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Oct 30 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Master in Equity

Charles B. Simmons, Master-in-Equity

Common Pleas Case No. 2024-CP-23-05987

Appellate Case No. 2026-002023

James E. Carter,

Appellant,

v.

Derek Dubay,

Respondent.

**RESPONDENT'S RETURN IN OPPOSITION TO APPELLANT'S MOTION FOR
LEAVE TO FILE RULE 60(b)(2), SCRCP, MOTION FOR RELIEF FROM JUDGMENT**

Respondent respectfully opposes Appellant's motion under Rule 240, SCACR, and Rule 60(b), SCRCP, for leave to file in the circuit court a Rule 60(b)(2), SCRCP, motion based on the “newly discovered evidence” contained in the affidavit of Jason Meadors, and requests that the court deny the motion.

RELEVANT FACTS

Appellant seeks to file a Rule 60, SCRCP, motion directed at the order and judgment entered by the Circuit Court on July 9, 2026, and from which Appellant appeals (the “Order”). This case concerns a breach of contract action where Respondent sought specific performance of a real estate contract (the “Contract”) for the sale of property located at 113 Ridgeland Drive, Greenville, South Carolina (the “Property”).

Relevant to this motion, the Order found that Appellant was represented by realtor Sara Chesney for several years in listing the Property and that Chesney assisted Appellant in creating the Contract and delivering it to Respondent. (Order at pp. 2-3). The Contract was signed by Appellant and delivered to Respondent, who countersigned the Contract prior to expiration. (Order at p. 3). The ratified Contract was then delivered to Appellant and Chesney. (Order at p. 3). The following day Appellant and Respondent executed an addendum to the Contract that amended the closing date but otherwise reaffirmed all of the remaining provisions of the Contract. (Order at p. 4).

Respondent then began performing his obligations under the Contract with the knowledge and permission of Appellant. (Order at p. 4). On August 1, 2024, Appellant decided to try to back out of the Contract and asked Chesney to prepare contract termination documents. (Order at p. 4). Chesney prepared a Notice of Termination and a Disbursement Agreement, both of which were signed by Appellant. (Order at p. 5). Both documents contain language confirming the existence of the Contract and making it clear that Appellant could not unilaterally release the Contract by his execution of these documents. (Order at pp. 5-6). Respondent never countersigned either document. (Order at p. 6). Instead, Respondent informed Appellant he intended to move forward with closing and performed all his obligations under the Contract. (Order at p. 7).

LEGAL STANDARD

Rule 60(b)(2), SCRCRCP, permits relief from judgment only upon newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b), SCRCRCP. Assuming this first condition is met, the Appellant must then establish that the newly discovered evidence: “(1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is

material to the issue; and (5) is not merely cumulative or impeaching.” Jamison v. Ford Motor Co., 373 S.C. 248, 272, 644 S.E.2d 755, 767 (Ct. App. 2007).

ARGUMENT

I. Appellant Could Have Timely Filed a Rule 59, SCRPC, Motion and his Failure to do so Defeats this Motion

The affidavit Appellant submits in support of leave defeats the motion. The non-jury trial in this matter concluded on June 9, 2026. The affiant Jason Meadors states that he informed Appellant of the newly discovered evidence “around mid-June 2026.” Judgment was entered on July 9, 2026. (Order). Rule 59(b), SCRPC, provides that in an action tried without a jury, a party has twenty (20) days “after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action.” Appellant had until July 29, 2026, to file a Rule 59, SCRPC, motion. Appellant failed to file a timely Rule 59, SCRPC, motion despite having the “newly discovery evidence” for more than a month prior to the Rule 59, SCRPC, deadline. Thus, Appellant does not qualify for Rule 60, SCRPC, relief.

Additionally, Appellant failed to act with due diligence. Final judgment was not entered until September 2, 2026, when the trial court ruled on Appellant’s motion to reconsider and Respondent’s motion for attorneys’ fees. (Order dated September 2, 2026). Again, Appellant failed to file an amended Rule 59, SCRPC, with the “newly discovered evidence” while the parties post-trial motions were pending or within twenty (20) days after these motions were decided. Finally, Appellant did not act with urgency once the appeal was underway: Appellant waited until October 5, 2026, nearly four months after Appellant claims he learned of the conversation, to conduct a first interview of the witness, and until October 15, 2026, to conduct a second interview and obtain the affidavit.

Rule 60(b)(2) is not available to Appellant because he possessed the “newly discovered evidence” in time to file a Rule 59, SCRC, motion. Appellant’s motion should be denied.

II. The “Newly Discovered Evidence” does not Satisfy the Rule 60(b) Elements

Because Appellant learned of the newly discovered evidence prior to the expiration of the period to file a Rule 59, SCRC, motion, this court need not consider the remaining factors. But if the court were to consider those factors, Appellant cannot meet his burden.

a. The Evidence Appellant Offers is Inadmissible Hearsay, is Immaterial, and would not Affect the Outcome at Trial

The affidavit does not offer the affiant’s own observations; it offers Chesney’s out-of-court statements, repeated for the truth of what they assert: that Appellant “didn’t want to sell,” that Chesney “had to push the deal through,” and that she “paid [herself] to get rid of him.” Each is an out-of-court statement offered to prove the matter asserted, and each is inadmissible hearsay. Rule 801, SCRE.

No exception rescues it. Chesney is not a party, so her statements are not party admissions. Appellant cannot invoke the agent-admission exception under Rule 801(d)(2)(D), SCRE, which applies only to a statement by a party’s own agent, offered against that party. The trial record establishes that Chesney was Appellant’s agent, not Respondent’s. Respondent was represented by Susan Dodds. Appellant cannot offer his own agent’s out-of-court statement against Respondent.

The circuit court’s finding that an enforceable contract existed did not rest solely on crediting Chesney’s account of events over Appellant’s. The court’s July 9, 2026, Order rests on multiple independent grounds. A secondhand account of an out-of-court conversation about Appellant’s state of mind, offered more than two years after the Contract was formed, is immaterial and would not disturb a judgment resting on the parties’ own written agreements and conduct. The

“newly discovered evidence” would not change the outcome of trial and is insufficient to support a Rule 60(b), SCRPC, motion.

b. The Evidence is Merely Impeaching

The evidence cited by Appellant supposedly contradicts Chesney’s sworn testimony but is otherwise irrelevant to the issues in the trial. The Order found numerous pieces of evidence supported the existence of the Contract. (Order at pp. 7 – 10). None of this depends on Chesney’s knowledge that Appellant supposedly “changed his mind” or “didn’t want to sell.” The ostensible value of the evidence is to impeach Chesney’s trial testimony. But courts do not grant new trials pursuant to Rule 60, SCRPC, based on evidence that is merely impeaching. Jamison, 373 S.C. at 272.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court deny Appellant's Motion for Leave to File a Rule 60(b)(2), SCRPC, Motion for Relief from Judgment.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I certify that the RESPONDENT'S RETURN IN OPPOSITION TO APPELLANT'S MOTION FOR LEAVE TO FILE RULE 60(b)(2), SCRPC, MOTION FOR RELIEF FROM JUDGMENT was served upon counsel for Appellant by electronic mail on **October 30, 2026**.

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