

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

---

Case No. 2013-CP-18-00074  
Appellate Case No. 2017-001393

---

Stephen Dudek, Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Respondents,

And

Molly M. Morphew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and  
Lorraine Ferro, Respondents

**RECEIVED**  
JAN 10 2018  
SC Court of Appeals

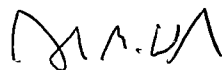
---

**RESPONDENTS' MOTION TO DISMISS APPEAL**

---

Pursuant to Rule 240, SCACR, and for the reasons set for in their memorandum in support of this motion, Respondents Stephen Dudek and Doreen Cross respectfully move for an order dismissing the Appellant's appeal.

SMITH | CLOSSER, P.A.



---

Steven L. Smith (SC Bar No.: 05173)  
Samuel M. Wheeler (SC Bar No.: 101008)  
7455 Cross County Road, Suite 1  
P.O. Box 40578  
Charleston, SC 29423-0578  
843-760-0220

*Attorneys for Stephen Dudek and Doreen Cross*

January 4, 2017

Other Parties of Record:

Molly M. Morpew  
786 E. Butternut Rd.  
Summerville, SC 29483  
*Appellant*

Thomas M. Ferro  
Lorraine B. Ferro  
76 Elk Range Dr.  
Snowmass, CO 81654  
*Respondents*

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

---

Case No. 2013-CP-18-00074  
Appellate Case No. 2017-001393

---

Stephen Dudek, Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Respondents,

And

Molly M. Morpew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and  
Lorraine Ferro, Respondents

---

**RESPONDENTS' MEMORANDUM IN SUPPORT OF MOTION TO  
DISMISS APPEAL**

---

SMITH | CLOSSER, P.A.

Steven L. Smith (SC Bar No.: 05173)  
Samuel M. Wheeler (SC Bar No.: 101008)  
7455 Cross County Road, Suite 1  
P.O. Box 40578  
Charleston, SC 29423-0578  
*Attorneys for Stephen Dudek and Doreen Cross*

## STATEMENT OF THE CASE

This appeal arises out of two separate cases brought in the Dorchester County Court of Common Pleas, *Stephen Dudek, et al. v. Thomas M. Ferro, et al.*, Case No. 2013-CP-18-00074 and *Molly M. Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183. Respondents Stephen Dudek and Doreen Cross (collectively referred to as the “Dudeks” or “Respondents”) entered into a purchase contract with Thomas and Lorraine Ferro (collectively referred to as the “Ferros”), under which the Dudeks agreed to buy from the Ferros a home and real property (“Home”), located in Dorchester County, South Carolina. (see Procedural History, *Dudek v. Ferro*, Case No. 2013-CP-18-00074). Appellant Molly M. Morphew (“Morphew” or “Appellant”) entered into contingency contract under which she agreed to buy the Home, if the Dudeks failed to close on the Home. (see Procedural History, *Morphew v. Ferro.*, Case No. 2013-CP-18-00183). A dispute arose over who, the Dudeks or Morphew, was entitled to purchase the Home, resulting in each the Dudeks and Morphew filing the above cases. Both the Dudeks and Morphew sought specific performance. Given that both parties were claiming the same relief, they consolidated the cases under Case No. 2013-CP-18-00183, by way of a consent order filed on or about September 18, 2013. (see Case No. 2013-CP-18-00183).

On June 11, 2014, and June 12, 2014, the cases were tried in front of the Honorable James E. Chellis, Master-In-Equity for Dorchester County. On November 6, 2014, Judge Chellis issued an order awarding the Dudeks specific performance (“Specific Performance Order”). (Id.). Both Morphew and the Ferros appealed the Specific Performance Order. (see *Stephen Dudek v. Ferro*, Appellate Case No. 2014-002633). On January 11, 2017, this Court upheld Judge’s Chellis’ award of specific performance to the Dudeks in an unpublished opinion, numbered 2017-UP-019. (Id.). Morphew initially petitioned for a rehearing, but she voluntarily

dismissed the petition on February 9, 2017. (Id.). This Court granted the dismissal and issued remittitur on February 15, 2017. (Id.).

Following remittitur, the Dudeks moved, in March, 2017, the lower court for an order setting a schedule for them to close on the Home. Judge Chellis heard the motion and ultimately issued an order setting the terms of closing, on May 17, 2017 (“Closing Order”). (see Case No. 2013-CP-18-00183). Morphew has currently appealed the Closing Order in this appeal. After the Dudeks closed on the Home pursuant to this Court upholding the Specific Performance Order and the subsequent issuance of the Closing Order, Morphew refused to vacate the Home. On June 14, 2017, Judge Chellis issued an order holding Morphew in contempt for failing to vacate the Home (“Contempt Order”). Morphew has appealed the Contempt Order in this appeal.

At various points in between this Court deciding the original appeal and the present, Morphew filed two separate cases in Dorchester County. In the first, Morphew sued the Dudeks and virtually every realtor, attorney and bank that touched the original transaction that would have sold the Home to the Dudeks. (see *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706). In her complaint, she alleges eighteen causes of action, most of which are grounded in fraud stemming from the sale of the Home to the Dudeks and the trial that occurred in June of 2014.<sup>1</sup> (Id.). On the very day that Judge Chellis heard the motion that led to him issuing the Contempt Order, Morphew filed a third case against the Dudeks in which she sought ownership of the Home through constructive trust. (see *Molly M. Morphew v. Stephen Dudek, et al.*, Case No. 2017-CP-18-0987). In total, Morphew has pending three cases and this appeal, all related to either the Home, her alleged ownership of the Home, or fraud perpetrated

---

<sup>1</sup> A quick read of the complaint reveals that the fraud that Morphew alleges is the exact same alleged fraud that forms the basis of four of her five issues in this appeal.

by the Dudeks on either Morphew or the lower court at trial in June, 2014, which allowed the Dudeks to take ownership of the Home.

## **ARGUMENTS**

In her initial brief, Morphew has listed five issues, masked as an appeal of the Closing Order and Contempt Order. In fact, Morphew has actually raised no new issues for this Court to consider; instead, Morphew's appeal is nothing more than her attempt to relitigate the Specific Performance Order, which is the unappealed law of the case.

Morphew's initial brief is a little difficult to dissect, as it jumps around from landlord-tenant laws to Constitutional claims, relying mostly on non-binding precedent from Arizona, federal circuits other than the fourth circuit, and an unidentified source labeled WRIGHT ET AL. (see generally Initial Br.). However, based on her issues and her conclusion, she is arguing three things: (1) that the Specific Performance Order should be overturned and that she is entitled to a new trial; (2) that the lower court failed to consider fraud before issuing the Closing Order; and (3) that the lower court did not have personal or subject matter jurisdiction to issue the Closing Order or the Contempt Order. (Id.).

### **I. The Specific Performance Order is the unappealed law of this case, requiring this Court to dismiss this appeal.**

In the Conclusion section of her initial brief, Morphew makes it abundantly clear what relief she is requesting. She attacks the alleged fraud on the court, then she states, "the Appellant is asking the Order of November 6, 2014 [i.e., the Specific Performance Order] should be rendered void and reversed, or as an alternative, void and vacated with this case remanded back for retrial." (Initial br., p. 19). Only then does she mention the lower court's failures with

respect to the Closing Order and Contempt Order, which will be discussed below. She reiterated this request for the Specific Performance Order to be vacated under the first three issues. (Id. at pp. 6, 9, 11). Under issue three, Morphew is actually challenging whether the Dudeks met the elements of Specific Performance. (Id. at pp. 9-11).

Morphew has already appealed the Specific Performance Order, and this Court has already upheld it. (see *Stephen Dudek v. Ferro*, Appellate Case No. 2014-002633). Morphew chose to voluntarily dismissed her petition for a rehearing, leading this Court to issue remittitur. (Id.). It is well established that an “unappealed ruling is the law of the case and requires affirmance.” *Transp. Ins. Co. v. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687 (2010) (citing *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000)); see also *Buckner v. Preferred Mutual Insurance Company*, 255 S.C. 159, 177 S.E.2d 544 (1970); *Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282 (2012); *First Union National Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (1998).

Morphew has used an appeal of the Closing Order and Contempt Order as an attempt to have this Court overturn the Specific Performance Order. The Specific Performance Order is the law of the case, requiring this appeal to be dismissed. At minimum, the first three issues and any requests for the Specific Performance Order to be vacated should be dismissed, or stricken.

**II. Morphew never properly challenged the alleged fraud on the lower court, rendering any rulings following it the law of the case.**

In her first four issues, Morphew argues that the Specific Performance Order, the Closing Order, and the Contempt Order should be vacated because the lower court issued these orders

without first considering fraud perpetrated by the Dudeks on both Morphew and the lower court at trial in June, 2014. (see Initial br.). This fraud, right or wrong, went unchallenged, and it cannot now be used to unsettle the law of the case.

By her own admission, the fraud that forms the basis of her first four issues, and her other pending cases in Dorchester County for that matter, was discovered by her and the Ferros in September, 2014, when the Ferros filed a “pleading statement” with the lower court, outlining new evidence that demonstrated fraud on the court at trial. (see Case No. 2013-CP-18-00183, Pleading Statement, filed September 10, 2014). In her initial brief, Morphew admits this fact, stating, “[t]he Ferros petitioned the court to consider this new evidence before making his ruling...and eventually, the evidence discovered led to a separate action for fraud/fraud on the court against Dudek/Cross, their agent, lending officer, and attorney....” (see Initial Br., p. 7). The “separate action” she referred to is *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706.

This new evidence and supposed fraud was known to Morphew and the Ferros after trial but before the lower court issued the Specific Performance Order, in November, 2014. Yet, at no point, either after issuance of the Specific Performance Order or the filing of their first appeal, did Morphew or the Ferros file a motion pursuant to Rule 60, SCRCF, seeking to have the Specific Performance Order set aside for fraud. (see Case No. 2013-CP-18-00183). Rule 60(b), SCRCF, allows for a party to move to set aside an order which was based on fraud or after the discovery of new evidence. Rule 60(b), SCRCF. The rule even allows for a party to request leave from the appellate court. Despite knowing of new evidence and alleged fraud by the Dudeks, Morphew neither filed a Rule 60 motion after the Specific Performance Order was

issued nor sought leave from this Court to file that motion, after she appealed the Specific Performance Order.

This fraud, which forms the basis of her first four issues on appeal, whether right or wrong, is as much the law of the case as the Specific Performance Order. Moreover, she currently has pending an entirely new case in Dorchester County that make the exact same allegations of fraud. For these reasons, the appeal, should be dismissed. Alternatively, at least the first four issues, should be dismissed, or stricken.

**III. Morpew's final issue on appeal should be dismissed or stricken because she is challenging jurisdiction, when she in fact voluntarily submitted to the jurisdiction of the lower court.**

In her only issue that discusses neither the Specific Performance Order or fraud, which are the law of this case and cannot be appealed again, Morpew claims that the Closing Order and Contempt Order should be vacated because the lower court lacked personal jurisdiction over her and subject matter jurisdiction over the case to issue these orders. (Initial br., pp. 15-16, 19).

Morpew brought one of the original specific performance cases that were consolidated. By doing so, she voluntarily appeared and subjected herself to the jurisdiction of the lower court. see *Eaddy v. Eaddy*, 283 S.C. 582, 324 S.E.2d 70 (1984). She cannot now challenge the personal jurisdiction of the lower court in issuing orders that followed this Court's remittitur. All post-remittitur hearings and orders are in the same case.... that she brought. In effect, she, as the plaintiff, is challenging personal jurisdiction, an argument completely contrary to the law. Her challenge of subject matter jurisdiction is equally as frivolous. In issuing the Closing Order and Contempt Order, the lower court was attempting to take steps necessary to close this case,

following this Court's remittitur. The Home, which is the subject of the original cases, the original appeal, and the Closing Order and Contempt Order, is located in Dorchester County. At no point did anyone challenge the subject matter jurisdiction of the lower court. Again, Morpew brought one of the original cases that forms the basis of the appeal. And, again, in doing so, she admitted that the lower court had subject matter jurisdiction.

What Morpew appears to complaining of is a lack of notice of hearings that led to the Closing Order and Contempt Order. However, Morpew admits that she attended these hearings, so notice must not have been an issue. (Initial br., p. 17).

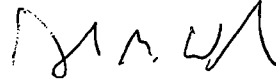
Morpew cannot challenge personal or subject matter jurisdiction, and she appeared at all hearings leading to the orders she now appeals. For these reasons, her final issue should be dismissed or stricken.

### **CONCLUSION**

Morpew has used another appeal to challenge what is the law of this case. Each time she confronts an unfavorable ruling, she either appeals or simply files a new action, always arguing the same grounds – fraud or the Dudeks failure to meet the elements of specific performance. This is evidenced by the fact that she currently has pending three cases and this appeal. This appeal is nothing more than her attempt to yet again complain about the Dudeks being awarded specific performance in 2014. Her actions would never be taken by a licensed attorney, for fear of being sanctions or reprimanded. Worse yet, they are costing the Dudeks substantial sums of money in attorney's fees. They are defending multiple cases, simply because they were awarded specific performance of the Home years ago.

Because Morphew is appealing issues that are the law of the case, her appeal should be dismissed. Alternatively, portions of her appeal that discuss the Specific Performance Order or fraud should be stricken, as she cannot now appeal these matters.

SMITH | CLOSSER, P.A.



---

Steven L. Smith (SC Bar No.: 05173)

Samuel M. Wheeler (SC Bar No.: 101008)

7455 Cross County Road, Suite 1

P.O. Box 40578

Charleston, SC 29423-0578

843-760-0220

*Attorneys for Stephen Dudek and Doreen Cross*

January 4, 2017

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

---

Case No. 2013-CP-18-00074  
Appellate Case No. 2017-001393

---

Stephen Dudek, Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Respondents,

And

Molly M. Morpew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and  
Lorraine Ferro, Respondents

**RECEIVED**  
JAN 10 2018  
SC Court of Appeals

---

**CERTIFICATE OF SERVICE**

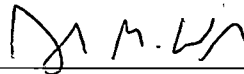
---

I certify that, on the date indicated below, I served Respondents' Motion to Dismiss Appeal, by United States Mail, postage prepaid, on the following:

Molly M. Morpew  
786 E. Butternut Rd.  
Summerville, SC 29483  
*Appellant*

Thomas M. Ferro  
Lorraine B. Ferro  
76 Elk Range Dr.  
Snowmass, CO 81654  
*Respondents*

SMITH | CLOSSER, P.A.



---

Steven L. Smith (SC Bar No.: 05173)  
Samuel M. Wheeler (SC Bar No.: 101008)  
7455 Cross County Road, Suite 1  
P.O. Box 40578  
Charleston, SC 29423-0578  
843-760-0220

January 4, 2017

*Attorneys for Stephen Dudek and Doreen Cross*

# Smith | Closser, P.A.

Attorneys at Law  
7455 Cross County Road, Suite One  
Post Office Box 40578  
Charleston, South Carolina 29423-0578

Samuel M. Wheeler  
swheeler@scnlaw.com

Office – 843-760-0220  
Fax – 843-552-2678  
www.smithclosser.com

January 4, 2017

**RECEIVED**

JAN 10 2018

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

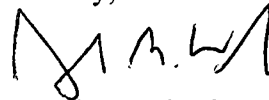
RE: Molly M. Morpew, Appellant v. Stephen Dudek, et al., Respondents  
Case No. 2013-CP-18-00074  
Appellate Case No. 2017-001393  
S|C File No. 17-232

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of two separate motions: (1) Respondents' Motion to Dismiss Appeal; and (2) Respondents' Motion to Stay Time Limits, for the above case. Also enclosed are Certificates of Services for each motion and two separate filing fees of \$25.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Samuel M. Wheeler

cc: Molly M. Morpew  
Thomas M. Ferro  
Lorraine B. Ferro

Smith | Closser, P.A.  
7455 Cross County Rd, Ste 1  
P.O. Box 40578  
Charleston, SC 29423



**RECEIVED**  
JAN 10 2018  
SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk, SC Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211