RECEIVED
Jul 01 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-001091
Lower Court Case No. 2025-CP-26-09089

Claran Lundgren,
Appellant,
v.
Ashton Glenn Homeowners' Association, Inc., Waccamaw Management, LLC, and Bob Sauthoff, individually and as agent of the HOA,
Respondents.

REPLY BRIEF OF APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

Preliminary Response to Respondents' Framing

Respondents reduce this appeal to a simple story: prior proceedings existed, judgments were entered, so Appellant cannot proceed. That framing assumes the very conclusion the Verified Complaint challenges. The issue is not whether prior proceedings occurred — they did — but whether the circuit court could give them blanket preclusive effect at the pleading stage without first determining what claims, issues, parties, capacities, time periods, later-accruing conduct, and record-integrity allegations were actually adjudicated. Appellant did not file an ordinary appeal or re-litigate the underlying HOA dispute; she filed an independent equitable action alleging that the prior record was narrowed, incomplete, and later used preclusively before its scope and integrity were ever tested. Respondents cannot defeat that action by asking this Court to presume the completeness, reliability, and preclusive effect of the very record Appellant challenges.

Respondents' counterstatement narrows the appeal the same way. This case asks whether the circuit court applied the correct pleading standard; whether it relied on extra-pleading materials without Rule 56 conversion; whether it used judicial notice to resolve disputed factual predicates; whether it skipped the independent-action gateway; whether it applied res judicata and collateral estoppel without claim- and issue-specific analysis; and whether it dismissed later-accruing conduct and claims against Waccamaw Management, LLC and Bob Sauthoff individually without separate analysis.

Preclusion cannot be applied by label. Calling this "the same dispute" does not establish identity of claims; calling issues "already decided" does not prove they were actually litigated, directly determined, and necessary to a prior judgment; and calling later ledger entries, board-directed charges, attorney referrals, and foreclosure-related threats "mere collection" does not establish that those acts had already occurred or been adjudicated. Because the circuit court dismissed the entire action through blanket preclusion without resolving those threshold issues, the dismissal should be reversed and remanded.

I. Respondents' Preclusion Theory Assumes the Validity of the Challenged Record and Is Reviewed as Legal Error.

Respondents' preclusion theory repeatedly assumes the integrity, completeness, and legal effect of the very judicial record this independent equitable action challenges. Every major preclusion argument depends on accepting Respondents' version of the prior proceedings as true before the process-integrity allegations are themselves adjudicated.

Respondents' Brief rests on a circular premise: because prior judgments and records exist, the Verified Complaint is barred. But the Verified Complaint does not merely disagree with prior outcomes; it invokes Rule 60(b)'s savings clause and the court's inherent equitable authority to address fraud on the court, extrinsic fraud, record-integrity defects, and later-accruing conduct that allegedly prevented a full and fair adjudication and then allowed a narrowed record to be used preclusively. (See Verified Complaint (Designation Item 4); Appellant's Memorandum of Law in Support of Verified Complaint (Designation Item 5)). Each later proceeding relied on or gave preclusive effect to the same narrowed and disputed magistrate record before those threshold defects were tested; the Common Pleas appeal, the federal dismissal, and the circuit court's ruling thus carried the original record-integrity problem forward rather than cleansing it.

An independent action is not barred merely because it concerns a prior judgment; its function is to determine whether equity permits that judgment and record to continue operating where the pleadings allege the judgment was procured, preserved, or later used through conduct undermining the adjudicative process. See Chewning v. Ford Motor Co., 354 S.C. 72, 81-83, 579 S.E.2d 605, 611-12 (2003). Respondents' argument that Appellant "could have raised" these claims earlier misunderstands the remedy: the gravamen is the alleged process-integrity defects and later preclusive use of the challenged record, not the underlying HOA dispute, and a judgment-integrity challenge cannot logically be litigated before the proceedings and record-use giving rise to it occur. For the same reason, Respondents' same-cause framing pitches the case at too high a level of generality; the operative right to relief is not the HOA dispute but the equitable right to test whether a narrowed, disputed record may operate preclusively. See Section V, infra.

The hearing transcript makes that preservation concrete. When the court asked whether Appellant was attempting another appeal, she stated: "Respectfully, this is not a re-argument of the merits. It's an independent action under Rule 60(b)," directed to process, extrinsic fraud, and the preclusion gateway. She explained she sought not a merits decision from the challenged materials but a test of the record-integrity defect: "Because it's to prove the fraud on the court, Your Honor," and "[t]here's missing testimony out of there." (See Transcript of February 23, 2026 Hearing, pp. 7-8, 15-16, 19 (Designation Item 19)).

Respondents' standard-of-review framing is also too narrow. The dismissal turned on threshold legal determinations — the independent-action gateway, the Rule 12/Rule 56 boundary, the use of judicial notice to resolve disputed facts, and the dismissal of later-accruing and defendant-specific claims — reviewed as legal error, not insulated by discretionary language. The applicability of res judicata and collateral estoppel is a question of law reviewed de novo. See

Builders Mut. Ins. Co. v. Bob Wire Elec., Inc., 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018). Whether a Rule 12(b)(6) motion was converted to summary judgment by reliance on extra-pleading materials, whether Rule 56 protections were required, and whether the correct pleading standard was applied are likewise procedural questions of law. Because the court dismissed the entire action through preclusion before analyzing those threshold matters, deference does not cure the error; the threshold framework was the first question, not a discretionary issue it could skip.

II. The Circuit Court Applied Blanket Preclusion Without the Required Claim-, Defendant-, Capacity-, and Time-Period Analysis.

Respondents defend the dismissal as though the Verified Complaint presented one claim against one party. It did not. The pleading named Ashton Glenn Homeowners' Association, Inc., Waccamaw Management, LLC, and Bob Sauthoff individually and as agent of the HOA, and asserted distinct theories including an independent action in equity, fraud on the court, extrinsic fraud, due-process and record-integrity theories, FHA retaliation/interference/discrimination, unlawful collection, breach of contract, breach of fiduciary duty, abuse of process, conversion, negligent misrepresentation/constructive fraud, civil conspiracy, negligent hiring/retention/supervision, and lien/collection relief. (See Verified Complaint, caption and counts (Designation Item 4); Appellant's Memorandum of Law (Designation Item 5)).

The court dismissed every count through a single preclusion analysis despite the Complaint's multiple causes of action governed by different standards and supported by different factual predicates. Neither the court nor Respondents identify which claims were barred by res judicata, which issues by collateral estoppel, which claims post-dated the prior proceedings, which fell outside the magistrate court's narrow CMV ruling, or which were directed against Waccamaw or Sauthoff in a capacity not previously adjudicated. Even if one theory were subject to dismissal, that would not dispose of every remaining claim. That approach is incompatible with Rule 12(b)

(6), because each count required analysis under its own elements, against the appropriate defendant, in the correct capacity, and within the correct time period. (See Form 4/Judgment (Designation Item 1); Order of Dismissal (Designation Item 2); Verified Complaint, counts and prayer (Designation Item 4)).

Respondents' reliance on Rule 52(a), SCRCP, to excuse the absence of claim- and defendant-specific analysis misunderstands the error. The defect is legal, not stylistic: Rule 52(a) excuses formal findings of fact, but it does not excuse the failure to perform the legal analysis necessary to dismiss an entire multi-count Verified Complaint against distinct parties and capacities — including direct claims against Waccamaw and individual-capacity allegations against Sauthoff. The argument also undercuts Respondents' own harmless-error position: if the Form 4 alone sufficed, they cannot simultaneously defend a detailed adversary-drafted order supplying the reasoning and blanket preclusion analysis Rule 52(a) supposedly made unnecessary; and if the signed order matters, its failure to perform the required claim-, issue-, defendant-, and posture-specific analysis matters too. A court cannot avoid reversible legal error by omitting the analysis appellate review requires.

The blanket approach also failed to address Appellant's preserved void-ab-initio and conditions-precedent arguments. The Verified Complaint alleged that certain fines, charges, and consequences were void or unauthorized because Respondents failed mandatory prerequisites under the governing documents and South Carolina law, including certified-mail notice, a cure period, and hearing rights before monetary penalties could be imposed or escalated, and because they relied on unrecorded or extra-contractual rules. (See Verified Complaint, governing-document and notice/hearing allegations and exhibits (Designation Item 4); Magistrate Court Transcript, p. 9, ll. 1-5; p. 39, ll. 13-20; p. 40, ll. 1-10 (Designation Item 20)). Actual receipt of ordinary mail does not establish that Respondents provided the required opportunity to contest the violation, present evidence, request a hearing, or obtain a decision before fines, fees, attorney referrals, service suspensions, or collection consequences were imposed. Because Respondents used the resulting debt and later collection as a foundation for preclusion, the court was required to analyze whether those charges were validly imposed before treating them as adjudicated. A contractual condition precedent must occur or be excused before the corresponding duty of performance arises. McGill v. Moore, 381 S.C. 179, 189, 672 S.E.2d 571, 576 (2009). The magistrate transcript confirms Appellant raised the absence of certified-mail compliance; that the notice package did not state a hearing could be requested; that Respondents' counsel agreed, "I would agree, Your Honor. I don't know that there's anything in there"; and that Appellant distinguished receipt from compliance with the certified-mail procedure. (See Magistrate Court Transcript, p. 9, ll. 1-5; p. 39, ll. 13-20; p. 40, ll. 1-10 (Designation Item 20)).

Respondents may cite the Magistrate Return's statement that Appellant acknowledged receiving notices, but receipt was not the issue she preserved. When asked whether she denied receiving letters, Appellant clarified: "No, I did receive them ... However, you failed to follow your enactment procedures for proper notification. It clearly says within your bylaws and within your declarations that they must be sent certified mail." (See Magistrate Court Transcript, p. 40, ll. 5-10 (Designation Item 20)). Respondents' recorded amendment confirms the distinction. The Thirteenth Amendment to the Declaration, recorded February 25, 2020, provides that reasonable fines may be collected in the same manner as assessments. (See Thirteenth Amendment, Exhibit 21 to Verified Complaint (Designation Item 4)). But treating a fine as collectible like an assessment does not erase the prerequisites governing its lawful imposition. The amendment did not permit Respondents to bypass Bylaw Section 6.10, certified-mail notice, or cure-and-hearing protections simply by placing penalty charges on a ledger or later calling them assessments. Whether those prerequisites were satisfied could not be resolved against Appellant through blanket preclusion at the Rule 12 stage.

Respondents' analysis also improperly treats every defendant as a single, interchangeable entity. Identity of parties, privity, capacity, and issue preclusion must be analyzed separately for each defendant, capacity, and claim; blanket treatment of distinct defendants is itself reversible error where the Complaint alleges separate conduct by each. A prior caption identifying Ashton Glenn HOA "c/o Waccamaw Management, LLC" does not establish that all direct corporate claims against Waccamaw were adjudicated; nor does privity, even if present for some purposes, establish that individual-capacity allegations against Sauthoff were actually litigated, necessarily decided, or barred without analysis. (See Verified Complaint, party/capacity allegations (Designation Item 4); Magistrate Court Complaint caption (Designation Item 21); Federal R&R privity discussion (Designation Item 23)). This is especially true as to Waccamaw, whose pleaded direct role in communications, enforcement, account handling, records, and the refusal to produce violation media as "proprietary" required analysis of its own conduct, not derivative treatment through the HOA; the Chris DeLuca communications and testimony were material to Appellant's theory that Respondents had notice of harassment, discrimination, retaliation concerns, unemployment hardship, and the request that Sauthoff not participate in decisions affecting her. (See Verified Complaint, Waccamaw-specific allegations and DeLuca "proprietary" email (Designation Item 4)). The same is true for Sauthoff individually: generic privity cannot replace analysis of whether his personal interests and individual-capacity liability were actually represented and adjudicated. The federal R&R recognized that interests could diverge if discriminatory or unfair action were found; the magistrate court then refused to hear those discrimination and retaliation issues. (See

Federal R&R (Designation Item 23); Magistrate Court Transcript, p. 21, l. 23-p. 22, l. 2; p. 38, ll. 19-22 (Designation Item 20); Verified Complaint, Sauthoff individual-capacity allegations (Designation Item 4)). That unresolved divergence cannot be converted into pleading-stage privity sufficient to dismiss all individual-capacity claims.

III. Respondents' Extra-Pleading Materials Either Had to Be Excluded or Required Rule 56 Conversion.

Respondents cannot rely on extra-pleading materials while preserving the benefits of a Rule 12(b)(6) posture. Rule 10(c), SCRCP, made Appellant's exhibits attached to the Verified Complaint part of the pleading. Respondents' Exhibits A-K were different: attached to their motion, not Appellant's pleading exhibits, they could not be treated as admitted facts or substantive Rule 12 proof. (See Verified Complaint and exhibits (Designation Item 4); Respondents' Motion to Dismiss, Exhibits A-K, and February 17, 2026 Memorandum (Designation Items 6-7)).

Nor did Appellant incorporate Respondents' entire prior-record universe by referencing prior proceedings. An independent action challenging a prior judgment necessarily identifies that judgment and explains how the prior record was used; that does not adopt the truth, completeness, reliability, or preclusive effect of the challenged record. If mere reference sufficed to incorporate the prior record for its truth, the independent-action remedy recognized in Chewning would be nullified. Respondents' insistence that Appellant "expressly incorporated" her prior filings does not change this: incorporating those filings to establish procedural history and the mechanism by which Respondents converted a narrowed record into a preclusion shield is not an adoption of the truth or completeness of a record Appellant simultaneously challenges as altered and incomplete. Appellant referenced the prior proceedings to show procedural history, preservation, and the mechanism by which Respondents converted a narrowed, disputed record into a preclusion shield; those references did not concede the completeness of the transcript or Return, admit that excluded issues were litigated, or transform late-filed motion exhibits into Rule 10(c) pleading exhibits. Respondents' reliance on Brazell v. Windsor does not cure the defect: Brazell involved a document the plaintiffs themselves identified as incorporated into their own complaint; it does not authorize a defendant to attach late-filed prior-record exhibits to a Rule 12 motion, build a factual preclusion defense, and avoid Rule 56 conversion. (See Respondents' Brief, Brazell argument; Respondents' Exhibits A-K (Designation Item 7)).

The procedural rule is straightforward. When matters outside the pleadings are presented and not excluded on a Rule 12(b)(6) motion, the motion must be treated as one for summary judgment, with a reasonable opportunity to present Rule 56 materials. Brown v. Leverette, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); Johnson v. Dailey, 318 S.C. 318, 321, 457 S.E.2d 613, 615 (1995). The hearing record fixed that boundary. The court stated that, on a Rule 12 dismissal, it was "bound by what's included in the pleadings," while recognizing Respondents were arguing the matters had already been decided and appealed. Counsel then represented, "I'm not asking you to consider any documents, or discovery, or anything like that," while confirming Respondents were on a motion to dismiss. (See Transcript of February 23, 2026 Hearing, p. 14, ll. 21-25; p. 21, ll. 17-25 (Designation Item 19)). Those statements create a procedural fork: either the outside materials were excluded and the Verified Complaint controlled, or they were considered and Rule 56 conversion was required. The Form 4 heightened the ambiguity by granting "Defendant's Motion to Dismiss & Summary Judgment," denying Appellant's Rule 56(f) continuance and limited discovery, and directing counsel to prepare the draft order. (See Form 4/Judgment (Designation Item 1)). Respondents' positions are thus internally inconsistent: below, they disclaimed reliance on outside materials to preserve a Rule 12 posture; on appeal, they rely on those same materials to support affirmance. They cannot do both. (See Transcript of February 23, 2026 Hearing, p. 21, ll. 17-25 (Designation Item 19); Respondents' Brief.)

Judicial notice does not solve the problem. A court may notice that prior filings, orders, and proceedings exist; it may not use notice to accept the truth of disputed assertions within them, resolve disputed scope or completeness, decide audio-integrity and chain-of-custody issues, or assign preclusive effect to the challenged record. Judicial notice of existence is not notice of truth or preclusive effect, and may support preclusion only where the defense raises no disputed fact. Here the preclusion defense depended on disputed matters: the scope of the magistrate proceeding, whether retaliation and discrimination were refused, whether the certified record was complete, whether native audio and metadata should be preserved, whether later ledger and collection activity created new claims, and whether claims against Waccamaw and Sauthoff in separate capacities had ever been adjudicated. Judicial notice could not resolve those disputes against Appellant at the pleading stage. Respondents' Designation of Matter does not cure the defect either; inclusion in the appellate record does not transform motion exhibits into Rule 10(c) pleading exhibits or proper Rule 12 proof. (See Appellant's Rule 209 Designation; Respondents' Designation of Matter; Appellant's Qualified Objection to Respondents' Designation of Matter.)

The same fork made the Rule 56(f) denial prejudicial. If the court considered matters outside the pleadings, Appellant had to receive a reasonable opportunity to respond under Rule 56 and to seek targeted discovery and preservation directed to the same record Respondents invoked as preclusive. Instead, the court denied preservation and Rule 56(f) relief while granting dismissal based on the challenged record. (See Form 4/Judgment (Designation Item 1); Plaintiff's Rule 56(f) Motion (Designation Item 10)). That was not harmless: either the court had to accept the Verified

Complaint and its exhibits as true under Rule 12, or Rule 56 protections were required first; either way, it dismissed the entire action before the required threshold inquiry occurred.

This defect was preserved at every stage. Before the hearing, Appellant objected by email to Respondents' untimely dispositive memorandum and Exhibits A-K, requested the official Notices of Electronic Filing and file-stamped copies, objected to any de facto Rule 56 presentation, argued that preclusion could not be resolved on a bare Rule 12 record, and asked the court to strike or decline to consider the late materials. She renewed it on the record and through her Rule 56(f), Rule 59(e), and Rule 209 filings and her Initial Brief; Respondents cannot characterize it as newly asserted. (See February 18, 2026 Email Objection (Designation Item 9); Transcript of February 23, 2026 Hearing, p. 5, ll. 14-22 (Designation Item 19); Appellant's Opposition Memorandum (Designation Item 8); Rule 56(f) Motion (Designation Item 10); Rule 59(e) Motion (Designation Item 25); Appellant's Rule 209 Designation.) At the close of the hearing, Appellant asked the court to read her opposition memorandum, and the court responded, “I will.” (See Transcript of February 23, 2026 Hearing, p. 27, l. 24-p. 28, l. 1 (Designation Item 19)). The late-service and proposed-order sequence reinforces the prejudice: Respondents' February 17 memorandum and Exhibits A-K were served after the January 22 scheduling notice's ten-day deadline; Appellant objected in writing as a Traditional Filer on February 18 and again at the hearing; Respondents then electronically submitted a proposed dispositive order while serving Appellant by mail, and the signed order adopted the late preclusion framework before she had a meaningful pre-signature opportunity to object. Respondents' reliance on the 1994 note to Rule 5(b)(3) — that a court need not delay entering a proposed order — misses the point: the defect is not the timing of entry but that Appellant, a Traditional Filer served only by mail, had no meaningful opportunity to object before signature. (See Notice of Motion Scheduling; February 18, 2026 Email Objection; Transcript of February 23, 2026 Hearing, p. 5, ll. 14-22 (Designation Items 8, 9, 19)).

IV. Collateral Estoppel Fails Because Respondents Do Not Show That the Relevant Issues Were Actually Litigated and Necessarily Decided.

Respondents invoke collateral estoppel in the abstract without the required issue-by-issue analysis. Issue preclusion applies only where the identical issue was actually litigated, directly determined, necessary to the prior judgment, and asserted against a party bound by that determination; a generalized assertion that the same dispute was previously litigated cannot replace that element-by-element showing. (See Respondents' Brief, collateral-estoppel argument.)

The certified magistrate transcript defeats Respondents' actually-litigated argument. Judge Clayton expressly declined to adjudicate the unpaid trash-can and kayak matters: "I can't do anything about the trash can and the kayak because you didn't pay those fines... So, let's move to the parking." Defense counsel accepted the narrowed scope: "Your Honor, since we're just going to deal with the commercial vehicles..." And in announcing judgment the court confined the ruling to the commercial-motor-vehicle issue: "As far as the commercial vehicle... based on that, the case is going to be dismissed." (See Magistrate Court Transcript, p. 21, l. 23-p. 22, l. 2; p. 38, ll. 19-22; p. 41, l. 19-p. 42, l. 1 (Designation Item 20)). Matters expressly removed from trial cannot simultaneously be characterized as actually litigated. The transcript, not Respondents' characterization, defines the scope of the adjudication. Matters outside that narrowed CMV ruling — including fence violations, dog/leash-related enforcement, trash-can violations, kayak violations, other non-CMV fines and letters, FHA retaliation/discrimination, selective enforcement, record-integrity issues, Waccamaw-specific conduct, Sauthoff individual-capacity liability, and later-accruing collection conduct — cannot be treated as actually litigated or necessarily decided.

Nor can the Magistrate Return enlarge the judgment. A summary return cannot transform excluded or unadjudicated issues into issues actually litigated and necessarily decided, and where the Return conflicts with the verbatim transcript, the transcript is the best evidence of the proceedings below. The Return confirms the limited nature of what was before the court in its own words: it recites that “[a] complaint was filed by Ms. Lundgren for violations, fees and administrative charges in the amount of $1,005,” and its narrative addresses only the garbage-can and commercial-vehicle violations, selective enforcement, and certified-mail notice. It contains no findings adjudicating the FHA, record-integrity, defendant-specific, or later-accruing issues Respondents now assert. (See Magistrate Return of Civil Appeal, Exhibit 15 to Verified Complaint, p. 1 (Designation Items 4, 20, 21)). Its reference to garbage-can testimony is not an adjudication: because the transcript shows the court declined to adjudicate the trash-can and kayak fines, Respondents cannot use that mention to preclude trash-can violations or related retaliation and selective-enforcement theories. (See Magistrate Court Transcript, p. 21, l. 23-p. 22, l. 2 (Designation Item 20)).

The federal dismissal does not supply the missing determination. The federal Report and Recommendation recognized that collateral estoppel had been raised but stated the parties had not focused on whether the doctrine foreclosed the lawsuit and that the court therefore had not analyzed it. (See Federal Report and Recommendation, p. 17 (Designation Item 23)). A ruling that expressly declined to analyze collateral estoppel cannot be treated as making the issue-by-issue determinations Respondents now ask this Court to presume. Respondents also cannot create preclusion by recasting Appellant's prior pro se statements as admissions that all claims were adjudicated; a litigant's description of prior proceedings is not a binding concession that every later-pleaded claim, party, capacity, or act was actually litigated and necessarily decided.

Appellant consistently asserted the opposite. (See Verified Complaint (Designation Item 4); Appellant's federal filings (Designation Item 23); Magistrate Court Transcript, p. 21, l. 23-p. 22, l. 2; p. 38, ll. 19-22; p. 41, l. 19-p. 42, l. 1 (Designation Item 20)).

Respondents likewise overstate the Common Pleas appeal. An appeal from a limited record does not transform excluded issues into litigated ones, and does not cure a record-integrity challenge where the reviewing court considered the same challenged record. Appellant advised Judge Hood that DeLuca testimony had been removed from the record, that she had filed a judicial complaint, and that she had requested forensic investigation of the audio file; when she asked to swear in DeLuca, Judge Hood responded that Common Pleas does not take testimony on appeal, and she explained the testimony mattered because the information had been removed from the record. (See Common Pleas Appeal Hearing Transcript, Exhibit 34, p. 5, ll. 9-12; p. 6, ll. 7-11; p. 12, ll. 20-25; p. 13, ll. 13-20 (Designation Item 22)). Judge Hood's order relied on the Return and appeal record; it did not conduct a new trial, receive omitted testimony, test native audio, resolve chain-of-custody issues, or determine whether the Return accurately reflected the narrowed trial. Respondents cannot rely on that order as conclusive proof the broader issues were fully and fairly adjudicated, especially where Appellant contemporaneously objected that the Return misstated the scope of what had been heard. Equally telling is what Respondents do not answer: they never identify where the magistrate court actually litigated and necessarily decided any of those matters. Their argument depends on generalization, not issue-specific proof. The judgment form confirms it: a short judgment awarding $1,020 in attorney fees did not identify or necessarily determine any of those matters. Collateral estoppel therefore cannot support dismissal of the entire Verified Complaint at the pleading stage.

V. Respondents Cannot Supply a New Merits Ruling on FHA and Later-Accruing Claims That the Circuit Court Did Not Make.

Respondents argue Appellant failed to plead a viable FHA theory because the Verified Complaint did not establish discrimination based on a protected class. They may argue alternative grounds for affirmance under Rule 220(c), but that does not cure the error here. The circuit court conducted no claim-specific Rule 12(b)(6) analysis of Appellant's FHA retaliation, discrimination, interference, or hostile-environment allegations; it dismissed through blanket preclusion, and Rule 12(b)(6) requires this Court to accept well-pled facts and reasonable inferences rather than resolve disputed retaliation and selective-enforcement questions against Appellant in the first instance. To the extent the federal action reached the FHA merits, that ruling addressed only the pre-2025 conduct pled in the August 2024 federal complaint; it could not have adjudicated the later-accruing FHA retaliation theory pleaded here, which rests on collection and foreclosure-related escalation in September and October 2025 — more than a year after that complaint and months after the June 2, 2025 federal judgment.

Respondents also narrow the FHA theory by addressing only discrimination under 42 U.S.C. § 3604 while ignoring Appellant's retaliation and interference allegations under 42 U.S.C. § 3617. Appellant alleged retaliation, interference, selective enforcement, denial of services, and later collection activity after she challenged Respondents' conduct and sought fair-housing review. Respondents' protected-class argument attacks the wrong element: § 3617 bars retaliation and interference against any person for opposing a discriminatory housing practice or exercising FHA rights, and turns on protected activity — Appellant's objection to the HOA President's sexually inappropriate conduct and her fair-housing complaints — not on Appellant's own protected-class status. In any event, Appellant separately pleaded sex-based hostile-environment harassment, which supplies a protected class. Because the magistrate court stated, “Retaliation. Discrimination.

No, ma'am," Respondents cannot use that limited proceeding as a preclusive merits ruling on FHA theories the circuit court never separately analyzed. (See Verified Complaint, FHA allegations and HUD complaint/response exhibits (Designation Item 4); Mag. Ct. Tr. p. 12, ll. 6-9 (Designation Item 20)). The court never decided whether Appellant could prove any FHA theory; it dismissed through preclusion. Affirmance on an unaddressed § 3604 element would resolve in the first instance a § 3617 retaliation/interference claim the magistrate court refused even to hear.

The early enforcement chronology raised factual questions unsuitable for the pleading stage. Appellant alleged that on March 16, 2023 she had a ten-minute call with HOA President Sauthoff about the commercial-vehicle issue, and that the same day Respondents' counsel issued a demand letter adding a $250 attorney-fee charge. (See Verizon Call Log, Exhibit 48, and March 16, 2023 Attorney Demand, Exhibit 49 (Designation Item 4)). Whether that sequence bears on escalation, retaliation, notice, or selective enforcement required factual development; it was not adjudicated by the narrow CMV ruling and could not be dismissed through blanket preclusion.

The same defect applies to later-accruing conduct. A later claim does not require a newly imposed fine; a later act may create a new claim or injury when a defendant escalates collection, relies on a ledger, asserts a judgment-related charge, threatens foreclosure, or uses disputed charges and a disputed record to impose new consequences. Appellant preserved that distinction by identifying new retaliation and foreclosure-related conduct that had not been adjudicated, including Exhibit 11, the $175-per-week entries, the 2025 collection demands, and the use of post-judgment collection to collect fines she maintained the magistrate court had refused to adjudicate. (See Transcript of February 23, 2026 Hearing, p. 19, ll. 9-14; p. 25, ll. 7-23 (Designation Item 19)). The Account History Report generated October 21, 2025 contradicts Respondents' "mere collection" characterization. It does not reflect passive collection of a static $1,020 judgment; it records recurring $175 violation-fine entries after the May 16, 2024 trial; two August 19, 2025 transactions — an $85 late fee and a $15 collection fee — each referencing "07/31/25 Charge" and noted "Per Board President"; a September 15, 2025 $1,020 "Miscellaneous Charge" labeled "Judgement of Fee Legal/Judgement 5/16/24"; and an October 21, 2025 $150 administrative charge for "Collection Process to Atty." The balance reached $3,650.00, and counsel then added another $250 attorney fee and demanded $3,800.00. (See Account History Report, Exhibit 11 to Verified Complaint, pp. 3-4; post-judgment ledger and collection materials (Designation Items 4, 24)). Those later acts changed the legal and practical consequences Appellant faced and required time-period-specific analysis before dismissal.

This is not an argument that every lawful attempt to collect a fixed judgment creates a new cause of action. The point is narrower: Respondents cannot use blanket preclusion to avoid review of later-added recurring fines, board-directed charges, administrative charges, attorney referrals, and foreclosure-related demands that exceeded simple collection of a static $1,020 judgment. By accepting Respondents' competing characterization at the Rule 12 stage, the court resolved against Appellant disputed questions — which portions of the balance were adjudicated, which were added later, whether recurring and board-directed charges satisfied notice, cure, and hearing prerequisites, and whether later entries caused independently accruing injury — instead of accepting the pleading as true or converting the matter under Rule 56. Preclusion does not bar claims based on conduct post-dating the prior judgment merely because the later conduct arises from the same general relationship. See Lawlor v. National Screen Service Corp., 349 U.S. 322, 328 (1955). Identity of subject matter does not exist merely because both cases involve the HOA; the operative proof materially differs, depending on record-integrity defects, the Return, later ledger activity, post-judgment collection, foreclosure-related demands, and evidence obtained after the prior proceedings. At minimum, the court had to determine whether those later acts supported independent claims before dismissing the entire Verified Complaint.

VI. Respondents' Intrinsic-Fraud, Delay, and Preservation Arguments Do Not Cure the Threshold Error.

Respondents contend that equitable relief requires extrinsic fraud and cast Appellant’s allegations as intrinsic — ordinary trial error she could have raised below. That argument conflates two distinct doctrines and ignores the controlling authority. Rule 60(b)’s savings clause preserves an independent action to set aside a judgment for fraud upon the court, and relief on that ground is not subject to the time bars or the discovery-based finality limits that govern ordinary fraud. Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003). Fraud upon the court is “that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases.” Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988). And conduct that appears intrinsic in isolation rises to extrinsic fraud when coupled with a deliberate scheme to defraud or mislead the court. Ray v. Ray, 374 S.C. 79, 647 S.E.2d 237 (2007); Chewning, 354 S.C. at 82, 579 S.E.2d at 610 (subornation of perjury or intentional concealment of documents constitutes extrinsic fraud).

The Verified Complaint does not allege merely that a witness testified falsely — which, standing alone, would be intrinsic. It alleges that the certified record itself was altered and incomplete — that the magistrate audio contains an audible “jump” or “skip” at the point where the omitted DeLuca testimony should appear, corroborated by the Affidavit of Hearing Conduct and the Blaire Jaeger Affidavit — and that a tainted return and order were then produced and used preclusively. Corruption of the court’s own record and machinery by those charged with creating and certifying it is the paradigm of fraud upon the court under Evans, not a matter “presented and considered in the trial." At the Rule 12 stage those allegations must be accepted as true. (See Verified Complaint, independent-action and record-integrity allegations (Designation Item 4); Appellant's Memorandum of Law (Designation Item 5)).

That is the very posture the Supreme Court confronted in Ray, which reversed a Rule 12(b)(6) dismissal of an independent fraud-upon-the-court action, holding that whether the alleged scheme rose to extrinsic fraud could not be resolved against the plaintiff on the pleadings. Evans likewise reversed a pleading-stage dismissal and held that res judicata and collateral estoppel do not bar a collateral attack on a judgment procured by fraud — a direct answer to Respondents' "could have been raised" theory, because a challenge to the integrity of a proceeding cannot have been litigated and adjudicated within that same proceeding. Respondents' authorities are not to the contrary: Raby Construction, LLP v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004), and Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609 (1951), bar relief for ordinary intrinsic fraud — a witness's perjury open to attack at trial — not the alleged corruption of the record itself.

Respondents' remaining answer — that Appellant discovered the defect and raised it before — cuts against them. Relief for fraud upon the court carries no discovery-based bar and no time limit. Chewning, supra. And notice of a defect is not adjudication of it.

Appellant raised the missing-testimony and audio-integrity issue during the August 28, 2024 Common Pleas appeal, advised Judge Hood that DeLuca testimony had been removed, referenced the judicial complaint and forensic-investigation request, and attempted to have DeLuca sworn; Judge Hood declined because Common Pleas sits in an appellate capacity and does not take testimony. (See Common Pleas Appeal Hearing Transcript, Exhibit 34, p. 5, ll. 9-12; p. 6, ll. 7-11; p. 12, ll. 20-25; p. 13, ll. 13-20 (Designation Item 22)). Identifying a defect during an appeal is not the same as receiving an adjudication of it. An ordinary magistrate appeal reviews the transmitted record; it is not a mechanism for receiving omitted testimony, compelling preservation of native audio, testing metadata, or making chain-of-custody findings. The federal dismissal likewise did not adjudicate native-audio integrity, metadata, chain of custody, or South Carolina's independent-action gateway. That proceedings occurred therefore does not prove Appellant had a full and fair opportunity to litigate the record-integrity defect Respondents later used as preclusion.

Respondents' "multiple-opportunities" argument confuses the existence of proceedings with a meaningful opportunity to adjudicate the disputed issue. They tally four proceedings — the magistrate trial, the Common Pleas appeal, the Motion for Retrial, and the federal action — as though the count alone establishes a full and fair opportunity. But the Motion for Retrial was resolved by a Form 4 order, and each later proceeding either relied on the challenged record or lacked the capacity to receive the omitted proof necessary to test the defect. The record also defeats the delay and waiver framing. Appellant did not wait until this action; she raised the issue during the Common Pleas appeal, attempted to present the omitted witness, and had requested forensic audio review/preservation by June 7, 2024. (See ODC Complaint, Ex. 43 (Designation Item 4)). Exhibit 35 shows contemporaneous written objection before the proposed Common Pleas order became another preclusion instrument: Respondents' counsel notified Appellant and copied Judge Hood's law clerk that the appeal had been denied and attached the proposed order; Appellant responded that Judge Hood had been misled by Respondents' arguments and the Return, and objected that Judge Clayton had refused to hear trash, discrimination, retaliation, or issues beyond the monetarily paid matters. (See Appellant's written objection to proposed Common Pleas appeal order, Exhibit 35, pp. 1-3 (Designation Item 22)). Diligence in identifying a defect is not waiver simply because the reviewing court lacked the ability to receive the omitted proof.

Nor are the record-integrity allegations mere personal attacks; they entitle Appellant to plead and seek limited discovery into the native audio, metadata, chain of custody, and omitted testimony on which the preclusion defense depended. The preservation ruling compounds the error: if the prior record was central enough to dismiss the entire action, the native audio, metadata, export logs, and chain-of-custody information were central enough to preserve and test before dismissal. The court denied preservation and Rule 56(f) discovery while allowing the same challenged record to operate as a complete preclusive bar — reversible error or, at minimum, ground to remand for preservation and limited record-integrity discovery before dispositive reliance on that record.

VII. Respondents' Authorities State General Principles but Do Not Cure the Circuit Court's Threshold Errors.

Respondents' authorities largely state principles Appellant does not dispute about finality, preclusion elements, and judicial notice. They do not answer the dispositive question: whether blanket preclusion may be applied before the court analyzes an independent action challenging the integrity, scope, and later use of the very record invoked as preclusive. Respondents also rely on selected language from prior orders while omitting its procedural posture; selected excerpts cannot substitute for the issue- and claim-specific analysis preclusion requires. (See Respondents' Brief; Magistrate Court Transcript (Designation Item 20); Common Pleas Appeal Hearing Transcript, Exhibit 34 (Designation Item 22)).

Finality principles do not answer the independent-action gateway. The question is whether the court could apply preclusive effect before determining whether this case falls within Rule 60(b)'s savings clause and the court's equitable authority over fraud on the court, extrinsic fraud, record-integrity defects, and later use of the challenged record. Federated Department Stores, Inc. v. Moitie, 452 U.S. 394 (1981), involved ordinary finality and claim preclusion, not a South

Carolina independent equitable action challenging the integrity and later preclusive use of the prior record itself; it cannot collapse the independent-action inquiry into the ordinary preclusion rule prematurely applied here. Brazell, Andrews v. Daw, 201 F.3d 521 (4th Cir. 2000), and similar judicial-notice authorities do not authorize a court to resolve disputed truth, scope, or preclusive effect against the nonmovant at the pleading stage; notice that prior filings exist is not notice that a disputed record is complete or preclusive. The problem is not that the court cited preclusion principles, but that it applied them by label before resolving the predicates necessary to use them. Respondents' authorities do not supply what the order lacks.

CONCLUSION

For these reasons, the circuit court's order should be reversed. At minimum, the case should be remanded for claim-specific, defendant-specific, capacity-specific, and time-period-specific analysis under the proper Rule 12 or Rule 56 framework, with preservation of the native audio and related record-integrity materials and such limited discovery as is necessary to test Respondents' preclusion defenses and Appellant's independent-action allegations. Appellant does not ask this Court to decide the disputed facts in the first instance, but to reverse the pleading-stage dismissal and remand for that threshold analysis under the proper procedural framework.

Respectfully submitted,

s/ Claran Lundgren
Claran Lundgren
Appellant, Pro Se
1622 Montclair Drive
Surfside Beach, South Carolina 29575
(607) 427-5653
Claran.Lundgren@gmail.com
Date: July 1, 2026

CERTIFICATE OF SERVICE

I certify that on July 1, 2026, I served a true and correct copy of the foregoing Appellant's Reply Brief, together with Appellant's Qualified Objection to Respondents' Designation of Matter and Motion to Enforce the Rule 209 and Rule 210 Record Boundaries, by electronic mail and U.S. Mail, postage prepaid, addressed as follows:

Mr. Jonathan Gregory Lane, Esquire
PO Box 12519
Columbia, SC 29211-2519

RECEIVED
Jul 01 2026
SC Court of Appeals

Mrs. Elizabeth Salley Millender, Esquire
1330 Main Street, 10th Floor
Columbia, SC 29201

Mr. Mark Andrew Nappier, Esquire
3575 Highway 17 Business
Murrells Inlet, SC 29576

Mr. Jeffrey Brandt Kuykendal, Esquire
6302 Fairview Road, Suite 700
Charlotte, NC 28226

s/ Claran Lundgren
Claran Lundgren