THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein

---

Case No. 2017-CP-18-987
Appellate Case No. 2018-000507

---

RECEIVED
SEP 04 2018
SC Court of Appeals

Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

---

**FINAL BRIEF OF THE 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
843-552-2678

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES



### STATUTES AND COURT RULES

## STATEMENT OF THE CASE

This is an appeal of The Honorable Diane S. Goodstein's ("Lower Court") February 20, 2018, order ("Dismissal Order"), dismissing the underlying action, *Molly M. Morphew v. Stephen Dudek*, et al., Case No. 2017-CP-18-987 ("2017 Lawsuit"), filed by the Appellant, Molly M. Morphew ("Appellant" or "Morphew"), on June 12, 2017, in the Dorchester Court of Common Pleas. (see R. pp. 260-285; R. pp. 30-38). In her complaint ("2017 Complaint"), Morphew asserts three causes of action against Respondents Stephen Dudek and Doreen Cross ("Respondents" or "Dudeks"): (1) constructive trust; (2) abuse of process; and (3) fraud. (R. pp. 260-285). Morphew filed concurrently a *lis pendens* ("2017 Lis Pendens") on real property owned by the Dudeks, located at 788 E. Butternut Road, Summerville, South Carolina ("Property"), to which Morphew claims equitable title based on her constructive trust cause of action. (R. p. 265, ¶ 18; R. p. 402).

The Lower Court described very aptly the 2017 Lawsuit as being part of "a labyrinthine of litigation" filed by Morphew. (R. p. 32). In total, Morphew has three cases pending in Dorchester County, two of which are currently on appeal and one of which has already been appealed. (see *Molly M. Morphew v. Thomas Ferro, et al.,* Case No. 2013-CP-18-00183; Appellate Case No. 2014-002633; *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706; 2017 Lawsuit; Appellate Case No. 2017-001393; this Appeal, Appellate Case No. 2018-000507; R. pp. 74-114; R. pp. 21-24; R. pp. 133-200; R. pp. 260-285; R. pp. 292-313). All of these cases and appeals involve the Property; the 2014 trial and subsequent appeal that granted the Dudeks the right to purchase and own the Property; the Dudeks' ownership of the Property; and the alleged fraud perpetrated by the Dudeks leading up to and during the 2014 trial, which purportedly duped The Honorable James E. Chellis, who presided over the 2014 trial, into ruling

in favor of the Dudeks. (see R. pp. 85-114; R. pp. 74-84; R. pp. 115-132; R. pp. 1-20; R. pp. 314-366; R. pp. 21-24; R. pp. 25-27; R. pp. 232-235; R. pp. 39-47; R. pp. 48-59; R. pp. 60-73; R. pp. 133-200; R. pp. 292-313; R. pp. 260-285; R. 30-38; R. p. 402).

In the 2017 Complaint, Morphew refers to these other actions to support her three causes of action. (see R. pp. 260-285). Among her numerous references to fully adjudicated or pending lawsuits, Morphew alleges "due to the [Dudeks] unlawful acts or fraudulent misrepresentations, the Judge [Chellis] was influenced to make an uninformed ruling;" "though the Judge in the prior proceeding itself may have been unknowingly 'fooled' to make an unlawful or uninformed ruling, he was recently presented with recently found evidence of fraud on his court, but then chose to turn a blind eye at the expense of justice;" "the [Dudeks] obtained said [P]roperty unlawfully [by] including, but not limited to, filing frivolous claims, fraudulent misrepresentations, and said acts on the court;" "the [Dudeks] utilized the legal process to unlawfully or fraudulently obtain the [P]roperty;" and "[t]he [Dudeks] made false statements or misrepresentations as to material facts critical to the prior civil proceedings." (R. pp. 263-269, ¶¶ 9, 10, 25, 28, 33).

By way of background, of which this Court is likely increasingly aware, the original dispute between Morphew and the Dudeks dates back to 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, which were consolidated under Case No. 2013-CP-18-00183 (collectively, "Original Lawsuit"). Both the Dudeks and Morphew sought the equitable remedy of specific

performance under separate purchase contracts with the then-owners of the Property, Thomas and Lorraine Ferro ("Ferros").[1] (see R. pp. 74-114).

On June 11, 2014, and June 12, 2014, the Original Lawsuit was tried in front of Judge Chellis. (R. pp. 1-20). On September 10, 2014, the Ferros filed a "Pleading Statement" in which they asserted alleged fraud perpetrated on the court at trial. (R. pp. 115-132). And on November 6, 2014, Judge Chellis issued an order awarding the Dudeks specific performance ("Specific Performance Order"). (R. pp. 1-20). Neither the Ferros nor Morphew filed a Rule 60, SCRCP, motion on the grounds that they had discovered new evidence or that the Lower Court was influenced by the fraud, as outlined in the Pleading Statement, when it issued the Specific Performance Order. (see Filing History, Case No. 2013-CP-18-00183). Instead, both Morphew and the Ferros appealed the Specific Performance Order. (see Appellate Case No. 2014-002633; R. pp. 314-366). On January 11, 2017, this Court affirmed Judge Chellis' award of specific performance to the Dudeks in an unpublished opinion, numbered 2017-UP-019. (R. pp. 21-24). Morphew initially petitioned for a rehearing, but she voluntarily dismissed the petition on February 9, 2017. (R. pp. 201-228; R. pp. 229-231). This Court granted the dismissal and issued remittitur on February 15, 2017. (R. pp. 25-29).

Following remittitur, the Dudeks moved for an order setting a schedule for them to close on the Property. (R. pp. 232-235). Judge Chellis heard the motion and ultimately issued an order on April 3, 2017, setting the terms of closing. (R. pp. 39-47). On April 6, 2017, after the First Closing Order was issued, Morphew filed an "Answer" to the Dudeks' Motion to Set Closing. (R. pp. 236-259). Out of an abundance of caution, Judge Chellis considered

[1] The Ferros are not parties to the 2017 Lawsuit or this appeal. Technically, the Ferros are Respondents in Appellate Case No. 2017-001393, but they have not taken an active role, likely because they conveyed the Property to the Dudeks pursuant to court order and have moved on with their lives.

Morphew's "Answer" a Rule 59, SCRCP, motion to reconsider and issued a new Closing Order on May 17, 2017. (R. pp. 48-59). Morphew has since appealed the Second Closing Order. (R. pp. 292-313). The Dudeks then closed on the Property pursuant to this Court affirming the Specific Performance Order and the subsequent issuance of the Second Closing Order, but Morphew, who had been in possession of the Property since trial in 2014, refused to vacate the Property. After additional hearings on this occupancy issue were held on June 12, 2017, Judge Chellis issued an order on June 14, 2017, holding Morphew in contempt and ordering Morphew to vacate the Property ("Contempt Order"). (R. pp. 60-73). Morphew has also appealed the Contempt Order in Appellate Case No. 2017-001393. Morphew filed the 2017 Lawsuit on the same day that Judge Chellis heard and ruled on the issue of contempt, June 12, 2017.[2] (R. p. 263).

In addition to the above cases and appeals, Morphew has pending a third case, which, chronologically, was her second action against the Dudeks. In that suit, Morphew sued the Dudeks and virtually every realtor, attorney and bank that touched the original transaction that would have sold the Property to the Dudeks. (see *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706; R. pp. 133-200). In her 64-page complaint in that action, she alleges eighteen causes of action, most of which are grounded in fraud and all of which relate to the Property and the 2014 trial. (Id.).

[2] Morphew's same-day filing of the 2017 Lawsuit gives rise to the very strong presumption that she, seeing the writing on the wall, came to the June 12, 2017, contempt hearing with the 2017 Complaint and 2017 Lis Pendens in hand. After receiving the ruling she fully expected, she walked across the hall and filed the 2017 Lawsuit, thus continuing this legal burden on the Dudeks and further encumbering the Property.

## ARGUMENTS

The Dudeks do not intend to let frivolous lawsuits and appeals go unanswered. However, having spent thousands to defend Morphew's blunderbuss of collateral litigation, they do not have the resources to address page after page of Morphew's recitation of moot allegations and tortured legal theories, all of which have no bearing on the lawfully executed procedure that put the Dudeks in legal possession of the prize Morphew cannot seem to let go. Judge Chellis is a distinguished judge with a history of, as his title suggest, equitable treatment of represented and *pro se* litigants alike. He has had ample opportunity to witness Morphew's tactics, and he summed up her approach the best, stating that "she has become so emotionally invested in this case that she cannot 'see the forest for the trees…'" and, after further delay maneuvering by Morphew, that her actions "raise the inference that she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross." (R. p. 68, n. 7; R. p. 57, ¶ 13).

The Dudeks are not vindictive people whose sole purpose is to attack or harass Morphew with court proceedings and abrasive words or treatment. They are normal home owners who are being punished simply because they were victorious in a balanced, well-tried case more than four years ago. There must be an end to Morphew's unchecked assault on the Dudeks and the fairness our legal system is designed to uphold. Despite being severely stressed financially, through no fault of their own, the Dudeks do intend to see this matter to its rightful conclusion.

## I. THE LOWER COURT DID NOT ERR IN DISMISSING THIS ACTION BASED ON *RES JUDICATA* AND BASED ON RULE 12(B)(8), SCRCP.

To establish *res judicata*, the following elements need to be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Riedman Corp. v. Greenville Steel Structures*, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992).

"*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011). "Under the doctrine of *res judicata*, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.*

It cannot be disputed that the 2017 Lawsuit and the Original Lawsuit involve the same parties, and the identity of the subject matter – the Property – is identical. Morphew has attempted to get around the third element of *res judicata* by arguing that the Original Lawsuit does not bar her current constructive trust claim because it only became ripe in June 2017, after this Court upheld the Specific Performance Order and after the Dudeks closed on the Property. (Appellant's Br., p. 13). In reality, Judge Chellis decided the issue of who was entitled to purchase and close on the Property. (R. pp. 1-20). This Court affirmed that ruling. (R. pp. 21-24). Both specific performance and constructive trust are equitable remedies. *Lollis v. Lollis*, 291 S.C. 525, 354 S.E.2d 559 (1987); *Campbell v. Carr*, 361 S.C. 258, 603 S.E.2d 625 (Ct.App.2004). By filing the 2017 Lawsuit, Morphew is asking the Lower Court, and now this Court, to reverse final equitable rulings concerning ownership of the Property, based on a separate equitable, but attenuated, theory. This approach by Morphew fits squarely within the elements of *res judicata*.

Morphew also attempts to circumvent the third element of res judicata by arguing that the Dudeks' alleged fraud on the court, which she claims was unknown to her until recently, allowed the Dudeks to prevail in the Original Lawsuit and ultimately take possession of the Property. (see Appellant's Br.). She makes the same allegation in the 2017 Complaint, alleging that Judge Chellis was "presented with recently found evidence of fraud on his court, but then chose to turn a blind eye at the expense of justice..." (R. p. 264, ¶ 10). Again, such claim, allegation or approach by Morphew is barred by *res judicata*. Morphew admits in her other pending appeal that this supposed fraud was known, at the latest, after trial in the Original Action but before Judge Chellis issued the Specific Performance Order. (R. p. 299). Despite being aware of this supposed fraud, at no point did Morphew file a Rule 60, SCRCP, motion in the Original Action based on this fraud or new evidence. Instead, she appealed. This Court affirmed Judge Chellis' decision, thus solidifying the law of the Original Lawsuit. *Transp. Ins. Co. v. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687 (2010) (restating the well-established law that an "unappealed ruling is the law of the case and requires affirmance.").

Morphew's second cause of action for abuse of process is also barred by *res judicata* because it is nothing more than her attempt to re-litigate the issue of specific performance. Morphew alleges that the Dudeks "participated, and continue to participate, in their unlawful behavior with full knowledge they never were 'ready, able and willing' to perform their sales contract as required by law or rules to compel Specific Performance." (R. p. 267, ¶ 28c). To be clear, the Dudeks are in possession and are the legal owners of the Property, so Morphew's argument that they are continuing to perpetrate some illusionary fraud is without a shred of merit. They want nothing more than to close this chapter of their lives. Morphew had every opportunity to litigate the issue of specific performance, and her current attempt to re-allege the

claim should be barred.

Furthermore, Morphew has not pled and cannot plead an abuse of process cause of action. (R. p. 267, ¶ 28). "The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding." *Hainer v. American Medical Intern., Inc.* 328 S.C. 128, 492 S.E.2d 103 (1997). "An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process." *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 74, 451 S.E.2d 907, 914 (Ct.App.1994). "[T]here is no liability when the process has been carried to its authorized conclusion." *Id.* at 74–75, 451 S.E.2d at 914. Morphew alleges that the Dudeks "utilized the legal process to unlawfully or fraudulently obtain the [P]roperty." Morphew is alleging the exact opposite of an ulterior motive. In fact, the Dudeks filed the Original Action to obtain ownership of the Property. And they took the process to its "authorized conclusion." *Id.* In other words, the process the Dudeks used – filing suit for specific performance – was legitimate.[3]

Morphew's final cause of action for fraud was discussed above. Morphew knew of the fraud but did not act upon it in the Original Action. When she learned of the fraud, she had ample opportunity to file a motion to set aside the Specific Performance Order based on that fraud. Rule 60, SCRCP. She should not be allowed to re-litigate this issue. Perhaps more damaging is the fact that Morphew has another pending action against the Dudeks in which she has made identical allegations of fraud. (R. pp. 133-200). This cause of action for fraud, as well as her other two claims, were rightfully dismissed under Rule 12(b)(8) because "another action is

[3] It is worthy of a somewhat ironic note that Morphew's actions, not the Dudeks', give rise to a rightful abuse of process claim. Based on Morphew's filing the 2017 Lis Pendens, which is serving no purpose other than to encumber the Property, the Dudeks have a valid abuse of process claim. See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 31, 567 S.E.2d 881, 897 (Ct.App.2002) (holding, "[t]he jurisdictions are in agreement that the proper action against a maliciously filed lis pendens is under abuse of process or malicious prosecution."). The Dudeks would simply prefer that this string of litigation come to an end, as opposed to asserting claims that will undoubtedly serve only to provide Morphew with further opportunities for appeal.

pending between the same parties for the same claim." Rule 12(b)(8), SCRCP.

For all of the above reasons, and for all reasons set forth by the Lower Court, this Court should affirm the Dismissal Order.

## II. THIS COURT SHOULD AFFIRM THE ORDER OF THE LOWER COURT BASED ON ANY GROUND APPEARING IN THE RECORD

"The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. "Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)." Rule 208(b)(2), SCACR. As the prevailing parties, the Dudeks would request that this Court affirm the Dismissal Order for any grounds appearing in the record, whether they based on collateral estoppel, mootness, statute of limitations, or any other legal theory.

## CONCLUSION

For all of the of the above reasons, for all the reasons set forth by the Lower Court, and for any ground appearing in the record, this Court should affirm the Dismissal Order.

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 the Respondents*

August 29, 2018