

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Master in Equity

Appellate Case No. 2014-002633

RECEIVED

JAN 24 2017

SC Court of Appeals

Molly M Morphey, Thomas M. Ferro and Lorraine B. Ferro.....

Appellants,

v.

Stephen Dudek and Doreen Cross.....
Respondents

PETITION FOR REHEARING

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Pursuant to South Carolina Appellate Rule (SCAPR) 221, Appellant Molly Morphey petitions this Court to rehear its Decision released January 11th, 2017 ("Decision"). Appellant respectfully requests rehearing on three issues, 1) The Breaches of Contract, 2) Bad Faith and Unfair Dealings, and 3) The Respondents lawful ability to compel specific performance.

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INTRODUCTION

(1) The breach(es) of contract. The Decision appropriately recognizes that the Respondents indeed did breach their sales Contract. Nevertheless, the Decision appears to have rejected Appellants’ position in the Appeal and misapprehended that the Respondents’ individualized issues associated with their breach(es) of contract preclude any alleged sellers breach of contract or alleged bad faith and unfair dealings. Ultimately, Respondents Dudek and Cross had failed to “apply or complete a mortgage application” per their **TIME IS OF THE ESSENCE** Contract requirement. Actually, they failed to apply ‘within the life’ of the contract, therefore let their Contract expire; they also failed to complete their lending application, and failed to answer their lender’s 10-day adverse letter; and because of the buyers breaches or failures alone, were ultimately denied lending on said Contract. These individualized determinations are alone enough to require that the trial court’s order be overturned since the Appellant has recognized Dudek and Cross have breached first and only, therefore ultimately caused their own failure to close escrow, regardless of any seller breach or bad faith and unfair

dealings, if any¹. Because of this exclusion Appellant Morpew seeks a rehearing to clarify whether or not Dudek and Cross' failure to make application per their Contract or their failure to even complete an application for financing [thus allowing their contract to expire] has any bearing in the Respondents lawful ability to compel specific performance; or if any alleged failures of the Appellants Ferro failures can legitimately excuse Dudek and Cross of their significant breach(es). Appellant Morpew also requests that the Court hold that specific performance must be denied because the Respondents individualized issues associated with their breach(es) of contract predominate over any other issue raised against the Appellants Ferro (sellers).

(2) Bad faith and unfair dealings. The Decision seems to have rejected the Appellants significantly supported defense in the Appeal that the sellers did not act in bad faith and unfair dealings, but instead this Court has agreed with the lower court Order. As repeated above (1), the Respondents individualized issues associated with their breach(es) of contract [and their own bad faith and unfair dealings] predominate over any other issue raised against the Appellants Ferro.

(3) The Respondents ability to compel specific performance. Again, and as repeated in (1) and (2) above, the Decision appears to have overlooked the fact or misapprehended the facts the Respondents breached their Contract first and only, and that their critical breach was not caused by any failure, if any, of the Appellants Ferro but instead by their own hand. In order to compel Specific Performance, at the exact time the Respondents requested specific performance, there has to be evidence of a valid and enforceable contract, and the Respondents Dudek and

¹ Appellants pointed out in the Appellants Final Brief, and with specificity (i.e., addressed each seller requirement or contingency), Appellants Ferro (sellers) did not breach the Dudek and Cross Contract, but instead went above and beyond their requirements; nor did they act with bad faith and unfair dealings.

Cross had to be able to perform their Contract. The Respondents did not meet these 2 elements of Specific Performance. The contract was rendered invalid and unenforceable by a lapse of time and/or illegibility (i.e., it expired because Dudek and Cross failed to apply or complete a mortgage application within the life of their Contract; at application the lender was requiring a Contract Extension Addendum in order to make the Contract enforceable or valid. This was never submitted by the buyers. Furthermore, the lender had ruled the contract illegible [for processing] and a required legible signed Contract was never produced by the Respondents. Ultimately, the Respondents were denied lending due to an incomplete application, thus Dudek and Cross were NEVER “ready” or “able” to perform their Contract, and specifically at the time they requested specific performance. Still, with complete knowledge of such, Dudek and Cross “unlawfully” filed a lis pendens and a complaint for specific performance, and did so to prevent the sale of said property to Appellant Morpew and/or use the legal system to force the sellers to sell [their home and property] to them and not to Morpew. There is no evidence or facts that prevented Dudek and Cross from applying or completing a lending application for financing except for themselves, making their serious breach inexcusable, which in itself waives their right to compel specific performance.

In further support of this Petition, Appellant Morpew submits the incorporated Memorandum. Morpew respectfully requests that upon rehearing, the Court modify or clarify its Decision as described below.

**APPELLATE MORPHEW's MEMORANDUM OF LAW IN
SUPPORT OF ITS PETITION FOR REHEARING**

I. Brief

Appellant acknowledges the Court's holding that to the extent the Respondents Dudek and Cross' breach of contract in this case was perpetrated. This Petition is not addressed to that holding. Rather, it appears the Court overlooked several material facts and arguments involving the three interdependent issues critical to the resolution of Appellants' appeal -- concerning Respondents ability to compel specific performance, bad faith and unfair dealing, and breach(es) of contract -- and this Petition seeks correction of those oversights and clarification of the Decision.

The Appellant respectfully brings this Request for a Rehearing to the Appellate court as there is irrefutable material evidence that by law, and not by speculation or assumptions, Dudek and Cross did not meet the strict legal requirements to compel Specific Performance, they acted in bad faith and unfair dealings, and the Defendants (Sellers Ferro) had not breached or acted in bad faith and unfair dealings, therefore were not at fault for Dudek and Cross' serious buyer breach(es) of contract.

II. Issue 1: Respondents Failure to Meet Specific Performance

Appellant strongly appeals to the Appellate court to allow a rehearing, and claim the court erred in holding Respondents had met the legal requirement(s) to compel Specific Performance, specifically, but not limited to, they were 'financially' ready to close the deal in order to demand specific performance.

Specific performance is addressed to the sound discretion of the Court of equity. *Sumner v. Bankhead*, 119 S.C. 78 (S.C. 1922). Specific Relief Act, S 20 provides — Discretion as to decreeing specific performance: — “The jurisdiction to decree specific performance is

discretionary and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of court is not arbitrary, but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.” Id.

“Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties.” *Ingram v. Kasey’s Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). In *Ingram*, the Supreme Court of South Carolina held to compel specific performance, a court of equity must find:

(1) [T]here is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.

Id.

Here, Dudek and Cross had initially met the first element of specific performance as evidence by record, but Appellant Morpew argues that agreement had become invalid as of 9p.m., November 30th, 2012 because the Respondents Dudek and Cross let their TIME IS OF THE ESSENCE contract expire before making application² for financing.

Dudek and Cross contacted First Federal to apply for financing on said contract on December 5th, 2012 [(5) days after the contract expiration date] (see **Attachment #1**, Mortgage Application Deposit Agreement/Authorization Form). Because the contract had expired and was not enforceable, First Federal required a [signed] Contract Extension Addendum at application in

²“Application” in this instance refers to their INITIAL request for mortgage credit on the sales contract/property as stated within that contract (i.e., the very first instance Dudek/Cross contacted First Federal asking for a loan application to apply for mortgage credit on said sales contract).

order for the expired Dudek/Cross sales contract to be valid³ (see **Record on Appeal (ROA) #301, #307, 308**; and **Attachment #2** Underwriting Memos for Loan, date 12/17/2012 1:36 pm (#1); date 12/31/12 3:24 pm; date 1/16/13; date 1/18/13 10:24 am). An expired land sale contract is no longer enforceable, unless supported by a signed contract extension addendum.

First Federal [Underwriting] received the expired sales contract on December 12, 2012, and on review deemed the sales contract illegible⁴. First Federal then required a legible copy of the sales contract and all addendums (including, but not limited to, the signed Contract Extension Addendum) (see **ROA #259**, **CONDITION #6**; and **Attachment #2** - entry: 12/17/2012 1:36 pm). Neither a signed legible sales contract nor a signed Contract Extension Addendum was ever received from the Respondents (see **ROA #310**).

Without the Contract Extension Addendum the Dudek and Cross Time is of the Essence contract expired on November 30th, 2012. And a legible contract without the sellers' signatures or name(s) on the contract was received on December 20th. In this instance, the Statute of Frauds⁵ was not satisfied, and therefore there was no enforceable agreement to sell the property or a valid agreement in which could be processed for mortgage credit by a federal banking institution.

³ Rendering the Dudek and Cross sales Contract null and void at application, when not accompanied by a signed Contract Extension Addendum *.

⁴ An illegible contract is deemed null and void [*Void Contract 1. A contract that is of no legal effect, so that there is really no contract in existence at all. • A contract may be void because it is technically defective, contrary to public policy, or illegal. — Also termed void agreement. Cf. illegal contract; unenforceable contract; voidable contract.*] Black's Law Dictionary

⁵ "...The principal characteristic of various state laws modeled after the original statute is the provision that no suit or action shall be maintained on a contract unless there is a and the identity of the parties, signed by the party to be charged or obligated under it or an authorized agent. The purpose of the statute is to prevent the proof of a nonexistent agreement through fraud or perjury in actions for breach of an alleged contract." ALM's Law.com online Real Life Dictionary of the Law

Consequently, at all times material to this case, and specifically at the exact time the Respondents requested specific performance, there was no evidence of a valid agreement, therefore the Respondents failed to meet the first requirement to compel Specific Performance.

As for the third element of specific performance, the Respondents had to prove the ability to perform the contract on January 15th, 2013. Dudek and Cross had not even completed their application at that time, had complete knowledge at all times material they would not be able to obtain financing if they did not provide a signed Contract Extension Addendum, and were denied lending due to an incomplete application (see **ROA #299** and **ROA #301**). Ultimately, Dudek and Cross failed to meet the first and third required elements of specific performance; and the court erred by determining Respondents Dudek and Cross were able to perform at the time it filed its action for specific performance.

Additionally, in order to compel Specific Performance, the movant must not have breached the "Time is of the Essence" Contract. In this case, the courts have 'forgiven' the Respondents critical breach of contract due to the alleged action that the Appellants Ferro breached first, and as a result caused Dudek and Cross' serious breach. "Ordinarily, a contract for the sale of land containing a clause that 'time is of the essence must be performed by the date fixed in the contract or the contract is no longer viable." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000).Id. (This general rule is, however, subject to the limitation that such a contract may nevertheless be specifically enforced if the failure to perform within the designated time results from the act or fault of the party against whom specific performance is demanded." Id. ("Accordingly, where a contract expressly states that time is of the essence- such that performance by the purchaser within a specified time a condition precedent to the seller's duty to perform his part- and the purchaser has been caused to delay his performance beyond the

specified time by the request or agreement or other conduct of the seller, the purchaser can enforce the contract in spite of the seller's delay." *Commercial Credit Corp v. Nelson Motors, Inc.*, 247 S.C. 360, 367, 147 S.E.2d 481, 484 (1966) ("There exists in every contract an implied covenant of good faith and fair dealing."); *id.* ("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." (quoting *Williams Trucking Co. v. JW Constr. Co.*, 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct. App. 1994)); *Champion v. Whaley*, 280 S.C. 116, 120, 311 S.E.2d 404, 406 (Ct. Appt. 1984) ("One who prevents a condition of a contract cannot rely on the other party's resulting non-performance in an action on the contract."); *id.* At 122, 311 S.E.2d at 407 ("It is sufficient for the plaintiff to present evidence that the defendant's prevention substantially contributed to the nonoccurrence of the condition." *Id.* at 121, 311 E.E.2d at 407 ("Almost all cases in which prevention is alleged will involve speculation as to what would have happened had the defendant's conduct not taken place"); *id.* At 121-22, 311 E.E.2d at 407 ("The defendant cannot take advantage of the uncertainty created by his own wrongdoing. If it were otherwise, then it would be virtually impossible for a plaintiff to prove a case of prevention."))

In the Appeal, the Appellants prove that the transaction didn't close by November 30, 2012 because the Respondents Cross and Dudek didn't even apply or complete a mortgage application for their financing by November 30th, 2012 or their failure to close is because they didn't apply or complete a mortgage application as they were required to do per their mortgage contingency within their sales Contract. In this instance, Dudek and Cross had 10 days within contract ratification to apply or complete a mortgage application. Contract ratified on October 24th, 2012. Dudek and Cross failed to apply or complete a mortgage application by November 3rd (see **ROA #302**), which inherently led to their direct failure to close escrow.

The standard forms approved by the **South Carolina Association of Realtors (SCAR)** are used for most residential real estate transactions in South Carolina. Paragraph 8 of the standard agreement contains the mortgage contingency clause. Under the terms of the agreement, the buyer is required to complete a mortgage application⁶ within an agreed upon period of time from the date of the agreement is fully executed by the parties. If the buyer fails to apply for a mortgage within the agreed upon time period, he is in default of the agreement.⁷

Because Dudek and Cross did not apply for lending per their Contract or even apply within the life of their Contract [i.e., before expiration], they were in default. This led to their inability to comply with the 2nd part of the mortgage contingency, to obtain “satisfactory” loan approval [not to be confused with final loan approval], and then directly to their failure to close escrow by November 30th, 2012.

The buyer is also in default of the agreement if he furnishes false or incomplete information concerning his legal or financial status or fails to cooperate in good faith in processing the mortgage loan application which results in the mortgage lender refusing to approve a mortgage commitment.⁸ Dudek and Cross again defaulted because they did not apply until the contract expired and did not provide all buyer documentation required at application, and were ultimately denied lending “due to an incomplete application” and failure to respond to their “10-day letter” (see **ROA #326** – entry 1/18/13; **#301**; **#299**).

The lower Court found that Dudek and Cross were “bound by the obligation of good faith and fair dealings which when considered with the intent and meaning of the Contract, required [them] to pursue [conventional] residential loan financing without delay” (see **ROA #1** - Finding

⁶ “Applying” or “completing a mortgage application” is not the same as obtaining a loan commitment or satisfactory loan approval.

⁷ South Carolina Association of Realtors (SCAR)

⁸ Id

of Fact #18). And though Cross testified that she knew she was required to apply for their loan per contract (see **Attachment #3**, trial testimony pg. 27 line 6-13). Instead Dudek and Cross did not contact First Federal to “apply” or “to begin a loan for processing” until December 5th, 2012 (see **ROA #302, 307, 308**).

The Decision does not call out with specificity the Respondents or the Appellants [Ferro] alleged breach or breaches, and Appellant has assumed to refer to the lower court Order. In further support for a rehearing, Appellant Morphey addresses specific performance as outlined in [1] through [7] below from the Order, paragraph 13, Findings of Fact.

The lower court found that, “Defendants Ferro failure to address each item of critical concern in the manner in which it was presented violates Defendants Ferros’ obligation to deal in good faith and fairly with Defendants Dudek and Cross. [1] The Court finds Defendants Ferros’ failure to immediately respond to Defendants Dudek and Cross in writing to the critical concerns to eliminate, or at least lessen, misunderstandings for Defendants Dudek and Cross to evaluate facts regarding their due diligence [inspection], together with Defendants Ferro's [2] failure to provide an approved subdivision plat until effectively four (4) days prior to the Paragraph 3 date, and [3] the utter failure to provide a timely "clear" CL 100, demonstrate that Defendants Ferro did not perform their obligations under the contract. [4] These failures prevented or hindered the ability of Defendants Dudek and Cross to complete their evaluation of the property as the contract provides.” “[5] Thus, this Court finds Defendants Ferro's failures excuse the obligation of Defendants Dudek and Cross to deliver the purchase price on or before November 30, 2012 by the method of payment to which the parties agreed. Reinstatement (First) of Contract § 295 (1932). The Court finds [6] the actions of Defendants Ferro establish they failed to observe TIME IS OF THE ESSENCE, a mutual obligation that the contract required. And found [7]

Defendants Ferro's failure to respond with dispatch and with clear intentions, collectively waives their right to assert Defendants Dudek and Cross did not comply with their obligation to observe that TIME IS OF THE ESSENCE.”

DEFENSES

[1] The Appellants Ferro responded immediately or within a very reasonable time, to every inquiry the Respondents sent [see (a)-(d) below], therefore did not violate their obligation to deal in good faith and fairly with Dudek/Cross or did not prevent Dudek and Cross' due diligence or did not hinder their understandings for Defendants Dudek and Cross to evaluate facts regarding their due diligence [inspection]. Additionally, Respondents let 15 days go by before communicating to the sellers that a second 'clarification' was needed, at which time their inspection contingency had been expired for 7 days. Appellant contends this does not seem the normal action of a substantially concerned buyer.

- a) Respondents sent the initial list from the inspection to seller's agent on November 3rd. Sellers answered on November 5th with a list of what they agree to do.
- b) Respondents request more clarification on November 8. Seller again responds on November 11 with a list directly correlating to the Respondents list on what they will do.
- c) On November 26, Buyers agent states to sellers agent via e-mail, her "*clients may consider a credit to have the repairs done themselves because the sellers were having an issue getting licensed contractor's to do the repairs.*" [nothing more from buyers on credit]
- d) On November 27, buyer's agent sends seller's agent a [Contract] Repair Addendum from the buyers that they 'need' the sellers to initial because the buyers are still unclear as to what is being agreed on. Note: the buyers initiated the amended the list, not the sellers. Sellers did not sign this Addendum⁹, but

⁹ Signing a Contract Repair Addendum would or could have turned their Contract into a "Repair Contract", which was not the intention of the said ratified Contract.

instead sent the original list from the Dudek and Cross addressing each line item with action or non-action taken and initialing each one on November 29th.

Moreover, Respondents “inspection” contingency expired on November 20th, (see **ROA #229** paragraph 19b) and they did not release their contingency [or take the house as is] or negotiate for repairs or terminate their contract; therefore per contract Dudek and Cross waived their right to condition closing escrow via inspection contingency, regardless how many times they may have gone back and forth negotiating repairs after that date. Ultimately,

Furthermore, Respondents were so focused on the seller’s obligations, they lost sight of their own critical contract contingency to secure financing per their contract. The inspection contingency is used to waive the buyers closing escrow contingency but does not waive the buyers financing contingency.

Again, the buyers’ failure to apply or secure financing per the Contract was no fault of the sellers, and even if the sellers failed some or all of their contract requirements, those failures became moot as soon as the Respondents allowed their contract to expire for failing to apply for financing.

[2] Appellants Ferro had the land survey scheduled the very day of contract ratification. The surveyor surveyed the land the very next morning after contract ratification. At this point it was out of their hands for processing by the surveyor and the county. As soon as the Appellants Ferro received the recorded plat [dated November 20th] on November 21st p.m. from the surveyor, they forwarded to their agent. Sellers’ agent forwarded to buyers agent November 22nd 7:50a.m (see **Attachment #4**, e-mail dated November 22 & 26th from sellers’ agent to buyers’ agent with recorded plat).

Plat was provided 8 days before the contract expired, not 4 as the lower court stated; the sellers had the land surveyed immediately after contract ratification, and they provided the

recorded plat as soon as it was available to them. And not with less significance, the sellers allowed Dudek and Cross to map out the part(s) of the property they wanted and how they wanted it, and they took on this effort and substantial cost BEFORE the buyers even scheduled an inspection or applied for lending. The sellers went above and beyond the ‘good faith and fair dealings’ threshold. As provided above, the lower court erred that the sellers acted in bad faith and unfair dealings. It was the Respondents that acted unlawfully or with bad faith and unfair dealing by falsely claiming they were held up from pursuing their financing because the survey needed to be recorded first. Respondents never provided or failed to provide any proof the recorded plat had prevented them from application or completing a mortgage application. The issue they claimed was the appraisal could not be performed until the land survey was recorded, but again, since they had not even applied within the life of their contract and/or never even completed a loan application, their alleged issue with the plat/recorded plat has no legitimate bearing or legal standing. Furthermore, it appears that Jackson Appraisal Service, the appraisal company that performed the Respondents’ appraisal, could and “*will do [an] appraisal based on the assumption the land is being subdivided*” – survey does not need to be recorded first (see **Attachment #5**, Jackson Appraisal’s response to Appellant Morphew’s inquiry). Furthermore, the Respondents waited 13 days after receiving the recorded plat to actually apply for lending, proving that the Respondents were not waiting on the recorded plat. Dudek and Cross were the ones acting in bad faith and unfair dealings, and it appears were only trying to use this “excuse” to forgive their serious breach of contract. Again, it was Respondents Dudek and Cross’ own intentional failure to apply or complete a mortgage application per contract or within the life of the contracts, that prevented them from closing escrow.

[3] The trial court erred that Appellants Ferro utterly failed to provide a timely “cleared” CL-100. Per the Contract, sellers were required only to “obtain” a CL-100 report on or before November 30th, 2012, not “provide” a “cleared” CL-100 (see **ROA #229** paragraph 19d). The sellers obtained such report per their contract requirement. Note, there was no communication prior to the Contract expiration from Respondents to Appellants Ferro emphasizing the need for the CL-100 any sooner than the date specified in the contract.

The CL-100 contingency date was established by the Respondents, not the sellers, and the Respondents’ agent, Susan Nicholson, testified at trial that “she *should have changed the date on the CL-100 to give them [buyers] plenty of time*”; AND she testified that she had accepted responsibility for contacting her contractor to clear the CL-100 (see **Attachment #6**, trial transcript – Nicholson – CL-100 date change and **Attachment #7**, trial transcript -Nicholson accepting responsibility to clear the CL-100). The sellers were and should have been under no assumption that they were required to provide the clearance letter.

Even if the sellers had maintained that responsibility, they were under no legal obligation or requirement to make those “repairs” until proof of financing or a closing date has been set. The Contract also contains a disclaimer that states, “*The seller is not required to make any repairs under any circumstances until Purchaser’s financing has been approved*” (see **ROA #229** paragraph 19h),¹⁰ therefore the Respondents cannot hold the Ferros responsible for not providing a “cleared” CL-100 until they could provide satisfactory approval per the Contract or a closing date.

¹⁰ This is in place to protect the sellers from making any unnecessary repairs until the buyers can prove they can perform their contract.

In this instance, the Appellants Ferro did not fail to meet their CL-100 contract requirement or did not fail to comply with Time Is of the Essence in regards to their Wood Infestation contingency.

[4] Appellant disagrees with the court Order that the Ferros prevented or hindered the ability of Defendants Dudek and Cross to complete their evaluation of the property as the contract provides” because the Ferros did not fail their contract contingencies or requirements, as specifically defended herein. Even if the seller’s did fail, the Respondents serious breach(es) of contract predominate over any other issue raised against the Appellants Ferro (sellers).

[5] Hence, the Appellant Morpew stands in the Appeal defenses the Respondents’ failed to lawfully meet the standards required to be ‘excused’ from a serious breach of contract in order for a court to compel specific performance. **Reinstatement (First) of Contract § 295 (1932).**

[6] Additionally, the Appellants Ferro did observe TIME IS OF THE ESSENCE, “a mutual obligation that the contract required”, while the Respondents did not. As stated herein and with specificity within the Appellant’ Final Brief. The Respondents utterly failed to perform their financing contingency, therefore this breach of contract is predominate over any other issue raised against the Appellants Ferro (sellers).

[7] And Appellant contends the Ferro's did not “fail to respond with dispatch and with clear intentions”, and collectively hold to their right to assert Defendants Dudek and Cross did not comply with their obligation to observe that TIME IS OF THE ESSENCE, as repeated herein.

III. Issue II: The Breach(es) Of Contract

All agree that the Respondents indeed did breach their sales Contract. But what is at issue is whether or not the Appellants Ferro caused this failure through their alleged breach(es)

or bad faith and unfair dealings; or did the Respondents, by their own hand and with bad faith and unfair dealings, cause their own breach of contract. As repeated above in (1), (2) and (3) above, the Respondents did not apply or complete a mortgage application per their Contract or even within the life of their Contract, allowed their Contract to expire, failed to complete their mortgage application, failed to respond to their lender's 10-day letter, and were ultimately denied mortgage credit on said Contract. Additionally, there was no evidence or irrefutable proof that the Appellants Ferro [sellers] breached the contract. Instead the Respondents and their lender told the court that they had applied per Contract and had secured financing. Appellant maintains that the courts have erred in law and in its review of the documents.

Even if the Appellants Ferro did breach or act with bad faith and unfair dealings, and as repeated herein, Dudek and Cross' individualized issues associated with their own breach(es) of contract predominate over any other issue raised against the Appellants Ferro.

IV. Issue III: Bad Faith and Unfair Dealings

As repeated herein (I, II and IV), the Respondents individualized issues associated with their breach(es) of contract [and their own bad faith and unfair dealings] predominate over any other issues raised against the Appellants Ferro. Appellant Morpew would also like to point out that they did not have concrete evidence at trial to argue due to the Respondents intentional withholding or obstruction of obtaining their financing status or lending file, even after several subpoenas AND [Appellants'] attorney-to- [Respondents'] attorney¹¹ meetings. And what is more, the Respondents and their defense specifically stated they had applied and were approved for financing. Please note, the Respondents no longer retain the "attorney" referenced herein due to his suspension by the Supreme Court, per SCACR Rule 413 and South Carolina Rule 7(b)

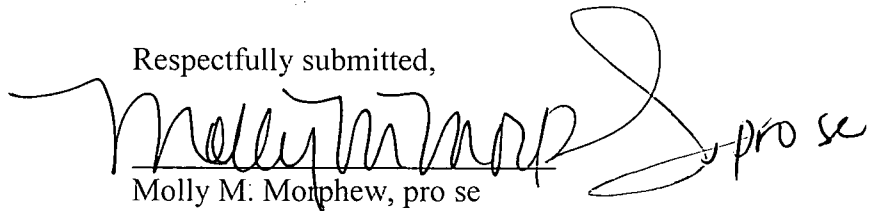
¹¹ The Respondents no longer retain the "attorney" referenced herein due to his suspension by the Supreme Court, per SCACR Rule 413 7(b).

Interim Suspension, “Upon receipt of sufficient evidence demonstrating that a lawyer poses a substantial threat of serious harm to the public or to the administration of justice, the Supreme Court may place the lawyer on interim suspension pending a final determination in any proceeding under these rules.” Due to this development, the Appellant Morphey would ask the Appeal courts to take further scrutiny in their review and confirm that the Respondents or their attorney had truly acted lawfully in their actions prior, during and after litigation.

CONCLUSION

For the reasons set forth in this petition, Appellant respectfully requests that the Petition for Rehearing be granted, and that the Court modify and/or clarify its Decision as set forth herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Molly M. Morphey', followed by the words 'pro se' written in a cursive style to the right of the signature.

Molly M. Morphey, pro se

FIRST FEDERAL

W12AW08756

MORTGAGE APPLICATION DEPOSIT AGREEMENT/AUTHORIZATION FORM

The Application Deposit is comprised of an estimate of the property appraisal fee, the credit report fee, and additional third party fees that are incurred by First Federal upfront (such as another lender's Subordination Agreement charge or Condominium documents). Should the actual costs exceed the estimate, I understand that I will be billed and pay the shortfall at or prior to closing.

The Application Deposit will be applied as follows:

*At the closing of my loan, to the actual property appraisal fee, credit report fee & upfront 3rd party fees. Any excess will be applied to additional closing costs.

*Upon First Federal issuing a declination of my loan request, I will be reimbursed the portion of the Application Deposit that exceeds the actual vendor costs incurred (this includes, but is not limited to, appraisal, credit report, Subordination Agreement, Condominium documents and Flood Certification).

*I understand that should I choose to withdraw/cancel my loan application the entire Application Deposit will be retained and not refunded.

I, DOREEN C. CROSS, authorize First Federal to:

- Charge my Visa/Mastercard/Discover Card in the amount of \$ 425.00
- Select One: Debit my First Federal checking/savings account in the amount of \$ _____ for my mortgage application deposit.
- Cash my personal or certified check in the amount of \$ _____

Name: DOREEN C. CROSS

Address: 236 CADY DRIVE SUMMERVILLE SC 29483

Billing Address on card (if different from above): _____

#121221
processed
12/6/12
DB

FOR CREDIT CARD USE ONLY:

Type of Credit Card: Visa
 Credit Card Number: 4144 4001 1386 8494
 Expiration Date of Card: 9/2013
 VCode on Back of Card: _____

FIRST FEDERAL OF CHARLE
2449 HULL DRIVE STE 100
CHARLESTON, SC 29405

TERMINAL ID: 11101577
MERCHANT ID: 002941020354226

ATM
SALE
DATE: 12/06/12
TIME: 10:09
AUTH: 00107358C
RESPONSE: N
APP: V

INVOICE: 121221
TIME: 10:09
AUTH: 00107358C

FOR FIRST FEDERAL CHECKING/SAVINGS ACCOUNT

Account Number: _____

TOTAL: \$425.00

Signature #: By Phone Date: 12/5/12

Loan Officer Signature: Alison Williams
WILLIAMS, ALISON

CRCDU
Rev. 9/12

AND EMAILED TO LO (sales price \$303,000)

12/17/2012 10:13:17 AM SANDI: plr appraisal reviewed. file to mla. approved du #6

12/17/2012 1:35:21 PM MADDY: PLR LOAN STILL TO TO BE REVIEWED BY UW ONCE ITEMS ARE RECEIVED:

1. CONTRACT WITH ADDENDS LEGIBLE COPY
2. TRANSCRIPTS

12/18/2012 11:56:58 AM QADEERA: PLR TRANSCRIPTS ORDERED.

12/18/2012 5:37:25 PM MADDY: PLR FILE TO UW FOR CONDITION REVIEW -SANDI

12/20/2012 10:43:07 AM SANDI: RECEIVED/REVIEWED LEGIBLE COPY OF SALES CONTRACT INCLUDING ALL ADDENDUMS. A REPAIR ADDENDUM WAS ALSO PROVIDED THAT WAS NOT PRESENT AT ORIGINAL UNDERWRITE. REPAIRS SEEM SUBSTANTIAL AND COULD INVOLVE STRUCTURAL/SAFETY ISSUES.

PER ADDENDUM ALL ITEMS TO BE ADDRESSED BY A LICENSED CONTRACTOR. I HAVE REQUESTED COPIES OF THOSE LETTERS AT CLOSING AS WELL AS A HOLD HARMLESS. FILE BACK TO MLA.

12/20/2012 11:05:59 AM MADDY: PLR FILE TO QADEERA FOR VOB LABELS. TRYING TO CLOSE ON DEC 28TH

12/31/2012 3:24:56 PM MADDY: plr emailed bwr and mlo to get update on contract extension.....

1/3/2013 11:29:25 AM MADDY: PLR 10 DAY LETTER SENT

1/12/2013 12:19:53 PM KAY: PLR IS HAS COME TO OUR ATTENTION THAT THIS FILE IS A SHORT SALE. (PREVIOUSLY SENT A 10 DAY LETTER ASKING OF FOR AN EXTENSION BUT THIS IS NOT THE CASE) I ASK THE LO TO CALL OR HAVE HER ASK THE PROCESSOR TO CALL THE BORROWER AND INQUIRE IF THERE HAS BEEN A VERBAL ACCEPTANCE. FILE IS COMPLETELY APPROVED JUST WAITING ON SHORT SALE APPROVAL.

1/16/2013 5:46:00 PM MADDY: PLR FILE BACK TO SANDI FOR DECLINE DUE TO EXPIRED 10 DAY LETTER

1/18/2013 10:01:31 AM SANDI: FILE DECLINED FOR INCOMPLETE APP AND SENT TO MARGIE TO COMPLETE.

1/18/2013 10:24:47 AM SANDI: EMAILED LO JUST TO BE SURE SHE HAD NOT HEARD FROM THE BORROWER REGARDING A CONTRACT EXTENSION. SHE SENT AN EMAIL BACK TO ME STATING THE BORROWER/SELLER ARE IN LITIGATION WITH EACH OTHER AND THE BORROWERS ATTY HAS PLACED AN

ORDER THAT THE SELLER CANNOT SELL THE HOME TO ANYONE OTHER THAN THE BUYER. LO IS REQUESTING THE FILE BE ESCALATED TO LINDA HITCHCOCK FOR DETERMINATION OF DECLINATION OR HOLD UNTIL RESOLUTION. LINDA IS OUT TODAY AND WILL RETURN TUES. I WILL HOLD FILE UNTIL THEN TO DISCUSS.

- 1 THE COURT: Thank you.
- 2 Q If I can refer you back to the contract and I
3 will give you a moment to find it. Paragraph 8 of the
4 contract, please?
- 5 A Yes, sir, I'm there.
- 6 Q Now, paragraph 8 had some obligations that you
7 were required to meet to apply for your financing, is
8 that right?
- 9 A That is correct.
- 10 Q Paragraph 8 required you to apply for financing
11 within 10 days and provide the Ferro's with proof of
12 financing within 20 days of the contract?
- 13 A Yes, sir.
- 14 Q We didn't talk about this before, but I think the
15 Judge brought it up, you submitted the contract
16 initially on October 20th, is that right?
- 17 A That is the date that we signed it and handed it
18 off to Ms. Nicholson, so if she sent it -- it was a
19 Saturday, I believe.
- 20 Q If we look over on page 6 of the contract we see
21 that the Ferro's signed it on the 24th?
- 22 A Correct.
- 23 Q Using the 24th as a contract day that meant that
24 you were required to apply for your financing no later
25 than November the 3rd, right?

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Attach #3



Rick Willis < rwillisteam@gmail.com >

Fwd: Butternut Plat is Attached

4 messages

Rick Willis < rwillisteam@gmail.com >
To: Susan Nicholson < snicholson@carolinaone.com >

Mon, Nov 26, 2012 at 11:13 AM

Susan,

The attached plat which was sent over last Thursday morning is the one you looking for...It is approved and registered.

Please let me know you have received this...Thanks

Charlene

↓
That would be Nov 22

----- Forwarded message -----

From: Rick Willis < rwillisteam@gmail.com >
Date: Thu, Nov 22, 2012 at 7:50 AM
Subject: Butternut Plat
To: Susan Nicholson < snicholson@carolinaone.com >

Good morning Susan,

Attached is the plat of Butternut property for your files.

Please let me know if you need anything further.

Thank you and Happy Thanksgiving to you.

Charlene Willis
The Willis Team, Llc
843-971-4002

----- Forwarded message -----

From: RingCentral < notify@ringcentral.com >
Date: Thu, Nov 22, 2012 at 7:49 AM
Subject: New Fax Message from (843) 881-3856 on 11/22/2012 at 04:49 AM
To: Fax < rickwillis8@yahoo.com >

You Have a New Fax Message

From: (843) 881-3856

Received: Thursday, November 22, 2012 at 04:49 AM

Pages: 1

To: (888) 803-1570 (Fax)

To view this message, please open the attachment or login to your RingCentral account by clicking here.

Thank you for using RingCentral.

Attach. #4

Subject: Fwd: Performing Appraisal on land being subdivided
From: Molly (firegirl0926@yahoo.com)
To: molly.morphew@engilitycorp.com; kirrayacht@cox.net;
Date: Tuesday, March 15, 2016 4:35 PM

Sent from my iPhone

Begin forwarded message:

From: "JAS@JacksonApp.com" <jas@jacksonapp.com>
Date: March 15, 2016 at 10:38:43 AM EDT
To: "Molly" <firegirl0926@yahoo.com>
Subject: RE: Performing Appraisal on land being subdivided

Yes We will do the appraisal based on the assumption that it is subdivided.

Emily H. Kovach

Jackson Appraisal Service

Office (843) 571-6385

Fax (843) 571-6890

From: Molly [mailto:firegirl0926@yahoo.com]
Sent: Monday, March 14, 2016 9:51 PM
To: JAS@JacksonApp.com
Subject: Re: Performing Appraisal on land being subdivided

So as long as you have a copy of the site with an indication of what is being done? It's not recorded yet...

Sent from my iPhone

On Mar 14, 2016, at 4:45 PM, JAS@JacksonApp.com <jas@jacksonapp.com> wrote:

Molly,

Yes, as long as we have a copy of the survey showing the new site. If you provide me the address I can get you a quote. Thanks!

Attach. #5

Emily H. Kovach

Jackson Appraisal Service

Office (843) 571-6385

Fax (843) 571-6890

From: molly morphew [<mailto:firegirl0926@yahoo.com>]
Sent: Sunday, March 13, 2016 5:37 PM
To: JAS@Jacksonapp.com
Subject: Performing Appraisal on land being subdivided

Hi,

I have a question about doing an appraisal.

Can you perform an appraisal on a house/land that is in the process of being subdivided by surveyors? The situation is basically, the land has been flagged off by the surveyors and they will submit to the county. The appraisal would include the house and part of the land.

Thanks!

Molly

1 First Federal probably didn't care if the CL100 was
2 clear or not, right?

3 A Well, I got a letter or an e-mail, either an
4 e-mail or a voice, talking to her on the phone from
5 Allison wanting to know if we got that. Also, I got
6 an e-mail from the closing attorney wanting to know if
7 that was clear.

8 Q And that was probably because Ms. Cross and Mr.
9 Dudek had to approve it, not because of the bank?

10 A I have no idea.

11 Q In your experience is the CL100 to be produced at
12 closing?

13 A No.

14 Q Do you think that it would be fair to say that it
15 happens, but in your experience it is not typical?

16 A Well it depends on this particular deal because
17 they changed the date, we probably should have changed
18 the date on the CL100 to bump that up as well to give
19 us plenty of time. But sometimes with closing that
20 I've handled there has been issues with the CL100 and
21 sometimes it will take up to the day of closing to get
22 it cleared.

23 Q CL100s are only good for how long?

24 A 30 days.

25 Q Your may have answered my question and I missed

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1 because I had already talked to Mr. Willis after I had
2 the conversation with Mr. Ferro and he told me to go
3 ahead and get the contractor out, he wanted him and I
4 to pay for the letter from the contractor and I
5 explained that I wasn't going to pay any more money.
6 I had already agreed some of the cost for the hall
7 repair to help ease Doreen and Steve's mind.

8 Q But you all were still negotiating?

9 A Yes, sir. He said for me to go ahead and send
10 the contractor out and he would pay for it and he
11 would talk to Mr. Ferro and take care of it. I
12 apologize for interrupting him because he was still at
13 the hospital with his son. I then didn't contact Mr.
14 Ferro anymore and let Mr. Willis inform him of
15 everything.

16 I then sent an e-mail to the contractor with
17 Mr. Ferro's information and Mr. Willis' information to
18 make arrangements for him to come out and to get
19 payments from them for the letter because I didn't
20 want to set up the appointment and then have my
21 contractor if he didn't get paid and come back to me
22 and say you ordered it, you need to pay me.

23 Q I guess what trying to get at Susan, is that
24 during this time, the second week of December, you and
25 Mr. Willis, my clients and Mr. Ferro are negotiating

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Master in Equity

Appellate Case No. 2014-002633

RECEIVED

JAN 24 2017

SC Court of Appeals

Molly M Morpew, Thomas M. Ferro and Lorraine B. Ferro.....

Appellants,

v.

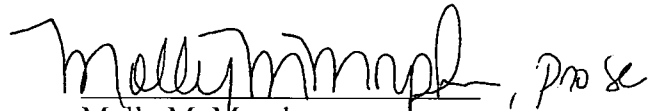
Stephen Dudek and Doreen Cross.....

Respondents

NOTICE OF FILING and PROOF OF SERVICE

I certify that I served the Notice of Petition for Rehearing on Respondents Stephen Dudek and Doreen Cross by depositing a copy of it in the United States Mail, postage prepaid, on January 23, 2017, addressed to their attorney of record, Mr. Stephen L. Smith, Esquire, P.O. Box 40578, Charleston, SC 29423.

January 23, 2017



Molly M. Morpew, pro se
788 E. Butternut Rd.
Summerville, SC 29483

CC: Thomas & Lorraine Ferro, pro se