THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

RECEIVED
SEP 06 2018
SC Court of Appeals

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

Stephen Dudek, Doreen Cross	Respondents,
v.	
Thomas Ferro M. Ferro and Lorraine B. Ferro	Respondents,
And	
Molly M. Morphew,	Appellant,
v.	
Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro	Respondents.

AMENDED RECORD ON APPEAL

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INDEX

I. **ORDERS/JUDGMENTS/OPINIONS**

1. Order for Specific Performance of November 6, 2014, Case No. 2013-CP-18-00183.....**1**
2. Consent Order, September 18, 2013, Case No. 2013-CP-18- 00183.....**21**
3. Order on Ferro Motion to Compel August 9, 2016, Case No. 2013-CP-18-00183 .....**25**
4. Appellate Opinion, January 11, 2017, Appellate Case No. 2014-002633.....**27**
5. Order Granting Motion to Dismiss Petition, February 15, 2017, Appellate Case No. 2014-2633.....**31**
6. Remittitur, February 15, 2017, Appellate Case No. 2014-002633 .....**33**
7. Closing Order, April 3, 2017, Case No. 2013-CP-18-00183.....**34**
8. Order, Motion 59(e)/Setting Closing, May 17, 2017, Case No. 2013-CP-18-00183.....**43**
9. Order Dissolving Rule to Show Cause (Contempt), June 8, 2017, Case No. 2013-CP-18-00183 .....**55**
10. Order on Rule to Show Cause (Contempt)/Ejectment/Attorney Fees and Costs of June 14, 2017, Case No. 2013-CP-18-00183.....**62**
11. AFFIDAVIT of Service (Rule to Show Cause (Contempt)), Case No. 2013-CP-18-00183.....**76**
12. Order of Dismissal, February 21, 2018, Case No. 2017-CP-18-987 77

II. **PLEADINGS**

1. Summons and Complaint, Case No. 2013-CP-18-00074..... .....**86**
2. Summons and Complaint, Case No. 2013-CP-18-00183..... .....**98**
3. Ferro Petition, September 10, 2014, Case No. 2013-CP-18-00183... .....**128**
4. Ferro Motion to Compel June 14, 2016, Case No. 2013-CP-18-00183... .....**195**
5. Summons and Complaint, Case No. 2016-CP-18-1706..... .....**210**
6. Petition for Rehearing, January 24, 2017, Appellate Case No. 2014-002633..... .....**278**
7. Motion to Dismiss Petition for Rehearing, February 9, 2017, Appellate Case No. 2014-002633.....**306**
8. Motion to Set Closing, March 16, 2017, Case No. 2013-CP-18-00183.....**309**
9. Motion and Rule to Show Cause, June 5, 2017, Case No. 2013-CP-18-00183.....**312**
10. Summons and Complaint, Case No. 2017-CP-18-987.....**316**
11. Lis Pendens, Case No. 2017-CP-18-987.....**340**

III. **ANSWERS**

1. Ferro/Morphew Answer to Defendants Motion for Closing/Fees April 6, 2017, Case No. 2013-CP-18-00183.....**341**
2. Morphew's Answer in Opposition to Defendants Dudek and Cross'

Notice of Motion and Motion For Rule to Show cause (Contempt), Ejectment, and Attorney's Fees, June 8, 2017 Case No. 2013-CP-18-00183.....**365**

IV. **TESTIMONIES from Hearing Transcripts**

1. Transcript, Motion 59(e)/Setting Closing, May 12, 2017, Case No. 2013-CP-18-00183, Pgs. 7, 98-100 .....**423**
2. Transcript, Rule to Show Cause/Contempt/Ejectment Hearing, June 12, 2017, Case No. 2013-CP-18-00183, Pgs. 4,5,72, 74, 75, 93 .....**429**

V. **OTHER MATERIALS OR DOCUMENTS**

1. Email dated January 15, 2013 Attorney Qualey to Thomas Ferro..... ....**437**
2. Email dated September 10, 2014 from Ferro to Morphew **438**
3. June 1, 2017 e-mail Lorraine Ferro, Case No. 2013-CP-18-00183 .....**439**

VI. **TRANSCRIPT(S)**

1. Hearing, 59(e) Motion on Motion for Closing Order/Attorney's Fees and Costs, May 12, 2017, Case No. 2013-CP-18-00183 .....**440**
2. Hearing, Motion for Rule to Show Cause (Contempt)/Ejectment/ Attorney's Fees and Costs, June 12, 2017, Case No. 2013-CP-18-00183.....**466**

VII. **CERTIFICATE(S) OF APPELLANT**

1. Certificate of Compliance **490**
2. Certificate of Service **491**

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	Thomas Ferro Stephen Dudek	Lorraine Ferro Doreen Cross
PLAINTIFF(S)		DEFENDANT(S)

2014 NOV -6 PM 12:58
CLERK OF COURT
DORCHESTER COUNTY

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Jerry S. Lucas — 3078 — 11/6/2014

Master in Equity — Judge Code — Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **November 6, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **November 6, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

John A. Massalon PO Box 859 Charleston, SC 29402

David A. Collins PO Box 40578 Charleston, SC 29423
Thomas Ferro 788 East Butternut Road Summerville, SC 29483
Lorraine Ferro 788 East Butternut Road Summerville, SC 29483

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
EQUITY DIVISION

Civil Action No.: 2013CP1800074
consolidated with Civil Action No. 2013CP1800183

Stephen Dudek, Doreen Cross,
Plaintiffs

Versus

Thomas M Ferro, and Lorraine B Ferro,
Defendants

AND

Molly M Morphew,
Plaintiff

Versus

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

ORDER

2014 NOV -5 PM 12:57

Presiding Judge: James E. Chellis
Master in Equity

June 11, 2014 and Thursday, June 12, 2014

Appearances:

For Plaintiff Morphew:
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Charleston, South Carolina 29402

For Defendants :Dudek & Cross
Law Firm of David A. Collins, LLC
David A. Collins, Esquire
P. O. Box 40578
Charleston, South Carolina 29423

Defendants:
Thomas M Ferro and Lorraine B Ferro,
Defendants,
Pro Se

Emily R. Mirek, Court Reporter and Notary Public

PREFACE

This is a breach of contract action. Plaintiff Morphew seeks enforcement of a contract for the purchase of real estate she entered into with Defendants Ferro on December 16, 2012 (the Morphew Contract). Defendants Dudek and Cross seek enforcement of a contract for the purchase of real estate they entered into with Defendants Ferro on October 23, 2012 (the Dudek/Cross Contract). The real property described in each contract is the same. It consists of a residential property on 6.006 acres near Summerville (the Real Property) Plaintiff's Exhibit 23, cf. endnote 10). All parties agree the residential real property is unique. All Parties agree both contracts are unambiguous.

Plaintiff Morphew and Defendants Ferro assert the latter contract, the first contract, is not enforceable. Plaintiff Morphew and Defendants Ferro assert Defendants Dudek and Cross failed to meet conditions of their contract in a timely manner. Plaintiff Morphew alternatively seeks damages against Defendants Ferro on breach of the Morphew Contract should the Court direct the specific performance of Dudek/Cross Contract. Hence, Defendants Ferro champion the Morphew Contract. As such, Plaintiff Morphew and Defendants Ferro have consistent positions on the Dudek/Cross Contract. The latter consistent positions diverge on the issue of Defendants Ferro's breach of the Morphew Contract.

This Court finds Plaintiff Morphew and Defendants Ferro consistent position untenable. The Dudek/Cross Contract is enforceable. This Court will order specific performance of that contract. The Morphew Contract is contingent on termination of the Dudek/Cross Contract. Hence, this Court will declare that contract enforceable only if Defendants Dudek and Cross fail to complete the performance of the Dudek/Cross Contract as ordered by this Court. Since the Dudek/Cross Contract is enforceable subject to conditions, this Court will fashion the remedy of specific performance giving due regard to the conditions, the time for completion of which will need to be reset, since the conditions are reasonably designed to protect all parties to the Contract. Plaintiff Morphew has a conditional contract that is not enforceable unless Defendants Dudek and Cross elect to terminate the contract as directed to be specifically performed. The Court's analysis follows.

GUIDING PRINCIPALS OF LAW & EQUITY

This Court is guided by many principals of law and equity. These guides include the following:

1. It is not the province of the courts to construe contracts broader than the parties have elected to make them or to award benefits where none was [sic] intended. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 151, 533 S.E.2d 597, 601 (2000).
2. The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous. *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003).
3. The law by which a contract is to be governed, is resolved into the terms whereby it is entered into; provided that the contract be consistent with morality and not repugnant to law or the principles of public policy. *Satterwhite's Adm'rs v. McKie*, 16 S.C.L. 397, 398 (S.C. Const. App. 1824).
4. Where a contract's language is plain and unambiguous, the language used by the parties "determines the instrument's force and effect." *Jordan v. Sec. Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).
5. A court reviewing a written contract must discern:

   [T]he intention of the parties and the meaning[, which] are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945); *see also ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct.App.2011) ("It is not the function of the court to rewrite contracts for parties."). "Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012).
6. If a promisor prevents or hinders the occurrence of a condition, or the performance of a return promise, and the condition would have occurred or the performance of the return promise been rendered except for such prevention or hindrance, the condition is excused, and the actual or threatened nonperformance of the return promise does not discharge the promisor's duty, unless (a) the prevention or hindrance by the promisor is caused or justified by the conduct or pecuniary circumstances of the other party; or (b) the terms of

the contract are such that the risk of such prevention or hindrance as occurs is assumed by the other party. Restatement (First) of Contracts § 295 (1932)

7. Impracticability excuses the non-occurrence of a condition if the occurrence of the condition is not a material part of the agreed exchange and forfeiture would otherwise result. Restatement (Second) of Contracts § 271 (1981).
8. Waiver is the voluntary and intentional relinquishment of a known right. *Janasik,* 307 S.C. at 344, 415 S.E.2d at 387. It may be implied from circumstances indicating an intent to waive. *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981); *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Ct.App.1987). Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver. *Bonnette*, 282 S.E.2d 597. *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928-29 (Ct. App. 1994).
9. In the construction of a contract, the intention of the parties to be collected from the instrument, (if in writing,) should be constantly in view, and in their performance, good faith and fair dealing is always required. And from hence, [the Court] deduce[s] the rule that when a contract stipulates for the performance of a condition on the event of a contingency, the occurrence of which must be known to one of the parties, but not necessarily known to the other, it is the duty of him to whom it is known to give notice of it to the other. . . *Birdseye v. Davis,* 13 S.C.L. 296, 298, 297-98 (S.C. Const. App. 1822).
10. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. *Restatement (Second) of Contracts § 205 (1981).*
11. The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case." *Guignard v. Atkins*, 282 S.C. 61, 64, 317 S.E.2d 137, 140 (Ct.App.1984); *accord Bishop v. Tolbert*, 249 S.C. 289, 298, 153 S.E.2d 912, 917 (1967) ("The rule is well settled that the granting of specific performance is not a matter of absolute right, but rests in the sound or judicial discretion of the Court, guided by established principles, and exercised on a consideration of all the circumstances of each particular case."). "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct.App.1985). "[S]pecific performance ... is only available to enforce a contract that is fair, just, and equitable." *Hodge v. Shea*, 252 S.C. 601, 612, 168 S.E.2d 82, 87 (1969). "In order to compel specific performance, a court of equity must find: (1) there 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." *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291; *Campbell v. Carr*, 361 S.C. 258, 263-64, 603 S.E.2d 625, 627-28 (Ct. App. 2004).

FINDINGS OF FACT

1. The Dudek/Cross Contract is a conditional contract. Four conditions[1] are in the "printed matter" of the Contract. The parties agree these conditions require that "TIME IS OF THE ESSENCE." These conditions are found in Paragraph 3[2]; Paragraph 8;[3] Paragraph 12;[4] and Paragraph 19: Condition of Property (B. Inspection[5]) and (D. Wood Infestation[6]).

2. Ten conditions are set out in the Paragraph 29 Contingencies[7]. Notably, these ten conditions do not provide that time is of the essence. Moreover, these stipulations preempt the printed matter. These ten conditions are stated in three separate addenda, entitled Addendum A[8], Addendum B[9] and Addendum C[10].

3. The intention of the parties and the meaning of the Dudek/Cross Contract can be gathered primarily from the contents of the writing itself. In other words, this Court finds that the Dudek/Cross Contract is clear and unequivocal from the four corners of the instrument. This Court finds that the intent of the parties is the sale and purchase of the Real Property. Even though the conditions, in the stipulated contingencies, do not expressly require that time is of the essence, these stipulations do not materially discharge the time of the essence provisions. The parties intended that this transaction would occur on or before a date certain, specifically, November 30, 2012. The Dudek/Cross Contract's meaning is determined by the Contract's contents alone. This meaning is express. This Court finds the Dudek/Cross Contract is clear and capable of legal interpretation. Thus, this Court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. See, *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012).

4. The meaning[11] of the Dudek and Cross Contract is to give effect to the sale and purchase of the Real Property, a unique residential real property. This objective, i.e., to give effect to the intentions of the parties, culminates at that point in time when Defendants Ferro deliver a deed of conveyance[12] to Defendants Dudek and Cross in exchange for the purchase price. The purchase price is Three Hundred Three Thousand Dollars ($303,000.00). Defendants Ferro agree to pay Five Thousand Dollars ($5,000.00) of Defendants Dudek and Cross' closing costs.

5. Paragraph 6 of the Contract provides: "Purchase price shall be paid as follows: ■ Subject to financing. Financing to be obtained by ■ Conventional." Cross testified she and Dudek were

prepared to pay 20% of the purchase price in cash, financing 80% with a conventional residential loan.

6. Paragraph 3's closing date condition is dependent on successful completion of all of the conditions. This condition cannot be enforced until Defendants Dudek and Cross can deliver to Defendants Ferro the purchase price, discussed *infra*. Additionally, Defendants Dudek and Cross are not obligated to deliver the purchase price until Defendants Ferro perform the conditions for which they are responsible[13].

7. Defendants Ferro rely heavily on the failure of Defendants Dudek and Cross to have performed under Paragraph 8. A review of the condition reveals that the obligation to provide written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in the contract, is impossible. No other provision in the Dudek/Cross Contract alters the obligation to provide written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions.

8. Defendants Dudek and Cross's loan officer testified that the conventional residential loan is subject to rules and regulation. Her testimony indicates her financial institution has loan criteria that change. This testimony infers these rules and regulations are also banking regulations. She stated the regulations change from time to time. She testified that her financial institution provides pre-authorized loan approvals upon a potential borrower's successful application for an approval of residential financing. She testified pre-approval loan letters contain conditions that cannot be changed. She testified pre-approved loans evolve into loan applications. Her testimony established that pre-approved loan applications become loan applications when a specific property is identified. Her testimony also established that a signed application is not necessary for a loan officer to begin initiating the lender's processing. She testified that loan applications, if the potential borrower meets the loan processing conditions, thereafter evolve into loan commitments. She testified loan commitments contain conditions. Further, her testimony that a loan commitment for a conventional residential loan will always be subject to conditions; such as, the borrower's assets and liabilities remain substantially the same as they were at the time of the loan's application[14], continued verification of employment, mortgagee title insurance, free of liens and encumbrances, except those acceptable to the lender, *et. cet.*, (Plaintiff Exhibit 16, generally, and specifically, Residential Loan Commitment,

12/12/12). This testimony and documentary evidence is consistent with this Court taking judicial notice of the fact that conventional residential loan approvals without conditions are impossible to achieve.

9. Plaintiff Morphew and Defendants Ferro assert Defendants Dudek and Cross failed to perform this condition. This Court finds that an unconditional loan approval as described in Paragraph 8 is impossible[15] to achieve. In fact, an unconditional commitment for a conventional residential loan is impossible. A conventional residential loan commitment is subject to conditions. The legal effect of this impossibility is to excuse the condition. Hence, the culmination of the transaction on or before November 30, 2012 is excused.

10. The Court however finds that the temporal condition that TIME IS OF THE ESSENCE cannot be ignored altogether because the intent of the Dudek/Cross Contract was to complete the transaction with TIME IS OF THE ESSENCE. Notably, this Court finds the term is a mutual condition that conversely infers mutual benefits. The Contract created conditions for both parties to observe the resounding term, TIME IS OF THE ESSENCE[16]. In fact, Defendant Cross testified she immediately ordered a home inspection upon completion of the executed contract. (Transcript page 35, line 20). This act demonstrates Defendants Dudek and Cross understood the intent and meaning of the Dudek/Cross Contract.

11. The evidence reveals that Dudek and Cross had a completed home inspection by November 3, 2012. On that date, the evidence reveals Dudek and Cross provided Defendants Ferro a detailed list of critical concerns. The first of which embodies four points concerning the structural integrity[17] of the residence[18]. Additional critical concerns include plumbing water damage (6 points), moisture control (4 points), electrical issues (6 points), safety (4 points), utility maintenance (2 points), and four miscellaneous points. (Plaintiff's Exhibit 5; Transcript page 36, lines 5-8).

12. The Court finds Defendants Dudek and Cross detail of problems they wanted addressed consistent with their rights under the contract (Plaintiff's Exhibit 3, Dudek/Cross Contract Addendum A, Item 1) and infers they acted on the condition time is of the essence to achieve the November 30, 2012 closing date. Moreover, development of the critical concerns list and notifying Defendants Ferro within 10 days of the execution date of the contract supports this Court finding Defendants Dudek and Cross acted with good faith were dealing fairly with

Defendants Ferro. The detail of critical concerns establishes the importance of clear communication to avoid delays that poor communication invariably creates. The Defendant Cross testified Mr. Ferro's reply was a "few simple lines" indicating that he would take care of the structural problems, the electrical problems, would make sure that the bath leak in his bathroom was repaired, the floor would be repaired if needed and a few and other things like that (Transcript page 36, lines 12 – 20). This evidence is not controverted (Plaintiff's Exhibit 17, see Thomas Ferro email, dated November 11, 2012 @ 2:51 P.M.). Also, the uncontroverted evidence reveals a copy of the approved subdivision plat, dated October 20, 2012, was received by Defendants Dudek and Cross the Friday after Thanksgiving. The effective utility of which is Defendants Dudek and Cross were delayed until at least November 26, 2012 to further pursue the purchase price through the conventional residential financing. Moreover, the evidence reveals a wood infestation report (CL 100) was not provided until November 30, 2012. That report revealed a number of problems.

13. The Court finds that Defendants Ferro failure to address each item of critical concern in the manner in which it was presented violates Defendants Ferro's obligation to deal in good faith and fairly with Defendants Dudek and Cross. The Court finds Defendants Ferro's 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, together with Defendants Ferro's failure to provide an approved subdivision plat until effectively four (4) days prior to the Paragraph 3 date, and the utter failure to provide a timely "clear" CL 100, demonstrate that Defendants Ferro did not perform their obligations under the contract. These failures prevented or hindered the ability of Defendants Dudek and Cross to complete their evaluation of the property as the Contract provides (Plaintiff's Exhibit 17, see Susan Nicolson email dated, November 27, 2012 @12:44 P.M.). 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. Restatement (First) of Contracts § 295 (1932).

14. This Court finds the actions of Defendants Ferro establish they failed to observe TIME IS OF THE ESSENCE, a mutual obligation that the contract required. The contract expresses this refrain five (5) times in the printed matter. The Court finds that Defendants Ferro's failure to

respond with dispatch, and with clear intentions, effectively waives their right to assert Defendants Dudek and Cross did not comply with their obligation to observe that TIME IS OF THE ESSENCE.

15. The Court finds Defendants Dudek and Cross are willing, able and ready purchasers of the Real Property.

16. The Court finds the Dudek/Ferro Contract is enforceable.

17. The Court finds Defendants Ferro shall complete the sale of the property to Defendants Dudek and Cross.

18. The Court finds the Defendants Dudek and Cross' Paragraph 8 conditions are impossible. Nonetheless, Defendants Dudek and Cross are bound by the obligation of good faith and fair dealing which, when considered with the intent and meaning of the Contract, requires them to pursue conventional residential loan financing without delay. Since, the payment method to consummate the sale is a conventional residential loan, the date of the closing shall occur as soon as practicable once Defendants Dudek and Cross procure the loan commitment. Defendants Dudek and Cross shall enlist the services of a closing attorney to assure the conditions of the conventional residential loan commitment shall proceed with the urgency of time is of the essence. Thus, the intent and meaning of the Contract is reset to the date this Order becomes the law of the case.

19. The obligation to observe time of the essence applies to both Defendants Dudek and Cross and to Defendants Ferro. Since both parties are obligated to observe that time is of the essence both parties enjoy a reciprocal benefit by this provision. The Court finds the mutual obligation that the parties must deal with one another in good faith and with fairness must be addressed. The obligation for good faith and fair dealing, implied in every contract, is essential in the Dudek/Cross contract relationship with Defendants Ferro.

20. In this case, had the Defendant Ferro reciprocated this mutual contractual obligation, the sale and purchase of the Real Property would have occurred nearly two years ago, and would have saved all parties tremendous time, effort, expense and perhaps, as importantly, emotional equity. Regrettably, Defendants Ferro allowed an innocent third party, Plaintiff Morphew, in this consolidated case, to become entangled in an existing contractual relationship. In this Court's view, Defendants Ferro's acts demonstrate they failed to exercise a simple rule of common

decency that is, "do unto others as you would have them do unto you"[19]. A corollary to the noble principal is "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Restatement (Second) of Contracts § 205 (1981). See, *Birdseye v. Davis*, 13 S.C.L. 296, 297-98 (S.C. Const. App. 1822) (In the construction of a contract, ***the intention of the parties*** to be collected from the instrument, (if in writing,) should be constantly in view, and ***in their performance, good faith and fair dealing is always required.***) (This Court's emphasis).

21. The Court finds Defendants Ferro are in default of the Dudek/Cross Contract for the reasons stated in this Order. Pursuant to Paragraph 16, the Court finds Defendants Dudek and Cross are entitled to recover reasonable costs, including a reasonable attorney fee. To this end, Defendants are at leave to apply, on or before ten (10) days of the date of this Order, for costs and attorneys fees due from Defendants Ferro. This Court will schedule a factual hearing on or after 10 days from the date of filing the application to ascertain a reasonable attorney fee and what costs should be recovered. If Defendants Dudek and Cross fail to apply for costs and attorneys fees within ten (10) days of the entry of this Order, Defendants Dudek and Cross shall be deemed to have waived their rights under Paragraph 16.

22. Defendants Dudek and Cross seek specific performance of the Dudek/Cross Contract. Defendants Dudek and Cross claim against Defendants Ferro allege a breach of contract; however, they maintain the property is unique and no adequate remedy at law is available. This Court agrees. The property is six and six-one thousandth (6.006) acres on the outskirts of Summerville, South Carolina between the developing communities of Knightsville and Jedburg. In the last decade and one-half this area has enjoyed significant growth in commercial development in a rural setting. The Real Property is close to new public elementary and middle schools, and Summerville's private school, Pinewood Preparatory School. It presents easy access to the Town of Summerville, and U. S. Highway 78, which is the predominant route between the Summerville and the County Seat, St. George. In contrast, it is a far cry from a condominium and significantly different than a home in a tract builder's residential subdivision. This Court finds the property unique. Specific performance should be granted because there is no adequate remedy at law. Specific enforcement of the contract is equitable between the parties. See, *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000).

23. The Court finds the Dudek/Cross Contract is fair, just, and equitable. See, *Anthony v. Eve*, 109 S.C. 255, 263, 95 S.E. 513, 515 (1918); *McChesney v. Smith*, 105 S.C. 171, 176, 89 S.E. 639, 641 (1916).

24. Giving due regard to the terms of the contract and the facts and circumstances concerning the intent and meaning of the Dudek/Cross Contract, this Court finds it should order that done which ought to be done. Hence, compelling performance of the Dudek/Cross Contract is an equitable result. Moreover, giving effect to the intent and meaning of the contract by compelling Defendants Ferro to sell the property to Defendants Dudek and Cross promotes a just result.

25. The Court finds Defendants Dudek and Cross worked in good faith to consummate the sale. The evidence supports a finding Defendants Ferro acts and omissions demonstrated unfair dealing. Defendants Ferro fail to point to meaningful communication with Defendants Dudek and Cross whereas the acts of Defendants Dudek and Cross infer they acted with care, kept Defendants Ferro advised of the concerns they had. This Court finds Plaintiff's Exhibit 3 emails demonstrate Defendants Ferro obfuscated the intent and meaning of the contract in the performance of conditions incumbent upon them to fulfill. The Court finds Defendants Ferro acted without intent to fulfill the contract according to its plain terms. The circumstances imply Defendants Ferro attempted to use the contract's time of the essence provisions as an exemption, and tried to use it as a tool to avoid their having to deal with critical concerns raised by Defendants Dudek and Cross, who were acting at all times within their rights under the contract.

CONCLUSIONS OF LAW

1. The Findings of Fact shall be deemed Conclusions of Law. The Conclusions of Law shall be deemed Findings of Fact. Additional Conclusions of Law are as follows:

2. The Dudek/Cross Contract is valid.

3. The Dudek/Cross Contract is a conditional contract.

4. The Dudek/Cross Contract is fair, just, and equitable.

5. Paragraph 12 of the Dudek/Cross Contract is impossible to perform. Defendants Dudek and Cross's failure to comply with Paragraph 12 is excused. However, Defendants Dudek and Cross did all they could have done to achieve a conventional residential loan to complete the method of payment. Moreover, they carried into execution of the terms of the Contract with the approbation of Defendants Ferro.

6. Defendants Ferro frustrated the rights of Defendants Dudek and Cross to perform their due diligence. Thus, Defendants Ferro excused the intent and meaning of the contract to culminate on or before November 30, 2012 with TIME IS OF THE ESSENCE.

7. Defendants Ferro's acts and omissions waived their right to require this Court to give effect to the intent and meaning of the contract to culminate on or before November 30, 2012 with TIME IS OF THE ESSENCE.

8. Defendants Ferro are in default of the Dudek/Cross Contract. Defendants Dudek and Cross have a contractual right to pursue recovery of a reasonable attorney fee and costs of this action. In order to assert this right, Defendants Dudek and Cross shall apply to recover these costs and fees on or before ten (10) days of the entry of this order.

9. Defendants Dudek and Cross have demonstrated they are willing, able and ready to purchase the Real Property, however, since approximately two (2) years have passed since the agreement was originally made, in order to give effect to the intent and meaning of the contract, they are granted the right to update their due diligence requirements while they renew their loan application.

10. Defendants Dudek and Cross shall be entitled to an updated Residential Home Inspection in accord with Paragraph 19 (B) that is satisfactory to them.

11. Defendants Ferro shall procure a CL 100 in accord with Paragraph 19 (D) that is satisfactory to Defendants Dudek and Cross.

12. The Dudek/Cross Contract intends and means that Defendants Dudek and Cross are to purchase the Real Property for Three Hundred Three Thousand Dollars ($303,000.00) and the method of payment shall be a conventional residential loan. The closing costs shall be paid as set forth in the Dudek/Cross Contract.

13. Defendants Ferro shall observe the obligation of good faith and fair dealing in performance of the Dudek/Cross Contract.

14. Defendants Ferro shall perform those conditions of the contract they are responsible for without delay. They shall inform in writing with specificity the Defendants Cross and Dudek what, if any, repairs they intend to complete to meet the satisfaction of Defendants Dudek and Cross. Although the finding of this Court established the Defendants right to personal satisfaction, the standard of satisfaction must meet the test of a reasonable person (*supra*,

endnote 13). In assessing what is reasonable the obligation of good faith and fair dealing prevails.

15. Defendants Ferro shall deliver a deed upon payment of the purchase price that complies with the provisions of Paragraph 3. and Addendum A and Addendum B of the Special Stipulations.

16. This Order shall be construed to terminate the Morphew Contract upon the exchange of the purchase price by Defendants Dudek and Cross for delivery of the deed by Defendants Ferro. Hence. at that point in time, Defendants Dudek and Cross grant of mortgage lien to their conventional residential loan lender shall be free of the encumbrance of the Morphew Contract.

17. The Morphew Contract cannot be specifically performed unless the Dudek/Cross Contract is terminated because a condition of the contract cannot be performed.

18. If the Dudek/Cross Contract is terminated, Defendants Dudek and Cross shall notify this Court and Plaintiff Morphew immediately, and file with this Court the written termination of Contract specifying the condition of the contract that could not be performed.

19. The Morphew Contract is a valid contract.

20. The Morphew Contract is a conditional contract.

21. The Morphew Contract is fair, just and equitable.

22. Thus, if the Dudek/Cross Contract is terminated, Defendants Ferro specifically perform Plaintiff Morphew Contract according to its terms.

23. Since the Morphew Contract is an enforceable contract conditioned on the termination of Defendants Dudek and Cross Contract, Defendants Ferro are not in default of the Morphew Contract. Absent a default, Plaintiff Morphew is not entitled to recover her costs and attorney's fee. NOW THEREFORE, IT IS

ORDERED, ADJUDGED, AND DECREED that Defendants Ferro shall deliver a deed of conveyance to the Real Property to Defendants Dudek and Cross in exchange for the purchase price in accord with the terms of sale and purchase contained in the Dudek/Cross Contract as directed to be given effect by the Findings of Fact and Conclusions of Law set forth in this Order. AND, IT IS

SO ORDERED, ADJUDGED, AND DECREED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
November 6, 2014

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[1] Paragraph 11. is not contested, however, this accounts for a fifth condition with Time is of the Essence. The Court considers it in construing the intent and meaning of the Dudek/Cross Contract.

[2]

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 11/30 ~~December 01~~, 2012, not later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

[3]

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 90.000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. **Time is of the essence.** Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐will ☐will not be added to the mortgage. VA funding fee ☐will ☐will not be added to the mortgage.

[4]

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

(B) **Inspection**: Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. **Time is of the essence.** If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before November 30, 2012. **Time is of the essence.** If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

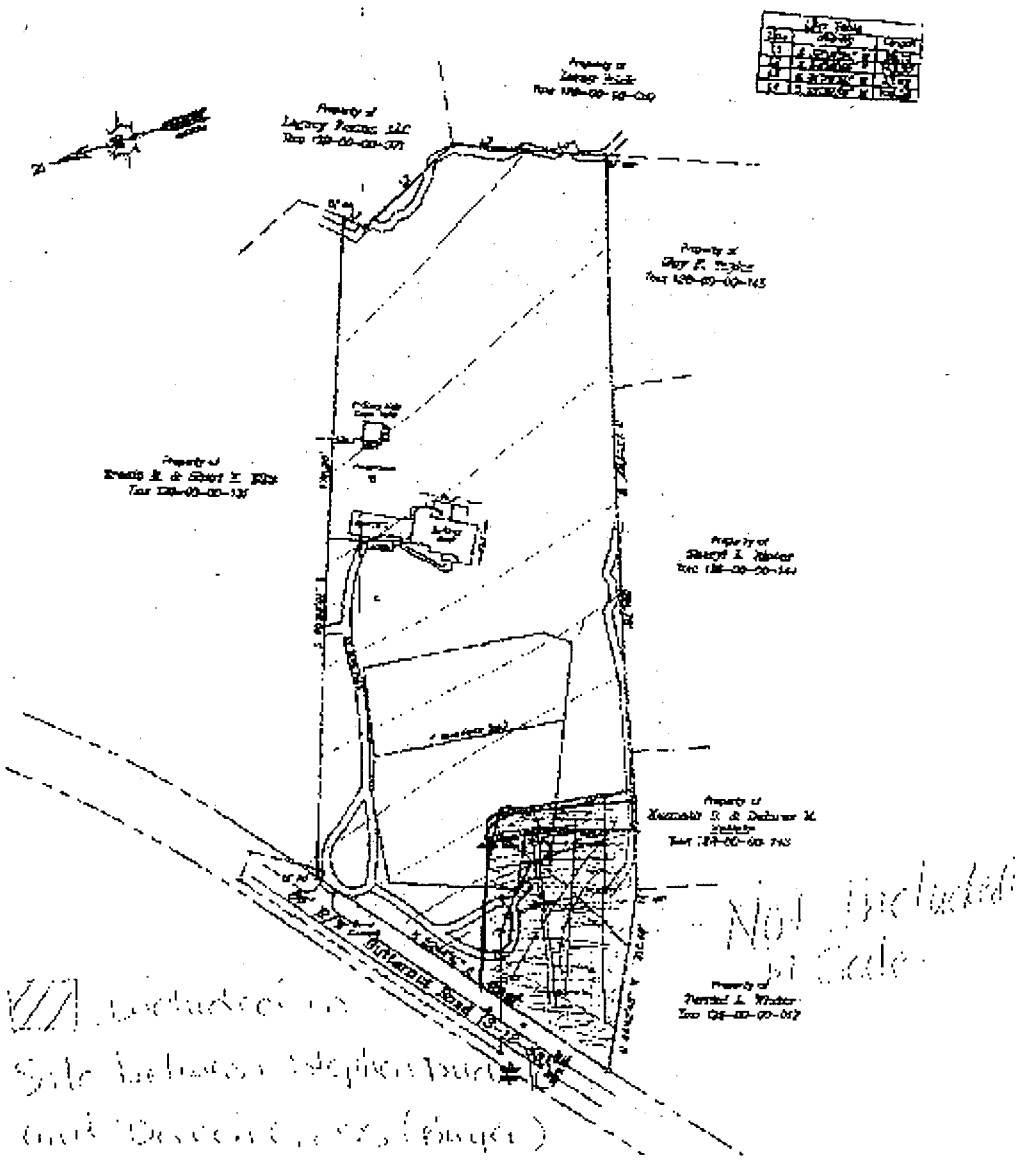
29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein; (attach and reference addendum if necessary) See attached addendum (A) (B) + (C)

The undersigned Parties hereby agree as follows.

1. Buyer total satisfaction of home inspection and CL100. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septic tank hasn't been service in the past yr. then Seller agrees to have it serviced.5. Seller agrees to have the property subdivided to include in this sale the 3340 sf house, storage bldg and 6 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to include copies of the survey. Cont. next to. (B) + (C)

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SC Sellers Disclosure due to not legible of what is currently on the MLS. 9. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc.

Addendum "C"



Not included in Sale

All included in Sale between Stephenson Dr. and Devereux Rd.

[11] The meaning of the contract and the intent of the parties to it is one and the same thing. To interpret the lawful meaning is to discover the intention of the parties as found within the agreement. Our Court acknowledges contractual language coupling the terms "intent and meaning." Cf., *Mordecai v. Stutts*, 16 S.C. 622, 622 (1882) (interpreting a power of sale in a mortgage, the Court acknowledges language of the mortgage, "the conditions and recitals thereof, according to the true intent and meaning); *Hext v. Jarrell*, 34 S.C.L. 11, 14 (S.C. App. L. 1848) (the intent and meaning of a deed); *Edwards v. Sartor*, 69 S.C. 540, 48 S.E. 537, 537 (1904) (the Court acknowledges language of "true intent and meaning of note and condition thereunder written" in a mortgage, see, also, *Kaphan v. Ryan*, 16 S.C. 352, 353 (1882) (true intent and meaning of said bond, secured by a mortgage); *Crawford v. Owens*, 79 S.C. 59, 60 S.E. 236, 237 (1908) (the Court acknowledges language of "the terms of the contract according to its true intent and meaning" addressing a bond surety for the faithful performance of a contract); *Satterwhite's Adm'rs v McKie*, 16 S.C.L. 397, 398 (S.C. Const. App. 1824) ("the obvious meaning and intent of the parties to the contract.").

[12] Paragraph 3 describes the particulars of the conveyance; this provision is modified by conditions set out in condition of the Special Stipulations.

[13] Addendum A requires the Paragraph 19 (B) and Paragraph (D) conditions to meet a standard totally acceptable to the Buyer. See. *Restatement (First) of Contracts § 265 (1932)*: A promise in terms conditional on the promisor's satisfaction with an agreed exchange, gives rise to no duty of immediate performance until such satisfaction; but where it is doubtful whether words mean that a promise is conditional on the promisor's personal satisfaction with an agreed exchange, or on the sufficiency of that exchange to satisfy a reasonable man in the promisor's position, the latter interpretation is adopted. The Court finds the term "total satisfaction" means Dudek and Cross are not required to pay the purchase price until Dudek and Cross are personally satisfied with the Paragraph 19 (B) & (D) conditions. In any event, Cross testified despite Defendants Ferros' failure to answer in kind the questions concerning the home inspection and after she procured a structural engineer's report acceptable to her (she had a relative, who is an engineer, review the calculations) she was satisfied that the residence was structurally sound a reservation contained in her home inspection report. Dudek testified he never received a satisfactory Cl. 100 (Transcript page. 104, line 23). Hence, she did not have an opportunity to determine if it was satisfactory.

[14] The Court takes Judicial Notice that at a conventional residential loan closing borrowers are required to sign a Uniform Residential Loan application. The application is made under oath. This fact further supports the impossibility of the Paragraph 8 condition.

[15] Impossibility that would discharge the duty to perform a promise excuses a condition if (a). . ., or (b) existence or occurrence of the condition is no material part of the exchange for the promisor's performance and the discharge of the promisor will operate as a forfeiture. Restatement (First) of Contracts § 301 (1932). This Court applies this rule to the facts of this case as follows:

> Dudek and Cross had a duty (promise to perform) to procure unconditional financing within 20 days of signing the contract. The Contract calls for a conventional residential loan. Unconditional residential loan financing is impossible. The occurrence of the condition to procure unconditional financing in 20 days is not a material part of the exchange because delivery of the deed depends on delivery of the purchase price not procurement of the loan within twenty days of the signing of the contract and the discharge of Dudek and Cross's duty to procure unconditional loan approval would operate as a forfeiture of the contract.

[16] It is well established in this state that time is not of the essence of a contract to convey land unless made so by its terms expressly or by implication. Bishop v. Tolbert, 249 S.C. 289, 153 S.E.2d 912 (1967). When the contract does not include a provision that "time is of the essence," the law implies that it is to be done within a reasonable time. Hobgood v. Pennington, 300 S.C. 309, 387 S.E.2d 690 (Ct.App.1989). In equity, strict compliance with time limits contained in a contract will not ordinarily be enforced, except with regard to option contracts. Dargan v. Page, 222 S.C. 520, 73 S.E.2d 705 (1952). Faulkner v. Millar, 319 S.C. 216, 219-20, 460 S.E.2d 378, 380 (1995).

[17] Defendant Cross testified:
"the piers were not supporting anything, they were jus there. I didn't understand why all these piers were there, they were not touching the house (Transcript page 38, lines 1-3) Dudek corroborates and elaborates: "We were concerned about the extra piers under the crawl space because they were just there, they weren't at supporting anything, that surprised me. And yes, we were concerned about the crack tile in the front foyer and in the master bathroom. The back porch where the concrete was sinking, I thought it was just an add on so I wasn't sure, if it was an add on it was just settling, that didn't worry me that much. But the biggest thing was the structure of the house, the extra piers there for the supports because they were there and they weren't doing anything (Transcript page 98, l. 24 – page 99, l. 9).

[18] The house is a fairly heavy house, it is made of steel and it has installed CompCore on the outside of it with rebar in it, so I was concerned about the structure (Transcript page 38, lines 6 – 9).

[19] The moral principle, that men in their intercourse with each other should act with perfect fairness, is as broad as the foundation on which society is erected, and, in some form or other, we find it incorporated into the laws of every well regulated society. "Do unto others as you would have them do unto you," is the substratum of every civilized code: and the well known rule that no one shall profit by his own wrong, or profit by his own fraud, is built upon it- and wherever it is apparent that one man has profited by fraud and circumvention, to the loss or injury of another, he must respond. Minter v. Dent, 37 S.C.L. 205, 207 (S.C. App. L. & Eq. 1832)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2013-CP-18-0183
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CONSENT ORDER
	)	TO CONSOLIDATE
Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	

This matter comes before the Court on the joint motion of the above-named parties for an Order pursuant to SCRCP 42 consolidating 2013-CP-18-74 into 2013-CP-18-183 on the grounds that these cases involve common questions of law and fact and should be consolidated for judicial economy as well as to avoid unnecessary cost, delay, and/or burden.

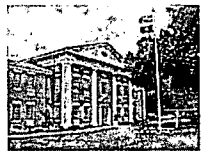
THEREFORE, IT IS HEREBY ORDERED that Pursuant to SCRCP 42 consolidation of 2013-CP-18-74 into 2013-CP-18-183 is hereby granted.

_____
Presiding Judge

St. George, South Carolina

July ___, 2013

Dorchester County
First Judicial Circuit
Public Index



Switch View

Molly M Morphew VS Thomas Ferro , defendant, et al					
Case Number:	2013CP1800183	Court Agency:	Common Pleas	Filed Date:	01/31/2013
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Chellis, James E.		
Disposition:	Ended by Non Jury	Disposition Date:	11/06/2014	Disposition Judge:	Chellis, James E.
Original Source Doc:		Original Case #:			
Judgment Number:	2013CP1800183	Court Roster:			

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Closser, Zachary James	PO Box 40578 Charleston SC 294230578				Defendant Attorney		08/17/2016
Cross, Doreen					Defendant		05/18/2017
Dudek, Stephen					Defendant		05/18/2017
Collins, David A. (Inactive)	PO Box 40578 Charleston SC 29423				Defendant Attorney		08/15/2016
Cross, Doreen					Defendant		05/18/2017
Dudek, Stephen					Defendant		05/18/2017
Cross, Doreen					Defendant		05/18/2017
Closser, Zachary James	PO Box 40578 Charleston SC 294230578				Defendant Attorney		08/17/2016
Collins, David A. (Inactive)	PO Box 40578 Charleston SC 29423				Defendant Attorney		08/15/2016
Smith, Steven L.	PO Box 40578 Charleston SC 294230578				Defendant Attorney		04/03/2017
Wheeler, Samuel Melvil	7455 Cross County Rd., Suite 1 PO Box 40578 Charleston SC 294230578				Defendant Attorney		08/17/2016
Dudek, Stephen					Defendant		05/18/2017
Closser, Zachary James	PO Box 40578 Charleston SC 294230578				Defendant Attorney		08/17/2016
Collins, David A. (Inactive)	PO Box 40578 Charleston SC 29423				Defendant Attorney		08/15/2016
Smith, Steven L.	PO Box 40578 Charleston SC 294230578				Defendant Attorney		04/03/2017
Wheeler, Samuel Melvil	7455 Cross County Rd., Suite 1 PO Box 40578 Charleston SC 294230578				Defendant Attorney		08/17/2016
Ferro, Lorraine	5501 Carson St Denver CO 80239				Defendant		05/18/2017
Ferro, Lorraine	5501 Carson St Denver CO 80239						11/12/2014

					Defendant Pro Se		
Ferro, Lorraine	5501 Carson St Denver CO 80239				Defendant Pro Se		11/12/2014
Ferro, Lorraine	5501 Carson St Denver CO 80239				Defendant		05/18/2017
Ferro, Lorraine B	5501 Carson St Denver CO 80239				Defendant		05/18/2017
Ferro, Lorraine B	5501 Carson St Denver CO 80239				Defendant Pro Se		05/18/2017
Ferro, Lorraine B	5501 Carson St Denver CO 80239				Defendant Pro Se		05/18/2017
Ferro, Lorraine B	5501 Carson St Denver CO 80239				Defendant		05/18/2017
Ferro, Thomas M	5501 Carson St Denver CO 80239				Defendant Pro Se		05/18/2017
Ferro, Thomas M	5501 Carson St Denver CO 80239				Defendant		05/18/2017
Ferro, Thomas M	5501 Carson St Denver CO 80239				Defendant		05/18/2017
Ferro, Thomas M	5501 Carson St Denver CO 80239				Defendant Pro Se		05/18/2017
Ferro, Thomas	5501 Carson St Denver CO 80239				Defendant		05/18/2017
Ferro, Thomas	5501 Carson St Denver CO 80239				Defendant Pro Se		11/12/2014
Ferro, Thomas	5501 Carson St Denver CO 80239				Defendant Pro Se		11/12/2014
Ferro, Thomas	5501 Carson St Denver CO 80239				Defendant		05/18/2017
Massalon, John A. (Inactive)	PO Box 859 Charleston SC 29402				Plaintiff Attorney		05/12/2015
Morphew, Molly M	1605 Central Avenue Suite 6/347 Summerville SC 29483				Plaintiff		06/16/2017
Morphew, Molly M	1605 Central Avenue Suite 6/347 Summerville SC 29483				Plaintiff		06/16/2017
Massalon, John A. (Inactive)	PO Box 859 Charleston SC 29402				Plaintiff Attorney		05/12/2015
Morphew, Molly M	1605 Central Avenue Suite 6/347 Summerville SC 29483				Plaintiff Pro Se		06/16/2017
Morphew, Molly M	1605 Central Avenue Suite 6/347 Summerville SC 29483				Plaintiff Pro Se		06/16/2017
Morphew, Molly M	1605 Central Avenue Suite 6/347 Summerville SC 29483				Plaintiff		06/16/2017
Smith, Steven L.	PO Box 40578 Charleston SC 294230578				Defendant Attorney		04/03/2017
Cross, Doreen					Defendant		05/18/2017
Dudek, Stephen					Defendant		05/18/2017
Wheeler, Samuel Melvil	7455 Cross County Rd., Suite 1 PO Box 40578 Charleston SC 294230578				Defendant Attorney		08/17/2016
Cross, Doreen					Defendant		05/18/2017
Dudek, Stephen					Defendant		05/18/2017

Judgments

For:	Dudek, Stephen	Against:	Ferro, Thomas	Judg. Amount:	$13,186.32	Judgment Date:	05/17/2017
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	05/18/2017 --
Notes:	None						

Judgment Details			
Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	Dudek, Stephen	Against:	Ferro, Lorraine	Judg. Amount:	$13,186.32	Judgment Date:	05/17/2017

Dudek, Stephen	Judgment/Judgment	Judgment		05/17/2017-10:33		
Ferro, Lorraine B	Judgment/Judgment	Judgment		05/17/2017-10:33		
Dudek, Stephen	Judgment/Judgment	Judgment		05/17/2017-10:32		
Ferro, Thomas	Judgment/Judgment	Judgment		05/17/2017-10:32		
Dudek, Stephen	Judgment/Judgment	Judgment		05/17/2017-10:32		
Ferro, Thomas M	Judgment/Judgment	Judgment		05/17/2017-10:32		
Ferro, Lorraine	Motion to attend hearing VIA Telephone or Video Conference	Motion		05/03/2017-09:15	05/03/2017-09:15	
Morphew, Molly M	Answer to Dudek & Cross Notice of Motion to Set Closing	Filing		04/06/2017-12:47		
Dudek, Stephen	Order Setting Closing Schedule & Awarding Attorneys Fees	Order		04/03/2017-16:34	04/03/2017-16:34	
Dudek, Stephen	Motion to set Closing Schedule and for Attorney Fees	Motion		03/16/2017-14:45		
Morphew, Molly M	Remittitur From Court Of Appeals/Affirmed	Filing		02/17/2017-11:03	02/17/2017-11:03	
Dudek, Stephen	Lis Pendens ($10.00)	Filing		08/16/2016-16:15		
Dudek, Stephen	Notice of Appearance	Filing		08/16/2016-16:15		
Ferro, Thomas	Order/Form 4/Motion to Compel removed from roster	Order		08/09/2016-09:12	08/09/2016-09:12	
Dudek, Stephen	Order/ Motion for Supersedeas Bond is Denied	Order		06/14/2016-15:07	06/14/2016-15:07	
Ferro, Thomas	Motion/Compel response from respondents Dudek cross for proo	Motion		06/14/2016-10:50	06/14/2016-10:43	
Morphew, Molly M	Letter/Letter	Filing		01/22/2016-15:02		
Morphew, Molly M	Motion for reverse judgment of order	Motion		11/05/2015-15:53	11/05/2015-15:53	
Morphew, Molly M	Answer to Mtn for Superseadas Bond	Filing		05/12/2015-14:41		
Morphew, Molly M	Motion/to Extend Time/for Response to Superseadas Bond Mtn	Motion		05/12/2015-14:30	05/12/2015-14:30	
Morphew, Molly M	Order/Relieve As Counsel	Motion		05/12/2015-14:25	05/12/2015-14:25	
Dudek, Stephen	Motion/Supersedeas bond	Motion		03/25/2015-15:28	03/25/2015-15:28	
Ferro, Thomas	Notice of Appeal (Thomas & Lorraine Ferro)	Filing		12/16/2014-15:30		
Morphew, Molly M	Notice of Appeal	Filing		12/08/2014-11:48		
Ferro, Thomas	Notice of Mailing to address in Colorado	Filing		11/20/2014-08:58	11/20/2014-08:58	
Morphew, Molly M	Final Order	Order		11/06/2014-12:26	11/06/2014-12:26	
Ferro, Thomas	Pleading Statement	Filing		09/10/2014-14:24	11/06/2014-14:24	
Morphew, Molly M	Filing fee for Motion/Refer to Master	Motion		12/30/2013-16:34	12/30/2013-16:34	
Morphew, Molly M	Consent Order for Reference	Order		12/30/2013-16:33	12/30/2013-16:33	
Morphew, Molly M	Consent Order/Consolidate	Motion		09/18/2013-15:44	09/18/2013-15:44	

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

2016 AUG -9 AM 9:35

DORCHESTER COUNTY

Molly M Morphew		Thomas Ferro Stephen Dudek	Lorraine Ferro Doreen Cross
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: **Motion to Compel Response from Respondents should be removed from the active roster; this court doesn't have jurisdiction.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Larry E Mills | 3078 | 8/4/2016

Master in Equity | **Judge Code** | **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 08/ 9 /2016, and a copy mailed first class or placed in the appropriate attorney's box on 08/ 9 /2016, to attorneys of record or to parties (when appearing pro se) as follows:

John A. Massalon
PO Box 859
Charleston, SC 29402
Molly M Morphew
788 E Butternut Rd
Summerville, SC 29483

David A. Collins
PO Box 40578
Charleston, SC 29423
Thomas Ferro
5501 Carson St
Denver, CO 80239
Lorraine Ferro
5501 Carson St.
Denver, CO 80239

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Stephen Dudek and Doreen Cross, Respondents,

v.

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

And

Molly M. Morphew, Appellant,

v.

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

Of whom Stephen Dudek and Doreen Cross are Respondents.

Appellate Case No. 2014-002633

Appeal From Dorchester County
James E. Chellis, Master-in-Equity

Unpublished Opinion No. 2017-UP-019
Submitted October 1, 2016 – Filed January 11, 2017

AFFIRMED

Thomas M. Ferro and Lorraine B. Ferro, both of Denver, Colorado, and Molly M. Morphew, of Summerville, all pro se.

Steven L. Smith and Samuel Melvil Wheeler, both of Smith Closser, of Charleston, for Respondents.

PER CURIAM: Thomas Ferro and Lorraine Ferro (collectively, the Ferros) and Molly Morphew (collectively, Appellants) appeal the master-in-equity's ordering specific performance of a contract between Stephen Dudek and Doreen Cross (collectively, Respondents) and the Ferros for the sale of residential real estate (the Contract). Appellants argue the master erred by ruling the Contract was enforceable, making findings unsupported by the record, and ordering specific performance. Appellants also argue the master erred by finding Morphew sought damages against the Ferros for breach of contract and the Ferros championed a contract between them and Morphew. Respondents argue Appellants' brief to this court should not be considered because Morphew was the only party to sign it and she did not have standing to raise any arguments on the Ferros' behalf. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the validity of Appellants' brief: Rule 208(b)(6), SCACR ("In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief . . . .").[1]

2. As to whether the master properly ordered specific performance of the Contract: *Campbell v. Carr*, 361 S.C. 258, 262, 603 S.E.2d 625, 627 (Ct. App. 2004) ("An action for specific performance is one in equity."); *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009) ("In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence."); *id.* ("However, this broad scope of review does not require this [c]ourt to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses."); *id.* at 302, 683 S.E.2d at 807 ("This [c]ourt reviews all questions of law de novo."); *Campbell*, 361 S.C. at 263, 603 S.E.2d at 627 ("Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the

---

[1] We note the Ferros signed all briefs filed with this court.

contract is equitable between the parties." (quoting *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000))); *id.* ("Equity will not decree specific performance unless the contract is fair, just, and equitable."); *Lowcountry Open Land Tr. v. Charleston S. Univ.*, 376 S.C. 399, 408, 656 S.E.2d 775, 780 (Ct. App. 2008) ("In order to compel specific performance, a court of equity must find: (1) there 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.* ("The party seeking to compel specific performance 'must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future.'" (quoting *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106 n.1, 531 S.E.2d 287, 291 n.1 (2000))); 61 Am. Jur. 3d *Proof of Facts* § 325 (2001) ("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."); *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 is 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) ("[T]here exists in every contract an implied covenant of good faith and fair dealing."); *id.* ("In the absence of an express provision therefor, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made." (quoting 17A C.J.S. *Contracts* § 328 at 282-84)); *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008) ("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 *Willms 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. App. 1984) ("[O]ne who prevents a condition of a contract cannot rely on the other party's resulting nonperformance 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 S.E.2d at 407 ("[A]lmost 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 S.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.").

3. As to all other issues: *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

AFFIRMED.[2]

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

Stephen Dudek, Doreen Cross, Respondents,

v.

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

And

Molly M. Morphew, Appellant,

v.

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

Of whom Stephen Dudek and Doreen Cross are Respondents.

Appellate Case No. 2014-002633

The Honorable James E. Chellis
Dorchester County
Trial Court Case No. 2013CP1800074, 2013CP1800183

ORDER

Appellant Molly Morphew filed a petition for rehearing that was received January 24, 2017. Ms. Morphew now files a motion to dismiss her petition. The appellant's motion to dismiss the petition is granted.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED
February 15, 2017

cc:
Molly M. Morphew
Thomas Ferro
Lorraine Ferro
Samuel Melvil Wheeler, Esquire
Steven L. Smith, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 15, 2017

The Honorable Cheryl L. Graham
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

Re: Stephen Dudek v. Thomas Ferro (Morphew)
Lower Court Case No. 2013CP1800074, 2013CP1800183
Appellate Case No. 2014-002633

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,
V. Claire Allen, Deputy

CLERK

Enclosure

cc: Molly M. Morphew
Thomas Ferro
Lorraine Ferro
Samuel Melvil Wheeler, Esquire
Steven L. Smith, Esquire

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	2017 APR -3 PM 4:33 CLERK OF COURT DORCHESTER COUNTY	**Thomas Ferro** **Stephen Dudek**	**Lorraine Ferro** **Doreen Cross**
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☑ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. Order / Judgment Post Remittitur
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

James E Lewis — 3078 — 4/3/2017

Master in Equity — **Judge Code** — **Date**

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

This judgment was entered on 4/3/17 , and a copy mailed first class or placed in the appropriate attorney's box on 4/3/17 , to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 East Butternut Road Summerville, SC 29483-8407

Thomas Ferro 5501 Carson St Denver, CO 80239
Lorraine Ferro 5501 Carson St Denver, CO 80239
Steven L. Smith PO Box 40578 Charleston, SC 29423-0578
Zachary James Closser PO Box 40578 Charleston, SC 29423-0578
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

RECORDED

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER 2017 APR -3 PM 3:54

CHERYL SOMMERS
CLERK OF COURT
DORCHESTER COUNTY

Stephen Dudek and Doreen Cross
(x) Plaintiff
v.
Thomas M. Ferro, et al.,
( ) Defendant
check box above indicating submitting party

Case No. 2013-CP-18-183

MOTION INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Samuel M. Wheeler - 101008	Thomas and Lorraine Ferro
Smith | Closser, PA	5501 Carson Street
P.O. Box 40578	Denver, CO 80239
Charleston, SC 29423	
telephone: 843-760-0220 fax: 843-552-2678	telephone: fax:
e-mail: swheeler@scnlaw.com	e-mail: lbferro3200@gmail.com

( ) MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
( ) FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
(x) PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: minutes Court Reporter Needed: YES / NO

SECTION II: Motion Type

( ) Written motion attached
(x) Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant — Date submitted: 3-29-17

SECTION III: Motion Fee

( ) PAID - AMOUNT: $25.00
(x) EXEMPT: ( ) Rule to Show Cause in Child or Spousal Support
(check reason) ( ) Domestic Abuse or Abuse and Neglect
( ) Indigent Status ( ) State Agency v. Indigent Party
( ) Sexually Violent Predator Act ( ) Post-Conviction Relief
( ) Motion for Stay in Bankruptcy
( ) Motion for Publication ( ) Motion for Execution (Rule 69, SCRCP)
(x) Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
( ) Other:

JUDGE'S SECTION

( ) Motion Fee to be paid upon filing of the attached order.
( ) Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____ _____(print name)
( ) MOTION FEE COLLECTION:_____
( ) CONTESTED - AMOUNT DUE:_____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

AND

Molly M. Morphew

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro

Defendants.

ORDER SETTING CLOSING SCHEDULE AND AWARDING ATTORNEY'S FEES AND COSTS

2017 APR -3 PM 3:54
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

On March 27, 2017, the above captioned actions came before this Court on Stephen Dudek and Doreen Cross' ("Dudeks") motion to set a schedule for the Dudeks to close on the home and real property located at 788 E. Butternut Road, Summerville, SC, TMS # 128-00-00-090 ("Property"), and for attorney's fees and costs. Present at the hearing was Steven L. Smith, on behalf of the Dudeks, Molly M. Morphew, *pro se*, and Thomas and Lorraine Ferro, *pro se*, who attended via telephone.

Brief Facts and Procedural History

These actions arose out of separate sales contracts to purchase the Property, one contract between the Dudeks and the Ferros ("Prevailing Contract"), and the other contract between

Morphew and the Ferros. Both the Dudeks and Morphew sought specific performance in separate suits, which were consolidated under the above case number. Following a trial, this Court issued an order ("Order") awarding the Dudeks specific performance and the right to apply for attorney's fees and costs against the Ferros. (See Final Order, November 6, 2014). Both Morphew and the Ferros appealed the Order. By way of a *per curiam* order, filed January 11, 2017, the South Carolina Court of Appeals affirmed the Order and this Court's ruling that the Dudeks were entitled specific performance under the Prevailing Contract. Morphew initially filed a petition for rehearing, but she voluntarily withdrew it, causing the Court of Appeals to dismiss the appeal and remit the case back to this Court on or about February 15, 2017. The Dudeks thereafter moved to have this Court set a schedule for closing on the Property. In addition, also pursuant to the Prevailing Contract and the Order, they sought attorney's fees and costs.

Finding and Rulings

After hearing arguments from all parties, this Court finds that the Dudeks are prepared to proceed with closing on the Property, pursuant to the Prevailing Contract and the Order. The Dudeks and Ferros entered into the Prevailing Contract on October 20, 2012, and closing was originally set for November 30, 2012, a period of forty (40) days. At the time the Order was issued, two years had passed since the parties entered into the Prevailing Contract, resulting in the need for certain steps to be taken or re-taken, including, but not limited to, inspection of the Property and securing an updated CL 100. (Order, p. 12). This Court finds that these steps are still required, and it further finds that the Prevailing Contract's 40-day closing window should be lengthened, due to the passage of nearly four years since the Dudeks and the Ferros entered into the Prevailing Contract.

IT IS THEREFORE ORDERED:

1. The Dudeks are entitled to purchase and close on the Property for a total sales price of $303,000, which was the sales price contained in the Prevailing Contract.
2. The Dudeks are further entitled to attorney's fees and costs in the amount of $21,268.82, which the Ferros are required to pay pursuant to the Prevailing Contract and the Order; (see Aff. of Attorney's Fees).
3. The purchase price will be offset by these attorney's fees and costs; thus, the adjusted purchase price is $281,731.18.
4. The parties will work in good faith to close on the Property within sixty (60) days of the issuance of this order. This Court recognizes that reasonable delays are inherent to loan applications, property inspections, and CL 100 reports. The parties shall cooperate, when necessary, to adjust time frames within this closing period or this closing period as a whole. Each party shall operate in good faith, and each shall not take actions that either unduly delay closing or that are meant to prevent closing in light of reasonable delays.
5. The Dudeks will apply for a loan and secure lending as soon as is feasible.
6. Prior to closing, the Dudeks will inspect or have inspected the home, and the parties will secure a CL 100 letter.
7. Except as to the times extended above, and any Contractual provision effected by these extensions, all other terms of the Prevailing Contract shall be binding on the parties.
8. Morphew, as the current tenant of the Property, is ordered to vacate the Property on or before the closing date, which will be provided to her by the parties or their counsel.
9. Morphew is further ordered not to change or damage the Property in any manner. Any

violation of this order will be considered contempt, punishable by fine, arrest, attorney's fees, and costs.

IT IS SO ORDERED.

The Honorable James E. Chellis

April 3, 2017
St. George, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-074, consolidated with 2013-CP-18-183
Stephen Dudek and Doreen Cross,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF ATTORNEY'S FEES AND COSTS
	)	
Thomas M. Ferro and Lorraine B. Ferro,	)	
	)	
Defendants.	)	
AND	)	
	)	
Molly M. Morphew	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro	)	
	)	
Defendants.	)	

NOT RECORDED
2017 APR -3 PM 3:54
CLERK OF COURT
DORCHESTER COUNTY

Personally appeared before me, the below signed attorney, who, after being duly sworn, hereby states as follows:

1. I am the attorney for the Plaintiffs Stephen Dudek and Doreen Cross in this action.

2. These Plaintiffs have incurred attorney's fees of Three Thousand One Hundred Seven and 50/100 ($3,107.50) Dollars, and costs in the amount of Thirty-Five and NO/100 ($35.00) Dollars.

3. These Plaintiffs have also incurred from their previous attorney (David A. Collins) attorney's fees of Sixteen Thousand Five Hundred Ninety-Two and 60/100 ($16,592.60) Dollars, and costs in the amount of One Thousand Five Hundred Thirty-Three and 72/100 ($1,533.72)

Dollars.

3. Upon information and belief, the attorney's fees charged herein are reasonable based upon the nature, extent, and difficulty of the services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the beneficial results obtained; and the fee customarily charged in the locality for similar legal services. See Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 259 (S.C. 1993).

FURTHER YOUR AFFIANT SAYETH NOT.

SWORN to before me this 28th day of March, 2016

Peggy M. Rochay
Notary Public for South Carolina
My Commission expires: March 28, 2024

Steven L. Smith

16-232

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED - RECORDED
2017 MAY 17 PM 2:36
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	Thomas Ferro Stephen Dudek	Lorraine Ferro Doreen Cross
PLAINTIFF(S)	**DEFENDANT(S)**	

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: Cancel all Lis Pendens; see ¶4, page 9 & 10 & Waive cancellation fees

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stephen Dudek and Doreen Cross	Thomas M. Ferro a/k/a Thomas Ferro and Lorraine B. Ferro a/k/a Lorraine Ferro	$13,186.32

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Jenny E Kitchings — 3078 — 5/17/2017

Master in Equity — **Judge Code** — **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

5/17/17 **For Clerk of Court Office Use Only** 5/17/17

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E Butternut Rd Summerville, SC 29483

~~**David A. Collins** PO Box 40578 Charleston, SC 29423~~
Thomas Ferro 5501 Carson St Denver, CO 80239
Lorraine Ferro 5501 Carson St. Denver, CO 80239
Steven L. Smith PO Box 40578 Charleston, SC 29423-0578
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
EQUITY DIVISION

Civil Action No.: 2013CP1800074
consolidated with Civil Action No.
2013CP1800183

Stephen Dudek, Doreen Cross,
Plaintiffs

Versus

Thomas M Ferro, and Lorraine B Ferro,
Defendants

AND

Molly M Morphew,
Plaintiff

Versus

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

ORDER

FILED - RECORDED
2017 MAY 17 PM 2:06
CHERYL CANNON
CLERK OF COURT
DORCHESTER COUNTY

This matter is before me pursuant to the Remittitur from the Court Of Appeals filed on February 17, 2017, affirming this Court's decision entered November 6, 2014. At question is this Court's Order Setting Closing Schedule & Awarding Attorneys Fees entered April 3, 2017 (the April 3, 2017 order) on the Dudek/Cross Motion for the same.

On April 6, 2017, Morphew/Ferros[1] filed a joint Answer to Dudek & Cross Notice of Motion and Motion to Set Closing Schedule and Award Attorneys Fee. The joint Answer is construed as a Rule 59(e) Motion to alter or Amend the April 3, 2017 order. The joint Answer has 13 points of contention. Paragraph 5 of the joint Answer, addressing the award of attorneys' fees, has merit. Paragraph 6, addressing the issue of the purchase price, has merit. Additionally, at the close of

[1] Morphew as used herein refers to Molly M. Morphew; Ferros as used herein refers to Thomas M. Ferro, a/k/a Thomas Ferro and Lorraine B. Ferro a/k/a Lorraine Ferro, jointly and severally. Dudek/Cross as used herein refers to Stephen Dudek and Doreen Cross, jointly and severally.

the hearing, Mr. Smith requested the Court order cancellation of the Lis Pendens filed in this action. This too has merit. All remaining issues raised in the joint Answer have no merit.

Morphew and Ferros are *pro se*. Hence, this Court has given broad latitude to them, particularly, in matters of procedure. The Answer follows entry of an Order on a Motion heard in open court and on the record. Morphew appeared in person. Ferros attended by telephone with consent of all parties inasmuch as they live in Colorado. As to the present matter the hearing conducted May 12, 2017 at 10:00 A.M. the same appearances were made, Ms. Morphew *pro se* and in person and the Ferros via telephone[2]. All parties presented arguments. The Ferros were placed under oath as was Ms. Morphew.

Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339, 1991 WL 113654 (1991) This Court liberally construes pleadings to conform them to the rules of civil procedure in such a manner that promotes substantial justice between the parties. The primary aim being to give, especially with pro se litigants, is to assure them notice of proceedings and an opportunity to be heard, the fundamental of procedural due process[3].

Striking this balance is often at the detriment of represented parties by competent counsel. Nonetheless in this case, since a hearing on the record pursuant to adequate notice to all parties on the Dudek/Cross Notice of Motion and Motion to Set The Scheduling For Closing And Award Attorneys' Fees, and all parties were given liberal opportunity to speak to the motion, this Court deems the joint Answer as a Motion pursuant to Rule 59 (e) SCRCP to alter or amend the April 3, 2017 order. At the hearing on the Dudek/Cross Motion, Ferros asserted that the requests

[2] Since the Ferros attended this hearing by telephone, the Court will enter an order dismissing their motion to attend by telephone filed May 3, 2017 as moot.

[3] Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350, 2007 WL 4698492 (2008)

for attorneys' fees had been waived because no motion for fees and costs had been timely filed, and they asserted the attorney's fees were too high.

The affirmed Order, dated January 17, 2017, remittitur entered February 17, 2017, provided the following finding of fact:

> "The Court finds Defendants Ferro are in default of the Dudek/Cross Contract for the reasons stated in this Order. Pursuant to Paragraph 16, the Court finds Defendants Dudek and Cross are entitled to recover reasonable costs, including a reasonable attorney fee. To this end, Defendants are at leave to apply, on or before ten (10) days of the date of this Order, for costs and attorneys fees due from Defendants Ferro. This Court will schedule a factual hearing on or after 10 days from the date of filing the application to ascertain a reasonable attorney fee and what costs should be recovered. If Defendants Dudek and Cross fail to apply for costs and attorneys fees within ten (10) days of the entry of this Order, Defendants Dudek and Cross shall be deemed to have waived their rights under Paragraph 16." Page 10, paragraph 21.

As a conclusion of law, this Court stated:

> "Defendants Ferro are in default of the Dudek/Cross Contract. Defendants Dudek and Cross have a contractual right to pursue recovery of a reasonable attorney fee and costs of this action. In order to assert this right, Defendants Dudek and Cross shall apply to recover these costs and fees on or before ten (10) days of the entry of this order." Page 12, paragraph 8.

Dudek/Cross did not file an application for attorneys' fees within ten (10) days of the original trial order. Instead on November 19, 2014, counsel for Dudek/Cross sent the Court an email to which he attached an itemization of fees and costs[4]. In reply, the Court instructed Dudek/Cross' attorney to file a motion and affidavit in support of their attorney's fees so as to allow the Ferros an opportunity to be heard on the motion. No motion was filed. Thereafter, on December 5, 2014, Morphew's then counsel[5] served her Notice of Appeal, which was clocked time-stamped by the Clerk of Court and entered in CMS on December 8, 2014, followed by Ferros' Notice of

[4] All parties had a copy of the itemization. During the hearing the Court reviewed the itemization. See also footnote 8 *infra.*

[5] Mr. Massalon served and filed Notice of Withdrawal as Counsel on December 15, 2014 with the Court of Appeals.

Appeal, dated December 12, served December 11, 2014 (emphasis added) and time stamped by the Clerk of Court on December 15, 2014 but entered in CMS on December 16, 2014.[6]

In any event, the Dudek/Cross failure to timely file the appropriate motion supported by an affidavit of attorney's fees only affects the attorneys' fees through the trial of the case. The failure to file a motion supported by an affidavit of attorneys' fees does not preclude the award of attorneys' fees once the case was appealed and following the appeal. In this regard, as to attorneys fees incurred in responding to the appeal, and matters post remittitur, attorneys fees have not been waived and are appropriately before the Court. To this end, the Court turns its attention first.

Dudek/Cross affidavit of attorneys' fees requests $16,592.60 attorneys' fees for David A. Collins[7]. As stated above, he had previously submitted an itemization of his fees of $10,150.00 and costs of $2,683.79, totaling $12,833.79[8]. Thus, from the affidavit of attorneys' fees, Mr. Collin's fees for representing Dudek/Cross on appeal are $6,442.60. He incurred $1,533.72 in costs. The total fees and costs are $7,976.32.

After Mr. Collins' suspension, Steven L. Smith, Esquire, has appeared on behalf of Dudek/Cross. He claims on behalf of Dudek/Cross a right to recover attorney's fees of $3,107.05 and costs of 35.00 through the motion hearing resulting in the April 3, 2017 order. In addition he claims attorney's fees of $2,067.50 through the Rule 59 (e) motion hearing on the Ferros' joint Answer.

In *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238–39, 616 S.E.2d 431, 434, 2005 WL 1620266 (Ct. App. 2005), the Court of Appeals affirmed Charleston County's Master in Equity who awarded the prevailing party in a contract dispute, in which the contract allowed

[6] The Court of Appeals did not address the timeliness of the Ferro Notice of Appeal. " Pursuant to Rule 203(b)(1), SCACR, a party wishing to appeal an order from the court of common pleas must serve the notice of appeal on the respondents "within thirty ... days after receipt of written notice of entry of the order." *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 413 S.C. 642, 644, 776 S.E.2d 575, 576, 2015 WL 5028852 (Ct. App. 2015). See, also, SCRCP 69 (e) providing an additional five (5) days when served by mail.

[7] In the Matter of David A. Collins, Respondent, *Matter of Collins*, 417 S.C. 72, 789 S.E.2d 577,

[8] Provided to the Court in the May 12, 2017 hearing by Morphew.

for recovery of attorneys fee, attorneys fees and costs, including fees and costs incurred by the prevailing party during the proceedings on appeal (emphasis added). The Court of Appeals cites a plethora of cases to the following: "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees." Citations omitted. In addition, *Berger* sets out the factors a trial judge must consider, utilizing its sound discretion, in a determination of the award of attorneys' fee.

"There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." Id., pp 434-435.

As to Attorneys' Fees due to David A. Collins after the Notices of Appeal

1. Nature, Extent, and Difficulty of the legal services rendered:

Two very talented lawyers tried this case before me. The initial trial order speaks to the nature, extent and difficulty of the legal services. Responding to the appeal equally, if not more, draws into focus the the nature, extent and difficulty of the legal services required. Considering this factual issue, this Court finds the weight of this factual inquiry favors awarding attorneys' fees and costs to Dudek/Cross.

2. Time and Labor Devoted to the Case

Mr. Collins hourly rate according to his itemization of fees is merely $200.00. I find this rate extremely favorable if not, quite frankly, very low for a lawyer with Mr. Collins' experience. At that rate he devoted 32.2 hours to the appeal. I find this fact weighs extremely favorable in awarding attorneys' fees and costs to Dudek/Cross.

3. Professional Standing Of Counsel

The Court notes Mr. Collins is presently suspended from the practice of law in South Carolina. The reason for this is not a matter of record in this case. Prior to his suspension, this Court notes

that he was a member in good standing with the South Carolina Bar, and generally enjoyed a reputation of being fair, even-mined, and well qualified in matters pertaining to contractual disputes. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

4. Contingency of Compensation

Nothing in the record indicates the attorneys' fees were contingent on a successful outcome. This factor is, therefore, neutral between Ferros and Dudek/Cross.

5. Fee Customarily Charged in the Locality for Similar Services

A 10,000.00 plus fee for the trial of a complex real estate contract is extremely reasonable. Most fees for responding to an appeal exceed $6,442.60. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

6. Beneficial Results Obtained.

Mr. Collins successfully tried the case. All of the appellate work was completed by the time of his suspension and, since the decision was rendered without oral argument, he successfully responded to the appeal. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

As To Attorneys' Fees Due To Steven L. Smith From His Appearance Before The Court Of Appeals Through The Present.

7. This Court views each of the 6 factors set forth above with same results. Mr. Smith is a member in good standing with the South Carolina Bar. He is an excellent trial and appellate lawyer[9]. Mr. Smith submits he is entitled to $5,175.00 in fees and $35.00 in costs. His total fees and costs are $5,210.00. He has made 2 court appearances before me as well as undertaken the representation of Dudek/Cross in the appeal albeit primarily perfunctory. At the Court's request he drafted the April 3, 2017 order which the joint Answer addresses (the joint Answer refers to a draft Order although as discussed in the

[9] A Westlaw search reveals he has represented parties on appeal in 39 cases.

Dudek/Cross Motion hearing, the Court accepted Mr. Smith voluntary offer to submit a proposed Order setting forth the rulings from the Bench). He submitted in his presentation that he has shepherded Dudek/Cross through the scheduling process, and has dealt with issues relating to procuring a closing attorney[10]. Although he has failed to prevail on Mr. Collins' fees for the trial, he is blameless for the shortcoming of Mr. Collins' failure to meet the Court's deadline for filing a Motion and supporting affidavit for attorneys' fees and costs. A fair inference to draw from that failure was that Dudek/Cross would likely not have pressed for the attorneys' fees and costs were the case not appealed. However, defending the pursuit of the appeal by the Ferros cannot be ignored when the real estate contract in dispute permits the non-defaulting party to recover costs and attorneys fees.

For the foregoing reasons as to Ferros responsibility for payment of Dudek/Cross Fees and Cost

8. I find as follows: $7,976.32 in attorneys' fees and cost post the trial of the case is fair and reasonable. These are the fees and cost they incurred with Mr. Collins from the date of the first notice of appeal of the November 6, 2014 trial court order to the time of his suspension. And further,
9. I find Ferros are responsible for the payment of these fees; and as to Mr. Smith's Fees and Cost I find $5,210.00 in attorneys' fees and costs Dudek/Cross have incurred with Mr. Smith's representation from the beginning of his representation during the appeal and to the present against Ferros is fair and reasonable.

10. The total judgment against Ferros for attorneys' fees and cost iSection 18-n favor of Dudek/Cross is $13,186.32[11].

[10] In a separate action, Morphew has sued lawyers and their staff who were to represent Dudek/Cross. With actual notice of pending litigation, the closing attorney declined to process the closing. Mr. Smith reports the closing attorney's title company would not remove an exception to the title commitment relating to the separate action.

[11] The Ferros stated under oath that they would give powers of attorney to an agent to close the real estate transaction with Dudek/Cross. The personal judgment against them will be a cloud on the title. The cloud can be satisfied at closing by deducting the judgment amount from Ferros proceeds and shown as a disbursement to the Dudek/Cross as a line itemt on the HUD-1 and disbursed at closing from the closing attorney's escrow and process of disbursement. Likewise, Mr. Smith can submit a satisfaction of the judgment to the closing attorney with

11. Ferros assert the contract price should not be changed. This Court agrees. The Contract price shall remain $303,000.00.
12. Each of the 11 remaining grounds Morphew and Ferros assert in the joint Answer have no merit. In short, all of the remaining terms of the April 3, 2017 order remain in full force.

13. Specifically, Morphew requested proof of financing from Dudek/Cross before she would be required to move from the Ferros property. At the hearing she demanded she receive 5 items: a Good Faith Estimate, Proof of Approved Financing, the HUD 1 closing statement, the Dudek/Cross loan application and the Contract. At the Dudek/Cross Motion hearing to set a closing schedule, proof of approved financing was a fair request though she did not have any legal right to this under the terms of the Ferros and Dudek/Cross contract. The April 3, 2017 order did specifically address granting a right to proof of approved financing, although the Court suggested from the Bench that some evidence of Dudek/Cross's approved financing should be given to her. Morphew's demand for 4 additional items, matters to which she has no right, 46 days after the April 3, 2017 order, when Dudek/Cross cancelled a closing because they had agreed not to close within 45 days to give her ample time to relocate, now raise the inference that she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross. She took the risk of moving into the property during pending litigation. She must now accept the risk that her contentions were misplaced.
14. Morphew/Ferros submitted no independent corroborating affidavits to support the 11 remaining claims. Neither did they proffer any other testimony in support of their contentions.
15. This matter is now concluded by this Court. To this end, this Court directs the Clerk of Court to mark all Lis Pendens associated with this consolidated case cancelled.

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instructions that it is to be delivered to the Ferros upon payment of the judgment amount to Dudek/Cross. Since the Ferros are pro se, and should choose to appeal this order, the Court suggests they review Rule 241 (b) (1) SCACR stating the exception that money judgments are not stayed by an appeal as provided in South Carolina Code Section 18-9-130.

Conclusions of Law

1. Dudek/Cross have judgment against Ferros in the amount of $13,186.32.

2. The purchase price of the Ferros and Dudek/crosss contract shall remain at $303,000.00.

3. All remaining claims of Morphew and Ferros for alteration or amendment of the April 3, 2017 Order are denied. Except as modified herein, the April 3, 2017 Order remains.

4. Each Lis Pendens is and shall be cancelled. The Clerk of Court for Dorchester County is directed to enter appropriate documentation in the record of this case that each and every Lis Pendens cancelled.

Each of the Court's Findings of Fact shall also be construed as Conclusions of Law. Each of the Court's Conclusions of Law shall are also be construed as Findings of Fact. NOW, THEREFORE, IT IS

1. ORDERED, ADJUDGED, AND DECREED that Dudek/Cross shall be granted judgment against Ferros in the amount of $13,186.32. AND IT IS
2. ORDERED, ADJUDGED, AND DECREED that the purchase price of the Ferros and Dudek/Cross contract shall remain at $303,000.00. AND IT IS
3. ORDERED, ADJUDGED, AND DECREED that this order ends the case on remittitur from Court of Appeal. AND IT IS
4. ORDERED, ADJUDGED, AND DECREED that all Lis Pendens in this action are and shall be cancelled. The Clerk of Court is directed to enter cancellation of lis pendens against each lis pendens filed in this action, including such lis pendens filed prior to consolidation of the cases. AND IT IS
5. ORDERED, ADJUDGED, AND DECREED that the Order Setting Closing Schedule & Awarding Attorneys Fees entered April 3, 2017 is altered and amended only as specifically set forth above. AND IT IS

6. ORDERED, ADJUDGED, AND DECREED that all remaining claims set out in the joint Answer to alter or amend the April 3, 2017, order are hereby denied.

AND, IT IS SO ORDERED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
May 17, 2017

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew		Thomas Ferro Stephen Dudek Thomas M Ferro	Lorraine Ferro Doreen Cross Lorraine B Ferro
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED - RECORDED
2017 JUN -8 PM 3:54
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
	[illegible] 40(j) SCRCP	

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

James E. Chellis	3078	6/8/2017
Circuit Court Judge	**Judge Code**	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

This judgment was entered on 6/8/2017, and a copy mailed first class or placed in the appropriate attorney's box on 6/8/2017, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 East Butternut Road Summerville, SC 29483-8407

Thomas Ferro 5501 Carson St Denver, CO 80239
Lorraine Ferro 5501 Carson St Denver, CO 80239
Steven L. Smith /Zachary James Closser /Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
EQUITY DIVISION

Civil Action No.: 2013CP1800183

Stephen Dudek, Doreen Cross,
Plaintiffs

Versus

Thomas M Ferro, and Lorraine B Ferro,
Defendants

AND

Molly M Morphew,
Plaintiff

Versus

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

ORDER
DISSOLVING RULE TO SHOW CAUSE
ISSUED JUNE 7, 2017

FILED - RECORDED
2017 JUN -8 PM 3:54
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

On June 7, 2017, this Court issued its Rule to Show Cause why Molly M. Morphew should not be held in contempt for failing to comply with the April 3, 2017 Order, as amended by Order of this Court dated May 17, 2017.

After further review of the pleadings in this matter, this court dismisses the rule to show cause as improvidently granted.

The Notice of Motion and Motion filed by Dudek/Cross through their attorneys fails is not supported by an affidavit. "The failure to support the rule to show cause by an affidavit or verified petition is a fatal defect."

Miller v. Miller, 375 S.C. 443, 455, 652 S.E.2d 754, 760, 2007 WL 2914644 (Ct. App. 2007), citing *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994)).

NOW, THEREFORE, IT IS ORDERED

The Rule to Show Cause issued by this Court on June 7, 2017 is dissolved, and of no force and effect. Upon presentation of an affidavit establishing grounds for the Court's issuance of a Rule to Show Cause, this Court will reconsider the issuance of a Rule to Show Cause, and set a time for hearing the same accordingly.

AND, IT IS SO ORDERED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
June 8, 2017

State of South Carolina

Stephen Didek, et al, Plaintiff(s)

vs.

Thomas H. Ferro, et al, D

For:

Steven L.

SMITH &

P.O. B

Chart

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Hon.

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Approx.

To D

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1. 9/12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183
Stephen Didek and Doreen Cross,	)	
Plaintiff,	)	
vs.	)	RULE TO SHOW CAUSE
Thomas M. Ferro and Lorraine B. Ferro,	)	
Defendants.	)	
AND	)	
Molly M. Morphew,	)	
Plaintiff,	)	
vs.	)	
Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro,	)	
Defendants.	)	

2017 JUN -7 PM 2:49

CLERK OF COURT
DORCHESTER COUNTY

The Order of this Court, issued April 3, 2017, ordered Molly M. Morphew to vacate the property in question in this litigation, 788 E. Butternut Road, Summerville, SC, TMS No. 128-00-00-090, on or before Stephen Dudek and Doreen Cross closed on the Property. Stephen Dudek and Doreen Cross closed on the property on June 2, 2017, and Molly M. Morphew has failed to vacate the property. Therefore, it is

ORDERED that the Molly M. Morphew appear before The Honorable James E. Chellis, Master-in-Equity for Dorchester County, South Carolina, at 5200 East Jim Bilton Blvd, St. George, South Carolina, on the 8th day of June, 2017, at 3:00 P.M., to show cause why she should not be cited for Contempt for having failed to obey a Court Order requiring her to vacate

the premises. **Failure of the Defendant to appear as directed above may cause her to be subject to arrest.**

AND IT IS SO ORDERED!

MASTER-IN-EQUITY
DORCHESTER COUNTY

June 7, 2017

16-232

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	2017 JUN 14 PM 1:03 CLERK OF COURT DORCHESTER COUNTY	Thomas Ferro Stephen Dudek	Lorraine Ferro Doreen Cross
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stephen Dudek and Doreen Cross	Molly M Morphew	$6,673.97

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

James L Willis

Master in Equity	3078 Judge Code	6/14/2017 Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

This judgment was entered on 06/14/2017, and a copy mailed first class or placed in the appropriate attorney's box on 06/14/2017, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E Butternut Rd Summerville, SC 29483 E/ VIA email. by MJE

~~**David A. Collins** PO Box 40578 Charleston, SC 29423~~
~~**Thomas Ferro** 5501 Carson St Denver, CO 80239~~
~~**Lorraine Ferro** 5501 Carson St. Denver, CO 80239~~
Steven L. Smith PO Box 40578 Charleston, SC 29423-0578
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578 E/ via email MJE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA **COUNTY OF DORCHESTER**	**IN THE COURT OF COMMON PLEAS** **FIRST JUDICIAL CIRCUIT** **EQUITY DIVISION** **Civil Action No.: 2013CP1800074** **consolidated with Civil Action No. 2013CP1800183**
Stephen Dudek, Doreen Cross, **Plaintiffs** **Versus** **Thomas M Ferro, and Lorraine B Ferro,** **Defendants** **AND** **Molly M Morphew,** **Plaintiff** **Versus** **Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro,** **Defendants**	**CONTEMPT ORDER** **IN RE MOLLY M. MORPHEW**

FILED - RECORDED
2017 JUN 14 PM 1:83
CLERK OF COURT
DORCHESTER COUNTY

INTRODUCTION

This matter is before me on Notice of Motion and Motion by Dudek/Cross[1] for a Rule to Show Cause why Morphew should not be ejected from the Property[2] that is the subject of this four and half-year old suit for specific performance. The Motion also seeks a Rule To Show Cause why Morphew should not be held in contempt. However, since no affidavit is filed in support of the Rule To Show Cause Dudek/Cross moves for the ejectment of Morphew from the Property.

[1] Morphew as used herein refers to Molly M. Morphew. Dudek/Cross as used herein refers to Stephen Dudek and Doreen Cross, jointly and severally

[2] The Property as used herein is 788 East Butternut Road, Summerville, South Carolina; containing approximately 6 acres.

PROCEDURAL HISTORY

The procedural history is well documented in prior orders of this Court. Moreover, the filings of record held by the Dorchester County Clerk of the Court demonstrate a number of proceedings post trial, and pending the appeal, and post remittitur. These show tenacious efforts by the parties to protect their respective rights. Hence, for purposes of the procedural history reference to the numerous filings is craved.

A hearing on the Dudek/Cross Motion was held on June 12, 2017 at 9:00 A.M. Present at the hearing were Dudek/Cross and their attorney Steven L. Smith, Esquire, whose offices are in North Charleston. He Smith serves clients throughout the Lowcountry. He is well known for his practice in representing parties in contract disputes. Molly Morphew, who at the trial of the case had the very competent John Massalon as her attorney, dismissed him after the Notice of Appeal was filed, and has appeared *pro se* since that time. Though she lacks a keen understanding of procedural matters her written word demonstrates she enjoys a high intellect. Based on these writings alone, this Court is comfortable in finding that she understands full well the terms of Court's orders and the consequences of her actions in light of the orders from this Court.

At the conclusion of opening statements by both parties as to the respective positions, this Court *sua sponte* issued a verbal rule to show cause directing Ms. Morphew to show cause why she should not be held in contempt. If a contempt decision were made, it could be used to affect the primary aim Dudek/Cross seek, as well, but also establish a method of compensation to Dudek/Cross for contemptuous behavior were it to be established.

EVIDENTIARY HEARING AND FINDINGS OF FACT

Once the Rule To Show Cause issued, this Court conducted an evidentiary hearing to ascertain the facts that would bear on whether Ms. Morphew should be held in contempt of this Court's Order, dated April 3, 2017, as modified by an Order entered May 17, 2017. In short the central question derives from the precise language in paragraph 8 of the April 3, 2017 Order concerning the Property. Paragraph 8 states:

> Morphew, as the current tenant of the Property, is ordered to vacate the Property on or before the closing date, which will be provided to her by the parties or their counsel.

This provision remained in full force by this Court's Rule 59(e) Order entered May 17, 2017.

After hearing the testimony of Cross, Dudek, and Morphew, I find that Morphew is in contempt of this Court's Order dated April 3, 2017. Morphew received notice that the Ferro and Dudek/Cross closing would be held on June 2, 2017 by email correspondence she received from Mr. Smith on May 31, 2017, within 10 minutes of Mr. Smith's receipt of confirmation that Ferro intended to close the sale via a power of attorney on June 2, 2017[3]. Moreover, Morphew continues in possession of the Property as of the date and time of the hearing 10 days after the date of closing of the Purchase and Sale Agreement between Ferro and Dudek/Cross.

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[3] The email in response to Mr. Smith inquiry that Ferro would close on Friday (June 2, 2017) was a cryptic "poa." Mr. Smith understood this to mean, "power of attorney," confirming the closing date. The email stating "poa" came from Ferro's real estate agent Rick Willis. Mr. Willis is Morphew's real estate agent, too. A Ferro/Morphew contract would have produced a full commission to Mr. Willis, who shared the commission with Dudek/Cross' buying agent under a cooperating broker agreement. I recollect the loss to Mr. Willis of approximately $12,000.00. The impertinent, cryptic email expresses Willis' disdain that the Morphew Ferro contract fails: "This Order shall be construed to terminate the Morphew Contract upon the exchange of the purchase price by Defendants Dudek and Cross for delivery of the deed by Defendants Ferro. Hence, at that point in time, Defendants Dudek and Cross grant of mortgage lien to their conventional residential loan lender shall be free of the encumbrance of the Morphew Contract." See Order, darted November 6, 2014, affirmed *Dudek v. Ferro*, No. 2014-002633, 2017 WL 128702 (S.C. Ct. App. Jan. 11, 2017).

The evidence is undisputed that the closing of title occurred on June the 2, 2017. Moreover, the evidence is undisputed that Morphew continues to reside in the Property and has refused to vacate it prior to or on the date of closing and has refused to vacate the property as of morning of June 12, 2017. I find that Morphew's conduct is a willful failure to vacate the property after notice of the closing date on or before that date. Her willful disobedience of this Court's Order of April 3, 2017 is established by clear and convincing evidence. I find that Morphew shall be confined to the Dorchester County Detention Center for a period of 30 days; provided, however, she shall purge this sentence of confinement by removing herself, any other occupants and all personal property from the Property on or before 9:00 A.M. June 16, 2017.

The issue now turns to an exercise of this court's sound discretion to formulate a reasonable means to address Morphew's contemptuous conduct to achieve the object in addition to having her removed from the property to compensate Dudek/Cross for Morphew's contempt. To this end, this Court inquired of Cross and Dudek as to the loss they have incurred by not having possession of the Property as of June 2, 2017.

Based on the testimony of Cross, I find she and Dudek have paid pre-paid interest on the purchase money note, secured by a mortgage, on the Property in the amount of $399.97.[4] Through Dudek's testimony I find that he and Cross have incurred additional carrying charges on the property in which they reside currently, 236 Cady Drive, Summerville, South Carolina. These charges consist of the following:

[4] During the course of the hearing the calculation of pre-paid interest was made using a 10 key calculator. In chambers, I have calculated the pre-paid interest using an excel spreadsheet. The resulting calculation is a per diem of $28.57 (rounded) [($242,000.00 X 4.25%/)/360.] Morphew's possession will end on the 14th day after the closing. $28.57 X 14 days is $399.97.

Water:	$35.00
Sewer	$45.00
Electric	$225.00
Internet/Cable	$144.00
Telephone	$30.00
Security Alarm	$30.00
Total	$509.00

I find the carrying charges on 236 Cady Drive as reasonable.

In addition, Dudek valued their loss of use of the Property at $200.00 per day. Total loss of use is $2,800.00 (14 days X $200.00). I find Dudek's evaluation of the loss of use reasonable. Moreover, Morphew offered no contravening evidence on the loss of use despite numerous offers by the Court to express additional testimony concerning her position.

In addition to these compensable losses, Mr. Smith submitted an affidavit in support of a request for indemnification of his clients for additional attorney's fees and costs incurred by them arising out the contemptuous behavior of Morphew. An indemnification of costs and attorneys fees requires this Court to consider the reasonableness the amount of the fees and costs. An evaluation of attorney's fees requires this Court to consider 6 factors. They are as follows:

1. Nature, Extent, and Difficulty of the legal services rendered:

The nature of this proceeding is an application for this Court to require Morphew to follow this Court April 3, 2017 order directing her to vacate the Property on or before the date of the closing of the Property on notice of the date of the closing. As attorney for the moving party

Mr. Smith has had to prepare and file a motion, serve the motion, and attend a hearing. He has continued communication with his clients no doubt to explain the procedure and prepare them for participation at the hearing. The difficulty of these proceedings for a seasoned attorney, such as Mr. Smith, is not particularly challenging. Notwithstanding, balancing this factual issue against the amount of attorneys fees asserted, this Court finds the weight of this factual inquiry favors awarding attorneys' fees and costs to Dudek/Cross.

2. Time and Labor Devoted to the Case

Mr. Smith's affidavit does not reveal his hourly rate. From prior hearings, the Court is aware that Mr. Smith took over the representation of Dudek/Cross from Mr. Collins. Mr. Collins' hourly was $200.00 per hour. The preparation of the motion, preparation for the hearing, and preparation of his clients for the hearing and attending the hearing can easily take approximately 10 hours. Any amount of time less than 10 hours would be exceptionally efficient and would easily justify a higher hourly rate. In this venue hourly rate for attorneys with the experience Mr. Smith has are within the range of $350.00 to $425.00 per hour. This Court finds this fact weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

3. Professional Standing Of Counsel

The Court notes Mr. Smith is a member in good standing with the South Carolina Bar. He is an excellent trial and appellate lawyer[5]. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

4. Contingency of Compensation

[5] A Westlaw search reveals he has represented parties on appeal in 39 cases.

Nothing in the record indicates the attorneys' fees were contingent on a successful outcome. This factor is, therefore, neutral on the issue of indemnification for attorneys fees and costs.

5. Fee Customarily Charged in the Locality for Similar Services

An attorney of $1925.00 for a motion is reasonable. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

6. Beneficial Results Obtained.

This Court rules in favor of Mr. Smith's clients. In other words, the actions of Morphew reveal she has no basis for remaining in the Property. She has willfully disobeyed this Court's order[6] and despite her subjective justifications[7] for remaining in the property. Dudek/Cross had no option but to move the Court for her ejection and contempt. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

Taking all of the factors as a whole, this Court finds the request for attorney's fees reasonable, appropriate and proper. The cost of $1,340.00 stated in Mr. Smith's affidavit was adjusted during the hearing to $1,040.00. Mr. Smith explained these costs were in large part the costs of retaining a court reporter. This Court has a standing administrative order that all hearings must be held on the record, and this Court requires a court reporter. The Masters in Equity across this state handle reporting of hearing in many ways, but generally across the state in contested

[6] I take this opportunity to state that Morphew admits I directed her to vacate the property in a hearing before me on May 12, 2017.

[7] Morphew repeatedly stated she felt she had the right to stay the Property; she felt she had not been given proper notice of the closing, she felt she had to protect her rights, etc. Her defense in large part is expressed in subjective terms. She did not consider the objective standards of this Court's prior Order. As I admonished her, Morphew has become so emotionally invested in this case that she cannot "see the forest for the trees", a euphemism which generally means one is so entangled in the details of a situation that she cannot see the larger principal of the whole of the case.

matters the moving party procures the service of a court reporter. This is a cost of the suit. In most cases, these costs when requested by a successful party are taxed to the losing party. This case is no different. Moreover, I find the costs of $1,040.00 reasonable.

In sum, the Court finds that Dudek/Cross are entitled to a compensable fine due from Morphew of the sum of the pre-paid interest, the carrying charges on 236 Cady Drive, and the attorney's fee and costs. The sum of these items is $6,673.97.

During the hearing, this Court expressed a desire that Morphew be required to pay this sum of money on or before June 16, 2017. After due consideration of this verbal ruling, and considering the position of Dudek/Cross, who expressed that they did not want to have Morphew jailed for contempt, this Court revises that oral ruling to the entry of a judgment against Morphew in the amount of the compensable fine.[8]

CONCLUSIONS OF LAW

Based on the foregoing facts, I conclude as a matter of law the following:

1. Morphew is in contempt of this Court's April 3, 2017 Order.

2. Morphew's contempt is willful.

3. Morphew's contempt has been established by clear and convincing evidence.

4. The object of the contempt is to encourage Morphew to abide by this Court's order of April 3, 2017 by having her remove herself, any other occupants, and her personal property (vacate) from the Property.

5. To encourage compliance with my Order, Morphew should be sentenced to confinement in the Dorchester County Detention Center, Deming Way, Summerville, South

[8] I do not think it fair or appropriate to require the payment of a compensable fine, in the circumstance before me, in order to purge confinement in the county detention center.

Carolina for a period of 30 days beginning June 16, 2017 from the time she fails to vacate the Property, through July 16, at Noon; provided, however, Morphew may purge herself of this confinement by vacating the Property on or before June 16, 2017 at 9:00 A.M.

6. In the event Morphew does not vacate the Property on or before June 16, 2017 at 9:00 A.M., this Order shall be used as a directive to the Dorchester County Sheriff, or his duly appointed deputy, place Morphew under arrest and place her in the Dorchester County Detention Center. The Dorchester County Sheriff, or his duly appointed deputy, shall thereupon remove any other occupants, including adults and children, from the Property, using such force as is necessary, and to then and there remove all of the personal property of Morphew, or any occupant into the unpaved portion of the right of way of East Butternut Road in front and at the northern most corner of the property (the corner closest to Old Orangeburg Road) abutting on East Butternut Road. In the event the Dorchester County Sheriff, or his duly appointed deputy, upon entry to the Property, discovers a child or children reside(s) in the Property, the Sheriff shall take said child or children into custody, delivering them over as soon as practical to the Dorchester County Department of Social Services (DSS) as is the standard protocol for the arrest of a person in whose care and custody a child or children reside(s). Once DSS takes protective custody, it shall follow the standard protocols for its care and protection of children, the jurisdiction over which acts would be the Dorchester County Family Court.

7. In the event Morphew vacates the Property but leaves personal property located on the Property, the personal property shall be deemed released, quit claimed, and abandoned unto Dudek/Cross. Dudek/Cross upon entry into possession shall have the right to keep the personal property or may remove it free of any recourse, legal or equitable, from Morphew or any occupant inasmuch as Morphew's or any occupant's act or omission of leaving the personal

property operates as a full and complete release of any and all claims Morphew or any occupant may have to the personal property. NOW, THEREFORE IT IS

ORDERED, ADJUDGED, AND DECREED THAT Molly M. Morphew is in contempt of this Court's Order, dated April 3, 2017, for her failure, after notice of the date of closing, to vacate the Property. IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED THAT Morphew is sentenced to confinement in the Dorchester County Detention Center, Deming Way, Summerville, South Carolina for a period of 30 days beginning June 16, 2017 from such time she is arrested, through Noon the thirtieth day therafter; provided, however, Morphew may purge herself of this confinement by vacating the Property on or before June 16, 2017 at 9:00 A.M. AND IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that Dudek/Cross shall have judgment against Morphew in the amount of $6,673.97. AND IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that if Morphew does not vacate the Property on or before June 16, 2017 at 9:00 A.M. the Dorchester County Sheriff, or his duly appointed deputy, shall arrest Morphew and place her in the Dorchester County Detention Center and remove any other occupants, including adults and children, from the Property, using such force as is necessary, and to then and there remove all of the personal property of Morphew or any occupant into the unpaved portion of the right of way of East Butternut Road in front and at the northern most corner of the property abutting on that road (the corner closest to Old Orangeburg Road). AND IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that if the Sheriff, upon entry to the Property, discovers a child or children reside(s) in the Property, the Sheriff shall take said child

or children into custody, delivering them over as soon as practical to the Dorchester County Department of Social Services (DSS) as is the standard protocol for the processing of a child when the arrest of a person in whose care and custody a child or children reside(s). Once DSS takes protective custody, it shall follow the standard protocols for its care and protection of children. All matters pertaining to such child or children shall become the jurisdiction of the Dorchester County Family Court. AND IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that if Morphew, or any other occupant, vacates the Property but leaves personal property located on the Property, the property shall be deemed released, quit claimed, and abandoned unto Dudek/Cross. Dudek/Cross upon entry into possession shall have the right to keep the personal property or may remove it without any recourse, legal or equitable, from Morphew or any occupant in as much as the act of leaving the personal property operates as a full and complete release of any and all claims Morphew or any other may have to the personal property. AND, IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that the Dorchester County Sheriff, or his duly appointed deputy, shall place Dudek/Cross is peaceful possession of the Property as soon as practicable on June 16, 2017 at or after 9:00 A.M. AND, IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED the Findings of Fact shall be deemed Conclusions of Law and the Conclusions of Law shall be deemed Findings of Fact.

AND, IT IS SO ORDERED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
June 14, 2017

AFFIDAVIT OF SERVICE

State of South Carolina

County of Dorchester

Common Pleas Court

Stephen Didek, et al, Plaintiff(s)

vs.

Thomas M. Ferro, et al, Defendant(s)

Case No: 2013-CP-18-183

For:
Steven L. Smith
SMITH & CLOSSER, P.A.
P.O. Box 40578
Charleston, SC 29423-0578

To be served on: Molly M. Morphew

Jason D. Guerra, undersigned, being duly sworn, deposes and says:
that on June 06, 2017 at 8:45 pm at 788 E Butternut Road, Summerville, SC
the undersigned served the documents described as:
Rule to Show Cause
A true and correct copy of the aforesaid document(s) was served on:
Molly M. Morphew
By personally delivering them into the hands of same.

The person receiving documents is described as follows:

Sex F ; Race White ; Hair Color grey ; Facial Hair
Approx. Age 60 ; Approx. Height 5'09" ; Approx. Weight 160

☑ To the best of my knowledge and belief, said defendant was not engaged in the US Military at the time of service.

Subscribed and sworn to before me this
8th day of June, 2017:

Heather Russell
NOTARY PUBLIC
My Commission Expires: 9/1/2019

I certify that I am over the age of 18, have no interest in the above action. Undersigned declares under penalty of perjury that the foregoing is true and correct.

Jason D. Guerra
Process Server
Southern Pride Process, LLC
(803) 386-8559
PO Box 7125
Columbia, SC 29202-7125

SPP File: 65309-1
Client File: 16-232

HEATHER RUSSELL NOTARY PUBLIC MY COMMISSION EXPIRES 9/1/2019 SOUTH CAROLINA

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP1800987

Molly M Morphew		Stephen Dudek	Doreen Cross
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

FILED-RECORDED
2-21-2018
Cheryl Graham
Clerk of Court
Dorchester County

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Diane S. Goodstein	2112	2/21/2018
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on 2/21/2018, and a copy mailed first class or placed in the appropriate attorney's box on 2/21/2018, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 786 E. Butternut Road Summerville, SC 29483

Steven L. Smith Smith Closser, PA PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2017-CP-18-987
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**
	)	
Stephen Dudek and Doreen Cross,	)	
	)	
Defendants,	)	
	)	

FILED-RECORDED
2-21-2018
Cheryl Graham
Clerk of Court
Dorchester County

On November 13, 2017, the above-captioned case came before this Court on the Defendants' Motion to Dismiss, pursuant to Rules 12(b)(6) and 12(b)(8), SCRCP. Present at the hearing were Samuel M. Wheeler, counsel for the Defendants, and the Plaintiff, Molly M. Morphew, *pro se* ("Plaintiff" or "Morphew"). For the reasons stated below, the Defendants' Motion is GRANTED.

FACTS AND PROCEDURAL HISTORY

Morphew, proceeding *pro se*, filed the above-captioned action against Stephen Dudek and Doreen Cross (collectively, "Dudeks") on or about August 24, 2016, alleging claims for constructive trust, abuse of process and fraud.

The same parties have been and are involved in a ~~tortured~~ DSG labyrinthine string of litigation. Specifically, Morphew has two other cases, as well as an appeal, pending against the Dudeks, all of which arise out of (1) Morphew's alleged legal or equitable ownership of real property, located at 788 E. Butternut Road, Summerville, SC 29483 ("Property"); and (2) alleged fraud perpetrated by the Dudeks on the court in other actions pending between the parties. (see, generally, Compl.; *Molly M. Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183; *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706; Court of Appeals

Appeal No. 2017-001393).

According to Morphew's complaint, in 2012, the Dudeks had a contract to purchase the Property from the previous owners, Thomas and Lorraine Ferro (collectively, "Ferros"). (Compl. ¶ 29(e)). Morphew had a contingency contract on the Property, which she alleges remains valid (Id. at ¶ 19). Morphew claims that the Dudeks contract expired on or about November 30, 2012, at which time Morphew should have been able to purchase the Property. (Id.; and Id at ¶ 29(e)). Morphew goes on to allege that the Dudeks filed a *lis pendens* and specific performance action without a valid contract, and the judge in that action was "fooled" when he awarded the Dudeks specific performance. (Id. at ¶¶ 10, 29). Morphew further asserts that, during the course of discovery and at trial in the previous action, the Dudeks committed fraud on the court regarding their ability to purchase the Property. (see Compl.). Based on the actions of the Dudeks, Morphew alleges that she is the equitable owner of the Property (constructive trust) and that she is entitled to damages for fraud and abuse of process. (Id.).

The case Morphew references is *Stephen Dudek, et al. v. Thomas M. Ferro, et al.*, Case No. 2013-CP-18-00074, which was consolidated with *Molly M. Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183. Both Morphew and filed suit seeking specific performance, each alleging that their contract with the previous owners, the Ferros, was valid. 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. Following trial but prior to a decision by Judge Chellis, the Ferros filed a "pleading statement" in which they raised instances of alleged fraud by the Dudeks. (see Case No. 2013-CP-18-00183, Pleading Statement, September 10, 2014). On November 6, 2014, Judge Chellis issued an order awarding the Dudeks specific performance. (see Case No. 2013-CP-18-00183, Nov. 6, 2014 Order). Both Morphew and the Ferros appealed that order. (see *Stephen Dudek v. Ferro*, Appellate Case No. 2014-002633). On January 11, 2017, the Court

of Appeals upheld Judge's Chellis' award of specific performance 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.). The Court of Appeals granted the dismissal and issued remittitur on February 15, 2017. (Id.). Following remittitur, Judge Chellis issued several orders setting a schedule for the Dudeks to close on the Property and, ultimately, for contempt, as Morphew refused to vacate the Property after closing. (see Case No. 2013-CP-18-00183). Morphew has appealed this contempt order. (see Court of Appeals Appeal No. 2017-001393).

While Morphew's original appeal was pending, she filed her second action against the Dudeks, as well as against virtually every person or entity that had any involvement in the Dudeks sales contract or in the trial in Case No. 2013-CP-18-00183. (see *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706). In that action, Morphew has pleaded fraud, or some variation thereof, arising out of the alleged facts that form the basis of Morphew's complaint in this action. By way of an order issued on or about January 31, 2017, the Honorable Deadra Jefferson dismissed all of Morphew's fraud-based claims against the Dudeks, leaving only an intentional infliction of emotional distress cause of action. (see January 31, 2017, Order, Case No.2016-CP-18-1706).

In total, Morphew has lost an appeal, she has three actions pending, and she has an appeal pending. All of her past and present actions arise out of her alleged ownership in the Property or out of the fraud that the Dudeks perpetrated on the court in the original action, Case No. 2013-CP-18-00183.

STANDARD OF REVIEW

The ruling on a Rule 12(b)(6), SCRCP motion to dismiss must be based solely upon the allegations set forth in the complaint. *State Bd. of Med. Examiners v. Fenwick Hall, Inc.*, 300

S.C. 274, 387 S.E.2d 458 (1990). The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)*; *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987). The question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Rule 12(b)(8) states that a complaint should be dismissed when "another action is pending between the same parties for the same claim." Rule 12(b)(8), SCRCP. In *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (2009), the South Carolina Court of Appeals explained dismissal under this rule as follows:

> In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Rule 12(b)(8), SCRCP. The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of action and relief. *S.C. Public Serv. Comm'n v. City of Rock Hill*, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977); see also James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed.1996). We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). See, *e.g., Beatty v. Liberty Mut. Ins. Group*, 893 N.E.2d 1079, 1084 (Ind.App.Ct.2008) (applying 12(b)(8) dismissal " where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same."). Accordingly, we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).

DISCUSSION

I. Morphew's complaint is dismissed pursuant to Rule 12(b)(6) and the doctrine of *res judicata*.

In order for res judicata to operate as a bar to a lawsuit, the following elements need to be proven: (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.*

In the original action between these parties, Case No. 2013-CP-18-00183, Morphew could have brought her constructive trust or equitable ownership claim against the Dudeks. After losing at the trial court level, Morphew appealed, and the Court of Appeals affirmed the order awarding the Dudeks specific performance. Not happy with the Court of Appeals decision, Morphew filed her second action, Case No.2016-CP-18-1706, as well as this action. Morphew has more than had her day in court on the issue of ownership of the Property. Furthermore, Morphew's constructive trust claim is fundamentally flawed, and she cannot plead a set of facts, against the Dudeks, that would entitle her to relief on her constructive trust cause of action. Constructive trust "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Carolina Park Associates, LLC v. Marino*, 732 S.E.2d 876, 879 (2012). (quoting, *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 560 (1987)). At all times, the Dudeks had a contract with the previous owners, the Ferros. At no point did the Dudeks have a contract or relationship, fiduciary or otherwise, with Morphew. If anyone could conceivable be entitled to "restitution," it would be the Ferros; however, the issue of ownership has firmly been established by the trial court and Court of Appeals. For these reasons, Morphew's constructive trust claims is dismissed and barred by *res judicata*.

As to Morphew's fraud and abuse of process claims, Morphew had legal mechanisms to bring the alleged fraud and abuse of process to the court's attention. Rule 60, SCRCP, addresses the exact situation. Rule 60(b), SCRCP, 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), SCRCP. The rule even allows for a party to request leave from the appellate court. The supposed fraud was known to Morphew and the Ferros after trial but before the lower court issued the order awarding the Dudeks specific performance. The Ferros filed a "pleading statement" in September, 2014, months prior to the court awarding specific performance. In this "pleading statement," the Ferros outline all the alleged fraud surrounding the case. Yet, at no point, either after issuance of the order awarding specific performance, or the filing of their first appeal, did Morphew or the Ferros file a motion pursuant to Rule 60, SCRCP, seeking to have the order set aside for fraud. (see Case No. 2013-CP-18-00183). Despite knowing of the alleged fraud by the Dudeks, Morphew never filed a Rule 60 motion. Moreover, Morphew brought the same claims in the second case she filed against the Dudeks, Case No. Case No.2016-CP-18-1706. By way of an order issued on January 31, 2017, the court dismissed Morphew's fraud-based claims against the Dudeks. For these reasons, her fraud and abuse of process causes of action are dismissed and barred by *res judicata.*

II. Morphew's complaint is dismissed by Rule 12(b)(8).

As discussed above, Morphew filed a second case against the Dudeks and almost all persons or entities that had any involvement with the Dudeks' contract with the Ferros, or with the trial in Morphew's original case. Dismissal under Rule 12(b)(8) is appropriate when another action is pending between the same parties for the same or substantially the same claim. Rule 12(b)(8), SCRCP; *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (2009). The second action filed by Morphew, Case No.2016-CP-18-1706, is pending. It is between

Morphew and the Dudeks. And it is for the same or substantially the same claim. For these reasons, Morphew's complaint is dismissed pursuant to Rule 12(b)(8).

CONCLUSION

For all of the above stated reasons, the Defendants' motion to dismiss is GRANTED.

IT IS SO ORDERED.

The Honorable Diane S. Goodstein
First Judicial Circuit

St. George, South Carolina
2-20, 2018

Exhibit "B"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. ~~2013-CP-18-~~ 2013-LP-18-18
Stephen Dudek and Doreen Cross	)	
Plaintiffs,	)	
vs.	)	LIS PENDENS
Thomas M. Ferro and Lorraine B. Ferro	)	
Defendants	)	

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CLERK OF COURT
DORCHESTER COUNTY

Notice is hereby given that an action has been commenced and is pending in this Court upon complaint of the above named Plaintiffs against the above named Defendants for the specific performance of a contract of sale dated October 12, 2012, on the below described real estate:

All that certain piece, parcel, or lot of land, situate, lying and being near Jedburg, Dorchester County, South Carolina, being shown and designated as Tract B containing 8.006 acres, more or less, and being delineated on a plat entitled "Plat showing the subdivision of property owned by Estate of St. ClairA Knight, III, located near Jedburg, Dorchester county, South Carolina" dated August 7, 1997, prepared by Ashley Surveying, Inc. and recorded in the RMC Office for Dorchester County in Plat book J-26. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This being a portion of the property conveyed to the Estate of St. Clair A. Knight, III, under the Last Will and Testament of St. Clair Ainsley Knight, III, by Catherine H. Knight, Personal Representative, as filed in Horry County Probate Court Case No. 97-ES-26-152.

TMS Number 128-00-00-090

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire
Attorney for Plaintiff
P. O. Box 40578
Charleston, SC 29423
(843) 760-0220

North Charleston, SC
January 11, 2012

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-18- 74

SUMMONS

NON-JURY

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DORCHESTER COUNTY

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office at Post Office Box 40578, Charleston, South Carolina, 29423, within thirty (30) days of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire
Post Office Box 40578
Charleston, SC 29423
(843) 760-0220
Attorney for Plaintiff

North Charleston, SC
January 15, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP- 18- 74
Stephen Dudek and Doreen Cross	)	
Plaintiffs,	)	
vs.	)	COMPLAINT
Thomas M. Ferro and Lorraine B. Ferro	)	
Defendants	)	

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CLERK OF COURT
DORCHESTER COUNTY

The Plaintiffs, complaining of the Defendants named herein, would respectfully allege.

1. That the Plaintiffs are citizens and residents of the County of Dorchester, State of South Carolina.
2. That the Defendants are citizens and residents of the County of Dorchester, State of South Carolina.
3. That all parties are subject to the jurisdiction of this Court and venue is proper.
4. That on or about October 24, 2012, the parties entered in an Agreement to Buy and Sell Real Estate, a copy of which is attached hereto as Exhibit "A".
5. That the contract provided that the Defendants, as Sellers, sell to the Plaintiffs that certain real estate known as 788 East Butternut Road, located in Dorchester, South Carolina for and in consideration of the purchase price of Three Hundred Three Thousand and 00/100 ($303,000.00) Dollars.
6. That the Plaintiffs have complied with all conditions precedent to the contract.
7. That despite repeated demand to close the transaction, the Defendants have refused and still refuse to close the transaction as provided for by the contract.
8. That the Defendants are in breach of their contract with the Plaintiffs.

9. That as a direct and proximate result of the Defendants breach of contract, the Plaintiffs have been damaged in an amount to be determined by this Honorable Court.

10. That the Plaintiffs are entitled to a judgment against the Defendants in an amount to be determined by this Honorable Court.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

11. That the allegations contained in the preceding paragraphs are incorporated herein as if specifically repeated.

12. That the parties entered into an Agreement to Buy and Sell Real Estate on or about October 24, 2012.

13. That the Plaintiffs have filed a Lis Pendens on the property and that said Lis Pendens was filed on January 11, 2013. A copy of said Lis Pendens is attached hereto as Exhibit "B".

14. That should the contract not be ordered to be specifically performed, then the Plaintiffs will have no adequate remedy at law.

15. The contract between the parties constitutes an agreement that is fair, just and equitable.

16. That the Plaintiffs have complied with all terms of the contract and remains ready, willing and able to comply with the contract's terms.

17. That the Plaintiffs are entitled to an order of this Court compelling the Defendants to specifically perform the contract of the parties.

WHEREFORE, the Plaintiffs pray that this Court inquire into the matters as set forth herein, grant them an order compelling the Defendants to specifically perform the contract of the parties, or in the alternative, grant them judgment on their contract claim in an amount to be determined by this Honorable Court, grant them their attorney fees and costs and grant them whatever other relief that this Court deems just and equitable.

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire (Bar # 10294)
Post Office Box 40578
Charleston, SC 29423
Phone (843) 760-0220
Fax (843) 552-2678
Davidacollins2@aol.com

Exhibit "B"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

© Carolina One Real Estate

1. **PARTIES:** This legally binding Agreement entered into on October 20, 2012 between, Buyer(s), Stephen Dudek, Doreen Cress (hereinafter called "BUYER"), and Seller(s), _____ (hereinafter called "SELLER"). The property shall be deeded in the name(s) of: Tan

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Buttermut Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____

No personal property will convey as a part of this sale, except as described: All appliances including refrigerator, as well as all window treatments.

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 11/30/2012, not later than 8:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ ~~[illegible]~~ 303,000.00
Three hundred three thousand ~~Two Hundred Ninety Five Thousand~~ 00/100 dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: _____

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 1,000.00
Buyer and Seller authorize Carolina One Real Estate as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☒Check, or ☐ Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

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DORCHESTER COUNTY

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 80.000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐will ☐will not be added to the mortgage. VA funding fee ☐will ☐will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to Contribute $5,000-towards Buyers Closing Costs.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐will ☐will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☒ Seller not to exceed $ 700.00 . AHS provided by Carolina One.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 6 o'clock p M. on October 22, 2012 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later then the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowners association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS. The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including, but not limited to mold, radon gas, lead based paint and lead based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (GL100) from a licensed and bonded pest control operator on or before November 30, 2012. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

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92

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) Repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment; or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) Residential Dwellings Built before 1978: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. APPRAISED VALUE: (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum A, B + C

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek Date 20 OCT 2012 Time 1:45

WITNESS: Susan Nicholson Date 10.20.12 Time 1:48

BUYER: Doreen Cross Date 10 2012 Time 1:47

WITNESS: Susan Nicholson Date 10.20.12 Time 1:48

SELLER: Thomas Lewis Date 10/24/12 Time 11:45 AM

WITNESS: [illegible] Date 10/24/12 Time 11:45 AM

SELLER: Kathleen Lewis Date 10/24/12 Time 11:46 AM

WITNESS: Thomas Lewis Date 10/24/12 Time 11:46 AM

LISTING AGENT AND COMPANY Rick Willis The Group, LLC

SELLING AGENT AND COMPANY Susan Nicholson Carolina One Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Susan Nicholson Carolina One Real Estate

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ADDENDUM A

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property; ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 B Buttercup Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

1. Buyer total satisfaction of home inspection and CL700. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septic tank hasn't been service in the past yr. then Seller agrees to have it serviced.5. Seller agrees to have the property subdivided to include in this sale the 2260 sf house, storage bldg and 5 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to Buyer, copies of the survey. Cont. next pg. (B) [illegible]

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 21 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Dorothy Cross	Date 10.2012	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: James Ferro	Date 10/24/12	Time 11:48
WITNESS: Cindy J Ferro	Date 10/24/12	Time 1:48
SELLER: [illegible]	Date 10/24/12	Time 11:49
WITNESS: Cindy J Ferro	Date 10/24/12	Time 11:49

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Phone: 8434191915 Fax: 8432023169 Susan Nicholson 145 Brownlee

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ADDENDUM B

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises -- commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 136-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SC Sellers Disclosure due to not legible of what is currently on the MLS. 9. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc. Buyer shall grant water & Sewer easement to adjacent 2 acres if it

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45 pm
WITNESS:	Date 10.20.12	Time 1:48 pm
BUYER: Debra Dunn	Date 10.20.2012	Time 1:47 pm
WITNESS:	Date 10.20.12	Time 1:48 pm
SELLER:	Date 10/24/12	Time 11:48
WITNESS:	Date 10/24/12	Time 11:48
SELLER:	Date 10/24/12	Time 11:49
WITNESS:	Date 10/24/12	Time 11:49

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2013-CP-18- 183
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**COMPLAINT**
	)	**(Jury Trial Demanded)**
Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	

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2013 JAN 31 PM 3:2
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff, Molly M. Morphew, complaining of the Defendants, Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross, alleges as follows that:

BACKGROUND

1. The Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. Upon information and belief, Defendants Thomas Ferro and Lorraine Ferro are residents of the State of Kentucky.
3. Upon information and belief, Defendants Thomas and Lorraine Ferro own property in Dorchester County that is the subject of this Complaint, identified as TMS# 128-00-00-090 (hereafter "the Property").
4. Upon information and belief, Defendant Stephen Dudek is resident of Dorchester County, South Carolina.
5. Upon information and belief, Defendant Doreen Cross is a citizen and resident of Dorchester County, South Carolina.
6. This Court has jurisdiction over the parties and subject matter of this litigation and venue is proper in Dorchester County.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

7. Upon information and belief, at some time prior to October 20, 2012, Defendants Thomas and Lorraine Ferrow acquired the Property.
8. On October 20, 2012, Defendants Dudek and Cross entered into an Agreement to Buy and

Sell Real Estate with Defendants Thomas and Lorraine Ferro (hereafter "1st Contract")(See "Exhibit A" attached) to purchase the Property specific terms and conditions stated in the 1st Contract.

9. Upon information and belief, Defendants Thomas and Lorraine Ferro performed their obligations under the 1st Contract and were prepared to close in accordance with the terms of the Contract.

10. Upon information and belief, Defendants Dudek and Cross failed to comply with their obligations under the 1st Contract.

11. Specifically, Defendants Dudek and Cross failed to provide Defendants Thomas and Lorraine Ferro with proof of financing within the time period required by paragraph 8 of the 1st Contract.

12. Additionally, Defendants Dudek and Cross failed or refused to close the purchase of the Property as specified in paragraph 3 of the 1st Contract.

13. The 1st Contract provided that time was of the essence as to both of the time limitations in paragraph 8 and paragraph 3.

14. Pursuant to paragraph 16 of the Contract Defendants Dudek and Cross were obligated to sign a written release after receiving written notice of their default under the 1st Contract.

15. Upon information and belief, on or about December 16, 2012 Defendants Thomas and Lorraine Ferro provided Defendants Dudek and Cross with notice of their default and requested that they sign a release of the 1st Contract, but Defendantd Dudek and Cross failed or refused to sign the release.

16. On or about December 16, 2012, Defendants Thomas and Lorraine Ferro entered into an Agreement to Buy and Sell Real Estate with Plaintiff (hereafter "2nd Contract")(See "Exhibit B" attached) to purchase the Property specific terms and conditions stated in the 2nd Contract.

17. The 2nd Contract states that it is contingent upon Defendants Thomas and Lorraine Ferro obtaining a release of the 1st Contract from Defendants Dudek and Cross.

18. Plaintiff has complied with all of her obligations under the 2nd Contract and she is ready, willing and able to close.

19. Plaintiff has been unable to close because Defendants Dudek and Cross have refused to

sign a release of the 1st Contract despite their breach of that contract.

20. Pursuant to the South Carolina Declaratory Judgments Act, S.C. Code Ann. Sec 15-53-10 et. seq., Plaintiff is entitled to a declaration that Defendants Dudek and Cross are in breach of their obligations under the 1st Contract, that those Defendants are obligated to sign a release of the 1st Contract, and that the Defendants Thomas and Lorraine Ferro are obligated to sell the Property to Plaintiff.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

21. All allegations in the prior paragraphs are fully repeated and incorporated herein.

22. The Defendants Dudek and Cross have unlawfully prevented Defendants Thomas and Lorraine Ferro from fulfilling their obligations under the 2nd Contract and/or unlawfully interfered and disrupted the performance of Defendants Thomas and Lorraine Ferro under the 2nd Contract.

23. Further, Defendants Dudek and Cross filed a lawsuit against Defendants Thomas and Lorraine Ferro in an attempt to disrupt and interfere with the closing of the 2nd Contract.

24. Upon information and belief, Defendants Dudek and Cross engaged in those activities even though she was aware that Defendants Thomas and Lorraine Ferro had contracted to sell the Property to the Plaintiff.

25. Defendants Thomas and Lorraine Ferro have an absolute duty to perform all their obligations under the 2nd Contract.

26. Plaintiff has no adequate legal remedy in that the Property is unique, the Property is uniquely suited for her needs, and Plaintiff has incurred substantial expenses and expended considerable time and effort planning to purchase this particular Property.

27. As a direct and proximate result of Defendants' conduct as set forth herein, Plaintiff is entitled to an order requiring Defendants Thomas and Lorraine Ferro to perform as provided by the 2nd Contract and deliver good and marketable title to the Property to Plaintiff by executing a general warranty deed free of liens, encumbrances and claims.

FOR A THIRD CAUSE OF ACTION
(BREACH OF CONTRACT)

28. All allegations in the prior paragraphs are fully repeated and incorporated herein.

29. As set forth more fully above, Plaintiff entered into a valid and legally binding written

contract with Defendants Thomas and Lorraine Ferro to purchase the Property on certain terms and conditions as stated in the 2nd Contract.

30. After signing the Contract, Plaintiff has secured the financing necessary to purchase the Property and Plaintiff has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

31. Plaintiff has performed all of her obligations under the 2nd Contract.

32. Defendants Thomas and Lorraine Ferro have an absolute duty to perform all their obligations under the 2nd Contract.

33. Upon information and belief, Defendants Thomas and Lorraine Ferro are prepared to perform their obligations under the 2nd Contract.

34. Upon information and belief, Defendants Thomas and Lorraine Ferro have been unable to close due to the unlawful objections of Defendants Dudek and Cross, which have or will result in breach of the terms the 2nd Contract.

35. As a direct and proximate result of Defendants' conduct as set forth herein, Plaintiff has been injured and damaged. Therefore, as an alternative to the Plaintiff's prayer for an order compelling specific performance of the 2nd Contract, Plaintiff is entitled to recover damages against Defendants in an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

FOR A FOURTH CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH
EXISTING CONTRACTUAL RELATIONS)

36. All allegations in the prior paragraphs are fully repeated and incorporated herein.

37. Plaintiff has a valid and binding Contract with Defendants Thomas and Lorraine Ferro.

38. At all times material, Defendants Dudek and Cross had actual knowledge of the 2nd Contract between Plaintiff and Defendants Thomas and Lorraine Ferro.

39. Defendants Dudek and Cross intentionally and tortiously interfered with and precipitated the breach of Plaintiff's 2nd Contract as described more fully above.

40. The actions and conduct of Defendants Dudek and Cross were without any reasonable or legitimate business justification.

41. As a result of the tortious interference with the Contract of Defendants Dudek and Cross Plaintiff has been unsuccessful in acquiring title to the Property pursuant to the 2nd Contract.

42. As a direct and proximate result of the conduct of Defendants Dudek and Cross as set forth herein, Plaintiff has been injured and damaged. Therefore, Plaintiff is entitled to recover actual damages and punitive damages against Defendants Dudek and Cross in an amount to be proven at the trial of this matter.

WHEREFORE, Plaintiff seeks an order of this Court compelling Defendants Thomas and Lorraine Ferro to specifically perform their obligations under the 2nd Contract, or in the alternative, for an award against Defendants Stephen Dudek and Doreen Cross for actual damages, consequential damages, pre-judgment interest at the legal rate, punitive damages and for such other relief as may be just and proper.

John A. Massalon
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

January 30, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	CASE NO.: 2013-CP-18- 183
Molly M. Morphew, Plaintiff, v. Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross, Defendants.	)	**SUMMONS** **(Jury Trial Demanded)**

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2013 JAN 31 PM 3:28
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the below subscribed attorney at his office at 97 Broad Street, Charleston, South Carolina 29401 within thirty (30) days after the service hereof exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this action.

John A. Massalon
WILLS MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

January 30, 2013

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CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT "A"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

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1. PARTIES: This legally binding Agreement entered into on October 20, 2012 between, Buyer(s), Stephan Dudek, Doreen Cross, (hereinafter called "BUYER"), and Seller(s), _____ (hereinafter called "SELLER"). The property shall be deeded in the name(s) of: TBD

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____

No personal property will convey as a part of this sale, except as described: All appliances including refrigerator as well as all window treatments.

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before ~~10 December 31~~, 2012, not later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be $ ~~250,000.00~~ 803,000.00
Three hundred three Thousand Two Hundred Fifty Five Thousand +00/100 dollars.

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: _____

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of $ 1,000.00
Buyer and Seller authorize Carolina One Real Estate as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☒Check, or ☐Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

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CLERK OF COURT
DORCHESTER COUNTY
CERTIFIED COPY

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 80,000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐will ☐will not be added to the mortgage. VA funding fee ☐will ☐will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to Contribute $5,000 towards Buyers Closing Costs.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☒will ☐will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐Buyer or ☒Seller not to exceed $ 700.00. HPS provided by Carolina One.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 6 o'clock p M. on October 23, 2019 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 10 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) Seller's Property Condition Disclosure Statement: (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012. In the event repairs are necessary to leave the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before November 30, 2012. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment; or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyers expense, by midnight on the tenth day after ratification of this contract or by midnight on _____. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum A, B + C

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek Date 20 OCT 2012 Time 1:45

WITNESS: Susan Nicholson Date 10.20.12 Time 1:48

BUYER: Doreen Cross Date 10 OCT 12 Time 1:47

WITNESS: Susan Nicholson Date 10.20.12 Time 1:48

SELLER: Thomas Ferst Date 10/24/12 Time 11:45 AM

WITNESS: [illegible] Date 10/24/12 Time 11:45 AM

SELLER: [illegible] Date 10/24/12 Time 11:46 AM

WITNESS: [illegible] Date 10/24/12 Time 11:46 AM

LISTING AGENT AND COMPANY Rick Willis The Group, LLC

SELLING AGENT AND COMPANY Susan Nicholson Carolina One Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Susan Nicholson Carolina One Real Estate

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ADDENDUM A

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property; ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 708 N Pattersnut Rd,

Tax Map # 328-00-00-000 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

1. Buyer total satisfaction of home inspection and $1,000. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on this home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septic tank hasn't been service in the past yr. then Seller agrees to have it serviced.5. Seller agrees to have the necessary subdivided to include in this sale the 3360 sf house, storage bldg and 8 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to include copies of the survey. Cont. next pg. (A) ✓C

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45 PM
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Brandy Cross	Date 10.20.12	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Ferro	Date 10/24/12	Time 11:48
WITNESS: Kelly T Ferro	Date 10/24/12	Time 11:48
SELLER: Kathleen D Ferro	Date 10/24/12	Time 11:49
WITNESS: Kelly T Ferro	Date 10/24/12	Time 11:49

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ADDENDUM B

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises -- commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 798 E Butternut Rd.

Tax Map # 100-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed, 2. XX dollar buy a current barnsite pond when seller shall transfer to buyer at no cost to buyer. 3. Seller to re-do 60 Gallons Bioglogium dye to pond to what is currently on the MLS. 4. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave hay and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc. Buyer shall grant water & Sewer easement to adjacent 2 acres for it

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: _____ (Stephen Dudek) Date 22 OCT 2012 Time 1:45 pm

WITNESS: _____ Date 10.20.12 Time 1:48 pm

BUYER: _____ (Dakota Deans) Date 10.2012 Time 1:47 pm

WITNESS: _____ Date 10.20.12 Time 1:48 pm

SELLER: _____ Date 10/24/12 Time 11:48

WITNESS: _____ Date 10/24/12 Time 11:48

SELLER: _____ Date 10/24/12 Time 11:49

WITNESS: _____ Date 10/24/12 Time 11:49

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145 Browning

EXHIBIT "B"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

1. **PARTIES:** This legally binding Agreement entered into on December 16, 2012 between, Buyer(s), Molly M. Morphew, (hereinafter called "**BUYER**"), and Seller(s), Thomas Ferro, Lorraine Ferro, (hereinafter called "**SELLER**"). The property shall be deeded in the name(s) of: Molly M. Morphew

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres) Tract B-1

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____

No personal property will convey as a part of this sale, except as described: Elec Cooktop, Dishwasher, Waher/Dryer Connections, Garbage Disposal, Satellite Dish

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 1/30/13, 1/30/13, not later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

6. **PURCHASE PRICE** shall be $ 280,000.00 Two Hundred Eighty Thousand dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: N/A

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 5,000.00 Pd. To Seller's Mr as Escrow Agent, to be held and disbursed as earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☐Check or ☐Other. Buyer does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money shall be credited to the Buyer.

MM BUYER [____] BUYER [MM] SELLER [MM] SELLER HAVE READ THIS PAGE

The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466 Phone: 843-971-4002 Fax: 888-803-1570 788 E. Butternut
Charlene Wills
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THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 96.500 % loan (loan-to-value ratio) within 5 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 30 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☒will ☐will not be added to the mortgage. VA funding fee ☐will ☒will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller agrees to pay up to $7,000 towards buyers closing costs, prepaids, allowables and non allowables at closing.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐will ☒will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐Buyer or ☐Seller not to exceed $ N/A.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at N/A o'clock N/A M. on N/A unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed N/A consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☐ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by N/A, N/A. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before At Closing, . Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. **(Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information).** This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. ~~**COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.~~

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

[MM] BUYER [___] BUYER [LH] SELLER [___] SELLER HAVE READ THIS PAGE

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See Addendum "A"

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Morphew Molly M. Morphew Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Thomas Ferro Thomas Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Lorraine Ferro Lorraine Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY The Group, Llc

SELLING AGENT AND COMPANY The Group, Llc

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐BUYER'S AGENT OR ☐SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

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ADDENDUM A

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises --- commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres)

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Property is being purchased in "As Is" condition. This contract is a "back up" contract. It is contingent upon an existing contract of sale to receive a signed release so that this contract becomes the primary contract. In the event the existing contract does not receive a signed release this agreement may be declared null and void by either party on or before December 30, 2012 with written notice and deposit money returned to purchaser.Attached plat shows property being purchased. Seller agrees to pay 6% of the sales price at closing to The Group, Llc as compensation for this transaction.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Morphew	Date 12/16/12	Time	
WITNESS:	Date	Time	
BUYER:	Date	Time	
WITNESS:	Date	Time	
SELLER: Thomas Ferro	Date 12/16/12	Time	
WITNESS:	Date	Time	
SELLER: Lorraine Ferro	Date 12/16/12	Time	
WITNESS:	Date	Time	

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The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466
Phone: 843-971-4002 Fax: 888-803-1570 Charlene Willis

788 E. Buttern

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STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option *and* sale *under* a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 14 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may consider the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: _____ Seller Date _____ Buyer _____ Date 12/6/12

Rev. 1/03

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM, MALFUNCTION OR DEFECT WITH ANY OF THE FOLLOWING:

		Yes	No	No Representation
1.	Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ Brick monolithic pour green house b. Approximate age of structure ___	☐	☑	☐
2.	Roof (leakage or other problem)? a. Approximate age of roof covering steel roof 8yrs.	☐	☑	☐
3.	Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☑	☐
4.	Electrical system (switches, wiring, panel, switches, fixtures, etc)?	☑	☑	☐
5.	Plumbing system (pipes, fixtures, water heater, etc.)?	☑	☑	☐
6.	Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ /cooling unit ___	☑	☑	☐
7.	Water supply (including water quality, quantity and water pressure)? a. Water supply is: city/county ✓ community system ___ private well ✓ b. Water pipes are: copper ___ galvanized ___ PVC/CPVC ✓ polybutylene ___	☐	☑	☐
8.	Septic system? a. Type system: septic tank ✓ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ✓ c. Has the septic system been serviced/pumped during your ownership?	☐	☑	☐
9.	Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☑	☑	☐
10.	Possum infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of or and destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ✓	☐	☑	☐
11.	Drainage, grading or stability of soil or retaining structure?	☑	☑	☐
12.	Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ✓ exhaust fan ___ ceiling fan ✓ sump pump ___ irrigation system ✓ cable TV wiring or satellite dish ✓ security system ___ or other systems ___	☐	☑	☐

Initials ___ Seller ___ Date ___ Buyer ___ Date 12/16/12

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

		Yes*	No	No Representation
13.	Room additions or other structural changes?	☐	☑	☐
14.	Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☑	☐
15.	Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☑	☐
16.	Previous damage caused by fire?	☐	☑	☐
17.	Violations or variances of building codes or zoning ordinances?	☐	☑	☐
18.	Restrictions to property use? (covenants or deed)	☐	☑	☐
19.	Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☑	☐
20.	Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☑	☐
21.	Owners' association fees or "common area" expenses or assessments?	☐	☑	☐
22.	Flood hazards or that the property is in a federally-designated flood plain?	☐	☑	☐
23.	Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☑	☐
24.	Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☑	☐

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

Initials: _____ Seller _____ Date ____ Buyer _____ Date 12/16/12

Rev. 10/11

"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 788 E Butternut Rd Summerville SC 29483

The property is currently: owner-occupied ✓ leased ___ or an estate ___ in foreclosure ___
vacant ___ (If vacant, how long? ___)

Owner's Name(s): Jan Ford

Owner(s) acknowledge having examined this statement before signing, and that all information is true and correct as of the date signed.

Owner Signature: _____ Date: 12/16/12

Owner Signature: _____ Date: 12/16/12

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: _____ Date: 12/16/12

Purchaser Signature: _____ Date: _____

This form is approved by the South Carolina Real Estate Commission

DUAL AGENCY AGREEMENT

THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT.

This Dual Agency Agreement is entered into between Molly M. Morphew, Buyer, and The Group, Llc Real Estate Company, Thomas Ferro, Lorraine Ferro, Seller, and The Group, Llc Real Estate Company for Property located at 788 E. Butternut (6 Acres), Summerville, 29483

The term "Broker" includes the real estate firm, broker-in-charge and associated licensees.

1. DUAL AGENCY: Seller and Buyer agree that Broker shall serve as both Seller's agent and Buyer's agent in the sale of Seller's property to Buyer in accordance with Section 40-57-137(M)(1) of the South Carolina Code of Laws, which provides in part that "...In acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited." The parties agree that without permission from the party about whom the information pertains, Broker shall not disclose to the other party the following information:
   a) That a party may agree to a price, terms, or any conditions of sale other than those offered;
   b) The motivation of a party for engaging in the transaction, unless disclosure is otherwise provided by state law or regulation; and
   c) Any information about a party which that party has identified as confidential unless disclosure is otherwise required by state law or regulation.
2. BROKER'S DUAL AGENCY ROLE: Because Broker is serving as Agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to represent Seller and Buyer in a balanced and fair manner. Broker shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and Buyer. Seller and Buyer understand and acknowledge that:
   a) Prior to the time this agreement was entered into, Broker acted as the exclusive Agent of Seller and acted as exclusive Agent of Buyer.
   b) In those separate roles Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker.
   c) Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.
3. SELLER'S AND BUYER'S ROLES: Because of Broker's Dual Agency relationship, Seller and Buyer understand and acknowledge that:
   a) Seller and Buyer have determined that the advantages of entering into this Dual Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
   b) Seller and Buyer each have the responsibility of making their own decisions as to what terms are to be included in any agreement to buy and sell between the Seller and Buyer.
   c) Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Dual Agency role as expressed herein to provide balanced and fair representation of Seller and Buyer and to encourage communication between Seller and Buyer rather than acting as an advocate or exclusive agent.
   d) Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent.
   e) Seller and Buyer may seek independent legal counsel to assist them with the negotiation and preparation of a buy and sell agreement or with any matter relating to the transaction which is the subject matter of a buy and sell agreement.
4. PREVIOUS AGENCY AGREEMENTS: The parties agree that this Agreement shall modify any agency agreements previously entered into by Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Dual Agency Agreement shall control.
5. DURATION OF DUAL AGENCY: The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

The Group, LLC. 2660 Skyhawk Ct Mt. Pleasant, SC 29466 Phone: 843-971-1093 Fax: 888-801-1570. 788 E. Butternut
Charlene Willis
Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

6. FAIR HOUSING: The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

7. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the execution of this dual agency agreement or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

8. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DUAL AGENCY AGREEMENT.

Seller Thomas Ferro — Date 12/16 — Time

Seller Lorraine Ferro — Date 12/16/12 — Time

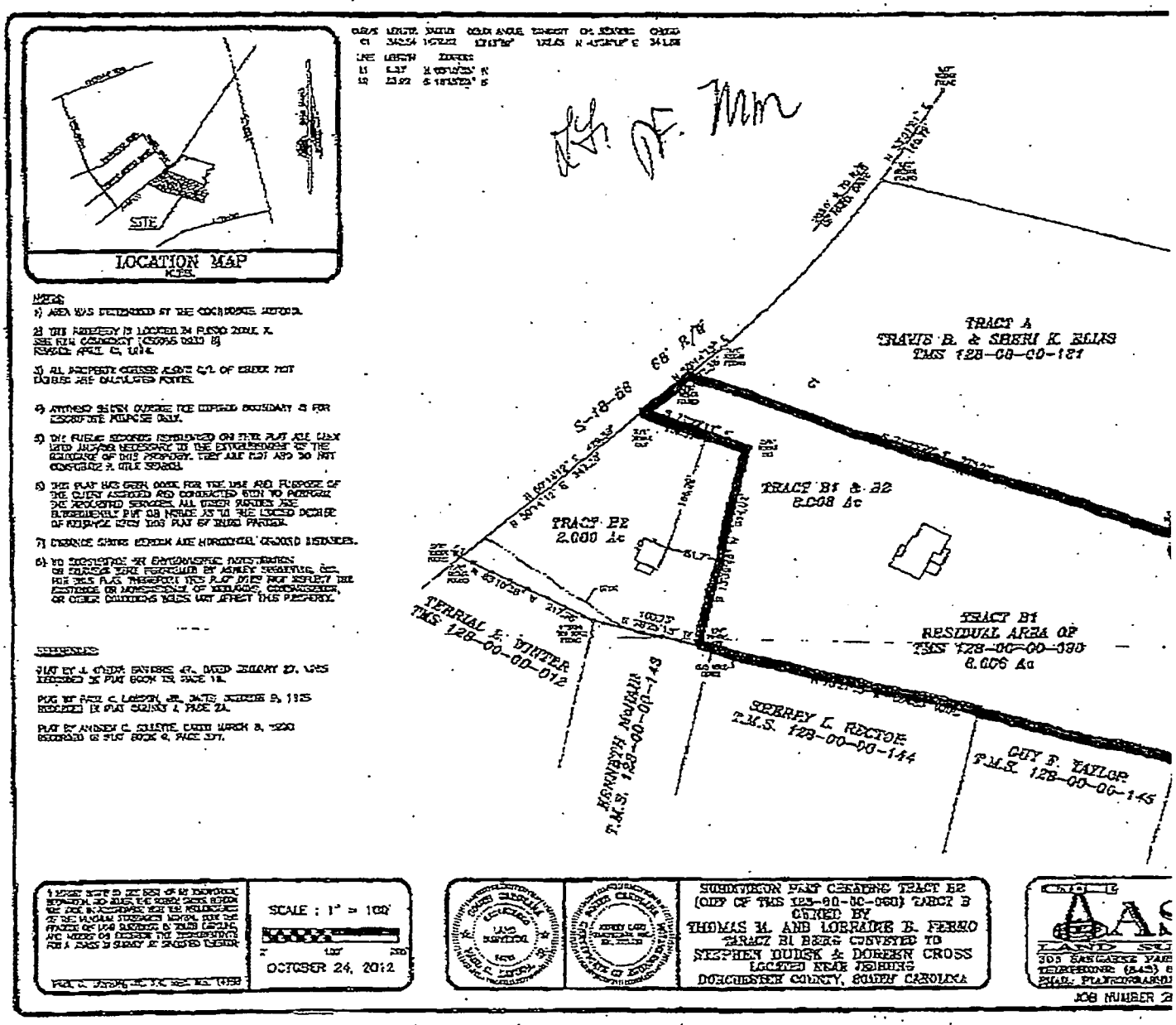
Buyer Molly M. Morphew — Date 12/16/12 — Time

Buyer — Date — Time

The Group, Llc
Real Estate Brokerage (Name of Real Estate Co.)

By: Broker/Assoc. Licensee — Date 12-16-12
Rick Willis

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com


LOCATION MAP
SITE
TRACT A
TRAVIS B. & SHERI K. ELLIS
TMS 128-00-00-121
TRACT B1 & B2
2.008 Ac
TRACT B2
2.000 Ac
TRACT B1
RESIDUAL AREA OF
TMS 128-00-00-090
6.006 Ac
TERRIAL L. WINTER
TMS 128-00-00-012
HIGHWAY 642/78
P.M.S. 128-00-00-143
SHERRY L. RECTOR
P.M.S. 128-00-00-144
GUY F. TAYLOR
P.M.S. 128-00-00-145
SCALE : 1" = 100'
OCTOBER 24, 2012
SUBDIVISION PLAT CREATING TRACT B2
(OUT OF TMS 128-00-00-090) TRACT B
OWNED BY
THOMAS M. AND LORRAINE B. FERRO
TRACT B1 BEING CONVEYED TO
STEPHEN DUDEK & DOREEN CROSS
LOCATED NEAR JEDBURG
DORCHESTER COUNTY, SOUTH CAROLINA

65

Thomas and Lorraine Ferro
5501 Carson St.
Denver, CO 80239
843-327-1262

COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STEPHEN DUDEK AND DOREEN CROSS, Plaintiff, vs. THOMAS M. FERRO AND LORRAINE B. FERRO, Defendant	Case No.: 2013-CP-18-74 PLEADING STATEMENT

2014 SEP 10 AM 8:46
CLERK OF COURT
DORCHESTER COUNTY

Dated this 30th of August, 2014.

Due to the facts and testimonies brought to light during the last year and a half, we are now able to answer many of the questions we presented to the Plaintiffs through our "ANSWER" statement submitted February 4th, 2013. We are also able to see the seriousness to which we were blindsided by the Plaintiffs, and able to state our facts using concrete evidence to support them.

This "PLEADINGS" statement answers those questions and confirms our initial claim the Plaintiffs, Stephen Dudek and Doreen Cross are indeed in a serious Breach of Contract, their contract is null and void, and we had every legal right to request and receive a signed cancellation request.

For clarification: Plaintiffs (Stephen Dudek and Doreen Cross) = Buyers
Defendants (Thomas and Lorraine Ferro) = Sellers.

In the case Doreen Cross and Stephen Dudek vs. Thomas Ferro and Lorraine Ferro, we are proving:

- The testimony of the Plaintiffs (Buyers Dudek and Cross) that the reason they did not close per the Time is of the essence contract is because "the Ferro's lack of a clean CL-100, and is STILL the reason the closing still hasn't taken place", is erroneous.

- The complaint against the (Defendants) Sellers, Tommy and Lorraine Ferro, from (Plaintiffs) Buyers, Dudek and Cross, is frivolous and invalid, and that the Plaintiffs, Dudek and Cross are in breach of contract, and that the Defendants had every legal right to terminate the contract between themselves and the Plaintiffs.
- The contract between Cross/Dudek and the Ferro's is no longer valid as of December 16, 2012, and that the contract between Molly Morphew and the Ferro's is the valid contract to purchase 788 East Buttemut as of December 16, 2012.

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1. Since the Plaintiff's (Buyers), Stephen Dudek and Doreen Cross, did not apply for the loan for 788 E Buttemut Rd before the TIME IS OF THE ESSENCE Contract date of November 30th, 2012, the contract expired and they were unable to secure lending with First Federal, regardless of a CL-100 clearance letter, due to the fact:
    a) First Federal does not process loan applications against an expired contract without an extension addendum or a new contract.
2. When the Plaintiffs applied for the loan on December 5th for 788 E Buttemut Rd, First Federal required a formal Extension Addendum in order to **begin processing** the loan.
    - On December 5th, the Lender issued a Customer Loan Application Checklist that stated an "anticipated closing by 1/4/13" and required a signed extension addendum to process the loan (see ATTACHMENT 1).
    - **The fact the Plaintiffs had not yet applied for a loan on or before November 30th the fact that First Federal would not begin processing their loan without the extension addendum, and the fact the Lender was giving an estimated closing date of 1-4-2013 was not communicated to the Defendants or their Agent.**
        - Instead, the replies to the Defendants and the Defendants Agent's questions about lending, the appraisal, closing, etc. before November 30th was met with answers such as "*I am inquiring about the appraisal from the lender but have not heard anything yet*" and "*the Lender can't give us an estimate on closing yet but it won't be at the end of this week* (Nov 30th)" and "*the Closing Attorney was waiting on the survey to be recorded before he could perform the title search, which he has now and it will take about a week to do*". Keep in mind that this is before

the loan was applied for so how can an appraisal be "checked on" if it hasn't been ordered yet? How can a Lender give an estimated closing date if the loan hasn't been applied for? And how can a Closing Attorney order a title search without the lender giving a clear to close to the attorney and requesting it from them? We as the Sellers were misled into thinking everything was being done per contract.

- By Law, if the Plaintiffs stated that they had not applied for their loan and allowed the contract to expire, making it impossible to obtain a loan without an extension or new contract, it would be an admission to a serious BREACH OF CONTRACT on the Plaintiffs part. This would open the Plaintiffs up for automatic and undisputed legal ramifications. Therefore they kept the Defendants in the dark thinking the Defendants would feel backed into a corner and have no choice but to close with the Plaintiffs.

3. First Federal **would not complete** the Plaintiff's application without an extension addendum (see ATTACHMENT 1, ATTACHMENT 2, ATTACHMENT 3 and ATTACHMENT 4).
4. First Federal finalized the loan as "Declined" on 1-18-13 due to receiving no response to the 10 day letter sent to the Borrowers to provide a signed extension addendum; application incomplete. **Loan was never secured for closing.**
5. Because the Plaintiffs applied for the loan AFTER the contract date, an extension addendum was required. In turn, because the Defendants refused to sign an extension addendum, the Plaintiffs could never secure a loan for closing. Again, it had nothing to do with the CL-100 Clearance Letter as the Plaintiffs keep telling the Defendants.
6. Defendants refused the extension addendum on Dec 3 (verbally) and on Dec 6 (see ATTACHMENT 5 faxed to Closing Attorney, Woody Law Firm, on Dec. 6).)
7. Defendants were informed by the Plaintiffs' Agent that the contract had a "no fault" extension clause within it and allowed the Plaintiffs until December 15th to close.
   - The "no-fault" extension clause (Paragraph 12) within the contract is stating "*if the closing did not take place due to no fault of either party, and it's agreed upon by both parties, then a 15 day extension to close will be granted.*"

- It also states that if both parties agree to the 15 day extension, "*Closing shall occur within this time extension, but* ***in no event*** *shall closing occur later than the above extension date.* ***Time is of the Essence.***" (see Paragraph 12 of the contract) **

    a) *In no event*", meaning 'in no circumstances whatever'. If the closing does not take place, the contract is automatically null and void.

8. Plaintiffs claimed the no-fault extension clause after they failed to close per the initial contract deadline of November 30th. (Susan verbally stated to Defendants on Dec 3 that the Plaintiffs had an automatic extension in the contract, and via e-mail dated December 16th--see ATTACHMENT 6)
9. Plaintiffs still filed a Lis Pendens on 1-11-13 (then a Complaint on 1-15-13) against the Defendants after they found out the Defendants had another Buyer (see ATTACHMENT 7), claiming the Defendants are at fault for the closing not taking place on or before November 30th and on or before December 15th , and are still at fault to this day. **Defendants are confused as to how the Plaintiffs can claim a "no fault" extension and still be able to file a "fault" Complaint.
    - Either the Complaint is valid and the Plaintiffs cannot claim the extension, therefore an automatic BREACH of CONTRACT because Plaintiffs allowed the contract to expire before applying for their loan **EXPIRED CONTRACT**
    - OR the extension clause is valid which in turn would make the Complaint invalid and no longer a case against the Defendants, and the contract automatically null and void after 9pm December 15th. **EXPIRED CONTRACT**
    - In both cases, the contract is no longer valid.
10. The Plaintiff's (Buyers), Stephen Dudek and Doreen Cross', testify they were ready to close/had loan approval but the reason they did not close per the (**"Time is of the Essence"**) contract is because of:
    - "*the Ferro's lack of a clean CL-100, and is STILL the reason the closing still hasn't taken place*" (See ATTACHMENT 8).
    - "*couldn't close because they never got a CL-00*" (see ATTACHMENT 9),
    - "*seller did not provide a CL-100 Clearance Letter in a timely manner*" (see ATTACHMENT 10)

        a) Since the Plaintiffs did not apply for their loan on or before November 30th, lack of financing is what prevented them from closing on or before

the Time is of the Essence contract date of November 30th; it had nothing to do with a CL-100.

b) Inability of First Federal to process a loan on an expired contract without an extension addendum, plus the fact the Plaintiffs only had 10 days to close from the time they actually applied for the loan, is what prevented the Plaintiffs from closing on or before December 15th. It had nothing to do with a CL-100.

c) Per Doreen Cross' deposition testimony, she did not start lending because she was "*waiting until she was actually satisfied that something was being repaired properly*" (see ATTACHMENT 11). **This was not a repair contingency contract. **Breach of Contract.** It had nothing to do with a CL-100.

d) Not having a valid contract is what is still preventing them from being able to close (see ATTACHMENT 12). It had nothing to do with a CL-100.

11. The Defendants obtained a CL-100 (report) on or before November 30th, 2012, per contract requirement. (see ATTACHMENT 13)

12. The Contract did not state the Defendants had to provide a Clearance Letter, if applicable, to the Plaintiffs on or before November 30.

13. The Contract's CL-100 contingency states "Buyer's total satisfaction of the CL-100" which by law means, if the buyer is not satisfied with the CL-100 report, they have an option to terminate the contract and walk away with their earnest money, take the property as is, or negotiate repairs, per Paragraph 19(E).

14. The Plaintiffs had an option of requesting the Defendants to obtain one sooner but did not do so.

15. The Plaintiffs had an option of obtaining the report themselves, at any time, with the cost to be paid by the Defendants but did not do so.

16. Defendants provided the CL-100 report to the Closing Attorney, even though there was no closing set.

17. Plaintiffs agreed with Susan Nicholson on December 3rd that they felt all with the house was OK and "*the sellers have been very serious about doing what is necessary within reason to close*" and felt "*comfortable to have the mortgage company do what they need so we can close*". (See ATTACHMENT 14). This e-mail confirms the CL-100 is not

what held up the Plaintiffs from applying for a loan per contract, it was the Plaintiffs own satisfaction of the repairs they needed to see done to their approval.

18. Plaintiffs Agent erroneously communicated to the Defendants on December 5th that the bank is requiring repairs to be done and a CL-100 Clearance Letter provided. (See ATTACHMENT 15).
19. Plaintiffs Lender never required a CL-100 (see ATTACHMENT 1, 2, 3, 16 & 17).
20. Plaintiffs did not require a Clearance Letter for themselves, they wanted it to "satisfy the bank and Closing Attorney." (See ATTACHMENT 18). *Again, no requirement from the Lender; nor a requirement from the Closing Attorney via any e-mails/correspondence to Defendants or Defendants Agent.
21. If a Clearance Letter was needed by the Lender, then per contract, Paragraph 19(B), "*If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.*"
22. On December 3rd, Plaintiff's contractor was at the property but could not inspect the repaired termite damage due to the repair had just been treated/sprayed. Contractor stated he will have to "check his schedule and come back another time". Neither the Contractor nor the Plaintiffs/Plaintiffs Agent rescheduled with the Defendants.
23. The CL-100 was provided to the Closing Attorney via the Defendants Agent, Rick Willis, even though no closing date set.
24. The lack of obtaining lending per contract requirements is what prevented the Plaintiffs from closing on or before November 30th.

- Despite negotiations in regards to the repairs or the Defendants, the Plaintiffs had a contractual obligation to apply for a loan within 10 days of contract ratification, supply the Defendants with an approval letter that contained no income, credit or asset issues within 20 days of contract ratification, and secure lending on or before November 30th. None of which these requirements were met by the Buyer. **Breach of Contract.**

- The Plaintiff's (Buyers), Stephen Dudek and Doreen Cross', did not secure lending for closing on or before the Time is of the Essence contract date of November 30th, 2012 at no fault of the Defendants. Therefore, **Breach of Contract.**

- Plaintiffs did not apply for loan within 10 consecutive days from the execution date (October 24th) of the contract, per Time is of the Essence Paragraph 8. Therefore, **Breach of Contract**
- Plaintiffs applied for loan on December 5th, 42 days after contract execution and after the Time is of the Essence contract date of November 30th. Therefore, **Breach of Contract.**
- Plaintiffs did not provide the Defendants with written satisfactory loan approval within 20 consecutive days that contains no credit, income or asset conditions, per Time is of the Essence Paragraph 8. Therefore, **Breach of Contract.**
- Plaintiffs provided Defendants with an approval letter (dated December 12) on December 17th (after the cancellation request was sent) that contained credit, income and/or asset conditions (see ATTACHMENT 2).
- Plaintiffs never provided the Defendants with loan approval that contained no credit, income or asset conditions.
- Per South Carolina Real Estate Law, the Plaintiffs failure to comply with the lending terms (Time of of the Essence) of their contract is a serious Breach of Contract.
- Per South Carolina Real Estate Law, the Plaintiffs failure to close per the Time is of the Essence contract date, is a serious Breach of Contract. *especially if Time is of the Essence can be proved.

25. Plaintiffs stated they provided Defendants with another "approval" letter and "GFE", dated October 22nd, from their Lender (see ATTACHMENTS 19- EXHIBIT 2 & ATTACHMENT 20).
    - Documents are not an approval or GFE (see ATTACHMENT 21) nor were they provided to the Defendants or their Agent within 20 days of contract ratification, as stated by the Plaintiffs, because they were developed on 2/10/2013 @ 1:08 Sunday morning (see ATTACHMENT 20; Notice date/time of attachments)
26. Per testimony of the Plaintiffs, Dudek and Cross, their mortgage loan officer, Allison Williams, sent the October 22 e-mail (see ATTACHMENT 21) with above #12 attachments. **During the trial on June 12 and after it was pointed out that the attachments were dated 3 ½ months after the e-mails were sent and the time was 1:08 am Sunday morning. **Allison Williams stated "*that e-mail is not mine.*"**

27. The above "validity in question" October 22nd e-mail, along with pre-approval letter and Closing Cost Worksheet, were not contained in Lending File, nor notated as being sent in the notes section of the Lending File.

28. The Defendants believe the (e-mail) and documents are fraudulent.

29. Lending was cancelled and never secured or given a clear to close due to the application being incomplete (see ATTACHMENT 4, entry dated 1-18-2013 & ATTACHMENT 22 and ATTACHMENT 23).

30. An extension addendum, not agreed on nor signed by the Defendants, was added on 12-20-12 to the Plaintiffs First Federal loan file (see ATTACHMENT 4, entry dated 12-20-12 at 10:43am). The extension addendum was not valid, therefore should not have been included in the Plaintiff's lending file. (See ATTACHMENT 24).

31. A Repair Request Proposal, not agreed on nor signed by the Defendants, was added to the Plaintiff's loan file on December 20th (see ATTACHMENT 25 & ATTACHMENT 4, entry dated 12/20/2012 10:43am). The Repair Request Proposal was not valid, therefore should not have been added to the Plaintiff's lending file.

32. On January 12, 2013, First Federal Underwriters state that "*it has come to our attention that this file is a short sale*", making the extension addendum unnecessary, and the file "*is completely approved just waiting on **short sale** approval*" (see ATTACHMENT 4, entry dated 1/12/2013). Defendants states this contract was NEVER a short sale (reference Plaintiff's Contract) and is perplexed as to where that information came from.

33. Many statements and documents now provided here were supplied by First Federal 1 day before the trial even though they had 2 written subpoena's sent the prior year (one on March 4th, 2013 and again August 1st, 2013) and a verbal request March 13th, requesting all documents and e-mails for the Cross/Dudek loan on the 788 E Buttemut property.

34. The reply to the written subpoena requests was "no accounts/loan or loan documents for the requested loan number, TMS number or Plaintiffs on file with First Federal" (see ATTACHMENT 26) though the loan #7100323356 was assigned to CROSS on 12/12/12 (see ATTACHMENT 2 and ATTACHMENT 23).

35. It wasn't until the Plaintiff's Mortgage Loan Officer, Allison Williams, was issued a subpoena to appear in court, along with a request provide all documentation for above stated loan that the prior requested documentation was "found" and sent less than 24 hours within the trial. Defendants did not receive them until after the trial due to be in transit at the time of delivery. These items are a major key to the case considering the

majority of the Defendants defense is lack of financing and not closing per the Time is of the Essence Contract terms.

36. The reply to the verbal conversation between Ryan Neville, Atty. and the First Federal representative, Sharon Raye Hester, was "*she could not (or would not) discuss* (Plaintiffs Lending) *with us*"

37. First Federal was never able to issue a clear to close to the Closing Attorney due to an incomplete application/lack of required documentation and a no response from the borrowers to a "10 day Letter" from Plaintiffs for request for initially requested extension addendum (see ATTACHMENT 4, entries dated 1/16/2013 and 1/18/2013).

38. Defendants were misled and deceived in order for the Plaintiffs to have "issues" to use for a re-negotiation and/or closing leverage.

- October 24th: Buyer states to her Agent that the land not subdivided and having to wait for a recorded survey may be a problem obtaining an appraisal. Allison Williams at First Federal is not sure but is confirming internally whether it will be or not (see ATTACHMENT 27). No documentation from Allison Williams or Doreen Cross provided for trial confirming either way. But e-mail from Susan to Doreen states "*if the home isn't subdivided in time it will be their (sellers) fault not yours.*" (See ATTACHMENT 28). *Note that the survey was performed the day after the contract was signed by the Defendants.
- Plaintiffs told their Agent if the Defendants "*threw in the barn and the extra acreage then they would guarantee a closing before November 30th*" in which the Agent responded that "***the trick is to get him to do that without any extra charge***". (See ATTACHMENT 28).
- On Nov. 16, Doreen states to Susan, "*Can we hold Eugene (*structural engineer) *liable if future information becomes available contradicting his report? It sounds like it will be a challenge to take the information from Tim and use it in the counter –offer. "(See ATTACHMENT 29).*
- October 24th: Plaintiffs Agent informs the Defendants that the recorded survey may hold up closing if not recorded in time.
    a) October 24th: Plaintiffs and Defendants, with Agents, stake out area to be subdivided for the surveyor.
    b) October 25th: Survey performed.
    c) November 20th: Survey recorded.

39. November 22nd: Plaintiff's Agent receives recorded survey.

40. November 26th: Plaintiff's Lender receives recorded survey from Plaintiff's Agent.

41. Buyer does not apply for loan or orders an appraisal on November 26th but instead waits for 13 days after Agent receives recorded survey before starting her lending and ordering an appraisal.

    - Per Cross deposition on June 12, 2013, Plaintiff still did not apply for the loan even though the survey was in hand because of a "private" discussion between Cross and her Lender, Allison Williams, where Ms. Williams "*suggested that I wait until I started seeing that the seller was serious in giving me what I was actually asking for* (repairs, receipts, etc.) *and what he said he would do* (repairs) *before I told her to go ahead* (with the loan), *and I agreed with her.*" (See ATTACHMENT 11)**Defendants were not told this was happening. Instead they were being told all along that the Plaintiffs were working as hard as they could to obtain lending.
    - First Federal does not require a recorded survey to perform an appraisal.
    - If anything, the staked out land can be used by the appraiser and have the value subject to the recorded plat, which it means it would have to be recorded before final loan approval (see ATTACHMENT 30)

42. Defendants never refused a closing.

43. No closing date ever set or offered to Defendants even though being told many times the Plaintiffs were ready to close.

44. Plaintiff's Agent, Susan Nicholson, knew that her clients hadn't applied for a loan as of Nov. 16th (see ATTACHMENT 31).

45. Plaintiffs and Plaintiff's Agent knew by November 16th they would not be closing on or before the Time is of the Essence contract date of November 30th since they had not even applied for the loan. This was not communicated to the seller.

46. Plaintiffs Agent, Susan Nicholson, was at the Seller's house with Plaintiff's contractor from Vasko, the same day that Palmetto was spraying for termites down in the crawlspace (12-3-12). Defendants were expressing their concerns about the Plaintiffs making the deadline for the closing and Susan said "***I have had difficult clients like this buyer before and have had the deal not go through because of it***", where Seller, Tommy Ferro, told her that "*we have to close on time or the deal will be off, I have a backup buyer*" (although we did not at the time).

47. Defendants stated in writing (on 12-6-12) on the Request for Information letter from the Plaintiff's Closing Attorney, "***Need to close in 7 days or less or no closing***." This page was faxed to the Closing Attorney, Woody Law Firm, on 12/6/12 (see ATTACHMENT 5).

48. On December 3rd, when the Plaintiff's Agent set in place the 15 day no fault extension clause with the Defendants, the Plaintiffs Agent knew at that time (since the loan hadn't been applied for) that they would not be closing per the extension clause but still claimed it with the Sellers. Defendants understand this is also an automatic BREACH of CONTRACT.

49. After receiving the cancellation request, the Plaintiff's Agent, Susan Nicholson, erroneously stated on 12-16-12: (see ATTACHMENT 32)

- "*The Buyers did everything they were asked to do with the lender*"
  - a) They did not apply for their loan per contract
  - b) They did not provide a signed agreed upon extension agreement as requested to process a loan against an expired contract.
- "*The Entire process was held up because of waiting on the recorded new survey.*"
  - a) First Federal did not require the survey to be recorded to start the loan or to have an appraisal performed.
  - b) Even if the survey held up the loan process, the loan was not applied for as soon as the recorded survey was received by the Agent. Instead it was 13 days later.
- "*Furthermore the CL100 still has not been cleared for closing...*"
  - a) Cleared for whom? The lender was not requesting it, the Closing Attorney did not send out a request to the Defendants or their Agent....
- "*Also, we are waiting on the bathroom leak to be cleared.*"
  - a) But Susan stated to Doreen per 12-3-12 e-mail that "*As for the damaged bathroom floor, the sellers are not wanting to do anything with that so I am getting a contractor to look at that to see what needs to be one to make the repairs to the damaged floor and if it's under $500 I will pay to have that done for you I usually give closing gifts so I thought I could cover that since we are pretty much down to that.*" *(see ATTACHMENT 14)*

b) The Plaintiff's Contractor looked at the bathroom leak and stated the owner had taken care of the leak and attached a quote for the repairs (see ATTACHMENT 33)

- *"The Buyers made application and supplied requested documentation from the lender in a timely manner from the time we ratified the contract."*
  - a) Plaintiffs did not apply for loan until after the contract expired.
  - b) Lender did not request anything until after the contract expired, when the loan was applied for on December 5th.
  - c) The loan application was not sent to the Underwriters until December 11th to review the application.
- *"The contract clearly states that there is a 15 day extension, if at no fault of the buyer or seller, to close which would bring us to the 15th of December."*
  - a) But her e-mail is dated December 16th. They are already past that date.
  - b) No closing date set or presented to Defendants.
- *"We have everything we need to close hopefully this week pending the title work is clear from the Closing Attorney."*
  - a) *"this week"* would mean by 9pm December 20th; but title work hadn't been started as of December 17th.
  - b) What happened to all the above issues needed?
  - c) No tentative closing date set by Closing Attorney.
  - d) No closing date presented to Defendants or their Agent.
  - e) Per First Federal loan package papers, First Federal needed a verbal verification of employment at least 10 days before closing on each applicant but could not obtain one on Doreen Cross until January 4th, 2014 due to the holiday closing of school district administrative offices. (see ATTACHMENT 34) *Not communicated to Defendants.

50. After receiving the cancellation request, the President/General Counsel for Carolina One Real Estate, Michael Scarfile erroneously stated: (per e-mail dated December 20th): (see ATTACHMENT 35)

- *"if Buyers were in default (of Paragraph 8 of contract), such default is pursuant of paragraph 16 which requires the Seller to provide "a 5 day written notice" which gives the Buyers the right to cure any default" and "the Sellers provided written notice on December 16th. However, the Buyers have provided such proof*

and are ready to close, both of which would be inside of the 5 day "right to cure" period."

a) No, proof would have been a closing date offered on or before December 21st if the Plaintiffs were so ready to close, which it was not.

b) Proof was not provided. Defendants received "approval letter" on December 17th that contained many contingencies, including First Federal disclosures signed and dated, First Federal to request IRS transcripts for the last 2 years, Verbal verification of employment prior to closing, an appraisal ordered, reviewed and received by First Federal, and a legible copy of the sales contract and all addendums (including an extension addendum). *This did not provide the Defendants with a confident feeling at all.

- *"To work towards closing, and in the spirit of good faith, the Buyers are willing to pay $1300 towards the termite bond that the Sellers have committed to and to also schedule the closing, through an agreed upon Addendum to be executed between the parties, for the middle to end of next week to allow the Sellers to remain in the home through the Christmas Holidays."*

a) Defendants believe when reading the e-mail that if the Plaintiffs were serious then they would have presented them with a closing date, not "if you provide us with an extension we will be so gracious as to give you a closing date….".

b) After reading First Federals lending package documents, Defendants now know that the Plaintiffs could not have closed before the New Year, and again, feel they (the Defendants) were lied to.

c) Defendants had already moved so there was not need to allow them to "remain in the home through the Christmas Holidays." Again another tactic to buy more time on the Plaintiffs part.

51. The loan was not finalized and ready for a closing on or before December 20th due to the fact First Federal was still requesting documentation, including a legible copy of the sales contract, the extension addendum, and a signed Repair Request Proposal, and verbal Verification of Employment on the Plaintiffs which could not be completed until 1-1-13.

52. Defendants had every legal right to cancel the contract.

53. Per Atty. Joe Qualey, the Plaintiffs TIME IS OF THE ESSENCE contract was null and void as of December 16, 2012 (see ATTACHMENT 11).
54. Per Real Estate/Closing Attorney, Mark Weeks. Plaintiffs contract was no longer valid as of December 16th; 2012. (Morphew statement)
55. Per Attorney, John Massalon, Plaintiffs contract was no longer valid as of December 16th 2012. (Morphew statement)
56. Per First Federal on February 18th; "*The contract on the house is no longer valid.*" (See ATTACHMENT 36).
57. Per South Carolina Real Estate Law, the Plaintiffs failure to close per the **Time is of the Essence** no-fault extension paragraph of the contract automatically makes the contract null and void.
58. Per South Carolina Real Estate Law, a **Time is of the Essence** contract is upheld in court, especially if there is a valid reason for the Time is of the Essence.

The Defendants, Thomas Ferro and Lorraine Ferro, testify pro se:

- We (the Defendants) have performed our contract requirements and did everything within reason to close.
- We (the Defendants) were not aware that the (Plaintiffs) Buyers, Doreen Cross and Stephen Dudek, did not have lending secured on or before November 30th, nor that they did not have lending secured on or before December 15th.
- It wasn't until after reviewing First Federal's documents after the trial that we are now aware the Plaintiffs never had lending secured for closing for ANY date, in the past or future.
- We (the Defendants) had a legal right to cancel the contract due to the Plaintiff's Breach of the Time is of the Essence contract.
- The complaint filed on January 15th, 2013 by Doreen Cross and Stephen Dudek against us (the Defendants) for Breach of Contract is not valid due to the fact the extension agreement they agreed upon, and contained within the contract (Paragraph 12), is a "**no fault** of either party" agreement. (The Plaintiffs) taking a no fault extension after failing to meet the initial contract date, knowing at the time they took it they would not meet the date, not closing on or before the December 15th date, and then filing a lawsuit against us (the Sellers) is contradictory, unethical and (possibly) not legal.
- Due to the documents produced from First Federal (1 day before the trial) and, combined with the e-mails between the Plaintiffs, Plaintiff's Agent, Plaintiff's Mortgage Loan Officer and/or the

Plaintiff's Closing Attorney, the facts show a severe lack of honesty, integrity and communication towards us (the Defendants) and our Agent through the life of the contract, and beyond.

- The Plaintiffs, their Agent and their Mortgage Loan Officer misled, lied to, and manipulated us (the Defendants) and our Agent.
- The Plaintiffs produced falsified documents in an attempt to meet their contract requirements.
- We (the Defendants) have been unjustly put on hold, not able to sell our home, not able to purchase a new home in our new location, caused undue stress, put in severe financial difficulties, caused us (the Defendants) a loss of a home and a loss of an investment home in Kentucky, and caused us (the Defendants) extensive loss of time and emotional pain.
- We (the Defendants) have signed a backup contract with Ms. Morphew, and will continue to honor it as agreed upon. She had shown all along she was serious to purchase our home. She has only shown us honesty and integrity. Ms. Morphew was ready to set a closing date within 1 month of signing. She was willing to spend her time and money to be ready per the contract requirements, knowing full well that the initial Plaintiffs might have produced a closing date within a reasonable time after receiving the cancellation notice.
- During a verbal "mediation" (between January 10th and January 18th) between our then lawyer, Joe Qualey, and the Plaintiff's lawyer, David Collins, we were offered $50,000 more to sell to Dudek and Cross. But again a closing date was not offered, only threats of being sued.
- After reading all documents produced before the trial, at the trial, and the First Federal e-mails and documents received less than 24 hours before the trial, we (the Defendants) stand by our initial cancellation request sent to the Plaintiffs, Dudek and Cross.
- We (the Defendants) wish to not sell to the previous Buyers (Plaintiffs Dudek and Cross). We (the Defendants) do not want anyone in the home we built and raised our children, who obviously will not appreciate it. We (the Defendants) do not want anyone in our home that would be less than honest and would conduct themselves the way the Buyers (Plaintiffs Dudek and Cross) have obviously done since signing the contract.

WHEREFORE, the Defendants ask the Court for judgment,

a. honor our contract with Ms. Morphew,
b. dismiss the complaint herein with prejudice,
c. dismiss the Lis Pendens against property stated in agreement,
d. grant written release from said Agreement,
e. in addition, Defendants pray that the Plaintiffs take nothing and the Defendants have judgment against the Plaintiffs and recover the costs of suit herein, and such other relief the court may deem proper.

PAGE 43 ATTACH. #1

First Federal Customer Loan Application Checklist

Customer Name: Cross/Dudek Date: 12/5/12

Thank you for your application. To expedite the loan process and to deliver a timely closing, we need the following documents delivered to us within 48 hours. If delivered within that time period, we anticipate a closing by 1/4/13 unless other unforeseen issues arise.

We will do everything within our control to deliver a timely closing as part of our service commitment to you. However, if we do not receive these items within 48 hours we may need to adjust your closing date accordingly.

The following information is required to begin processing your application.

- ___ Application Deposit:
- ___ Current Pay Stubs:
- ___ W2 - most recent:
- ___ Copy of Driver's License
- ___ Two most recent years federal personal tax returns, signed/dated:
- ___ Self-Employed: Two most recent years federal business tax returns, signed/dated:
- ___ Self-Employed: YTD Profit and Loss (P&L) statement signed by accountant:
- ___ Most recent 30 day complete bank statement:
- ___ Copy of rental/lease agreement:
- ✓ Copy of divorce decree/child support agreement: Separation agreement
- ___ Letter explaining credit issue(s):
- ___ Copy of executed purchase contract:
- ✓ Copy of cancelled earnest money check: front & back
- ___ Copy of builder contract/building plans:
- ___ Completed gift letter:
- ___ Homeowners insurance quote & declarations page:
- ___ Copy of most recent property tax statement:
- ___ Copy of deed:
- ✓ Completed disclosures/redisclosures: Sent 12/6/12
- ___ EAL: Leave Open ___ Close EAL ___ Open New EAL $ ___
- ___ Other:
- ✓ Other: Letter explaining what you'll do with Cady Dr property
- ___ Other:
- ✓ Other: Signed Connect extension
- ___ Other:
- ___ Appraisal Type: 1004

Best contact method: Phone ___ E-Mail ___
Home ___ Work ___ Cell ___ # 574-6956 dd
Email Address: doreen.cross@tridenttech.edu

Please return these documents to the First Federal's Corporate Center:
First Federal 2440 Mall Dr Charleston, SC 29406 Attn: Mortgage Processing Team #1

ATTACH. # 2

First Federal

Date: December 12, 2012

Borrower: DOREEN C CROSS
Co-Borrower: STEPHEN C DUDEK
Address: 236 CADY DRIVE
SUMMERVILLE SC 29483

Loan # 7100323356
Subject Property: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

First Federal is pleased to inform you that your loan application has been approved contingent upon the terms and conditions listed below:

TERMS:

Type of Loan: CONV FIXED
Loan Amount: $242,400
Monthly Payment excluding escrow: $1,122.60
Interest Rate Lock Expiration Date: 02/03/13

Interest Rate: 3.750%
Term in Months: 360

TITLE TO PROPERTY:

The listed Mortgagor(s) will take title to the property as follows:

DOREEN C CROSS

STEPHEN C DUDEK

REQUIRED INSURANCE:

Hazard Insurance Coverage: Full replacement cost or 100% of the insurable value.
Flood Insurance Coverage, if required: Full replacement cost or 100% of the insurable value.

Flood Insurance required: NO **Flood Zone:** X

Contact your insurance company and apply for your insurance immediately. Fax a copy of the policy declaration page which lists the amount and type of coverage as well as the deductible. The name of the insured should read the same as the title to the property. The mortgagee clause should also be listed as follows:

Loan Number: 71003233[illegible]6
First Federal Bank, its successors and/or assigns - ISAOA
As their interest may appear - ATIMA
P O Box 5942
Troy, MI 48007-5942

CONDITIONS:

Please provide all the conditions below within 3 business days of receipt of this approval letter.

1. This commitment is being issued subject to the receipt and review of an appraisal prepared for and ordered by First Federal. This appraisal *must* have a value after review of no less than $303,000. Should the appraisal review discover any adverse conditions that may affect the property to be used as collateral, the terms and conditions of this loan request may change subject to the aforementioned appraisal review.
2. The attached flood certification must be signed, dated and returned by fax or mail.
3. First Federal to request IRS transcripts for the last 2 years - Receipt & review of these transcripts.
4. FIRST FEDERAL TO OBTAINA VERBAL VERIFICATION OF EMPLOYMENT PRIOIR TO CLOSING.
5. PLEASE PROVIDE ALL FIRST FEDERAL DISCLOSURES SIGNED AND DATED.
6. LEGIBLE COPY OF THE SALES CONTRACT ALL ADDENDUMS.
7.
8.
9.
10.

NO closing DATE SET AS per 12-21-12

CLOSING ATTORNEY:

Your attorney will be contacted upon receipt and review of above conditions. At that time, you will be notified to schedule your closing.

Thank you for choosing First Federal as your lender. If you have any questions prior to closing, please feel free to contact me.

MADDY MCWHIRTER
mmcwhirter@firstfederal.com
Telephone: 843-529-5659
Fax: 843-737-7251
Toll Free: 800-768-3248
P. O. Box 118068
Charleston, SC 29423-8068

APPRVL
Rev 9/12

ATTACH. #3

First Federal

W12AW08756

Date 01/03/2013

DOREEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

Re: Request for additional information

Dear Applicant(s):

Thank you for trusting us with your residential loan application.

As discussed during the application process, we require all necessary loan documents within 10 days of your initial application. As of today, First Federal has not received all the requested documents. We are missing the following items:

1. PLEASE PROVIDE A SALES CONTRACT EXTENSION SIGNED BY ALL PARTIES.
2. FIRST FEDERAL TO OBTAINA VERBAL VERIFICATION OF EMPLOYMENT PRIOIR TO CLOSING.
3.

Please fax or drop off these documents at any one of our convenient locations.

We must receive all the above documentation within 10 days from the date of this letter. Otherwise, First Federal will regrettably be unable to give further consideration to your credit request and any corresponding interest rate lock agreements. Should you decide at a later date to furnish the above items, we can assist you with a new application.

Please call me with any questions. My contact information is shown below. I look forward to providing you with your home financing.

Sincerely,

NMLS Registry #000000607897

ATTACH. # 4

Memos for Loan: W12AW08756
Generated on 01-31-2013 at 11:07:43

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 1:36:21 PM MADDY: PLR LOAN STILL TO TO BE REVIEWED BY UW ONCE ITEMS ARE RECIEVED:
1. CONTRACT WITH ADDEMS 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 VOE LABLES. 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 COMPLETLY 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.

Second Review Sheet
Use for loans only going to Second Review or Loan Committee

DU Finding results:

Applicants Name: DOREEN C CROSS
STEPHEN C DUDEK

Product Type: CONV Purchase

Primary Investor or Second Home Limited or Cash out $_____

Loan Amount Requested: $ 242,400

LTV: 80.00 Ratios: 0: 13 / 29 Credit Score: 803 / 697

(B) Job: Position: INSTR TECH YRS: 12

(Co-B): Position: TECHNICAL SERVICES NETWOR YRS: 0

Assets Required: _____ Remaining: _____

Recommendation/Comments by Processor: _____ Date: _____

Compliance Auditor, Underwriter or Designee Section - Based on the facts above:

_____ loan is NOT approved, but granted permission to continue processing.

✓ loan is declined (use same denial reasons as the Adverse Action Form):

10 day letter no response

UNDERWRITER: [signature] DATE: 1/23/13

Second Review: Reviews files upon request along with ALL files with low to moderate income, single female, minority or FHA, VA and USDA loans.

I AGREE or DISAGREE with the original denial decision.

Committee Meeting Date: 1-30-13

Committee: [signature] [signature] [signature]

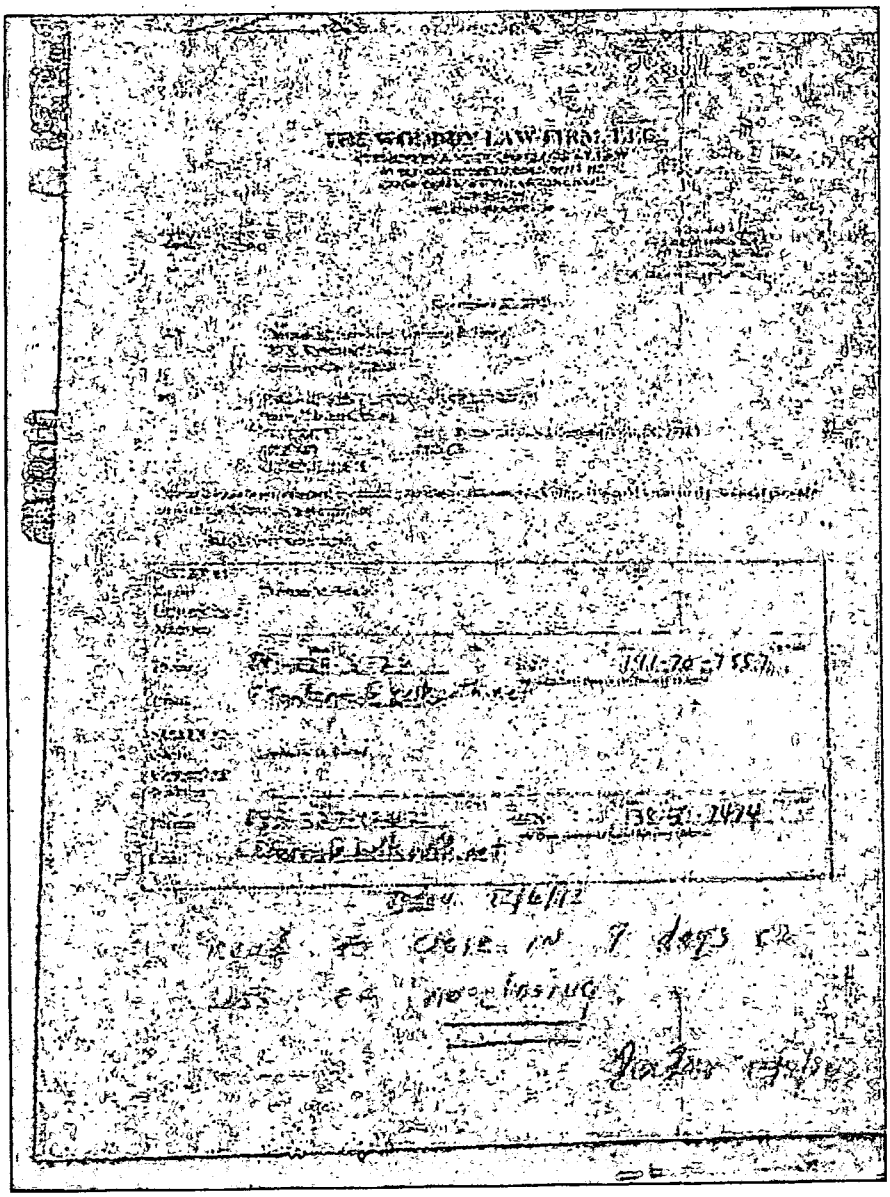
Loan Committee, when requested by Second Review

Decision: _____ Date: _____

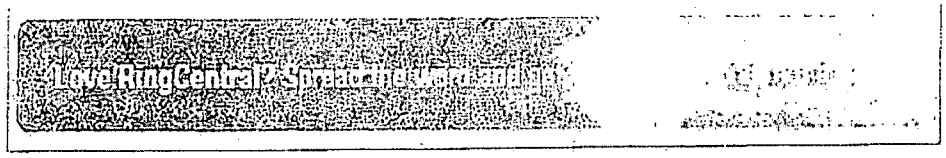
Signature Signature Signature

SECREV
8/12

ATTACH. #5



ATTACH. #6



--
Rick
843-327-3017
Charlene
843-327-3018
843-971-4002

18438813856-1216-133033-442.pdf
35K

Susan Nicholson< snicholson@carolinaone.com> Sun, Dec 16, 2012 at 6:09 PM

To: Rick Willis <rwillisteam@gmail.com>

Rick,
I'm confused about this whole thing. As of late yesterday I received the banks requested new documentation signed by your clients, this morning I received the HVAC receipt, and now I'm receiving a cancellation with the contract; what is going on? The Buyers did everything they were asked to do with the lender. The entire process was held up because of waiting on the the recorded new survey. Further more the CL100 still has not been cleared for closing as I have been trying to get documentation from your clients for well over a week. Your clients were adamant that the CL100 was clear and when we finally received a copy of the CL100 it wasn't. Also, we are still waiting on the bathroom leak to be cleared. We expressed clearly that we needed the new recorded subdivided plat so the bank could proceed with everything else. The Buyers made application and supplied requested documentation from the lender in a timely manner from the time we ratified the contract. The contract clearly states that there is a 15 day extension, if at no fault of the buyer or seller, to close which would bring us to the 15th of December. We have everything we need to close hopefully this week pending the title work is clear from the closing attorney. We will have a problem with the Buyer if this doesn't close. I will consult with my Broker to discuss this and get back to you.
Susan Nicholson

On Tue, Jan 15, 2013 at 9:09 AM, Joseph K. Qualey <joequaley@qlawfirm.com> wrote:

Mr Ferro we discussed this matter on thursday and you indicated you were moving forward to secure another Contract and that you did not

intend to sell to the present Buyers.

I told you that their atty may file a Lis Pendens to attempt to stop any such sale .

Pls see attached Lis Pendens which was in fact filed.

Sincerely,

Joe Qualey

Joseph K. Qualey
23 Broad Street
Charleston, SC 29401
O: 843-577-3434
F: 843-577-2241
C: 843-693-3434
joequaley@qlawfirm.com

1/18/2013

ATTACH. 48

Fw: Dudek/Cross

To: 'molly morphew' <firegirl0926@yahoo.com>
Cc: John A. Massalon <jmassalon@wmalawfirm.net>
Sent: Thursday, March 21, 2013 11:19 AM
Subject: RE: Dudek/Cross

Good afternoon, Molly. We met with David earlier today. In short, Dudek and Cross' position remains that they were ready to close and that the Farro's lack of a clean CL-100 is the reason the closing still hasn't taken place. To evidence this, David produced a letter from First Federal stating it would loan them approximately $240K to buy the home, but we believe there are still many short comings in their position because the letter contained conditions that Dudek and Cross did not timely satisfy.

If you want to chat about this, I'm in the office today, but I'll be in Greenville tomorrow. You can always catch me next week. In the meantime, we need to get to work on answering their discovery requests which are attached to this email. Let's set a time next week to chat about them.

Thanks,

Ryan

ATTACH. # 9

[redacted]

John A. Massalon

Mar 18, 2013

To molly morphew, Ryan Neville

Molly:

We received a response from First Federal which essentially said that it has no loan file for Dudek/Cross. I will get my associate Ryan to send you that response.

I spoke briefly with David Collins on Friday. We had a mediation in another case. He says that his clients had loan approval, but couldn't close because they never got CL-100. I told him that our info was different. Again, he said that he would sit down with me this week to discuss and compare documents. We will continue trying to get that meeting set up.

JM

ATTACH. # 1c

Email from Rick Willis to Joe Qualey - Thurs 1-17-13

Joe,

Attached you will find additional documents that were received by the sellers of 788 E. Butternut on Tuesday, January 15.

Additionally, you will find a copy of a communication I am entitled to ask the lender of the buyers (Not yet sent...but perhaps if it were sent to the attorney representing the contract purchasers it might produce some questions for their attorney to ask the buyers.)

I believe the answers to these questions would reveal that the contract purchasers did not comply with the contract which states buyers shall **"diligently pursue the application...And buyer also agrees to provide all documents or information requested by the lender company in a prompt and timely manner...Buyer will take any action that is needed or requested by lender to process the loan application...If buyer fails to comply with these above contingencies, buyer shall be in default of this agreement and subject to the terms of Paragraph 16".**

Joe, as you stated to me weeks ago Paragraph 16 does not have a right to cure provision.

Additionally...You told me the buyers attorney believes his clients contract is valid because the seller did not provide a CL-100 Clearance Letter in timely manner.

With respect to the paragraph dealing with the CL-100 which is paragraph 19d, the seller fully complied with this.

The contract called for the CL-100 to be done on or before November 30, 2012...which was done.

The paragraph further states that..."**If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, seller shall remedy such deficiencies subject to Section (E) below, and shall furnish buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.**"

As you can verify from the lenders approval letter there was not as a condition of loan approval a requirement to show the lender any verification of repair of damage.

It is customary and normal that such verification be provided on or before closing and would have been provided on or before closing and would have been provided to either the lender or closing attorney at the time of the closing...as per the contract.

Joe...I wanted you to have this information to review prior to our 10:00 a.m. meeting tomorrow.

the survey done and recorded. So we couldn't do anything before that. She had everything else from me, and she said most deals go south when you are trying to negotiate repairs if there is a lot of them. If there is a lot of things going on, that is when most deals go south. She suggested that I wait until I started seeing that the seller was serious in giving me what I was actually asking for and what he said he would do before I told her to go ahead, and I agreed with her.

Q. That is something that you and your mortgage officer agreed on?

A. Yes.

Q. The Ferros did not agree to that?

A. The Ferros --

Q. Meaning the Ferros weren't part of that, and they said --

A. The Ferros said that they were going to get me the receipts done by a qualified licensed contractor, and that didn't happen, and so I was waiting until I was actually satisfied that something was being repaired properly. Mr. Ferro was repairing the electrician's work by himself, and that kind of scared me.

Q. My question is, when you and your loan

officer got together and said, okay, let's not process this loan application until you are satisfied that this seller is going to make the repairs you want him to, and you agreed with that, the Ferros were not part of that discussion and did not agree to that, right?

A. No, this was between me and my loan officer. She was giving me her expert advice, and the Ferros, when they signed the contract, I expected that they intended to do what they said they were going to go.

Q. Gotcha. Now, did you ever get a copy of the appraisal?

A. I did.

Q. Okay. Do you have that with you?

A. No, I do not.

Q. Would you mind putting that on your list? So that would be "let's go" e-mail on December 3rd, and the copy of the appraisal. What was the appraised value you got?

A. Three hundred and forty thousand.

Q. And do you know when or about when you got that?

A. I got that on December 14th.

Q. Does it indicate -- or do you remember

ATTACH. #12

QUALEY LAW FIRM

23 BROAD STREET
CHARLESTON, SC 29401

JOSEPH K. QUALEY
joequaley@qlawfirm.com

PHONE: (843) 577-3434
FACSIMILE: (843) 577-2241

December 24, 2012

VIA E-MAIL and US-MAIL
Susan Nicholson
Carolina One Real Estate
1530 Trolley Road
Summerville, SC 29485
snicholson@carolinaone.com

Re: 788 E. Butternut
Stephen Dudek and Doreen Cross

Dear Ms. Nicholson:

I have conducted a thorough review of the Agreement to Buy and Sell Real Estate in the above matter.

Since the Closing did not occur within the required time period (Time being of the Essence), this Contract is null and void.

It is my understanding that a Release was previously furnished to you for your clients' signature. Please return a signed copy to me on or before 3:00 pm on Thursday, December 27, 2012 . The Sellers will then sign thus allowing a return of your clients' Earnest Money Deposit.

Many thanks and I look forward to receiving the Release.

Sincerely,

J. K. Qualey

Joseph K. Qualey

JKQ/abr

cc: Rick Willis (Via e-mail only)

ATTACH. # 13

PALMETTO Exterminations Inc.

Wood Infestation Report



788 E.Butternut Rd., Summerville, SC 29483

11/30/2012

WOODIE@HSCAP.COM

PALMETTO EXTERMINATORS, INC.

CL-100 Graph

customer name: TOM FERRO

job address: 738 E. BUTTERNUT RD

city, state, zip: SUMMERVILLE, SC, 29485

inspector name (print): KYLE DEMERY

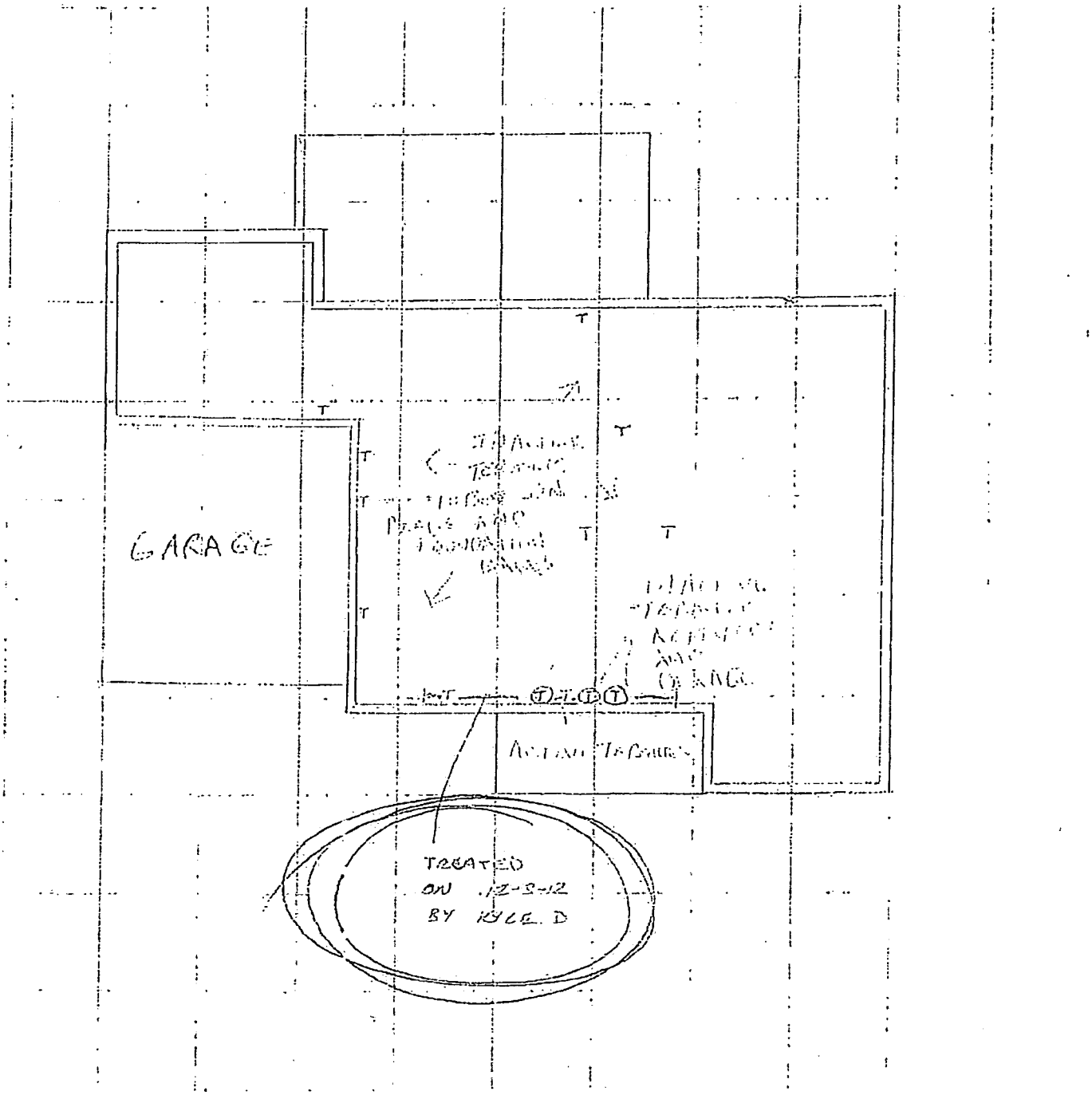
date: 11-29-12

Sq.Ft. 3300 APPX. Ln.Ft 260

Wood Moisture Content: 14-16 %

CONST. TYPE	FOUND. PIERS	FOUND./WALL	EXTERIOR
Crawlspace	Concrete	Concrete	X Brick
Basement	H. Block Open	H. Block Open	Stone
X Slab & Crawls.	X H. Block Cap	X H. Block Cap	Stucco
Slab (type)	Brick	Sgle Brick	H. Board
Floating	Stone	Dble Brick	Wood
X Supported	Wood	Tple Brick	Vinyl
Monolithic	Other	Other	Other

Wood/Ground Contact	Yes	X No	Slab air ducts	Yes	X No
Crawlspace Insulation	X Yes	No	Frame Insulation	Yes	X No
Vapor Barrier	X Yes	No	Foam/Ground Contact	Yes	X No



KEY

www.palmettoexterminators.net

ATTACH. # 4

From: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Monday, December 03, 2012 8:46 AM
To: Cross,Doreen; Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63300
Subject: Fwd: 788 Buttermut

Just received the below email...Susan
ATTACHMENT [18439813856-1203-042437-422.pdf]

Susan,
Please find attached the addendum and the receipt for septic evaluation.
CL-100 and plumber analysis will be ready for you later today.
Please get appraisal done asap or we will loose this deal by default from the time taking so long.
As you can see the sellers are getting their responsibilities taken care of
Rick

From: RingCentral <notify@ringcentral.com>
Date: Mon, Dec 3, 2012 at 7:24 AM
Subject: New Fax Message from (843) 881-3856 on 12/03/2012 at 04:24 AM
To: Fax <rickwillis8@yahoo.com>

You Have a New Fax Message

From:	(843) 881-3856
Received:	Monday, December 03, 2012 at 04:24 AM
Pages:	2
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*.

From: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Monday, December 03, 2012 9:00 AM
To: Cross,Doreen; Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63300
Subject: Fwd: QUOTE NEEDED ASAP!

Electrical work info...
Susan,
Please see the attached [788 E. Buttermut.pdf] paid invoice for work complete at E. Buttermut. Thanks for everything!!
Nels

On Mon, Dec 3, 2012 at 10:57 AM, Cross,Doreen < Doreen.Cross@tridenttech.edu> wrote:
Have you heard from Tim on the specific items estimate? Do you know the story of the gutters and sand yet? Thanks, -Doreen [6956]

From: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Monday, December 03, 2012 11:11 AM
To: Cross,Doreen
Cc: Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 6330
Subject: Re: 788 Buttermut

Hey. No I haven't received the CL100 to see if they put something on that about the gutters and sand or if they just did it according to what you requested on the repair addendum. They said I'll have the CL100 later today. I've been trying to get a hold of Tim but I'm not waiting on him. I have another contractor going out there to give me an estimate and will get that to you soon. As for the damaged bathroom floor the sellers are not wanting to do anything with that so I am getting a contractor to look at that to see what needs to be done to make the repairs to the damaged floor and if it's under $500 I will pay to have that done for you. I usually give closing gifts so I thought I would cover that since we are pretty much down to that. I think the sellers have been very serious about doing what is necessary within reason to close do you feel comfortable to have the mortgage company do what they need so we can close? 1 2 3
Thanks, Susan

From: Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 6[illegible]220
[mailto:stephen.c.dudek.ctr@navy.mil]
Sent: Monday, December 03, 2012 11:20 AM
To: Cross,Doreen
Subject: RE: 788 Buttermut
My personal concern is the water damage from the bathroom. All else is OK. Again this is my stance and does not imply what some else may or may not say...

On Dec 3, 2012, at 3:22 PM, "Cross,Doreen" < Doreen.Cross@tridenttech.edu> wrote:
I agree with Stephen. I contacted First Federal this morning to move forward. I received an OOO that my agent is in training through tomorrow. -Doreen
I signed the Addendum 3 and sent it to Stephen. 4

From: Susan Nicholson [mailto:snicholson@carolinaoneplus.com]
Sent: Monday, December 03, 2012 4:13 PM
To: Cross,Doreen
Cc: Susan Nicholson (snicholson@carolinaong.com); Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220
Subject: Re: 788 Buttermut

Sounds good. I'll get the contractor to evaluate and see what is needed for the bathroom issue. We really need to get with first federal hopefully they will call you back. She did tell me that all they needed was your ok and the appraisal fee which you could pay by credit card to get it ordered. Let me know if you get with her and I'm still working on the other reports and estimates. Steve I just need the addendum back from you so I can forward to the sellers. Thanks, susan 5

Sent from my iPhone

(4)

--
Rick
843-327-3017
Charlene
843-327-3018
843-971-4002

18438813856-1203-042437-422.pdf
61K

Susan Nicholson< snicholson@carolinaone.com> Wed, Dec 5, 2012 at 2:56 PM
To: Rick Willis <rwillisteam@gmail.com>, RICK WILLIS <rick@rickwillis.com>

Hey,
Attached is the addendum to the extension As I explained to the sellers last night about how the appraisers work with the new regulations we are not allowed to contact them or even pick out which one we want to use. The bank can't give us an exact date to close but said we can close on or before the 28th. They will do everything they can to expedite so we can close sooner but they recommend to keep the date how I have it on the addendum because they don't want to miss another deadline. Also, I just got a copy of the CL100 report and it states that there is termite damage to the subfloor in the front of the house. Did that get repaired? The bank is requiring that it gets repaired to clear the report which will need to be done by a certified licensed contractor. If there is a color pic of the damage to send please send me it, the copy I have didn't come out very good. Please let me know the status of that so we don't have any further delay.
[Quoted text hidden]

---

addendum3sign120412.pdf
333K

DOESN'T SAY BANK MUST HAVE CL-100 prior TO closing... iT ONLY MUST be cleared BY closing As Per The purchase Agreement

ATTACH #16

13

Info Request

Cross/Dudek and 788 East Butternut

Doreen Cross and Stephen Dudek (the Buyers) are requesting this information to provide to the attorney handling our case.

1 On what date did buyers apply for the loan?

12/05/2012

2 On what date did you provide buyers with written satisfactory loan approval that contained no credit, income, or asset conditions?

12/12/2012

3 On what date did buyers apply for the loan?

12/05/2012

4 Did your loan approval letter make any written request as to CL-100 issues?

NO

5 On what date did you initially pull buyers credit report?

12/05/2012

6 On what date did you request buyer's confirmation of employment?

12/06/2012

7 On what date did you receive all information needed for buyer's verification of employment and income?

12/06/2012

8 On what date did each buyer provide you with copies of their tax returns for 2010 and 2011?

12/06/2012

9 On what date did buyers provide you with copies of their bank statements, W-2'S, pay stubs and or 1099's.

12/06/2012

10 How many times and on what dates did you have to ask buyers to get additional information to you?

12/7/2012 - REQUEST - LEGIBLE PAGES CONTRACT - CLEARED ON 12/20/2012

11 On what date was the appraisal ordered?

12/06/2012

12 Were buyers requested to pay in advance for the appraisal prior to it being ordered?

[redacted]

13 If buyers were requested to pay for the appraisal prior to closing when did they write the check and authorize you to order it?

[redacted]

12/05/2012

14 When did you submit your loan documents for the underwriter's approval?

[redacted]

12/17/2012

15 Is your firm a mortgage brokerage firm or mortgage banker?

[redacted]

MORTGAGE BANKER

16 When did you receive all information or documents request from the buyers?

[redacted]

12/20/2012

17 Do you fund or close loans internally?

[redacted]

BORROWER DESIGNATES AN ATTORNEY TO CONDUCT CLOSING

18 When was the title work ordered?

[redacted]

12/17/2012

19 When was title work completed?

[redacted]

UNKNOWN. DOCUMENTS ARE SENT TO CLOSER WHEN CLOSING IS SCHEDULED. PLEASE REFER TO BUYERS CLOSING ATTORNEY

20 When was the soonest date you and closing attorney were prepared to close?

[redacted]

CLEARED TO CLOSE ON 12/20/2012 WITH A PRIOR TO CLOSE CONDITION OF A VERBAL RE-VERIFICATION OF EMPLOYMENT THAT COULD NOT BE COMPLETED UNTIL JANURARY 4TH DUE TO HOLIDAY CLOSING OF SCHOOL DISTRICT ADMINISTRATIVE OFFICES

21 Did you ever receive a "clear to close" notice? If so, on what date?

[redacted]

FIRST FEDERAL DOES NOT HAVE A CLEAR TO CLOSE NOTICE

ATTACH. # 17

First Federal

Date: December 12, 2012

Borrower: DOREEN C CROSS
Co-Borrower: STEPHEN C DUDEK
Address: 236 CADY DRIVE
SUMMERVILLE SC 29483

Loan # 7100323356
Subject Property: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

First Federal is pleased to inform you that your loan application has been approved contingent upon the terms and conditions listed below:

TERMS:

Type of Loan: CONV FIXED
Loan Amount: $242,400
Monthly Payment excluding escrow: $1,122.60
Interest Rate Lock Expiration Date: 02/03/13

Interest Rate: 3.750%
Term in Months: 360

TITLE TO PROPERTY:

The listed Mortgagor(s) will take title to the property as follows:

DOREEN C CROSS
STEPHEN C DUDEK

REQUIRED INSURANCE:

Hazard Insurance Coverage: Full replacement cost or 100% of the insurable value.
Flood Insurance Coverage, if required: Full replacement cost or 100% of the insurable value.

Flood Insurance required: NC Flood Zone: X

Contact your insurance company and apply for your insurance immediately. Fax a copy of the policy declaration page which lists the amount and type of coverage as well as the deductible. The name of the insured should read the same as the title to the property. The mortgagee clause should also be listed as follows:

Loan Number: 7100323356
First Federal Bank, its successors and/or assigns - ISAOA
As their interest may appear - ATIMA
P O Box 5942
Troy, MI 48007-5942

CONDITIONS:

Please provide all the conditions below within 3 business days of receipt of this approval letter.

1. This commitment is being issued subject to the receipt and review of an appraisal prepared for and ordered by First Federal. This appraisal *must* have a value after review of no less than $303,000. **Should the appraisal review discover any adverse conditions that may affect the property to be used as collateral, the terms and conditions of this loan request may change subject to the aforementioned appraisal review.**
2. The attached flood certification must be signed, dated and returned by fax or mail.
3. First Federal to request IRS transcripts for the last 2 years - Receipt & review of these transcripts.
4. FIRST FEDERAL TO OBTAIN VERBAL VERIFICATION OF EMPLOYMENT PRIOIR TO CLOSING.
5. PLEASE PROVIDE ALL FIRST FEDERAL DISCLOSURES SIGNED AND DATED.
6. LEGIBLE COPY OF THE SALES CONTRACT ALL ADDENDUMS.
7.
8.
9.
10.

no "CL-100" mentioned

no closing date set as per 12-21-12

CLOSING ATTORNEY:

Your attorney will be contacted upon receipt and review of above conditions. At that time, you will be notified to schedule your closing.

Thank you for choosing First Federal as your lender. If you have any questions prior to closing, please feel free to contact me.

MADDY MCWHIRTER
mmcwhirter@firstfederal.com
Telephone: 843-529-5659
Fax: 843-737-7251
Toll Free: 800-768-3248
P. O. Box 118068
Charleston, SC 29423-8068

APPRVL
Rev 9/12

(Ferro Depo) PLAINTIFF'S #18

Q. All right. Would it be fair for me to understand that when you got the CL-100 report, you didn't really have any concerns about it, what you were doing when you raised concerns about the CL-100 report not being clean were just telling the Ferros what the bank and the closing attorney told you?

A. Of course I have concerns about termites in the house I am going to buy.

Q. And that's what I am trying to get at. I want to know what you were worried about about the CL-100, not what the bank was worried about, not what the closing lawyer was worried about, but when you got the CL-100 --

A. I wanted to make sure that the bank and the closing attorney have what they needed to move forward.

Q. And if the bank and closing attorney said this was good, you were A-okay with it?

A. I was all right.

Q. And so what you were just concerned about was getting what you needed to satisfy the bank and the closing lawyer?

A. Because I knew that the bank and the closing attorney were taking care of those things.

Q. Okay. But other than that, you weren't worried about what the CL-100 said or didn't say?

A. Of course I was.

Q. That's what I want you to tell me then. What were you worried about other than what the bank may have been telling you to worry about or the closing lawyer may have been telling you to worry about?

A. Just that it was clear and it was ready to move forward.

Q. And clear meaning what?

A. Two things.

Q. Okay.

A. One of them, that the termites were no longer living.

Q. All right.

A. And the second, that any damage that they had done to the home was repaired.

Q. Okay. Now, is it your testimony that the contract you had with the Ferros required them to repair old termite damage?

A. It is my understanding that they had to provide a clean CL-100, meaning that those repairs, if there was damage, had to be looked at by a contractor, and the exterminators could not do

ATTACH. #19

First Federal

October 22, 2012

Doreen Cross & Stephen Dudek

Dear Doreen & Stephen,

You have been pre-approved for a purchase price of $295,000.

Approval is contingent upon receipt of an acceptable appraisal and loan documentation for credit review, provided that verifies the income and/or assets stated on your loan application, as well as receipt and review of any other documentation that may be requested by First Federal.

I look forward to working with you during your home financing process. If you have any questions, please feel free to call me.

Sincerely,

Allison Williams
Mortgage Loan Officer
690 Bacons Bridge Rd.
Summerville, S.C. 29485
843-529-5894
843-875-1338 (Fax)
NMLS ID #607897
awilliams@firstfederal.com
www.firstfederal.com/allison

EXHIBIT
Plf. 2
Cross
6/12/13 APH

ATTACH #20

First Federal Mortgage Cost Breakdown

Client:	Doreen Cross		**Date:**	10/22/2012	
Loan Officer:	Allison		**Zip Code:**		
NMLS #:	607897	**Loan Type:** Conv Fixed	**Int Rate**	3.750%	**Term** 30

Loan Amount			Estimated Monthly Payment	
SALES PRICE/PROPERTY VALUE		$ 295,000.00	Monthly P&I	$1,092.95
Down Payment	20.00%	$ 59,000.00	Monthly PMI/MIP	$ -
Base Mortgage		$ 236,000.00	Hazard Ins Escrow	$ 200.00
Financed PMI/VA FF/MIP		$ -	Tax Escrow	$ 150.00
Total Mortgage		$ 236,000.00	Flood	$ -
			Wind and Hail	$ -
			Monthly Payment	$1,442.95

Closing Costs		
1.00%	*Origination Fee*	$ 2,360.00
0.00%	*Discount Points ($ applicants portion + $ sellers portion)*	$ -
0.00%	*Temporary Buydown Points*	$ -
Underwriting Fee		$ 600.00
Appraisal Fee (see internal sheet for quote)		$ 375.00
Credit Report ($30 joint/$20 individual)		$ 60.00
Flood Cert		$ 12.00
Property Tax Service Fee		$ 64.00
Employment Verification Fee		$ -
Attorney's Fees		$ 400.00
Title Insurance (Lender's)		$ 750.00
Title Insurance (Owner's)		$ 100.00
Recording Fees		$ 55.00
Survey/Situation Plat (see internal sheet for quote)		$ -
Termite Inspection		$ -
Power of Attorney (Atty Prep Fee)		$ -
Deed Prep (if title is changing at closing)		$ -
Transfer Tax (HHI & GA Purchase Transactions)		$ -
Subordination Fee (If a 2nd mortgage needs to be approved by lienholder)		$ -
Home Inspection Fee (Purchase loan only)		$ -
Home Warranty (Purchase loan only)		$ -
SC Deed Stamps (Purchase Only: $3.70 per $1,000/$1.85 per $500 of purchase price)		$ -
TOTAL COSTS TO BE PAID PRIOR TO OR AT CLOSING		$ 4,776.00

Prepaid Expenses							
Interest at	$ 24	per day	15				$ 363.70
PMI/MIP Not Financed (single payment or first year's premium)							$ -
Hazard Insurance Premium							$ 2,400.00
Flood Insurance							$ -
Wind and Hail Insurance							$ -
Hazard Insurance Escrow:	2	months @	$ 200.00	per month			$ 400.00
PMI/MIP Escrow:	2	months @	$ -	per month			$ -
Flood Insurance	2	months @	$ -	per month			$ -
County Property Taxes:	2	months @	$ 150.00	per month			$ 300.00
Wind and Hail Escrow:	2	months @	$ -	per month			$ -
TOTAL PREPAID EXPENSES TO BE PAID AT CLOSING							$ 3,463.70

Estimated Cash Required to Close	
EST. TOTAL SETTLEMENT COSTS TO BE PAID AT CLOSING	$ 8,239.70
ESTIMATED CLOSING COSTS TO BE FINANCED/SELLER PAID	$ -
SALES PRICE/PAYOFF AMOUNT	$295,000.00
ESTIMATED CASH REQUIRED/REC'D AT CLOSING	$ 67,239.70

This worksheet provides information concerning possible closing costs and fees with a First Federal mortgage loan solution you have inquired about. If you should decide to submit an application to us, we will provide you with the federally required Good Faith Estimate and a Truth in Lending disclosure on the loan solution. Fees listed are approximate and may vary based on loan factors and actual third party charges.

ATTACH. # 21

From: Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Monday, October 22, 2012 2:50 PM
To: Cross,Doreen
Subject: cost worksheet

Hey. This is my first time using this format. This is not a Good Faith Estimate, because we are not permitted to give those until you apply for the loan. This is a "closing cost worksheet". Let me know if you have questions about anything on it. It auto adds these things together & I'm assuming it all works. I'll send over a pre-approval letter shortly. Thanks!

The information in this message, along with any attachments, is confidential and intended solely for the addressee(s). First Federal disclaims any responsibility for the contents of this message and attachments, if any. If you are not the intended recipient of this message, please contact the sender by reply e-mail and destroy all copies of the original message. Unauthorized review, use, disclosure or distribution is prohibited.

Copy of FFcostbreakdown.xls
2/10/2013 1:09 AM, 48.0KB

From: Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Monday, October 22, 2012 2:53 PM
To: Cross,Doreen
Subject: pre-app letter

Hey. Here's the letter. Let me know if you need something different. Keep me posted girl. Thanks! Allison

The information in this message, along with any attachments, is confidential and intended solely for the addressee(s). First Federal disclaims any responsibility for the contents of this message and attachments, if any. If you are not the intended recipient of this message, please contact the sender by reply e-mail and destroy all copies of the original message. Unauthorized review, use, disclosure or distribution is prohibited.

pre-app letter.doc
2/10/2013 1:16 AM, 38.0KB

From: Cross,Doreen [mailto:Doreen.Cross@tridentech.edu]
Sent: Wednesday, October 24, 2012 9:18 AM
To: Williams, Allison
Subject: Offer Accepted

Thanks for sending everything. They accepted our counter-offer of $303,000 and buyer's closing costs not to exceed $5,000; so basically $298k. The sellers want to close by the end of November. No, the land hasn't been surveyed or split up yet. Still one TMS. They are supposed to be working on this ASAP. You will be setting up the appraisal? I called my insurance company (USAA) and gave them details; they said they would contact you with the information you need. What else do you need from me and Steve? Thanks, -Doreen [574-6956]

From: Cross,Doreen [mailto:Doreen.Cross@tridentech.edu]
Sent: Wednesday, October 24, 2012 10:59 AM
To: Williams, Allison
Cc: 'Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 633CD'
Subject: RE: Offer Accepted

Hi. See inline responses: - Doreen [574-6956]

From:
Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Wednesday, October 24, 2012 10:02 AM
To: Cross,Doreen
Subject: RE: Offer Accepted
Sent:
Wednesday, October 24, 2012 10:02 AM
To:
Cross,Doreen
Subject:
RE: Offer Accepted

Hey. I need a lot from you. I need the signed contract first.
[Susan Nicholson from Carolina One will get this to you ASAP] Are you doing a home inspection? [Yes. Susan is getting estimates right now; this will also happen ASP] I don't really like to start anything until that is done because it can kill the deal if it goes south. [makes sense] Let me know about the inspection... End of November closing may be ok if all other things go smooth. I'm not sure how the appraiser can do the appraisal if the TMS #'s aren't separated. I think that could be a big problem and delay the transaction. I have a feeling he won't be able to do it until the property is divided. [I feel you're probably right. Are you going to check with an appraiser to make sure?] Tell me about the inspection and we'll go from there. [Will do.] Thanks again.

From: Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Wednesday, October 24, 2012 12:23 AM
To: Cross,Doreen
Subject: Offer Accepted

...I going to try to find out about the appraisal issue. I emailed someone here at the bank & haven't heard yet. Do the inspection asap & if all goes well with that, we'll continue... I just wonder how long it will take that man to separate that property thru the county. It has to be approved by them before he can do it and I think he has to have the survey done to submit the request to the county... Hopefully, he's done his homework...

ATTACH. #22

mos for Loan: W12AW08756
Generated on 01-31-2013 at 11:07:43.

1/23/2013 10:40:39 AM MARGIE: PLL; FILE TO 2ND REV--SINGLE FEMALE--DECLINE FOR INCOMP APP

1/25/2013 1:25:26 PM KAY: PLR RECEIVED A REQUEST FROM THE SELLING AGENT FOR SPECIFICS ABOUT WHEN FILE WAS RECEIVED, APPROVED, WHEN SHE MADE APPPLICATION ETC... I HAVE CALLED MRS. CROSS TO ASK IF THE BORROWER WANT ME TO PROVIDE THE LISTING AGENT. IF SO,
NEED STATEMENT IN WRITING.

1/29/2013 8:14:25 AM KAY: PLR NO RETURN CALL FROM BORROWER. FILE IS GOING BACK TO MARGIE FOR SECOND REVIEW.

1/29/2013 4:41:56 PM KAY: PLR BOLROWER CALLED ME BACK. GOT MY VOICE MAIL..I LEFT HER ANOTHER VOICE MAIL.

1/30/2013 8:22:59 AM KAY: PLR BOLROWER CALLED ME BACK AND REQUESTED THAT I EMAIL HER THE QUESTIONS THAT WERE BEING ASKED FROM THE SELLING AGENT. I DID AT 08:20AM TODAY.

1/30/2013 9:57:20 AM KAY: PLR BOLROWER EMAILED ME THE NAME OF HER ATTORNY...DAVID A COLLINS 818-760-0220 AND ASKED ME TO DIRECT ALL QUESTIONS THUR HER ATTORNEY.

1/31/2013 11:05:44 AM MARGIE: PLL; REC'D FILE FROM 2ND REV; LETTER AND REFUND CK MAILED TODAY; FILE TO W/R STOLAGE DRAWER

ATTACH. H 23

Underwriting Approval Conditions

Loan Officer: WILLIAMS, ALLISON 10334
MLA/CAM: MADDY MCWHIRTER
Underwriter: SANDI

Permanent Loan #: 7100321536
FF Loan ID: W12AW08756
DU/LP#: 1073356662
FHA/VA#:
Broker Name:
Application Date: 12/5/12

Borrowers: DOREEN CROSS STEPHEN C DUDEK
Property: 788 E BUTTERNUT RD SUMMERVILLE,SC 29483 County: DORCHESTER

Loan Amt: $242,400	Loan Type: C FIX 1000	LTV: 80.00	Lock Expiration: 2/3/13
Sales Price: $ 303,000	Occupancy: Occupant	CLTV/HCLTV: 80.00 80.00	Est. Close Date: 1/30/13
Appraised Val: $ 340,000	Purpose: Purchase	Cr Score B: 803	Cr Rept Expir: 7/5/13
Land Value: $ 80,000	Interest Rate: 3.750 Term: 360	Cr Score CoB: 697	Verbal Expir:
Simp Sale?: N	Empl Int Rate/P&I:	Housing Ratio: 12.62	Self Emp Verb Exp: N/A
	ADJ Index: Margin:	Debt Ratio: 29.26	Income Expiration: 2/28/13
P & I Pymt: $1122.00	Sp Financ: 127 180	PMI Company:	Asset Expiration: 1/29/13
Escrows Waived N	Code:	PMI Coverage:	Appraisal Expir: 3/9/13
Orig Fee Buyer: $2424.00		PMI/MIP Mthly: 0.00	
Discount Pct: $0.00		PMI/MIP Fin: 0.00	Approval Date: 12/11/12
		VA FF: $0.00	

Note - signed by: DOREEN C CROSS
STEPHEN C DUDEK

Settlement Agent:
AUBREY J WOODDY JR

Mortgage/Title Name: DOREEN C CROSS
STEPHEN C DUDEK

DOREEN CROSS W12AW08756

Request Date	Resp Party	Cleared By ClearDate	Description/Notes
1/18/13	Z2	SANDI 1/18/13	Loan is declined as of 01/18/2013 - INCOMPLETE APPLICATION - NO RESPONSE TO 10 DAY LETTER
12/17/12	Z1	SANDI 12/17/12	Loan Approval as of 12/17/2012 in the amount of $242400). Interest rate is 3.750. LTV is 80% and DTI is 29.262%
12/11/12	Z	SANDI 12/11/12	Loan Approval as of 12/11/2012 in the amount of $242400). Interest rate is 3.750. LTV is 80% and DTI is 28.832%
12/11/12	UW	SANDI 12/20/12	Fully ratified sales contract, including all pages, addenda - MISSING ADDENDUM C; SELLER NAME TO SHOW ON PAGE 1 -with a sales price of 303000.00 NEED ADDENDUM C & SELLER NAMES TO SHOW ON PG 1
12/11/12	UW	SANDI 12/20/12	LEGIBLE COPY OF sales contract, including all pages, addenda with a sales price of 303000.00
12/11/12	UW	SANDI 12/17/12	Satisfactory Appraisal with a minimum value of $303000.00

Y N Y N Y N

12/11/12	PR	MADDY 12/12/12	Evidence 401K/IRA can be liquidated or do not list as an asset REMOVED AND REQUALIFIED WITHOUT ASSET
12/11/12	PR		FG WATCH LIST required for the following participants of the loan: LO, PROCESSOR, UW, LIST AGENT & CO, SELLING AGENT & CO, SELLER 1, SELLER 2, APPRAISER
12/11/12	PR	MADDY 12/12/12	Active clock
12/11/12	PR	MADDY 12/18/12	First Federal Disclosure to be signed
12/11/12	PR	MADDY 12/18/12	Servicing Disclosure to be signed
12/11/12	PR	MADDY 12/18/12	Authorization to Release to be signed
12/11/12	PR		FraudGuard Rescore and check Undisclosed Debt Monitoring
12/11/12	PR	MADDY 1/3/13	TRANSCRIPTS REQUIRED FOR THIS LOAN
12/11/12	PR	MADDY 12/18/12	SIGNED INITIAL APPLICATION TO INCLUDE SUBJECT PROPERTY ADDRESS. WATCH DATES TO MAKE SURE FILE IS IN COMPLIANCE. ONLY APP IN FILE IS THE PREQUAL APP
12/11/12	PR	MADDY 12/18/12	LOCAL EMPLOYER ADDRESS FOR COBORROWER OR CONSIDER COMMUTING COSTS AND UW TO REVIEW

12/11/12	PR		VOE - verbal within 10 days of closing - New BORROWER1/BORROWER2
12/11/12	CL		OCCUPANCY AFFIDAVIT
12/11/12	CL		Final Application (URLA) signed by all Borrowers DOREEN C CROSS STEPHEN C DUDEK
12/20/12	CL		Hold Harmless- SEE REPAIR ADDENDUM TO SALES CONTRACT
12/11/12	CL		Escrow Account: Requested
12/11/12	CL		Drivers License/Patriot Act/W8 BEN
12/11/12	CL		Seller Contributions $5000 of closing costs/prepaids at closing
12/11/12	CL		IRS for 4506T for the following years 2010/2011 1040
12/11/12	CL		FLOOD CERTIFICATION TO BE SIGNED
12/20/12	CL		COPIES OF ALL LICENSED CONTRACTOR LETTERS TO CLEAR THE REPAIR ITEMS REQUIRED BY BORROWER PER REPAIR REQUEST ADDENDUM TO SALES CONTRACT

ATTACH. #24

ADDENDUM ___

© Carolina One Real Estate

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☒ premises --- commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Buttermut Rd

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Due to unforseen circumstances on receiving the recorded plat for the Buyers mortgage company to proceed with Buyers mortgage Seller and Buyer agree to extend the closing date on or before December 28, 2012.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 12/04/2012	Time 12:00 PM
WITNESS:	Date	Time
BUYER: Doreen Grous	Date 12/03/12	Time 3:00 p.m.
WITNESS:	Date	Time
SELLER:	Date	Time
WITNESS:	Date	Time
SELLER:	Date	Time
WITNESS:	Date	Time

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Carolina One Real Estate - Trolley Road 1530 Old Trolley Road Summerville, SC 29485
Phone 843 [illegible] Fax 843 [illegible] Susan Nicholson

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ATTACH. # 25

REPAIR REQUEST PROPOSAL

© Carolina One Real Estate

In reference to [X] AGREEMENT TO BUY AND SELL REAL ESTATE, [__] RESIDENTIAL RENTAL AGREEMENT, [__] COUNTER OFFER, [__] OTHER: _____ covering improvements and the [__] real property, [__] business, [__] premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester State of South Carolina.

The undersigned Parties hereby agree as follows:

1. **REQUESTED REPAIRS:** Buyer/Tenant hereby requests Seller/Landlord to complete the following repairs to the Property (please see attached sheet if checked [X]):

1. Several piers not in use for support visible in crawl space. A certified letter from Structural Engineer satisfied with the construction of this home and is safe and secured. 2. PLUMBING WATER DAMAGE: a. Hallway bathroom tub faucets not properly fitted or sealed to tile. b. Soft areas in drywall along hallway bathroom tub to wall. c. High moisture under hallway tub in crawl space to sub floor appears active leak. d. Grade around home inadequate to drain water from home. Have certified licensed Contractor re-grade proper angle to move water away from home or add gutter and downspouts to redirect the flow of water away from the home. e. Replace missing pipe straps and verify proper placement of pipes in crawlspace. f. Hose valve at rear of home not properly secured. Have certified licensed Contractor to repair or be replaced. 3. Wet areas in crawl space. Consult certified licensed contractor for further evaluation and repair if needed. 4. Termite tubes visible in crawl space. Consult Pest Control Contractor for further complete evaluation. 5. ELECTRICAL: a. Electrical wiring under panel box needs to be in conduit. b. Electrical panel circuits/ breakers not properly labeled. c. Knockouts missing in electrical panel box. d. Several loose electrical outlets and switches which need securing or open boxes. e. Electrical outlets in room over garage bathroom not GFCI protected. f. Switch nonfunctional on whirlpool tub. Have certified licensed electrical Contractor to repair or be replaced. 6. Laundry cabinet loose needs re-securing. 7. UTILITY MAINTENANCE: a. Septic system needs to be services. b. HVAC serviced. 8. CL100: Seller to have a licensed pest company to perform the CL100 with moisture readings. THIS NEEDS TO BE DONE PER OUR CONTRACT.
Buyer hereby removes the home inspection contingency once all repairs are completed.

2. **AGREEMENT:** At such time as Buyer/Tenant and Seller/Landlord agree which of the repairs set forth in paragraph 1 above will be completed, Seller/Landlord shall complete the agreed upon repairs (the "Repairs") at Seller's expense and in a good and workmanlike manner. Repairs shall be requested and completed prior to closing providing reasonable time for inspection and remediation if repairs are not completed in a good and workmanlike manner.

3. **NOTIFICATION AND VERIFICATION:** Seller/Landlord shall notify Buyer/Tenant upon completion of the Repairs prior to closing and provide time for inspection and if necessary, remediation. Buyer/Tenant shall have the right to inspect to verify that the Repairs were completed in a good and workmanlike manner. Inspection shall be at the expense of the Buyers/Tenants.

Buyer/Tenant [_____] [_____] Seller/Landlord [_____] [_____] HAVE READ THIS PAGE

Carolina One Real Estate - Trolley Road 1530 Old Trolley Road Summerville, SC 29485
Phone: 843.491.1815 Fax: 843.202.2169 Susan Nadalson

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ATTACH. #26

First Federal

March 13, 2013

Wills Massalon & Allen LLC
Attn: J Ryan Neville
97 Broad St PO Box 859
Charleston SC 29402

Re: Stephen Dudek & Doreen Cross

Dear Mr. Neville:

I am in receipt of your subpoena of March 4, 2013 on the above referenced client.

Please be advised there are no accounts for this client at our institution. We researched our internal system and Dorchester County Register of Deeds and were unable to locate any loan documents related to the above referenced customers for the specific address and TMS number.

Please contact the undersigned at 843-529-5547 with any questions or concerns.

Sincerely,

Sharon Raye Hester

Sharon Raye Hester
Deposit Operations

First Federal

August 12, 2013

Wills Massalon & Allen LLC
Attn: I Ryan Neville
PO Box 859
Charleston SC 29402

Re: Loan No. 7100323356
Case No. 2013-CP-18-0183

Dear Nr Neville,

I am in receipt of your subpoena of August 1, 2013 requesting information on the above referenced loan.

Please be advised there are no records of any loans with that number at our institution.

Please contact the undersigned with any questions or concerns.

Sincerely,

Judith Ann Clune
Deposit Operations

WMA
WILLS MASSALON & ALLEN LLC

97 Broad Street • Charleston, SC 29401 • Post Office Box 859 • Charleston, SC 29402
Phone: 843-727-1144 • Fax: 843-727-7696 • www.wmalawfirm.net

August 1, 2013

Corporation Service Company
First Federal Bank
1703 Laurel Street
Columbia, SC 29201

RE: Molly M. Morphew v. Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross
Case No.: 20 3-CP-18-0183
Our File No.: 86[illegible]-1

Dear Sir/Madam:

I represent the Plaintiff in the above referenced matter. In regard to that action, I enclose herewith a Subpoena requesting certain documents pertaining to the above referenced matter.

Please forward the reques ed documents by August 15, 2013, along with a certificate stating that the copies are a true, accurate, and complete copy of any and all documents or tangible thing of any description whatsoever, electronic or otherw se, relating in any manner to loan number 7100323356, Doreen C Cross and Stephen C Dudek, 236 Cady Drive, Summerville, SC 29483, 788 E Butternut Rd, Summerville, SC 29483, and/or TMS# 128-00-00-090. I will reimburse you for any reasonable expenses incurred in complying with this request.

If you anticipate that the cost of reproducing the requested documents will exceed $50, please contact me before copying the records. Otherwise, please forward the requested documents to my attention along with an invoice for the copying costs and my firm will reimburse you.

By copy of this correspondence, I am advising all counsel of record that these records have been requested from your office. Also, we request that counsel consider this letter as a supplemental discovery response on behalf of the Plaintiff. Plaintiff reserves the right to use the subject documents at the trial of this action.

Thank you for your attention to this matter. With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC

I. Ryan Neville
rneville@wmalawfirm.net

Enclosures
cc: David A. Collins, Esquire
Ms. Molly M. Morphew
Mr. Thomas Ferro
Mrs. Lorraine Ferro

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF DORCHESTER

Molly M. Morphew, Plaintiff

v. SUBPOENA IN A CIVIL CASE

Thomas Ferro, Lorraine Ferro, Stephen Dudeck Case Number: 2013-CP-18-0183

Pending in Dorechester County

TO: Corporation Service Company, First Federal Bank, 1703 Laurel Street, Columbia SC 29201

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

Any and all documents or tangible thing of any description whatsoever, electronic or otherwise, relating in any manner to loan number 7100323356, Doreen C Cross and Stephen C Dudek, 236 Cady Drive, Summerville, SC 29483, 788 E Butternut Rd, Summerville, SC 29483, and/or TMS# 128-00-00-090

PLACE Wills Massalon Allen, LLC 97 Broad Street, Charleston SC 29401	DATE AND TIME August 15, 2013, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE August 1, 2013

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT/ISSUING OFFICER SIGNATURE DATE PRINT NAME

SCCA 254 (10/04) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

PROOF OF SERVICE

SERVED	DATE 8/1/13	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE 1703 Laurel Street, Columbia, SC 29201	☐YES ☒ NO AMOUNT $
SERVED ON Corporation Service Company: First Federal Bank		MANNER OF SERVICE US Mail
SERVED BY Krystal Parrish		TITLE Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8/1/13

SIGNATURE OF SERVER

97 Broad Street, Charleston SC 29401
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

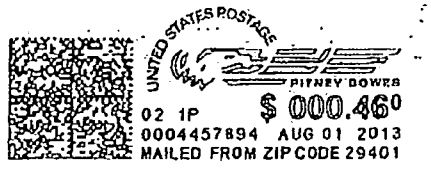
(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

WMA
WILLS MASSALON & ALLEN LLC

Post Office Box 859
Charleston, SC 29402



Corporation Service Company
First Federal Bank
1703 Laurel Street
Columbia, SC 29201

29201+2860

PLEASE SHARE WITH ALL

AGENTS IN YOUR OFFICE

FIRST FINANCIAL HOLDINGS, INC.
P. O. Box 118068 · Charleston, S.C. 29423-8068
(843) 529-5933 · FAX: (843) 529-5883
www.firstfinancialholdings.com

NOTICE OF APPOINTMENT OF REGISTERED AGENT

To Whom It May Concern:

First Financial Holdings, Inc.; First Federal Savings & Loan Association of Charleston; First Southeast Insurance Services, Inc.; First Southeast Investor Services, Inc. and all subsidiaries and affiliates have designated the Corporation Service Company (CSC) as the registered agent in all states in which business is conducted. You are instructed to check the Secretary of State's Corporation Database in your jurisdiction for the specific service address.

SERVICE OF PROCESS WILL NO LONGER BE ACCEPTED AT OUR PHYSICAL BUSINESS ADDRESSES OR OUR MAILING ADDRESSES.

Thank you,

Robert L. Davis
Executive Vice President and
Corporate Counsel

ATTACH. #27

From: Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Monday, October 22, 2012 2:50 PM
To: Cross,Doreen
Subject: cost worksheet

Hey. This is my first time using this format. This is not a Good Faith Estimate, because we are not permitted to give those until you apply for the loan. This is a "closing cost worksheet". Let me know if you have questions about anything on it. It auto adds these things together & I'm assuming it all works. I'll send over a pre-approval letter shortly. Thanks!

The information in this message, along with any attachments, is confidential and intended solely for the addressee(s). First Federal disclaims any responsibility for the contents of this message and attachments, if any. If you are not the intended recipient of this message, please contact the sender by reply e-mail and destroy all copies of the original message. Unauthorized review, use, disclosure or distribution is prohibited.

Copy of FFcostbreakdown.xls
2/10/2013 1:09 AM, 49.0KB

From: Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Monday, October 22, 2012 2:59 PM
To: Cross,Doreen
Subject: pre-app letter

Hey, Here's the letter. Let me know if you need something different. Keep me posted girl. Thanks! Allison

The information in this message, along with any attachments, is confidential and intended solely for the addressee(s). First Federal disclaims any responsibility for the contents of this message and attachments, if any. If you are not the intended recipient of this message, please contact the sender by reply e-mail and destroy all copies of the original message. Unauthorized review, use, disclosure or distribution is prohibited.

pre-app letter.doc
2/10/2013 1:16 AM, 38.0KB

From: Cross,Doreen [mailto:Doreen.Cross@tridentech.edu]
Sent: Wednesday, October 24, 2012 9:18 AM
To: Williams, Allison
Subject: Offer Accepted

Thanks for sending everything. They accepted our counter-offer of $303,000 and buyer's closing costs not to exceed $5,000; so basically $298k. The sellers want to close by the end of November. No, the land hasn't been surveyed or split up yet. Still one TMS. They are supposed to be working on this ASAP. You will be setting up the appraisal? I called my insurance company (USAA) and gave them details; they said they would contact you with the information you need. What else do you need from me and Steve? Thanks, -Doreen (574-6956)

From: Cross,Doreen [mailto:Doreen.Cross@tridentech.edu]
Sent: Wednesday, October 24, 2012 10:59 AM
To: Williams, Allison
Cc: Durlek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 6330
Subject: RE: Offer Accepted

Hi. See inline responses: - Doreen (574-6956)

From:
Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Wednesday, October 24, 2012 10:02 AM
To: Cross,Doreen
Subject: RE: Offer Accepted
Sent:
Wednesday, October 24, 2012 10:02 AM
To:
Cross,Doreen
Subject:
RE: Offer Accepted

Hey, I need a lot from you. I need the signed contract first.
[Susan Nicholson from Carolina One will get this to you ASAP] Are you doing a home inspection? [Yes. Susan is getting estimates right now; this will also happen ASP] I don't really like to start anything until that is done because it can kill the deal if it goes south. [makes sense] Let me know about the inspection... End of November closing may be ok if all other things go smooth. I'm not sure how the appraiser can do the appraisal if the TMS #'s aren't separated. I think that could be a big problem and delay the transaction. I have a feeling he won't be able to do it until the property is divided. [I feel you're probably right. Are you going to check with an appraiser to make sure?] Tell me about the inspection and we'll go from there. [Will do.] Thanks again.

From: Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Wednesday, October 24, 2012 12:23 AM
To: Cross,Doreen
Subject: Offer Accepted

I'm going to try to find out about the appraisal issue. I emailed someone here at the bank & haven't heard yet. Do the inspection asap & if all goes well with that, we'll continue... I just wonder how long it will take that man to separate that property thru the county. It has to be approved by them before he can do it and I think he has to have the survey done to submit the request to the county... Hopefully, he's done his homework...

ATTACH. # 28

From: Cross,Doreen
Sent: Wednesday, October 24, 2012 10:28 AM
To: 'Susan Nicholson'; 'Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63300'
Subject: RE: Updated contract...

ATTACHMENT [recv14645-001_r1.pdf] ⟶ CONTRACT

Here you go; reviewed, initialed, and dated by both of us.

See inline below:

From: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Wednesday, October 24, 2012 9:43 AM
To: Cross,Doreen; Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63300
Subject: Updated contract...

Hey, Attached are the pages that we changed in the original offer. I need you both to review and initial by the X and date it. I need to get this as soon as possible. If it is easier for me to meet with you to get initials just let me know and I can arrange that. See below list of the process:

1. Need ratified contract. This is you, Susan?
2. Apply for loan. Mortgage company will need copy of ratified contract. In the works.. Will put together after the inspectio
3. Arrange for a home inspection ASAP. I will get quotes and get them to you so you can decided who to go with. [sounds good] If you want to get the contractors in to get quotes on the floors and paint then we need to make that arrangement as well. [Steve is working on this]
4. Do you want a survey? [not necessary since required by seller] If so it will be an additional cost to you. I will need to get this arranged as well. Keep in mind the current owner will need to do this in order to get the property subdivided. [what about the actual property division? More drive, less depth, less drive, more depth?] I have in the contract for you to receive a copy of it. [excellent!]
5. After the home inspection we need to go over everything to see if we want to proceed. If we move forward then we will need to get a closing attorney [Wooddy Law Fi LLC, 597 Old Mount Holly Road #202, Goose Creek, SC 29445]. I will get you info. so you can choose who you want to go with. [not necessary]
6. We will receive copy of CL100 and address any issues if any. This is the responsibility of the Seller. We will need to decide if we will move forward after seeing this. [This is very important to us. Who certifies it is authentic and when it was done?]
7. If we get to this point then we will be ready to clos

Let me know if you have any questions.
Thanks,
Susan Nicholson
Carolina One Real Estate

From: Cross,Doreen
Sent: Wednesday, October 24, 2012 10:41 AM
To: 'Susan Nicholson'; 'Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63300'
Subject: RE: Updated contract...

This is our Mortgage Loan Officer:
First Federal
Allison Williams: awilliams@firstfederal.com
843.529.5894 and 843.875.1338 (fax)

Allison is a bit concerned about the end of November. She doesn't think the appraiser will be able to go in until the property is divided. She doesn't know how it can be done until both TMS #s are in place. The Seller could always throw in the extra acreage and the barn and we'll guarantee the end of November for sure. We're willing to do that. ☺

Will you provide her with the signed contract, or will I? Thanks. - Doreen

From: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Wednesday, October 24, 2012 10:47 AM
To: Cross,Doreen
Subject: Re: Updated contract...

I will forward to her as soon as I get it back from the seller. If the home isn't subdivided in time then it will be their fault not yours. I will express the importance of having this subdivided asap and let the other agent know what your mortgage lady is saying. I'm working on home inspection info. now so we can get that done asap not to delay anything. If the seller wants to throw in any additional property I'm sure you will be ok with it the trick is to get him to do that with out any extra charge! You never know he may throw you guys a deal you can't refuse!
Thanks, Susan

From: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Wednesday, October 24, 2012 12:12 PM
To: Cross,Doreen
Cc: Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220
Subject: Re: Updated contract...

Hey, OK the other agent called and said they need to meet with us to make sure we are on the same page of where the boundaries of the property so they can get the surveyor out there asap. When can you meet? I have showings this afternoon till about 4:30 pm then church at 7 or we can meet tomorrow when you get off work. I received notice that the home inspector that I use is very familiar with this type of construction the cost for the home inspection is $490 is it ok to set it up?
Thanks, Susan

From: Cross,Doreen
Sent: Wednesday, October 24, 2012 12:18 PM
To: 'Susan Nicholson'
Cc: 'Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220'
Subject: RE: Updated contract...

I can do it today when you are done with showings or tomorrow. What's best for you Steve?
Yes, go ahead and set up the inspector. Thanks, - Doreen

On Wed, Oct 24, 2012 at 12:40 PM, Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220 <stephen.c.dudek.ctr@navy.mil> wrote:
Just give me a time.

am: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
nt: Wednesday, October 24, 2012 12:46 PM
Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220
...: Cross,Doreen
Subject: Re: Updated contract...

I left a message with him that we will meet him at 4:30 today.
Thanks, Susan

ATTACH. # 29

snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Thursday, November 15, 2012 3:57 PM
To: Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220
Cc: Cross,Doreen
Subject: Re: Buttermut Repairs

OK I just wanted to see how you guys were feeling abou yesterday since we haven't really talked.

On Fri, Nov 16, 2012 at 10:52 AM, Cross,Doreen < Doreen.Cross@tridenttech.edu> wrote:

Remember, you asked...

I believe Eugene came in with a preconceived notion as to the structural condition of the home. Not that I didn't enjoy the lesson on supply and demand, and what the rest of the world builds homes of... So, the question I wanted answered, still isn't answered definitively. No moisture test was done in the crawlspace, and Eugene acted indignant when I questioned him about it (he had a long strip of insulation and spider webs draped over his shoulder like tinsel; -you had to be there ☺). Apparently he's too important to carry a moisture measuring device??? He did state that moisture doesn't play a role in the stability of structures. He's a character!

Tom finally conceded there are termites living under the house (I had to practically make him kiss one – I have pictures!); he doesn't do chemicals. And, Tom finally admitted it's been four years since the septic system was pumped. He's adamant that it doesn't need to be pumped because he uses enzymes and natural bacteria. He says the system doesn't need to be pumped, no matter what Knight's says. "They're just out to make a quick buck." I think I made it clear to him that when/if it's my tank, I don't want his crap in it.

Tim looked overwhelmed by the extent of the small detail work that needed to be done, and we were all surprised when Tom announced that the interior walls were all steel and not wood, as we were previously told. Not to mention that the shoddy baseboards are super-glued to the sheetrock. Plus, I never went into the hallway bathroom, which was one of my largest concerns. I do have pictures of the moisture in the subfloor and corrosion on the steel and hardware from the crawlspace. I meant to ask you about the electrical. It appears none of the work was done by a certified electrician??? If only Tom were as handy as he thinks he is.

The highlight for me was when Steve found my keys. I'm interested in your thoughts.

My mortgage company says a realtor has been contacting them to see how the loan is going? Any new information on when the property lines will be recorded? When are the termites going to be exterminated? Can we hold Eugene liable if future information becomes available contradicting his report? I sounds like it will be a challenge to take the information from Tim and use it in he counter-offer. When can we expect his estimates? Thanks, - Doreen

From: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Friday, November 16, 2012 12:04 PM
To: Cross,Doreen
Cc: Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220
Subject: Re: Buttermut Repairs

You make me laugh!!!!

OK, after you left I went inside to speak with the sellers. I wanted to make sure they knew how important it was that we had licensed contractors to evaluate the issues and make the necessary repairs. After a lengthy conversation I think they understand. I also went into the issue on the septic tank and explained that it really needed to be serviced. I will get with Tim about his assessment with the repairs. I think he thought it would be a simple look at quote, but since there is so much cosmetic work he needed to put more thought into it and price everything by the foot. He can defiantly handle it he just wants to make sure he covers everything. Also, the sellers did make a comment that maybe they needed to get Tim in to look over the repairs they said they would do since he is licensed so I may have him do that as well if ok with you. Tim also said he thought the home was structurally good and felt good with the engineers assessment. As to the engineer and his moisture reader that isn't in his scope of work. A licensed pest control company will go under the home and give a moisture reading as well as the termite issue. Keep in mind that when you have a crawl space you have air flow as well as moisture flowing if you don't want any moisture issues at all you can have a company come out and totally close it in and install fans. A lot of people do that, but it is pricey. The way the home is now is fine just as long as the pest company ok's it. I believe the mortgage company requires it to be under 25% and the contract is contingent upon having this as well as the mortgage company satisfaction at sellers expense.

The engineer is suppose to give paperwork to the owners with this red stamp about the structure, which you will need in case you purchase the property and then decide to sell later because this issue may come up again. This also shows that the engineer is putting his license and name to his findings so they don't take it lightly. I also asked the sellers about the survey and they were checking on it. I told them that the mortgage company will not do anything until we have that. I've contacted your mortgage company checking in to see where we were with everything. She said she was waiting to hear from you before scheduling the appraiser (which will take about 2 weeks before getting back). She also said she may need to get up dated paystubs and bank statements as well. Let me know if you have any other questions.
Thanks, Susan

ATTACH #30

From: molly morphew <firegirl0926@yahoo.com>
To: "Eldridge, Patricia (Tricia)" <teldridge@Firstfederal.com>
Sent: Friday, May 10, 2013 1:31 PM
Subject: Re: Mortgage question

Yes, it does. Thank you and have a good weekend!

From: "Eldridge, Patricia (Tricia)" <teldridge@Firstfederal.com>
To: molly morphew <firegirl0926@yahoo.com>
Sent: Friday, May 10, 2013 10:43 AM
Subject: RE: Mortgage question

Hi Molly,

Not necessarily recorded. The appraiser would need the measurements of the lot being conveyed with your house to determine lot size. If the seller has staked it out, then the appraiser could use that information and have the value subject to the recorded plat, which means it would have to be recorded before final loan approval.

Hope that helps.

From: molly morphew [mailto:firegirl0926@yahoo.com]
Sent: Friday, May 10, 2013 9:31 AM
To: Eldridge, Patricia (Tricia)
Subject: Mortgage question

Hi Tricia, just have a quick mortgage question.

If I'm buying part of a piece of property that is being subdivided and is in the process of being surveyed to record the division per my contract, does the survey need to be finalized and recorded before an appraisal is performed?

I was looking at First Federal as a lender, but am afraid that this will hold up my lending requirements per my contract and/or make it so I cannot meet my closing date.

Thank you,

ATTACH. # 31

snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Thursday, November 15, 2012 3:57 PM
To: Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220
Cc: Cross,Doreen
Subject: Re: Butternut Repairs

OK I just wanted to see how you guys were feeling about yesterday since we haven't really talked.

On Fri, Nov 16, 2012 at 10:52 AM, Cross,Doreen < Doreen.Cross@tridenttech.edu> wrote:

Remember, you asked...

I believe Eugene came in with a preconceived notion as to the structural condition of the home. Not that I didn't enjoy the lesson on supply and demand, and what the rest of the world builds homes of... So, the question I wanted answered, still isn't answered definitively. No moisture test was done in the crawlspace, and Eugene acted indignant when I questioned him about it (he had a long strip of insulation and spider webs draped over his shoulder like tinsel; -you had to be there ☺). Apparently he's too important to carry a moisture measuring device??? He did state that moisture doesn't play a role in the stability of structures. He's a character!

Tom finally conceded there are termites living under the house (I had to practically make him kiss one—I have pictures!); he doesn't do chemicals. And, Tom finally admitted it's been four years since the septic system was pumped. He's adamant that it doesn't need to be pumped because he uses enzymes and natural bacteria. He says the system doesn't need to be pumped; no matter what Knight's says. "They're just out to make a quick buck." I think I made it clear to him that when/if it's my tank, I don't want his crap in it.

Tim looked overwhelmed by the extent of the small detail work that needed to be done, and we were all surprised when Tom announced that the interior walls were all steel and not wood, as we were previously told. Not to mention that the shoddy baseboards are super-glued to the sheetrock. Plus, I never went into the hallway bathroom, which was one of my largest concerns. I do have pictures of the moisture in the subfloor and corrosion on the steel and hardware from the crawlspace. I meant to ask you about the electrical. It appears none of the work was done by a certified electrician??? If only Tom were as handy as he thinks he is.

The highlight for me was when Steve found my keys. I'm interested in your thoughts.

My mortgage company says a realtor has been contacting them to see how the loan is going? Any new information on when the property lines will be recorded? When are the termites going to be exterminated? Can we hold Eugene liable if future information becomes available contradicting his report? I sounds like it will be a challenge to take the information from Tim and use it in the counter-offer. When can we expect his estimates? Thanks, - Doreen

From: snicholson@carolinaoneplus.com [mailto:snicholson@carolinaoneplus.com] On Behalf Of Susan Nicholson
Sent: Friday, November 16, 2012 12:04 PM
To: Cross,Doreen
Cc: Dudek, Stephen C CTR SPAWARSYSCEN-ATLANTIC, 63220
Subject: Re: Butternut Repairs

Counter Offer?

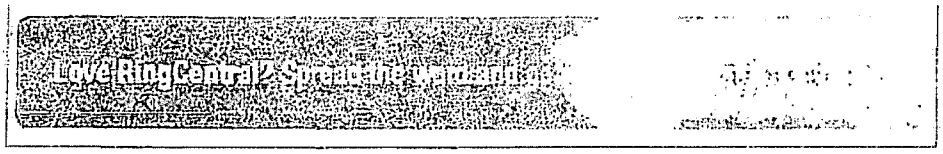
You make me laugh!!!!

OK, after you left I went inside to speak with the sellers. I wanted to make sure they knew how important it was that we had licensed contractors to evaluate the issues and make the necessary repairs. After a lengthy conversation I think they understand. I also went into the issue on the septic tank and explained that it really needed to be serviced. I will get with Tim about his assessment with the repairs...I think he thought it would be a simple look at quote, but since there is so much cosmetic work he needed to put more thought into it and price everything by the foot. He can defiantly handle it he just wants to make sure he covers everything. Also, the sellers did make a comment that maybe they needed to get Tim in to look over the repairs they said they would do since he is licensed so I may have him do that as well if ok with you. Tim also said he thought the home was structurally good and felt good with the engineers assessment. As to the engineer and his moisture reader that isn't in his scope of work. A licensed pest control company will go under the home and give a moisture reading as well as the termite issue. Keep in mind that when you have a crawl space you have air flow as well as moisture flowing if you don't want any moisture issues at all you can have a company come out and totally close it in and install fans. A lot of people do that, but it is pricey. The way the home is now is fine just as long as the pest company ok's it. I believe the mortgage company requires it to be under 25% and the contract is contingent upon having this as well as the mortgage company satisfaction at sellers expense.

The engineer is suppose to give paperwork to the owners with this red stamp about the structure, which you will need in case you purchase the property and then decide to sell later because this issue may come up again. This also shows that the engineer is putting his license and name to his findings so they don't take it lightly. I also asked the sellers about the survey and they were checking on it. I told them that the mortgage company will not do anything until we have that. I've contacted your mortgage company checking in to see where we were with everything. She said she was waiting to hear from you before scheduling the appraiser (which will take about 2 weeks before getting back). She also said she may need to get updated paystubs and bank statements as well. Let me know if you have any other questions.
Thanks, Susan

Pay ... ordered as soon as the loan is approved for.

ATTACH. # 32



Rick
843-327-3017
Charlene
843-327-3018
843-971-4002

18438813856-1216-133033-442.pdf
35K

Susan Nicholson< snicholson@carolinaone.com> Sun, Dec 16, 2012 at 6:09 PM

To: Rick Willis <rwillisteam@gmail.com>

Rick,
I'm confused about this whole thing. As of late yesterday I received the banks requested new documentation signed by your clients, this morning I received the HVAC receipt, and now I'm receiving a cancellation with the contract; what is going on? The Buyers did everything they were asked to do with the lender. The entire process was held up because of waiting on the the recorded new survey. Further more the CL100 still has not been cleared for closing as I have been trying to get documentation from your clients for well over a week. Your clients were adamant that the CL100 was clear and when we finaly received a copy of the CL100 it wasn't. Also, we are still waiting on the bathroom leak to be cleared. We expressed clearly that we needed the new recorded subdivided plat so the bank could proceed with everything else. The Buyers made application and supplied requested documentation from the lender in a timely manner from the time we ratified the contract. The contract clearly states that there is a 15 day extension, if at no fault of the buyer or seller, to close which would bring us to the 15th of December. We have everything we need to close hopefully this week pending the title work is clear from the closing attorney. We will have a problem with the Buyer if this doesn't close. I will consult with my Broker to discuss this and get back to you.
Susan Nicholson

To: Rick Willis <rwillisteam@gmail.com>, RICK WILLIS <rick@rickwillis.com>

Hey,
As of yesterday the appraisal hadn't been turned into the bank. The Buyers file is out of underwriting, pending the appraisal, and all looks good. We are still waiting on the title work from the closing attorney. The underwriter needs a clearer copy of the contract so they want me to redo that (see attached). I still don't have the 2 addendum's that is required asap from the Seller the repair addendum and the closing date extension addendum. Please have your clients initial the recorded plat as Addendum C per the original contract. It would be better to pickup the signed documents from them and dropped off at my office so I can get a clearer copy to the bank. For some reason the bank is having issues with the copies sent so far with the contract. I also am in need of the contractors letter of the termite damage, the HVAC letter, and the plumbing work in the hall bath satisfied. The hall bath work from my contractor said:

Hall bath Plumbing Leak

Material

Sheetrock, 2' x 2' $9.29

Joint compound $14.29

Misc., glue, fasteners $54.25

Primer $15.50

Flooring $0.02 Current Owner to provide

Urethane $29.45

Subtotal Material $122.79

BID NOTE: Owner had a leak from what appears to be cracks in the caulking around the tub. It damaged the sheetrock at the edge of tub and the flooring in adjacent Bedrooom. The current owner has already caulked the tub, which appears to be the source of the problem. New owner is advised to maintian a good caulk seal around the tub to ensure

ATTACH. #34

YES

13 If buyers were requested to pay for the appraisal prior to closing when did they write the check and authorize you to order it?

12/05/2012

14 When did you submit your loan documents for the underwriter's approval?

12/11/2012

15 Is your firm a mortgage brokerage firm or mortgage banker?

MORTGAGE BANKER

16 When did you receive all information or documents request from the buyers?

12/20/2012

17 Do you fund or close loans internally?

BORROWER DESIGNATES AN ATTORNEY TO CONDUCT CLOSING

18 When was the title work ordered?

12/12/2012

19 When was title work completed?

UNKNOWN. DOCUMENTS ARE SENT TO CLOSER WHEN CLOSING IS SCHEDULED. PLEASE REFER TO BUYERS CLOSING ATTORNEY.

20 When was the soonest date you and closing attorney were prepared to close?

CLEARED TO CLOSE ON 12/20/2012 WITH A PRIOR TO CLOSE CONDITION OF A VERBAL RE-VERIFICATION OF EMPLOYMENT THAT COULD NOT BE COMPLETED UNTIL JANURARY 4TH DUE TO HOLIDAY CLOSING OF SCHOOL DISTRICT ADMINISTRATIVE OFFICES

21 Did you ever receive a "clear to close" notice? If so, on what date?

FIRST FEDERAL DOES NOT HAVE A CLEAR TO CLOSE NOTICE

Cleared to close based on "short sale" request by (Susan?) Lender had to rescind ... statement and again require an extension ... What is going on here??

(See Attach. #4)

Rick Willis< rwillisteam@gmail.com>

788 E. Butternut

1 message

Michael Scarafile< mcs@carolinaoneplus.com> Thu, Dec 20, 2012 at 2:14 PM
To: "rwillisteam@gmail.com" <rwillisteam@gmail.com>
Cc: Susan Nicholson <snicholson@carolinaoneplus.com>

Rick,

>
> I am writing with respect to 788 E. Butternut. First and foremost, the Buyers position is that they have a valid contract to purchase this property, have not agreed to release this contract and it is their desire to work with the Seller towards closing. Alternatively, they are prepared to enforce their rights in this contract through the filing of a Lis Pendens and a suit for specific performance.
>
> As you are aware, Susan Nicholson represents the Buyers Stephen Dudek and Doreen Cross. My hope is that prior to them getting outside counsel involved and filing a motion for specific performance, we can resolve this matter among ourselves.
>
> I am also in receipt of your email from December 17th and must take exception with several points your raise. First off, while you are correct about the Buyers' obligations under paragraph 8, you are incorrect in your "legal" interpretation. Furthermore, paragraph 8 provides that, if the Buyers were in default, such default is pursuant to paragraph 16 which requires the Seller to provide "a 5 day written notice" which gives the Buyers the right to cure any default. (if they did not have a right to cure, there would not be a five day required period and this interpretation has been upheld in court). Based on your email, assuming your interpretation of paragraph 8 is correct, the Sellers provided written notice on December 16th. However, the Buyers have provided such proof and are ready to close, both of which would be inside of the 5 day "right to cure" period.

To work towards closing, and in the spirit of good faith, the Buyers are willing to pay $1,300 towards the termite bond that the Sellers have committed to and to also schedule the closing, through an agreed upon Addendum to be executed between the parties, for the middle to end of next week to allow the Sellers to remain in the home through the Christmas holiday.
>
> At this point, there are two options. The first is to close, allowing both sides to move forward and put this matter to rest this week, or alternatively the Buyers can file an action for both damages and specific performance. An action for specific performance will involve the filing of a Lis Pendens which would protect their rights in the property and also prevent the Sellers from selling the home to any other buyer. The second option would also necessitate excessive fees and costs to be incurred by both sides as we debate, over the next 18-24 months, contract provisions and the reasons for any delays. We are more than prepared to provide any and all communications between the Buyers and their lender.
>
> Please let me know how your client would like to proceed. Our choice is clearly to close and we look forward to hearing from you. I also wish you a nice holiday season.
>
> Michael Scarafile
> President/General Counsel
> Carolina One Real Estate
> 4024 Salt Point Parkway

ATTACH. #36

From: Rick Willis [mailto:rwillisteam@gmail.com
Sent: Monday, February 18, 2013 2:33 PM
To: Molly Morphew
Subject: Re: 788 E. Butternut

Molly,

The originator said "The contract on the house is no longer valid."

She did not mention the status of the loan approval.

Rick
Rick
843-327-3017
Charlene
843-327-3018
843-971-4002

...Bank

VERIFICATION AND ACKNOWLEGEMENT

To the best of my knowledge, information and belief, the information contained in the document is well grounded in fact and is warranted by existing law.

I have not been determined by any court of South Carolina or in any other Sate to be a frivolous litigant or subject to an Order precluding me from serving and filing this document.

I am not serving or filing this document for any improper purpose, such as to harass the other party, nor to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

Dated this 30 day of August, 2014

Thomas M. Ferro
5501 Carson St.
Denver, CO 80239

843-327-1262

Lorraine B. Ferro
5501 Carson St.
Denver, CO 80239

843-327-1262

MA LETICIA RODRIGUEZ DE BARRERA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134076128
MY COMMISSION EXPIRES DECEMBER 5 2017

2014 SEP 10 AM 8:16
CLERK OF COURT
DORCHESTER COUNTY

NOTARY PUBLIC (SIGNATURE)

State of Colorado

County of Denver

On this 03 day of September 20 14, before me a Notary Public, the undersigned officer, personally appeared Thomas M. Ferro and Lorraine B. Ferro, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained. In witness hereof, I hereunto set my hand and official seal.

Notary Public (PRINT)

Certificate of Service

I hereby certify that a true copy of the pleading was sent, postage prepaid, to the following attorneys on the _9th___day of September___, 2014:

David Athell Collins, Esq.
Attorney for the Plaintiffs
P.O. Box 40578
Charleston, SC 29423

2014 SEP 10 AM 8:46
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER THOMAS M. FERRO and LORRAINE B. FERRO, Defendants, v. STEPHEN DUDEK and DOREEN CROSS Plaintiffs	IN THE COURT OF COMMON PLEAS Civil Action No. 2013CP1800183
MOLLY MORPHEW, Plaintiff, v. STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO Defendants	

FILED - RECORD
2015 JUN 14 AM 10:50
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

APPELLANTS FERRO MOTION TO COMPEL RESPONSE FROM RESPONDENTS DUDEK/CROSS FOR PROOF OF LENDING

The Appellants/Defendants Thomas Ferro and Lorraine Ferro, pro se, moves pursuant to Rule 26(b)(1), SCRCP, for an Order compelling the Respondents/Plaintiffs/Defendants, Stephen Dudek and Doreen Cross, to produce valid documentation and lender contact information to confirm Respondents ability to [apply] and obtain financing per court Order of November 6, 2014.

On November 6th, 2014, the Master of Equity ruled in favor of Respondents/ Defendants/ Plaintiffs Stephen Dudek and Doreen Cross for specific performance on a real estate contract for 788 E Butternut Rd, Summerville, SC, which includes the house and 6 acres of land, and an Order was filed with the Clerk of Court.

In December 2014, Appellants Ferro appealed said Order.

Per S.C.A.C.R. 241(b)(4), "*Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170*[1]," the issued court Order does not have an automatic stay. Per *S.C. Code Ann. § 18-9-170*, if the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant. No written undertaking requesting a stay of said Order has been executed by the appellant(s). Respondents were required to move forward on the sale of said property.

On January 8, 2015, Respondents stated they were going to move forward on said Court Order, by filing the appropriate motions with the judge and the courts (Attachment 1).

On March 25th, 2015, Plaintiffs/Defendants Dudek and Cross filed a motion compelling the court to order Appellants Ferro and Appellant Morphew to post a Supersedeas Bond in order to stay further proceedings in this action, including the sale and delivery of the real property at issue. Said motion also included and compelled the courts to hold Appellant Morphew in contempt [for obstructing Respondents ability to perform their due diligence per said Order].

On May 13th, 2015, the hearing for Respondents Motion took place, at which time the courts did not make a ruling, but instead allowed 10-days for the courts and the Respondents attorney, David Collins, to review and respond to the Appellants Answer to said Motion. No response to Appellants Answer from opposing party/attorney. All parties were directed to continue to proceed with the sale of the property (home inspections, appraisals, bank financing), specifically directing Dudek and Cross to contact Appellants Ferro to obtain access to said property so that they could perform their due diligence; included within the hearing, the court confirmed on record that Appellant Morphew will allow Respondents physical access to property to perform their due diligence. There has been no movement forward by Respondents, nor any communications to the Appellants Ferro.

[1] If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a Judge of the court by which judgment was rendered and which shall be specified in the undertaking.

It has been a year since the May 13th, 2016 Motion hearing, and a year and a half since the court Order of November 6th, 2014. Though Dudek and Cross have communicated several times since 2014 they are required to comply with the court's Order and were proceeding to move forward with said purchase, Respondents Dudek and Cross have questioningly failed to do so.

When requested to provide proof of current ability to make application and secure financing per court order, via lender letter and/or lender contact information for seller's direct communication to the lender, there has been no response (see Attachment 2).

1. That discovery in the form of a written e-mail request [for proof of Respondents ability to apply and obtain financing, and confirmation that First Federal (now South State) was going to again be Respondents mortgage lender] was submitted on April 27th, 2016 to the Respondents attorney. Attorney Collins answered, "*My clients will be willing and able to close upon the courts ruling.*"[2] Under Rule 37(a)(3), the attorney's answer is to be treated as a failure to answer.[3]

2. That discovery in the form of a written e-mail request for proof of Respondents ability to apply and obtain financing via current pre-approval letter/confirmation letter from their financial institution was requested - along with confirmation Appellants Ferro may contact First Federal (now South State) - was again submitted, to the Respondents attorney, on April 27th, 2016. No answer.

3. That discovery in the form of a written e-mail request for proof of Respondents ability to apply and obtain financing via current pre-approval letter/confirmation letter from their financial institution was requested - along with confirmation Appellants Ferro may contact First Federal (now South State) - was again submitted, via e-mail to the Respondents attorney, on May 3rd, 2016. No answer.

4. That discovery in the form of a written e-mail notification that an applicable motion will be filed due to Respondents lack of response to Appellants Ferro e-mail requests (as repeated above). Respondents response, "*Lorraine, please feel*

---

2 Upon further clarification, 'courts' is specifically to mean the Court of Appeals.

[3] S.C.A.C.R 37(a)(3), FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS; Evasive or Incomplete Answer. " *For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.*"

free to file any motions that you feel are necessary to protect your interests."

Failure to answer.[4]

Past history shows that, though Respondents Dudek and Cross testified they had lending previously secured on said sales contract but could not go to closing due to the breach of Appellants Ferro, they in fact had never provided the lender with a complete application to be processed and were denied lending due to 'an incomplete application' and failure to respond to a 10-day notice, and furthermore failed to disclose this material fact to the opposing parties and to the courts. Appellants Ferro argue that perjury and non-disclosure of material facts is valid grounds to in which to question Respondents actions in good faith and fair dealings, plus their ability to obtain financing.

Due to these points and facts, and to the Respondents intentional avoidance to supply the requested documentation and lender point of contact information for confirmation, Appellants Ferro question Respondents current ability and willingness to comply with the court Order.

WHEREFORE, the Appellants Ferro move for an Order compelling the Respondents to produce complete and executed answers, and the required document(s) within 30 days.

Respectfully Submitted,

Thomas M. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

May 30, 2016

[4] Id 3

RECORDED
2016 JUN 14 AM 10:50
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

ATTACHMENT 1

Subject: Re: Civil Action No.: 2013CP1800074 consolidated in Civil Action No. 2013CP1800183; Appeal Notice
From: davidacollins2@aol.com (davidacollins2@aol.com)
To: firegirl0926@yahoo.com;
Cc: lbferro3200@gmail.com; kkorda@scnlaw.com;
Date: Monday, January 12, 2015 8:58 AM

Molly, I respectfully disagree with your assessment of the rules. This case is not automatically stayed Should you wish to have the protection of the automatic stay you will have to post the bond. We will be filing the appropriate motions with Judge Chellis and the Court of Appeals.

FILED - RECORDED
2015 JUN 14 AM 10:50
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

ATTACHMENT 2

RECORDED
2016 JUN 14 AM 10:51
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

From: **David Collins** <davidacollins2@aol.com>
Date: Fri, May 20, 2016 at 10:23 AM
Subject: Re: Butternut Property Sale
To: Lorraine Ferro <lbferro3200@gmail.com>

RECORD
2016 JUN 14 AM 10:51
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Lorraine, please feel free to file any motions that you feel are necessary to protect your interests.

Sent from my iPhone

> On May 20, 2016, at 11:35 AM, Lorraine Ferro <lbferro3200@gmail.com> wrote:
>
> David,
> With regards to your clients not responding to my repeated requests as contracted buyers of the Butternut property to provide me with a confirmed pre-approval of their financing, I have no other recourse but to file a motion to compel with the court. This is a disappointing outcome. As buyers expecting a resolution from the SC Appellate Court in the coming months, the task of financing should be one that they have set in motion and ready to finalize for closing.
>
> I will be filing the motion unless I hear back from you with their cooperation to my request.
>
> Regards,
> Lorraine Ferro

From: Lorraine Ferro <lbferro3200@gmail.com>
Date: May 3, 2016 at 10:30:03 AM MDT
To: "davidacollins2@aol.com" <davidacollins2@aol.com>
Subject: Re: Financing, second request

David,
I have not heard back from you. Who are your clients going to be using for their financing? Avoiding this issue inclines me to think that there is a potential problem. Please let me know if they are continuing with First Federal or using a different lender.

Thank you,
Lorraine

On Wed, Apr 27, 2016 at 6:19 PM, Lorraine <lbferro3200@gmail.com> wrote:
David,
I assume then I can contact First Federal for a current approval letter? I need a confirmation letter from their financial institution so we know we are not wasting our time, and this applies to all buyers. It is a stipulation of the sales contract, and though I would love to take your word on this, I need a current letter of approval.

I look forward to cooperation from all involved.

Lorraine
Sent from my iPhone

On Apr 27, 2016, at 5:32 PM, davidacollins2@aol.com wrote:

Lorraine, all is well. I hope the same for you. My clients will be willing and able to close upon the courts ruling.

-----Original Message-----
From: Lorraine Ferro <lbferro3200@gmail.com>
To: davidacollins2 <davidacollins2@aol.com>
Sent: Wed, Apr 27, 2016 1:05 pm
Subject: Financing, second request

Hi David,
I hope you are doing well. Tom and I are looking to reconfirm financing from your clients as well as Molly, per the last email we sent to you. Please have your clients provide us with confirmation of financing at this point in time. Are they still going to use First Federal for their mortgage? As we had never received final approval in December of 2012, we need to revisit this issue. Please respond to this email at your earliest possible convenience.

Best Regards,
Lorraine Ferro

> On Apr 20, 2016, at 4:36 PM, Lorraine Ferro <lbferro3200@gmail.com> wrote:
>
> Greetings to All,
>
> It has been quite a while since we have been in touch, which leads to the reason for my email. As the sellers of the 788 E Butternut property, we are respectfully requesting all of our contracted buyers to re-establish financial status and current eligibility of financing per the purchase of our property. Nearly four years have passed since our "time is of the essence" December 2012 closing expectation. The appeal of the original court ruling would be moot if one of the contracted buyers is unable to secure financing at this point in time. As the sellers, we need to confirm that all parties are still able to close within 30 days or the shortest reasonable time period available.
>
> Please get back to us to confirm that you have received this, and are aware of our concern and our request.
>
> Best Regards,
> Lorraine and Tom Ferro

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	Civil Action No. 2013CP1800183
THOMAS M. FERRO and LORRAINE B. FERRO, Plaintiffs, v. STEPHEN DUDEK and DOREEN Defendants	
MOLLY MORPHEW, Plaintiff, v. STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO Defendants	

FILED - RECORD
2016 JUN 14 AM 10:51
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

CERTIFICATE OF SERVICE

I, Thomas M. Ferro and Lorraine B. Ferro, Appellants [and pro se] for said case, hereby certify that we have, on this date indicated below, served counsel below with the **APPELLANTS FERRO MOTION TO COMPEL RESPONSE FROM RESPONDENTS DUDEK/CROSS FOR PROOF OF LENDING** by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

David A. Collins, Esquire
P.O. Box 40578
Charleston, SC 29423

Thomas M. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

May 31, 2016

FILED - RECORDED
2016 JUN 14 AM 10: 51
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Honorable Cheryl Graham
Dorchester County Clerk of Court
5200 E. Jim Bilton Boulevard
St. George, South Carolina 29477

May 30, 2016

RE: Thomas M Ferro and Lorraine B Ferro, Defendants vs. Stephen Dudek and Doreen Cross, Plaintiffs, AND Molly M Morphew, Plaintiff vs. Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro, Defendants
Case No. 2013CP1800183

Dear Ms. Graham:

In regards to the above referenced matter, please find 2 copies each of the **Appellants Ferro Motion to Compel Response from Respondents Dudek/Cross for Proof of Lending**, and the **Certificate of Service**.

Please file the originals, file-stamp the copies, returning the copies to me in the enclosed self-addressed, stamped envelope. Should you have any questions or concerns, please feel free to call me.

Kindest regards,

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

Enclosures
Cc: David Athell Collins, Esquire
Molly Morphew, Pro Se Plaintiff

May 30, 2016

RECORD
2016 JUN 14 AM 10:52
CHERYL SEIGLER
CLERK OF COURT
DORCHESTER COUNTY

David Athell Collins, Esquire
P.O. Box 40578
Charleston, SC 29405
(843) 760-0220

RE: Thomas M Ferro and Lorraine B Ferro, Defendants vs. Stephen Dudek and Doreen Cross, Plaintiffs, AND Molly M Morphew, Plaintiff vs. Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro, Defendants
Case No. 2013CP1800183

Dear David:

In regards to the above referenced matter, please find a copy each of the **Appellants Ferro Motion to Compel Response from Respondents Dudek/Cross for Proof of Lending**, and the **Certificate of Service.**

Should you have any questions or concerns, please feel free to call me. Thank you for your cooperation and assistance in this matter.

Kindest regards,

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
(843-327-1262)

Enclosures
Cc: Molly Morphew, pro se
788 E Butternut Rd.
Summerville, SC 29483

MB ✓

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
) 50 - RECORDS
) CASE NO: 2013-CP-CP-1800183
2016 JUN 14 AM 10:50
Doreen Cross, Stephen Dudek) CHERYL GRANT
Plaintiff.) CLERK OF COURT **MOTION AND ORDER INFORMATION**
vs.) DORCHESTER COUNTY **FORM AND COVERSHEET**
)
✓ Thomas M. Ferro, Lorraine B. Ferro)
Defendant.)

Plaintiff's Attorney: David A. Collins, Esq.	Defendant's ~~Attorney~~: Pro Se
_____, Bar No. _____	N/A, Bar No. _____
Address:	Address:
P.O. BOX 40578, Charleston, SC 29401	_____
Phone: _____ Fax _____	Phone: _____ Fax _____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Thomas Ferro 6/3/16 _____
Signature of ~~Attorney for~~ ☐ Plaintiff /☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) Civil Action Case No.: 2016-CP-18-1706
)
Molly Morphew,)
)
Plaintiff,)
)
v.) **SUMMONS**
) **(Jury Trial Demanded)**
Stephen Dudek, Doreen Cross, David)
Collins, Allison Williams, First Federal,)
Michael Scarafile, Susan Nicholson,)
Carolina One Real Estate, Carrie Boyer,)
Woody Law Firm)
)
Defendants)

CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the below subscribed Pro Se litigant at her address at 788 E Butternut Rd, Summerville, SC 29483 within thirty (30) days after the service hereof exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this action.

Molly M. Morphew, Pro Se

Molly M. Morphew, Pro Se
788 E Butternut Rd
Summerville, SC 29483
(843) 514-7299
morphew926@gmail.com

SUMMERVILLE, SC
August 23, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) Civil Action Case No.: 2016-CP-18-1706
)
Molly Morphew,)
)
Plaintiff,)
)
v.) **COMPLAINT**
) **(Jury Trial Demanded)**
Stephen Dudek, Doreen Cross, David)
Collins, Allison Williams, First Federal,)
Michael Scarafile, Susan Nicholson,)
Carolina One Real Estate, Carrie Boyer,)
Wooddy Law Firm)
)
Defendants)

Plaintiff Molly Morphew sues Defendant Stephen Dudek, Defendant Doreen Cross, Defendant David Collins and/or his agent, Defendant Susan Nicholson and/or her agent, Defendant Carolina One Real Estate, Defendant Michael Scarafile and/or his agent, Defendant Allison Williams and/or her agent, Defendant First Federal (now South State Bank), Defendant Carrie Boyer or her agent, Defendant Wooddy Law Firm, and states as follows:

NATURE OF THE ACTION

1. This is an action for fraud, and specifically fraud on the courts, and torts stemming from the actions, and continued actions, of the Defendants Dudek and Cross, their attorney their real estate agent and company/representatives, and their lending officer and company. Plaintiff Morphew seeks damages, and other appropriate relief based on the (as listed in the causes of action) Defendants' fraud, perjury, breach of fiduciary duty, violation of the SC Rules of Professional Conduct, violation of Title 40 – Professions and Occupations (Chapter 57), contempt, and breach of the Dudek/Cross express, written

contractual obligations per their court Order of November 6, 2014, as well as for violation of their common law duties to Morphew.

2. This is a separate action from combined civil Cases #2013-CP-1800183 (Specific Performance/breach of contract) and #2013-CP-1800074 (Specific Performance/breach of contract), currently on appeal (Appellate Case No. 2014-002633).

   a. Appellants: Plaintiff Morphew, Sellers Thomas Ferro and Lorraine Ferro

   b. Respondents: Defendants Stephen Dudek and Doreen Cross

3. Plaintiff brings this action to recover the losses suffered by Ms. Morphew at the hands of defendant Doreen Cross and Stephen Dudek for compensatory damages of at least $50K, special damages $75K, punitive damages of at least $75K; Susan Nicholson for compensatory damages of at least $25K, special damages $50K, punitive damages of at least $75K; Michael Scarafile for compensatory damages of at least $50K, special damages $75K, punitive damages of at least $75K; Carolina One for compensatory damages of at least $50K, special damages of $50K, and punitive damages of at least $250,000; Allison Williams for compensatory damages of at least $25K, special damages $50K, punitive damages of at least $75K; First Federal (currently State Bank[1]) for special damages of $50K, punitive damages of $250,000 and compensatory damages of $53K, Carrie Boyer for compensatory damages of at least $5K, special damages $5K, punitive damages of at least $25K; Wooddy Law Firm for punitive damages of $25K; and Defendant Collins for punitive damages of $250,000 (to include lost attorney fees and judgement for sanctions), compensatory damages of at least $50K, as well as injunctive relief and declaratory judgment.

[1] Will be referenced as First Federal within this document.

4. The court, and the applicable officers of the court, have been the victim of repeated acts of fraud, dishonesty, deceit, misrepresentation, perjury, non-disclosure of material facts, and bad faith and unfair dealings; including Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act SECTION 15-36-10, Abuse of Rule 11; Violation of ABA Rules of Professional Conduct, Rule 3.1, Rule 3.3, Rule 7.1, 8.4(a), 8.4(b), 8.4(c), 8.4(d), 8.4(e), 8.4(f), 8.4(a); Violation of the Federal Rules of Civil Procedures, Rule 26, Rule 37; Breach of Fiduciary Duty/Breach of Assumed Duty, Duty of care, Duty of full disclosure, Duty to act fairly, and Duty of good faith and fair dealing, tortious conduct; Forgery/falsifying documents with intent to defraud another; Breaking Federal Rules and Regulations (FDIC)/Breaking of Banking Rules and Regulations; Obstruction of Justice; Tortious Interference with Existing Contractual Relations; and contempt by Defendants.

5. Morphew has been, and continues to be, the victim of the repeated acts (allegations in #3 repeated word for word herein), and to include Slander of Title; Breach of Contract followed by fraudulent action(s), Intentional Infliction of Emotional Distress; and harassment and/or discrimination by the Defendants. Despite Morphew's repeated given opportunities for Defendants to disclose the truth, to Morphew's knowledge, there has been no action taken by Defendants to put a halt to their unlawful actions which have caused a vast amount of personal expense, time and distress to, not only Morphew, but all parties involved, including the courts. Morphew ultimately was wronged by failing to be awarded specific performance on 788 E Butternut Rd, Summerville, SC, and instead, Defendants Dudek and Cross were awarded such specific performance based on the Defendants unlawful and/or wrongful acts, and bad faith and unfair dealings, both in and out of court.

To: THE DEFENDANTS ABOVE NAMED:

NOW comes the Plaintiff, complaining of the acts and omissions of the Defendants names above, and says as follows:

6. That the Plaintiff, Molly Maric Morphew, (hereafter "Plaintiff") is a citizen and resident of the County of Dorchester, State of South Carolina.

7. That upon information and belief, Defendants Stephen Dudek and Doreen Cross are residents of Dorchester County, State of South Carolina.

8. That upon information and belief, Defendant David Collins is a resident of Charleston County, State of South Carolina.

9. That Defendant Collins was previously Defendants Dudek and Cross' attorney and/or has been suspended by the Supreme Court from practicing law as of approximately July 16, 2016.

10. That upon information and belief, Defendant Susan Nicholson is a resident of Dorchester County, State of South Carolina.

11. That upon information and belief, Defendant Allison Williams is a resident of Dorchester County, State of South Carolina.

12. That upon information and belief, Defendant Michael Scarafile is a resident of Charleston County, State of South Carolina.

13. That upon information and belief, Defendant Carolina One Real Estate, Inc. (hereinafter "Carolina One"), is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Dorchester County. Defendant is in the business of providing real estate agent services in the selling of property, including personal property.

14. That upon information and belief, Defendant First Federal, now known as South State Bank (hereinafter "First Federal"), is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Dorchester County. Defendant is in the business of providing banking and credit services, including personal mortgages, and other related services.

15. That upon information and belief, Defendant Wooddy Law Firm, is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Berkley County. Defendant is in the business of providing variety of complex business transactions, focusing primarily on real estate matters.

16. That upon information and belief, Defendant Carrie Boyer, is a real estate paralegal employed at the Wooddy Law Firm, in Goose Creek, SC, Berkley County.

17. That upon information and belief, and at all times material, the Defendant(s) or its agent(s)' named above misrepresented facts with the intent to deceive the Plaintiff and/or the courts and/or with the intent of influencing the court[2].

18. That upon information and belief, and at all times material, the misleading acts of the Defendant(s) or its agent(s)' named above prevented the Plaintiff from presenting all of her case or deprived her of the opportunity to be heard.

VENUE AND JURISDICTION

19. That the Plaintiff hereby incorporates paragraphs one (1) through four (18) above, the same as if set forth again verbatim.

[2] Misrepresentation of facts with the intent of influencing the court is fraud upon the court.

20. Venue is proper pursuant to S.C. Code § 15-7-30, as First Federal [now known as South State Bank since 2015] and Carolina One Real Estate have operations in Dorchester County, and Defendants Dudek and Cross reside in Dorchester County, and the actions set forth herein occurred in Dorchester County.

21. Venue is proper pursuant to S.C. Code § 15-7-10, as the property in dispute is located in Dorchester County.

22. The acts and omissions of the Defendants were conducted, disseminated, published and/or performed in South Carolina, at its jobsites and offices and to its employees and/or agents, including in Dorchester County, in a way to affect, reach and cause injury and/or damage to the Plaintiff in the State of South Carolina.

23. The Plaintiff consents to the jurisdiction of this court since she is a resident of the County of Dorchester, State of South Carolina.

24. Morphew is currently, and was during the relevant period, a citizen and resident of South Carolina in Dorchester County.

FACTS

25. That the Plaintiff hereby incorporates paragraphs one (1) through three (24) above, the same as if set forth again verbatim.

26. On October 24th, 2012, the **"Time is of the Essence"** sale contract between Defendants Dudek and Cross and sellers Thomas Ferro and Lorraine Ferro for property located at 788 E Butternut Rd, Summerville, SC 29483, was ratified [and expired on Friday, November 30th, 2012].

27. That, upon information and belief, on December 3rd, Defendants Dudek and Cross claimed the 15-day 'no-fault to either party' extension clause within the contract. Expiration date of clause 12/15/2012.

28. That, upon information and belief, on December 3, Sellers Ferro were presented with a Contract Extension Addendum dated December 28th; sellers refused.

29. On December 5th, [5 days after said contract expired], Defendants Dudek and Cross applied for mortgage credit or lending.

30. That, upon information and belief, on December 5th, Defendant Allison Williams received or reviewed the sales contract for the first time.

31. On or about December 5th, Defendant Allison Williams requested [buyers] Defendants Dudek and Cross to obtain the missing sellers names on the front of the sales contract.

32. On December 10th, Defendants Dudek and Cross signed the mortgage loan application.

33. On December 11th, Underwriting received the Dudek and Cross mortgage file; only item in the file was an expired and unsigned/non-property specific, pre-qualification application dated May 2012, and the [expired] sales contract.

34. On December 12th, First Federal Underwriting sends inquiry to both Defendant Williams and Defendants Dudek and Cross as to the status of the required signed Contract Extension Addendum.

35. On December 12th, First Federal declared the Dudek and Cross sales contract invalid due to its illegibility and/or sent a request for a legible, signed contract with all addendums, including the required signed Contract Extension.

36. On December 12th, First Federal requested a signed application and all banking disclosures.

37. On December 12th, [with no application or signed application/banking disclosures, and/or with no legible signed sales contract and all addendums (including the required signed Contract Extension Addendum[3]), First Federal issued an approval letter.

38. On December 16th, 2012, Sellers Ferro submitted a request for sales contract termination to Defendants Cross and Dudek or their agent.[4]

39. On December 16th, Plaintiff and sellers Ferro ratify back-up sales contract.[5]

40. On December 16th, Defendant Susan Nicholson received the termination request from the sellers.

41. On December 16th, Susan Nicholson replies to sellers Ferro and/or their agent that her clients "*made application and supplied requested documentation from the lender in a timely manner from the time we ratified the contract*", and that 'they' are ready to close, "*hopefully this week pending the title work is clear from the closing attorney.*"

    a. No closing date offered or scheduled.

42. On December 18th, First Federal Underwriting received the Dudek and Cross signed Application, First Federal disclosure, Servicing Disclosure, Authorization to Release, and Local Employer Address for Co-Borrower.

43. On December 20th, legal counsel for Carolina One, Defendant Michael Scarafile, stated Dudek and Cross had provided proof of lending, "*were ready to close*", and could schedule a closing "*next week*".

    a. No closing date offered or scheduled.

---

[3] First Federal does not accept mortgage applications on an expired sales contract without a signed Contract Extension Addendum or a new contract.

[4] And only after Dudek and Cross failed to close on or before the November 30th contract date and failed to close on or before the contract extension clause date of December 15th.

[5] Contingent upon Dudek and Cross signing the contract termination request.

44. December 31, First Federal Underwriting sent direct requests to both Defendants Dudek and Cross and Defendant Allison Williams for an update on the **required** Contract Extension Addendum.

    a. No reply from Defendants Dudek and Cross.

45. January 3rd, 2013, First Federal sent out separate 10-day adverse notices to both Defendant Dudek and Defendant Cross requesting the signed Contract Extension Addendum they've required and requested since application.

> Said notice, stated "*We must receive all the above documentation within 10 days from the date of this letter. Otherwise, First Federal will regrettably be unable to give further consideration to your credit request....Should you decide at a later date to furnish the above items, we can assist you with a new application.*"

46. January 3rd, 2013, Morphew secured lending, and had a tentative closing date of January 12th[6].

47. January 11, Defendants Dudek and Cross were notified that "the sellers were not going to sell to them" and that "the sellers had secured another contract" and were "going with another buyer".

48. January 11, Defendants Dudek and Cross filed a lis pendens.

49. January 13th, application submitted by Dudek and Cross was no longer valid, and a new application would have to be submitted.

50. January 15th, Defendants Dudek and Cross filed a 2nd lis pendens, along with a breach of contract lawsuit against sellers[7] to compel specific performance and/or damages.

---

[6] Ibid 5

[7] Defendants Dudek and Cross claim sellers breached their contract and were the reason Defendants could not close.

51. January 16th, as a result of their failure to provide a complete application to First Federal and [intentional] failure to respond to the 10-day adverse notice, Defendants Dudek and Cross were denied lending/mortgage credit on said sales Contract.

52. January 18th, Defendant Allison Williams informs First Federal that the file is under litigation and "was concerned First Federal could get drawn into the lawsuit".

    a. Williams suggested to keep the file open.

53. As of January 18th, Defendants Dudek and Cross are declined mortgage credit for incomplete application, and their mortgage lending file is closed.

54. January 31, First Federal refunds balance of application fee, and provides official notice of declination.

55. On January 31st, 2013, Morphew filed a complaint for breach of contract and damages against Defendants Dudek and Cross, and sought specific performance [only] from sellers, Thomas and Lorraine Ferro.

56. That, upon information and belief, on or about February 10th, 2013, Defendants Dudek and/or Defendant Cross and/or Defendant Collins produced or assisted in the production of a falsified and/or forged e-mail and/ or in order to provide proof they "applied" for lending per Contract.

57. March 4, 2013, Morphew subpoenas First Federal for Dudek and Cross' lending information, including files, electronic documents, e-mails/communications, etc.

    a. First Federal responds March 13, "*there is no such people or property address on file with their institution nor the TMS numbers found in the county records*".

58. March 15, 2013, Plaintiff Attorney contacts Defendant Collins and informs him that, per First Federal, there are no loans approved for his clients.

a. Appeal is currently 'Under Review', pending Appellate Court decision.

66. December 15, 2014, sellers Ferro filed appeal with the appellate court.

a. Appeal is currently 'Under Review', pending Appellate Court decision.

67. January 8, 2015, Defendants Dudek and Cross or its agents moved forward on court Order [by requesting to schedule an inspection].

68. March 25, 2015, Defendant Dudek, Defendant Cross and Defendant Collins or its agent(s) filed a Motion to compel the courts to order the appellants (Plaintiff Morphew and sellers Ferro) to post a supersedeas bond to stay the court Order[10] or if not awarded bond, to hold Morphew in contempt for attempting to obstruct Dudek and Cross' performance of the court Order of November 2014.

69. May 13, 2015, Motion hearing held.

a. Defendants Dudek and Cross were instructed to perform their due diligence and/or start application per court Order, as "time was of the essence".

i. No action taken.

b. Plaintiff Morphew was instructed to allow Dudek and Cross access to property to perform their inspection.

i. No action taken.

c. The courts allowed Defendant Collins 10 days to respond to Morphew's Answer to the Motion.

[10] A supersedeas bond is defined as a "bond required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful." Black's Law Dictionary 738 (6th ed. 1990); The language of Federal Rule of Civil Procedure 62 indicates that a co-requisite to imposition of a supersedeas bond is a motion for a stay by the appellant; A Supersedeas Bond May not be Imposed in the Absence of a Stay; The district court has no power to impose a supersedeas bond in the absence of a stay. Nothing in the language of these rules indicates that an appellee can move the court for imposition of a supersedeas bond.

a. Defendant Collins responds that "his clients had loan approval but could not close because they never got a CL-100"[89].

59. June 2013, Dudek and Cross deposition held.

a. Dudek and Cross claim they had secured lending per contract, and/or had not breached their contract and/or they had the valid contract and/or were, and were still ready, able and willing to close.

b. Dudek and Cross failed to disclose they had been denied lending.

60. August 1, 2013, Morphew [again] subpoenas First Federal for Dudek and Cross' lending information, including files, electronic documents, e-mails/communications, etc.

a. First Federal responds "*there were no records of any loans with that number at their institution*".

61. August 12th, 2013, Morphew's attorney makes a phone call to First Federal to verify said response(s) are correct.

a. First Federal responds "*they could not* [or would not] *provide that information*".

62. June 10th, 2014, First Federal responds [unexpectedly] to the March 2013 subpoena for Dudek and Cross mortgage lending information.

63. June 11 & 12, 2014, Trial held for combined cases.

64. November 6, 2014, Order issued from court.

a. Specific performance granted to Defendants Dudek and Cross.

65. December 6th, 2014, Morphew filed appeal with the appellate court.

---

[8] Per documents from Defendant Cross' files during her deposition in June, 2013, sellers obtained a CL-100 inspection on November 29th, a report on November 30th, as per Cross/Dudek requested in their sales contract.

[9] Per Cross deposition, she received the CL-100 from Defendant Nicholson on Monday, December 3rd, 2012.

i. No response from Defendant Collins.

70. The Defendant(s) or its agent(s) having participated in the civil action(s) are presumed to have acted with full knowledge of the facts, and, knowing that they had [unlawfully] and/or with complete disregard to a legal Contract, allowed said Contract to expire.

71. At all times material, the Defendant(s) or its agent(s) having participated in the civil action(s) are to presumed to have acted with full knowledge of the facts, and, knowing at application on December 5th, 2012, that they were required to produce a signed Contract Extension Addendum, and/or

a. without it had an invalid contract and/or would not be able to obtain financing.

72. At all times material, the Defendant(s) or its agent(s) having participated in the civil action(s) are presumed to have acted with full knowledge of the facts, and, knowing that Defendants Dudek and Cross were denied lending and/or Denied [at their own hand].

73. The Defendant(s) or its agent(s) having participated in the civil action(s) are to presumed to have acted with full knowledge of the facts, had [intentionally] failed to disclose required pertinent material facts to the case.

FOR A FIRST CAUSE OF ACTION
(Fraud, Extrinsic Fraud – Fraud on the Court)
[Against all Defendant(s) or its agent(s)]

74. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

75. Plaintiff alleges Defendant Collins [the attorney for Defendants Dudek and Cross] made fraudulent representations and/or misrepresentations, or omitted pertinent material information and or documents, and/or concealed Defendants Dudek and Cross' 'lost or non-existent' lending records.

76. Upon information and belief, and at all times material, Plaintiff alleges Defendant Collins had, in his possession or had complete knowledge of, the letter(s) from First Federal denying his clients lending, which had not been disclosed to the Plaintiff or the court.

77. Plaintiff alleges, Defendant Collins, having participated in the civil action(s), filed frivolous lawsuits/motions; signing pleadings; notice and opportunity to respond.

78. Plaintiff further maintains Defendant Collins both in the prosecution of the case in the lower court, and on appeal in the Court of Appeals, made representations that were false, material, known to have been false when made, [and] made recklessly and/or with the intention that it be acted upon by all parties involved [including the sellers, Plaintiff, and the courts].

79. Plaintiff argues that where there is a duty to speak[11] and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

80. These acts and/or misrepresentations is blatant extrinsic fraud[12].

81. At all times material and with complete knowledge otherwise, [all] Defendant(s) or its agent(s) made false statements and/or misrepresentations and/or omitted material information pertinent to the case and/or committed perjury and/or committed forgery.

82. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she [and all parties involved] would never have gone to trial or be in this position today if

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[11] Where there is a duty to speak, a fiduciary's non-disclosure may be fraudulent. Cf. Manning v. Dial, 271 S.C. 79, 245 S.E.2d 120 (1978).

[12] [E]xtrinsic fraud' refers to frauds collateral or external to the matter tried such as...misleading acts which prevent the movant from presenting all of his case or deprives one of the opportunity to be heard.

Defendant(s) or its agent(s) had been conducted themselves with honesty, and good faith and fair dealings.

83. Plaintiff asserts that the courts relied on the fraudulent act(s) and/or omissions, and representations or misrepresentations made by the Defendant(s) or its agent(s).

84. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

85. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

86. Upon information and belief, Plaintiff affirms these fraudulent act(s) and omissions were intentional and/or made recklessly and/or with malice[13] and/or with intent to deceive.

87. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

88. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

89. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

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[13] Malice is presumed; 1) disparagement of title to real property is false, 2) caused damages, and 3) is not privileged.

90. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

91. Due to these acts [stated herein] of fraud, perjury, falsifying documents, forgery, omissions, and intentional misrepresentations, the Defendant(s) or its agent(s) have cost the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

FOR A SECOND CAUSE OF ACTION
(Perjury)
[Against all Defendant(s) or its agent(s)]

92. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

93. Defendant(s) or its agent(s) falsely and/or [fraudulently] testified unduly during the trial and/or at deposition, including testimony that:

a. Dudek and Cross had applied for lending per contract,

b. Dudek and Cross had provided all documents required of their lender,

c. Dudek and Cross had provided all documents required of their lender per contract and/or in a timely manner,

d. Dudek and Cross had done everything they could to secure financing per contract,

e. Dudek and Cross had done everything they could to close escrow per contract,

f. Dudek and Cross had secured lending per contract,

g. Dudek and Cross were 'ready, able and willing' to close per contract,

h. Dudek and Cross were 'ready, able and willing' to close per contract but the sellers refused,

i. Dudek and Cross were ready to close on December 14th, 2012,

j. First Federal was ready to close on December 14th, 2012,

k. First Federal was "cleared to close" on December 20th, 2012,

l. Dudek and Cross did not receive a CL-100 (report),

m. Defendant Collins has never seen the CL-100,

n. First Federal couldn't *continue* with the loan because they were waiting on the recorded survey,

o. First Federal didn't order the appraisal because they were waiting on the recorded survey,

p. Dudek and Cross did not receive the stamped recorded land survey until 'they drove to the county office themselves to obtain it' [on or about January 2013],

q. Dudek and Cross did not know of the existence of another buyer when filing their lis pendens and lawsuit,

r. the sellers breached their contract,

s. the sellers breach caused Dudek and Cross to breach,

t. the sellers refused to provide required lender and/or closing attorney required documents in order to close,

u. Defendants Dudek and Cross could not close per contract because of the sellers,

v. the Contract Extension Addendum was not required (by their lender), and

w. Defendant Williams turned in the application file [to underwriting] on October 31, 2012.

94. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she (and/or all parties involved) would never have gone to trial or be in this position today if

Defendant(s) or its agent(s) had been conducted themselves with honesty, and good faith and fair dealings.

95. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

96. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

97. Plaintiff insists, if the material facts and/or material evidence was not concealed and the parties went to trial, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

98. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

99. Plaintiff argues the Defendants knew the statements to be false and/or failed or intentionally failed to take remedial measures or disclose to the courts(s) the truth.

100. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

101. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

102. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

103. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A THIRD CAUSE OF ACTION
(Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act SECTION 15-36-10; Abuse of Rule 11 Signing Pleadings, Motions, and Other Papers; Representations to the Court; SC Rules of Professional Conduct Rule 3.1 Meritorious Claims and Contentions Sanctions)
[Against Defendant Collins]

104. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

105. Upon information and belief, Defendant Collins, having participated in the civil action(s), filed frivolous lawsuits/motions; signing pleadings; notice and opportunity to respond.

a. Defendant Collins [unlawfully] and/or [fraudulently] and/or frivolously filed a lawsuit for Specific Performance with complete knowledge the case did not meet all requirements of "Specific Performance" and/or the requirement of the court to compel Specific Performance.

b. Defendant Collins [unlawfully] and/or [fraudulently] and/or frivolously filed a lawsuit claiming seller breach of contract (i.e., seller fault), after Defendants Dudek and Cross had previously claimed the "no fault to either party" extension clause within the contract.

c. Defendant Collins submitted several documents to the courts (including Defendants [Dudek and Cross] Answer to Plaintiff Morphew complaint) that contained numerous or extensive false statements or defenses to the case.

d. In absence of an appellants (Plaintiff Morphew) request for stay of execution, said attorney [unlawfully] and/or [fraudulently] and/or frivolously filed a Motion [for appellants to pay] Supersedeas Bond and/or contempt against Morphew.

i. Upon information and belief, Morphew argues the motion was filed in hopes to "clandestinely" obtain a "stay" to legally excuse his or his client's intentional and fraudulent actions, and/or to harass the appellants.

ii. Due to this [unlawful] and/or [fraudulent] and/or frivolous motion, Plaintiff Morphew had to spend considerable amounts of time, and loss of money, to prepare an answer, and to prepare for and attend a hearing for said motion, including the undue distress it caused Plaintiff Morphew.

106. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his client's sales contract was invalid at application and/or invalid on or before the day they filed or unlawfully and/or frivolously filed the civil action for specific performance.

107. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his clients had not secured lending and/or had been denied lending on or before the day they filed or unlawfully and/or frivolously filed the civil action for specific performance.

108. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his clients had been and/or were unable to obtain lending

without the signed Contract Extension Addendum when they filed or unlawfully and/or frivolously filed said lawsuit for specific performance.

109. At all times material, Defendant Collins, having participated in the civil action(s) had full knowledge his clients had been denied lending, therefore were never able to close (i.e., "ready, able and willing") within the contract life and/or at any time material, as required to compel specific performance.

110. Defendant Collins having participated in the civil action(s) had full knowledge his clients did not meet all requirements of specific performance, but filed or unlawfully and/or frivolously filed said lawsuit in an attempt to disrupt or interfere with the closing in the Morphew contract, and/or in an attempt to harass, and/or in an attempt to blackmail (technically referred to as 'legal blackmail') the sellers into selling to his clients and/or not honoring Morphew's valid contract.

111. Defendant Collins having participated in the civil action(s) had full knowledge his clients had been denied lending and/or were unable to obtain financing on their sales contract without the signed Contract Extension Addendum but continued to [unlawfully and/or frivolously] file said lawsuit in an attempt to blackmail (technically referred to as 'legal blackmail') the sellers into selling to his clients and/or not honoring Morphew's valid contract.

112. Defendant Collins had a duty to disclose any critical material facts, specifically any that may be of intentional misrepresentation, deceit, or concealment of a material fact the concealing party had a duty to disclose, which was gross, oppressive, or malicious and committed with the intention on the part of the perpetrator to thereby deprive a person or entity of property, legal rights or otherwise cause injury.

113. Upon information and belief, the actions of the Defendant or its agent(s) were not the actions of honesty, good faith and fair dealings.

114. Upon information and belief, Defendant Collins or its agent(s) violated the South Carolina Rules of Professional Conduct

115. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

116. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff Morphew has incurred extensive undue burden or expense.

117. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant or its agent had conducted themselves with honesty, and good faith and fair dealings, or obeyed/honored the South Carolina State Bar Association Rules and Regulations.

118. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant or its agent(s).

119. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

120. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

121. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

122. Upon information and belief, Plaintiff argues Defendant Collins exhibited abuse of process and/or malicious prosecution.

123. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff h has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

124. Due to these acts or acts of fraud, perjury, omissions, unlawful conduct, and/or intentional misrepresentations, the Defendant or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

125. Injunctive relief is also necessary to demand Defendant or its agent to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

126. Punitive damages are necessary to deter Defendant or its agent from continuing its wanton conduct.

127. Sanctions, under FRCP Rule 11 and Rule 3.1, are applicable if the fraudulent evidence and perjured testimony was used in a pleading, written motion or other paper and/or the failure of a lawyer's ethical duty not to bring or defend an action or raise or challenge an issue unless there is a non-frivolous basis for doing so.

FOR A FOURTH CAUSE OF ACTION

(Violation of ABA Rules of Professional Conduct, Rule 3.3 Candor Toward the Tribunal)

[Against Defendant David Collins or its agent(s)]

128. All allegations in the prior paragraphs are fully repeated and incorporated herein.

129. Defendant Collins made a false statement(s) of fact or law to the court(s), including the appellate court or failed to correct a false statement(s) of material fact or law he previously made to the courts(s), such as:

a. Defendant Cross had applied for financing with First Federal before ratifying said sales Contract.

b. Defendant Cross had been pre-approved for financing per paragraph 8 of said contract before contract ratification.

c. Defendant Cross had diligently pursued financing per sales contract.

d. The sale would have closed within the life of the contract if the sellers had complied with their side of the contract.

e. The extension clause within the contract (Para. 12) was an automatic extension.

f. The said contract stated the CL-100 was required to be provided to the Defendants Dudek and Cross by November 30th, 2012.

g. The CL-100 was not provided.

h. He had never seen the CL-100.

i. The bank required the CL-100 clearance letter.

j. The CL-100 clearance letter was a contingency in the sales contract.

k. The sellers were required to provide the clearance letter.

l. First Federal ordered the appraisal "*the minute that the re-subdivision of the property was accomplished*".

m. The appraiser wouldn't go out there [to perform appraisal] until the subdivision had been made by the county.

n. Defendant Cross and/or Dudek were not at fault for any delay in getting the appraisal performed.

o. Sellers Ferro didn't provide response to repair request until December 7, 2012.

p. The lender hadn't ordered the appraisal because of the delays in getting the subdivision plat.

q. All repairs and the CL-100 clearance letter had to be done by November30, 2012.

r. Defendants Dudek and Cross have done nothing to delay the closing during the life of the contract (i.e., from ratification to expiration on November 30th).

s. Nobody (i.e., the lender, the closing attorney) was waiting on any documentation from Defendants Dudek and Cross in order to close.

t. Defendants Dudek and Cross did not know of another buyer until they received Plaintiff Morphew's initial lawsuit (approximately or around February 3rd, 2013).

130. Defendant Collins failed to disclose to the courts(s) legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

131. Defendant Collins failed to disclose to the courts Defendants Dudek and Cross were denied lending due to never providing a complete application.

132. Defendant Collins failed to disclose to the courts Defendant Dudek and Cross did not have lending secure and/or 'ready, able and willing' to close during the life of the said sales contract, and/or at any time and/or any time material.

133. Defendant Collins failed to disclose to the courts Defendant Dudek and Cross did not have a valid sales contract at application and/or at any time material.

134. Defendant Collins failed to disclose to the courts Defendants Dudek and Cross did not meet the requirements of specific performance.

135. Defendant Collins offered evidence that with complete knowledge he knew to be false or failed to take remedial measures or disclose to the courts(s).

136. Defendant Collins, with complete knowledge that his clients intended to engage in, is engaging or has engaged in criminal or fraudulent conduct related to the proceedings, has failed to take reasonable remedial measures, including, if necessary, disclosure to the court(s).

137. Defendant Collins was required to adhere and continue the duties he so failed in as stated in paragraphs (128) through (136) to the conclusion of the proceeding, and these duties apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

138. Upon information and belief, the actions of the Defendant or its agent(s) were not the actions of honesty, good faith and fair dealings.

139. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

140. Plaintiff argues the actions of Defendant Collins, as an officer of the court, participated, and is participating, in the failure of the court(s) to make an informed decision.

141. Plaintiff insists, absent of herein stated acts and/or omissions, Plaintiff would not have been deprived of a fair trial and/or the opportunity to present all of her case.

142. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

143. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

144. Due to these acts of fraud, perjury, omissions, and misrepresentations or intentional misrepresentations, the Defendant or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

145. Due to the violation of Rule 3.3, sanctions are necessary due to the Defendant or its agent use of fraudulent evidence and perjured testimony in the court of law.

FOR A FIFTH CAUSE OF ACTION

(Violation of the Federal Rules of Civil Procedures, Rule 26. Duty to Disclose; General Provisions Governing Discovery; Rule 37 Failure to Make Disclosures or to Cooperate in Discovery; Sanctions; SC Rules of Professional Conduct Rule 8.4(c) Misconduct, of the Rules Regulating The South Carolina Bar (Rules of Professional Conduct)

[Against Defendant David Collins or its agent(s), Defendant First Federal or its agent(s), and Defendant Michael Scarafile or its agent(s)]

146. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

147. At all times material, and at the direct request(s) of the Plaintiff or her attorney during initial discovery, Defendant Collins failed or intentionally failed to disclose material fact(s) in connection with the sale of land.

148. Defendant Scarafile, as legal counsel and President of Defendant Carolina One Real Estate provided written documentation falsely stating Defendants Dudek and Cross were 1) 'ready, able and willing' to close, and 2) a closing could be scheduled [as of

December 20th, 2012], and 3) his clients had provided proof of financing [per sales contract].

149. With full knowledge and receipt of said subpoena(s), Defendant Collins failed or intentionally failed to disclose to the opposing attorney or party (including the courts) a material fact(s) in connection with the sale of land.

150. First Federal failed or intentionally failed to disclose, answer or respond to, and/or and in a timely manner, two subpoenas and a phone call requesting Dudek and Cross' lending information or status and/or all documents, letters, correspondences, files, etc. and/or affiliation to First Federal.

151. Upon information and belief, Defendants Williams and/or First Federal failed or intentionally to respond to the lawful requests for proof of Defendants Dudek and Cross lending status and/or lending approval [per Contract] and/or lack of approval.

152. At all times material, and with complete knowledge Dudek and Cross had been denied lending due to an incomplete application and/or their application was not valid and/or the Dudek and Cross sales contract were not valid, First Federal refused to provide and/or disclose stated herein material facts and/or status to the sellers or its agent and/or to the Plaintiff and/or to the courts.

153. With full knowledge her clients and the sellers were in litigation, Defendant Allison Williams testified she had destroyed all documents or communications, electronic or otherwise, between her and the Defendants Dudek and Cross.

154. Upon information and belief, the actions of the Defendants were not the actions of honesty, good faith and fair dealings, but instead implied they had damaging or unfavorable information to hide.

155. Upon information and belief, the actions of the Defendant Collins and/or Defendant Scarafile and/or First Federal were not the actions required per the South Carolina Bar Rules (SCBR) of Professional Conduct but instead were inconsistent with the SCBR requirements of 'honest dealings with others'.

156. Plaintiff asserts that, absent of herein stated act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant(s) or its agent(s) had conducted themselves with honesty, and good faith and fair dealings and/or had honored the SC Rules of Profcssional Conduct and/or honored the Federal Rules of Civil Procedures.

157. Plaintiff asserts that the Plaintiff and/or the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

158. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or a fair trial and/or the courts were prevented from making a lawful or informed ruling.

159. Plaintiff insists, absent of herein stated fraudulent acts or act(s) or omissions, Plaintiff would not have been deprived of a fair trial and/or the opportunity to present all of her case and/or the courts would have been able to make a lawful or properly informed ruling.

160. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

161. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

162. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

163. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

164. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

165. Sanctions, under FRCP Rule 26, are applicable due to the Defendants or its agent's use of fraudulent evidence and perjured testimony, as stated herein, as part of their failure to comply with a discovery order and/or submitted as part of a bad faith affidavit or declaration.

166. Sanctions are compelled for violation of Rule 8.4(c) and/or failure to comply with an obligation or prohibition imposed by a Rule as stated herein, as is a basis for invoking the disciplinary process.

167. Sanctions are compelled for abuse of process and/or malicious prosecution as stated herein, as possibly criminal liability.

FOR A SIXTH CAUSE OF ACTION
(Violation of ABA Rules of Professional Conduct, Rule 4.1 Truthfulness in Statements to Others; Rule 5.3 Responsibilities Regarding Non-lawyer Assistants)
[Against Defendant Scarafile or its agent(s) and Defendant Wooddy Law Firm or its agent(s)]

168. At all times material, Defendant Michael Scarafile, with full knowledge Dudek and Cross were not 'ready, able and willing' to close per the sales contract and/or unable to obtain financing on their sales contract without the signed Contract Extension Addendum and/or had an expired or invalid sales contract, declared Dudek

and Cross had provided proof of financing and are ready to close (i.e., 'ready, able and willing') and/or could schedule a closing.

169. With full knowledge that his clients were unable to obtain financing on their sales contract without the signed Contract Extension Addendum and/or had an expired or invalid sales contract, Defendant Scarafile unlawfully concluded a lawsuit would result if the sellers did not comply [i.e., sell to his clients].

170. On November 27, upon information and belief, Defendant Dudek and/or Defendant Cross and/or Defendant Nicholson requested Wooddy Law Firm to contact the sellers [as Dudek and Cross's closing attorney[14]].

a. Upon information and belief, Plaintiff argues the request was implemented to create a 'façade' that they were preparing for a closing in the near future[15], and/or to 'cover up' the fact Dudek and Cross had intentionally and/or seriously breached their contract.[16]

171. On November 27, Wooddy Law Firm mailed an [official] letter introducing themselves as the closing attorney handling the closing, and requested the sellers' personal information (PI)[17].

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[14] Request was made by Nicholson and/or Cross and/or Dudek after sellers' agent asked "*if a closing time has been set and if so, the place it will occur...*"

[15] Request was 8 days before Defendants Dudek and Cross applied for mortgage lending on their sales contract; no legal relationship existed between Woody Law Firm and the sellers, at all times material, no application for financing had been submitted in connection with Dudek and Cross sales contract.

[16] Contract required application within 10 days of contract ratification; Contract also called for financing approval within 20 days of contract ratification; application for financing had not been submitted until after the said sales contract had expired.

[17] See Note 9

172. On December 5, and at all times material and with full knowledge there was no legal cause and/or justification, Defendant Carrie Boyer required proof [from the sellers] that the [minor] damages stated in the CL-100 have been repaired (i.e., contractors clearance letter)[18].

173. Upon information and belief, Plaintiff argues the actions and/or omissions of the Defendant(s) or its agent(s) created an unjustified expectation or belief as to the status of Defendants Dudek and Cross's financing status, and/or their capacity to close, and/or created a false sense of belief that a closing would take place [in the near future], and or which was materially misleading to the Plaintiff and/or the courts.

174. Upon information and belief, the actions and/or omissions of the Defendant(s) or its agent(s) were not the actions of honesty, good faith and fair dealings, and furthermore violated ABA Rules of Professional Conduct.

175. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

176. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff Morphew has incurred extensive undue burden or expense.

177. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant or its agent had conducted themselves with honesty, and good faith and fair dealings, or obeyed/honored the South Carolina State Bar Association Rules and Regulations.

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[18] See Note 9

178. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

179. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

180. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

181. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

182. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

183. Due to these acts or omissions or misrepresentations, the Defendant(s) or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

184. Injunctive relief is also necessary to demand Defendant or its agent to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

185. Punitive damages are necessary to deter Defendant or its agent from continuing its wanton conduct.

186. Sanctions are compelled under ABA Rules of Professional Conduct Rule 4.1, and are applicable if the fraudulent evidence and/or perjured testimony was a false statement of material fact or law to a third person; or the lawyer failed to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

187. Sanctions are compelled under ABA Rules of Professional Conduct Rule 5.3, stating that the lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

FOR A SEVENTH CAUSE OF ACTION
(Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud)
[Against all Defendant(s) or its agent(s)]

188. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

189. With complete knowledge the sales contract was, 1) their own (i.e., not the sellers'), 2) was of **"Time is of the Essence"**, and 3) vastly reduced in the sales price with agreement Cross and Dudek would close on or before November 30th, 2012, Dudek and Cross failed or intentionally[19] failed to make [mortgage financing] application before said sales contract expired.

[19] Though the sales contract was not a "repair' contingent contract, Defendants Cross testified they knew they were required to apply per contract but didn't because she "*was waiting for the sellers to 'take her seriously*" [in regards to making the repairs].

190. Defendants Dudek and Cross and Defendant Susan Nicholson, with intent and/or pre-meditation, conspired to 'cheat' or 'trick' or 'defraud' the sellers out of their remaining property by placing fault on the sellers, and did so even before the contract was ratified (i.e., signed by the sellers)].

> Doreen: "*The Seller could always throw in the extra acreage and the barn and we'll guarantee the end of November for sure. We're willing to do that.* ☺"
>
> Susan: "*If the home isn't subdivided in time then it will be their [sellers] fault not yours....If the seller wants to throw in any additional property I'm sure you will be ok with it* ***the trick*** *is to get him to do that without any extra charge! You never know he may throw you guys a deal you can't refuse!*"

191. Upon information and belief, 15 days before contract expiration, again Defendants Dudek and Cross attempted to 'cheat' or 'trick' or 'defraud' the sellers out of their remaining property by conspiring to use a 3rd party's information against another 3rd party in order to re-negotiate their contract.

> Doreen to Susan: "*Can we hold Eugene* [structural engineer] *liable if future information becomes available contradicting his report? It sounds like it will be challenge to take the information from Tim* [contractor] *and use it in the counter-offer.*"

192. With complete knowledge their client had not yet applied for lending, Defendant Susan Nicholson or her agent(s) falsely stated that the 'lender' was requiring documents (i.e., repair receipts, a CL-100 or cleared CL-100) [in order to process the loan].

193. With complete knowledge their client had not yet applied for lending and/or supplied a complete application, Defendant Susan Nicholson or her agent(s) falsely stated that the 'lender' had not been able to schedule a closing due to waiting on the recorded survey.

194. Upon information and belief, on December 5, Defendant Susan Nicholson requested Wooddy Law Firm to provide a notice they [closing attorney] required proof

the [minor] damages stated in the CL-100 have been repaired (i.e., contractors clearance letter);

195. At all times material, and with complete knowledge of its falsity, Defendants Dudek and Cross have maintained or testified the reason they could not close [per contract] was due to the lack of a CL-100 or a clear/cleared CL-100.

196. On or about December 20th, Dudek and Cross or Defendant Nicholson submitted or unlawfully submitted a legible but invalid sales contract [unsigned and missing sellers names] to First Federal.

197. First Federal accepted or unlawfully accepted an invalid and/or unsigned sales contract that contained no sellers name for mortgage loan processing.

198. With complete knowledge they had been denied lending due to an incomplete application and/or their application had expired and/or their sales contract was no longer valid or expired, Defendant Cross gave specific directions to First Federal to not provide or disclose their lending/mortgage information or status.

199. Defendants Dudek and Cross and Defendant Collins engaged in filing of frivolous and unlawful actions with complete knowledge Dudek and Cross had been denied lending, and/or that their application had expired and/or was no longer valid, and/or the sales contract was no longer valid and/or had expired.

200. Defendants Dudek and Cross and Defendant Collins engaged in filing of [frivolous and/or unlawful] actions at the time they became aware the sellers had contracted to sell the Property to another buyer [Plaintiff].

201. Upon information and belief, Defendants Dudek and Cross and Defendant Collins engaged in filing of actions or frivolous and/or unlawful actions to prevent the sale of said property to Plaintiff.

202. Defendants Dudek and Cross and Defendant Collins, with complete knowledge Dudek and Cross could not secure lending without the signed Contract Extension Addendum, engaged in filing of actions or frivolous and/or unlawful actions in an attempt to 'force' the sellers to sell to them.

203. Upon information and belief, Defendant Nicholson or its agents, and/or Defendant Scarafile or its agents, in their acts and omissions as stated herein, have engaged in bad faith and unfair dealings by displaying a complete disregard to their company core values, "***TRUTH*** *Commitment to honesty without compromise. An excellent reputation, loyalty and trust. We hold each other accountable. We do what we say we are going to do. We communicate honestly with everyone.*"

204. Defendant(s) or its agent(s) having participated in the civil action(s) had full knowledge all times material Defendants Dudek and Cross were denied lending due to an incomplete application, have never secured lending on said contract, could never obtain lending on said contract without a signed contract extension, but in bad faith and unfair dealings engaged in, continues to engage in, and plans to engage in, fraud, forgery, falsifying documents, misrepresentation, perjury, breach of fiduciary duties, and fraud on the courts.

205. Plaintiff asserts the acts or omissions or representations or misrepresentations made by the Defendant(s) or its agent(s) was relied on by Plaintiff and/or the courts.

206. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

207. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

208. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

209. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

210. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

211. Disciplinary action is compelled per SECTION 40-57-145 (A)(1) [makes a substantial misrepresentation involving a real estate transaction], (3) [pursues a continued and flagrant course of misrepresentation], (4) [in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public], (19) [fails to disclose in accordance with Section 40-57-137 any material facts concerning a real estate transaction], (20) [violates any provision of this chapter or a regulation promulgated under this chapter], (21) [violates a rule or order of the commission], and (23) [engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their client].

212. An investigation is compelled per SECTION 40-57-150 Investigation of violations of law; surrender of license; disciplinary action; report to be posted (A) through (f), with emphasis on (C)(1) [Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days].

FOR AN EIGHTH CAUSE OF ACTION
(Slander of Title)
[Against Defendant Collins and Defendants Dudek and Cross or its agent(s)]

213. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

214. Upon information and belief, Defendant Collins and Defendants Dudek and Cross, in bad faith, filed or frivolously filed a Lis Pendens (and including filing a separate Lis Pendens under a complaint or unlawful or frivolous complaint) with full knowledge Dudek and Cross had been denied lending and/or could not obtain financing on said contract without a signed Contract Extension Addendum, and/or the sales contract was invalid, and/or the application made to First Federal had expired and/or was invalid.

> First Federal 10-day notice letter dated 1-3-13: "*Should you decide at a later date*[20] *to furnish the above items, we can assist you with a new application.*"

215. Upon information and belief, Plaintiff affirms these acts were intentional and/or made recklessly and/or with malice and/or with intent to deceive[21].

216. Upon information and belief, Defendant Collins and Defendants Dudek and Cross, with complete knowledge of a backup buyer, filed or frivolously filed a Lis

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[20] 10-day notice letter was dated January 3, 2013. Expiration of application was January 13, 2013, making Dudek and Cross mortgage application on said contract invalid after January 13, 2013.
[21] See note 13.

Pendens (and including filing a Lis Pendens under a complaint or an unlawful or frivolous complaint) to prevent such sale of said property.

217. Injunctive relief is necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealings.

FOR A NINTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)
[Against Defendants Dudek and Cross]

218. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

219. Defendants Dudek and Cross failed or intentionally failed to perform the court Order of November 15th, 2014 for specific performance[22].

220. At all times material, and upon information and belief, Plaintiff argues Dudek and Cross were unable and/or are currently unable to obtain mortgage credit on said court Order with First Federal and/or any lending institution.

221. Upon information and belief, and with complete knowledge their sales contract within the court order was and/or is invalid [as provided herein], Defendants Dudek and Cross filed a motion, or an unlawful and frivolous motion, to compel the courts to order a supersedeas bond on appellants in order to stay the said court Order[23].

222. At the direction of the court, Dudek and Cross were, 1) directed to contact the sellers to obtain permission to the property, and 2) Morphew was directed to allow access

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[22] Per SC Rule 241(b)(4), orders, judgements, decree or decision on appeal that direct the sale or delivery of possession of real property as provided in S.C. Code Ann § 18-9-170, are not stayed on appeal.

[23] Per S.C. Code Ann § 18-9-170, If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the *judgment shall not be stayed unless a written undertaking be executed on the part of the appellant*, with two sureties...

to the property [in order for Dudek and Cross to perform an inspection and/or due their due diligence], and 3) Dudek and Cross to move forward on said Order.

223. Upon information and belief, Defendants Dudek and Cross failed or intentionally failed to perform their court Order of November 6, 2014, and again are in breach of contract, and contempt.

224. Upon information and belief, Defendants Dudek and Cross breached or intentionally breached sales contract within the court Order with complete knowledge they are unable to and will be unable to obtain financing on their sales contract within the Order; and have withheld or fraudulently withheld and/or continue to withhold that information from the sellers, the Plaintiff, the lower courts and the appellant court.

225. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

226. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

227. Injunctive relief is also necessary to demand Defendants or its agent to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

228. Punitive damages are necessary to deter Defendants or its agent from continuing its wanton conduct.

FOR A TENTH CAUSE OF ACTION

(Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of care; Duty of full disclosure; Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct)

[Against Defendant Williams, Defendant Nicholson Defendant Collins, and Defendant Scarafile]

229. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

230. Upon information and belief, Defendant Allison Williams, lending officer at First Federal, had a fiduciary duty and/or an assumed duty to disclose to the courts true facts and/or representations as to the status or conditions of the Dudek/Cross loan or file.

231. Upon information and belief, Allison Williams [with complete knowledge of said facts or status] misrepresented to the courts that Defendants Dudek and Cross had applied for lending per their sales Contract, and/or obtained approval per Contract, and/or had secured mortgage lending, and/or were ready to close.

232. Upon information and belief, Defendant David Collins, had a fiduciary duty and/or an assumed duty to disclose to the Plaintiff's attorney and/or the courts, true facts and/or representations as to the status or conditions of the Dudek/Cross loan or file.

233. Upon information and belief, and with full knowledge the sales contract expired November 30th, 2012, Defendant Allison Williams gave legal advice on the Dudek and Cross **Time is of the Essence** sales contract.

234. Upon information and belief, Defendant Allison Williams displayed a misuse of her [influential] position in court and provided false testimony [in order to sway the courts decision].

235. Defendant Scarafile or Defendant Carolina One or Defendant Nicholson had a fiduciary duty and/or an assumed duty to disclose to the sellers or their agent, and to the

courts, that their clients, Dudek and Cross, had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending.

236. Defendant Scarafile made false or unlawfully and/or intentionally made false statements that Dudek and Cross, 1) had secured lending, 2) were ready, able and willing to close, and could schedule a closing the week of Christmas.

237. Upon information and belief, Plaintiff argues said statements were unlawfully made and/or made as a 'scare tactic' to compel the sellers into selling to his clients.

238. Plaintiff argues that where there is a duty to speak and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

239. Upon information and belief, Plaintiff argues these fraudulent actions were performed with the intent to deceive.

240. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

241. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

242. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

243. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

244. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

245. Sanctions are compelled under ABA Rules of Professional Conduct Rule 4.1, and are applicable if the lawyer failed to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

FOR AN ELEVENTH CAUSE OF ACTION

(Violation of the Real Estate Code of Conduct SECTION 40-57-137 Real estate brokerage company duties to client; agency relationship; applicability of common law: (H)(4), (H)(6)(a), (H)(6)(b), (H)(6)(c); (K); (O)(2)(e), (O)(4); SECTION 40-57-140 (B); Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct)

[Against Defendant Susan Nicholson, Defendant Scarafile, and Defendant Carolina One Real Estate]

246. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

247. Defendant Scarafile/Carolina One had a fiduciary duty and/or an assumed duty to disclose to the sellers or their agent, and to the courts, that their clients, Dudek and Cross, had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending.

248. Defendant Scarafile made false statements or unlawfully and/or intentionally made false statements that Dudek and Cross, 1) had secured lending, 2) were ready, able and willing to close, and could schedule a closing the week of Christmas.

249. Upon information and belief, Plaintiff argues Defendants Scarafile's actions or fraudulent action as stated [in (#196) above] were initially performed with intent to use 'legal blackmail'[24].

250. Defendant Susan Nicholson made false statements and/or false testimony that Dudek and Cross had secured lending or were ready to close.

251. Defendant Susan Nicholson made false statements and/or false testimony that Dudek and Cross were ready to close but could not schedule a closing because of missing document(s) required of the sellers.

252. Defendant Susan Nicholson or her agent had a duty and/or an assumed duty to disclose to the sellers or their agent and/or to the courts that her clients had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending due to an incomplete application.

253. Defendant Nicholson or its agents, or Defendant Scarafile or its agents, have broken their duty and/or violated the S.C. Real Estate Code of Conduct.

254. Plaintiff argues that where there is a duty to speak and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

255. Upon information and belief, Plaintiff argues these fraudulent actions were performed with the intent to deceive.

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[24] When a buyer uses the legal system to "blackmail" the seller into conveying title to the property and/or at a price agreeable to the buyer; (ex., seller of property "blackmailed" into settling frivolous claims for breach of a real estate sales contract).

256. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

257. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

258. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

259. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

260. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

261. Disciplinary action is compelled per **SECTION 40-57-145 (A)(1)** [makes a substantial misrepresentation involving a real estate transaction], **(3)** [pursues a continued and flagrant course of misrepresentation], **(4)** [in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public], **(19)** [fails to disclose in accordance with Section 40-57-137 any material facts concerning a real estate transaction], **(20)** [violates any provision of this chapter or a regulation promulgated under this chapter], **(21)** [violates a rule or order of the commission], and **(23)** [engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their client].

262. An investigation is compelled per **SECTION 40-57-150** Investigation of violations of law; surrender of license; disciplinary action; report to be posted; (A)

through (f), with emphasis on (C)(1) Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days.

FOR A TWELFTH CAUSE OF ACTION
(Fraud - Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive]
[Against all Defendant(s) or its agent(s)]

263. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

264. At all times material, Defendant(s) or its agent(s) concealed pertinent information to the case.

265. At all times material, Defendant(s) or its agent(s) failed to disclose material facts or nondisclosure of material facts/failure to volunteer information.

a. Defendant(s) or its agent(s) failed to disclose they had been denied lending [due to an incomplete application].

b. Defendant(s) or its agent(s) failed to disclose the sales contract between Defendants Dudek and Cross and the sellers Ferro was, has been, and currently is, invalid.

266. Defendant(s) or its agent(s) knowingly made over a hundred misrepresentations or false statements with intent to deceive, including:

1. Defendants Dudek/Cross testified they had secured lending per contract and had been or were always ready able and willing to close,

a. when in fact, they had been denied mortgage credit due to an incomplete application.

2. Defendants Dudek/Cross, their agent, Defendant Susan Nicholson, and loan officer Defendant Allison Williams stated or testified that the loan had been processing per sales contract but it was held up [for various reasons],

    a. when in fact, an application had not even been submitted until the contract had expired.

3. Defendants Dudek/Cross testified they could not close per contract due to seller's breach of contract,

    a. when in fact, they could not close due to making application after their contract expired and/or they were denied lending because they never submitted a complete application.

4. Defendants Dudek/Cross and their agent, Defendant Susan Nicholson, [fraudulently] communicated that the lender was requiring repair receipts and a cleared CL-100,

    a. when in fact, First Federal never required and/or requested either.

5. Defendant(s) or its agent(s) testified that sellers were to complete all the repairs [to Dudek and Cross' satisfaction] before making application,

    a. when in fact, Defendant(s) or its agent(s) had complete knowledge that 1) Dudek and Cross were required to apply for lending within 10 days of contract ratification, and 2) the sellers were under no legal obligation to perform any repairs until proof of financing.

6. Defendant Cross testified she did not receive a copy of the recorded plat, but instead had to obtain one in January 2013, when Defendant Dudek "drove to the county office to obtain a copy",

a. when in fact, Defendant Cross had received the stamped or recorded plat on or about the 23rd of November (Friday).

i. On (Tuesday) November 27th, Cross sent a confirmation e-mail to Defendant Allison Williams at First Federal, checking to make sure the recorded survey is what they needed.

7. Defendant Allison Williams testified her clients did everything they could to close escrow per contract,

a. when in fact, and with complete knowledge, Dudek and Cross had applied for mortgage credit after the said sales contract expired, and had been denied lending due to an incomplete application.

8. With complete knowledge this was breaking FDIC rules and regulations and First Federal processes, Defendant Allison Williams testified that the said non-property specific, unsigned, pre-qualification application dated for May 7, 2012 was the Defendants Dudek and Cross's application requirement per their October 24th, 2012 sales contract,

a. when in fact, at all times material, First Federal and/or FDIC clearly stated an unsigned pre-application is only valid for 30 days.

267. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

268. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

269. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

270. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A THIRTEENTH CAUSE OF ACTION
(Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal)
[Against Defendant First Federal, Defendants Dudek and Cross and Defendant Collins]

271. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

272. Upon information and belief, at all times material, Plaintiff contends no valid Sales Contract exists, or ever existed, between Dudek/Cross and First Federal.

a. Defendants Dudek and Cross applied for lending on an expired sales contract.

b. First Federal required a signed Contract Extension Addendum at application.

c. Dudek and Cross did not provide a signed Contract Extension Addendum at application and/or never provided said Addendum as required by First Federal to process their mortgage application.

d. First Federal declared the submitted sales contract illegible, therefore making it invalid, on December 12, 2012.

e. First Federal requested a signed legible sales contract and all addendums on December 12, 2012.

f. First Federal never received a [valid] and/or signed legible sales contract.

273. Plaintiff seeks declaratory judgment that at all times material, no sales contract existed or exists between Defendants Dudek and Cross and the sellers, as repeated above.

274. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

275. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

276. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

277. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A FOURTEENTH CAUSE OF ACTION
(Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d))
[Against Defendants Dudek, Cross, Williams, Collins, and Nicholson]

278. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

279. Upon information and belief, Defendant(s) or its agent(s) created or engaged in or assisted in the making of fake or false documents.

280. Upon information and belief, Defendant(s) or its agent(s) used or presented a forged document or other forged item (also referred to as "uttering" the instrument) with intent to deceive and with complete knowledge that the item was forged or false.

281. Upon information and belief, Defendant(s) or its agent(s) used a forged or false or fake instrument or document in an attempt or to obtain or transfer property or money.

282. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

283. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

284. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

285. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

286. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A FIFTEENTH CAUSE OF ACTION
(Violation of Federal Rules and Regulations (FDIC)/Violation of Banking Rules and Regulations)
[Against Defendant Allison Williams and First Federal]

287. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

288. Upon information and belief, Per FDIC and/or First Federal Banking Rules and Regulations, pre-qualification applications (that don't become applications or move forward for processing) expire after 30 days.

289. Upon information and belief, First Federal qualified or unlawfully qualified an 'expired' (over 180 days) unsigned, non-property specific, pre-qualification application as Defendant Dudek and Cross' pre-application 'requirement'.

290. Upon information and belief, FDIC rules specify, a file with a complete application [and with valid loan approval] for residential mortgage credit can only stay open for no more than 90 days without resolution.

291. Upon information and belief, First Federal failed to close Defendant Dudek and Cross' empty lending file (i.e., no application, no valid loan approval, no sales contract) that was over 180 days old.

292. Upon information and belief, and First Federal Banking Rules and Regulations, First Federal requires all necessary or required loan application documents within 10 days of initial application [in order to be considered for mortgage credit and/or process application for mortgage credit].

293. Upon information and belief, and FDIC, and First Federal rules and regulations, an application for mortgage credit cannot be accepted on an expired sales contract without a signed Contract Extension Addendum or a new sales contract with a valid expiration date.

294. First Federal Underwriting continued to process the Dudek/Cross file after the expired 10 days with an invalid or expired contract and no application or signed application from Defendants Dudek and Cross.

295. First Federal failed to close Defendants Dudek and Cross' file when they did not receive a valid contract and/or a signed Contract Extension Addendum within the time required.

296. First Federal accepted or unlawfully accepted an invalid [unsigned, missing seller name(s)], sales contract for mortgage loan processing.

297. Without having a complete application and/or a valid sales contract, First Federal distributed or unlawfully distributed an 'approval' letter dated December 12th, 2012[25].

[25] Submitted as a trial exhibit as proof of financing.

298. Upon information and belief, First Federal 'cleared' their 12/12/12 requirement for a legible signed sales contract and all addendums on 12/20/16 by writing, "*See other copy*[26] *for signatures*" on an unsigned, and nowhere the sellers name appeared on, copy of the sales contract.

299. Defendant Allison Williams and Defendant First Federal provided or intentionally provided false documentation and/or information and/or testimony to the courts:

a. Allison Williams testified Defendant Cross had submitted a pre-approval application" as of October 22nd, 2012 or [per the sales contract].

b. "Satisfactory loan approval" [per contract] was provided on 12/12/12, without a signed application and all banking addendums or a complete application yet received by First Federal.

c. Satisfactory loan approval [that contained no credit, income or asset conditions] per contract was provided on 12/12/12, when in fact approval was still contingent on:

    1. First Federal's receipt and review of the IRS request for last two years of transcripts, and a valid sales contract and all addendums (specifically, a signed legible sales contract, and a signed Contract Extension Addendum), and a signed application and all bank disclosures.

d. First Federal provided statement that, "All [final] information and documents requested from the buyers was received on 12/20/12", when in fact they never

[26] 'Note' references to use the illegible signed copy's signature page to validate the unsigned legible copy, which did not contain the sellers name anywhere.

received a valid [legible] signed sales contract with all addendums nor a complete application.

e. First Federal provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact they had not yet received a complete application and/or a valid sales contract.

f. First Federal [unlawfully] provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact First Federal had not ever contacted closing attorney or with a clear to close approval.

g. First Federal provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact, upon information and belief, the closing attorney had not started a title search as of 12/20/12.

300. Upon information and belief, Defendant Allison Williams provided or unlawfully provided underwriting with invalid and [**unsigned**] documents for processing[27].

301. Upon information and belief, First Federal displayed blatant discrimination[28], specifically but not limited to, Evidence of Disparate Treatment (Treat a borrower differently in servicing a loan or invoking default remedies) and Overt Evidence of

[27] Pre-qualification application dated May 2012, unsigned Contract Extension Addendum on 12/20/16, Unsigned Repair Addendum on 12/20/16, Unsigned sales contract on 12/20/16.

[28] The Department of Housing and Urban Development ("HUD"), the Department of Justice ("DOJ"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Housing Finance Board ("FHFB"), the Federal Trade Commission ("FTC"), the National Credit Union Administration ("NCUA"), and the Office of Federal Housing Enterprise Oversight ("OFHEO") (collectively, "the Agencies") will not tolerate lending discrimination in any form. (FDIC Law, Regulations, Related Acts 5000 – Statements of Policy).

Discrimination (overt evidence of discrimination when a lender openly discriminates on a prohibited basis).

b. All allegations in paragraphs 211-233 are fully repeated and incorporated herein.

c. Without a pre-qualification application or a credit check, First Federal provided or unlawfully and/or fraudulently provided a buyer with a pre-approval letter in the amount of $295,000 to provide to sellers as "*an indication of credit worthiness*" and/or "help borrowers let the seller know that they are about to get financing."

d. First Federal accepted an application on an expired contract (i.e., invalid contract) from Dudek and Cross, when Plaintiff Morphew was told by First Federal that they do not accept applications on expired contracts without, "*a Contract Extension Addendum or a new sales contract*".

e. First Federal failed to close Dudek and Cross' 'empty' residential lending file that was over 180 days old.

f. First Federal used Dudek and Cross' unsigned and incomplete pre-qualification application dated over 180 days as their pre-qualification application requirement (i.e., electronic application).

g. First Federal used an expired or invalid sales contract for Defendant Dudek and Cross' mortgage loan processing.

h. At all times material, and/or with full knowledge Defendant Cross was married at the time, Defendant Allison Williams or Defendant First Federal changed

Defendant Cross' marital status to 'single female' and/or reviewed application as such[29].

i. Defendant Williams, as an agent of a federal bank, provided false testimony or perjury in court [in favor of Defendants Dudek and Cross].

j. Upon information and belief, Ms. Williams failed to disclose pertinent material lending information during trial [in favor of Defendants Dudek and Cross] to hide damaging evidence against her clients.

302. Upon information and belief, Allison Williams or its agents and/or First Federal or its agents provided or unlawfully provided or testified altered information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards at the court trial in order to sway the court's ruling [in favor of Defendants Dudek and Cross].

303. Defendant(s) or its agent(s)' actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

304. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

305. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

306. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

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[29] Mrs. Cross' filed her applicable tax returns as 'single female'.

307. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A SIXTEENTH CAUSE OF ACTION
(Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4 (a), Rule 3.4(d))
[Against all Defendant(s) or its agent(s)]

308. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

309. First Federal failed or intentionally failed to provide Defendants Dudek and Cross lending file in a timely manner[30].

310. First Federal responded to 2 separate subpoena requests and 1 direct telephone call by stating:

a. "*there are no accounts for this client at our institution*" and "*unable to locate any loan documents related to the above referenced customers for the specific address and TMS number*" [1st request dated March 4th, 2013]

b. "*no records of any loans with that number at our institution*" [2nd request dated August 1, 2013]

c. "*could not provide any information.*" [phone call August 2013]

311. Upon information and belief, First Federal was forced to supply the file [and only] when lending officer and Defendant, Allison Williams, was subpoenaed by the Plaintiff to appear at trial.

a. File "magically" appeared 15 months later in response to the March 4th, 2013 subpoena request.

[30] First Federal failed to supply the subpoenaed information for 15 months, and when provided, it was just hours before the trial.

b. File was unexpectedly delivered to the applicable attorneys just hours before the trial on June 10th, 2014.

312. Upon documentation and belief, on or about January 18th, 2013, First Federal was initially concerned they would be "*pulled into the lawsuit*".

> "*The attorneys are in negotiation still as of a couple of days ago & the attorney for the buyer has placed an order that the seller cannot sell to anyone else until the matter is resolved. I think someone there should speak to our attorney about how to proceed. We could get drawn into this law suit if it in fact becomes a lawsuit*".

313. Upon information and belief, Defendant Collins failed or intentionally failed to provide the Defendants Dudek and Cross lending status, [even at the direct request(s) of the Plaintiff's attorney and/or with knowledge of the 2 subpoenas[31] [32] [33]].

314. Upon information and belief, Defendant Collins directed First Federal not to provide the Defendants Dudek and Cross lending file and/or status to the opposing party or parties[34] [35].

315. Upon information and belief, Defendants, or their agents, [intentionally] refused to provide Dudek and Cross' true lending status.

316. Upon information and belief, the actions of the Defendants were not the actions of honesty, good faith and fair dealings, but instead implied they had something negative to their case to hide.

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[31] Rule 3.4 (a) (a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act)
[32] Rule 3.4(d) (in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party)
[33] Rule 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information)
[34] See Note 25
[35] Rule 3.4(f) (a lawyer shall not request a person other than a client to refrain from voluntarily giving relevant information to another party)

317. Upon information and belief, Plaintiff alleges there were critical material facts that would contradict Defendants Dudek and Cross' lawsuit against the sellers, and contradict their defense against the Morphew complaint, therefore damaging their legal stance and character.

318. Upon information and belief, Plaintiff alleges there is an abundant amount of damaging information contained herein to prove intent for obstruction.

319. Furthermore, Plaintiff asserts the damaging material facts withheld by the Defendant(s) or its agent(s) is, in itself, enough to demonstrate [malicious] intent in their obstruction.

320. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

321. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

322. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

323. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

324. Sanctions, under FRCP Rule 26, are compelled due to the Defendant(s) or its agent(s) use of fraudulent evidence and perjured testimony as part of their failure to comply with a discovery order.

FOR A SEVENTEENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
[Against all Defendant(s) or its agent(s)]

325. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

326. With complete knowledge that Defendants Dudek and Cross were denied lending due to an incomplete application, Defendant(s) or its agent(s) subjected or intentionally and/or recklessly subjected Morphew to unnecessary spending, time, effort, lost work hours, and extreme emotional distress.

327. Furthermore, Defendant(s) or its agent(s) subjected or intentionally and/or recklessly subjected, and/or is currently subjecting, Morphew to further unnecessary spending, time, effort, lost work hours, and extreme emotional stress[36].

328. Defendants Dudek and Cross, and Defendant Collins or its agents subjected or intentionally and/or recklessly subjected Morphew to [again] unnecessary spending, time, effort, lost work hours, and extreme emotional stress by subjecting Morphew to an unlawful and frivolous motion.

329. Defendant's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

330. The emotional distress that Morphew suffered, and continues to suffer, because of Defendant(s) or its agent(s) conduct is so unreasonable and unnecessary that no reasonable person can be expected to tolerate it.

331. As a result of Defendants conduct, Morphew suffered, and still continues to suffer, emotional distress and embarrassment.

---

[36] With complete knowledge that Dudek and Cross fraudulently filed an unlawful and frivolous lawsuit [with intent to deceive].

332. Plaintiff seeks actual and punitive damages to redress her damages.

333. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

334. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR AN EIGHTEENTH CAUSE OF ACTION
(Tortious Interference with Existing Contractual Relations)
[Against all Defendant(s) or its agent(s)]

335. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

336. Upon information and belief, Plaintiff has the valid and binding Contract with the sellers.

337. Upon information and belief, and at all times material, Defendant(s) or its agent(s) had actual knowledge of the Contract between the Plaintiff and the sellers.

338. At all times material, Defendant(s) or its agent(s) had actual knowledge that they did not have a valid sales contract.

339. At all times material, Defendant(s) or its agent(s) had actual knowledge that they, by their own hand, seriously breached their sales contract or could not obtain financing without a signed Contract Extension Addendum or had been denied mortgage credit.

340. Upon information and belief, Defendants Dudek and Cross currently cannot obtain financing on the sales contract and/or with the court order of November 2014.

341. Upon information and belief, Defendants Dudek and Cross have, and still are, interfering or intentionally and/or tortuously interfering with Plaintiffs Contract.

342. The herein stated actions and conduct of Defendants Dudek and Cross are without reasonable or legitimate business justification.

343. As a result of the tortious interference with their fraudulent actions Plaintiff has been unable in acquiring title to the Property pursuant to her Contract.

344. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

345. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

346. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to be truthful in its dealings with their clients and towards all parties involved.

347. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

As a direct and proximate result of the conduct of Defendant or its agents as set forth herein complaint, Plaintiff Morphew has incurred extensive undue burden or expense, time and emotional distress. Plaintiff seeks damages, as stated herein (to include actual, injunctive, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

WHEREFORE, having fully set forth his Complaint, Morphew prays the jury award her available relief including but not limited to the following:

A. Award Morphew appropriate compensatory, actual, consequential, and punitive Damages against Defendants to compensate Morphew for her monetary loss, lost wages, humiliation, embarrassment and emotional

distress, and loss of litigation costs caused by Defendants fraudulent acts, omissions, and of its violation of its duties to the courts and to Morphew; and

B. Award Morphew such other and further relief as the Court deems just and proper, and

C. Sanctions against applicable Defendant(s) or its agent(s) who had a fiduciary duty or duty to follow Rules and Regulations and Rules of Conduct as stated herein but failed or intentionally failed to do so.

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SUMMERVILLE, SC
August 23, 2016

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Dorchester)

Molly M. Morphew)
) CIVIL ACTION COVERSHEET
Plaintiff(s))
2016-CP-18-1706

vs.

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Woody Law Firm)

Defendant(s))

Submitted By: Molly M Morphew, Pro Se
Address: 788 E Butternut Rd, Summerville, SC 29483

SC Bar #: N/A
Telephone #: 843-514-7299
Fax #:
E-mail: morphew926@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699) Fraud/Fraudulent conveyance/Breach of Fiduciary Duty/ Property/Property Owner of Justice Dispute of Contract Tort
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: Molly M Morphew **Date:** 8/24/16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

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

RECEIVED
JAN 24 2017
SC Court of Appeals

Appellate Case No. 2014-002633

Molly M Morphew, 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 Morphew 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.

TABLE OF AUTHORITIES

Cases

Champion v. Whaley, 280 S.C. 116, 120, 311 S.E.2d 404, 406 (Ct. Appt. 1984) ix
Commercial Credit Corp v. Nelson Motors, Inc., 247 S.C. 360, 367, 147 S.E.2d 481, 484 (1966) ix
Id at 121, 311 E.E.2d at 407 ix
Id. vi
Id. At 121-22, 311 E.E.2d at 407 x
Id. At 122, 311 S.E.2d at 407 ix
Ingram v. Kasey's Assocs., 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000) vi
Sumner v. Bankhead, 119 S.C. 78 (S.C. 1922) vi
Williams Trucking Co. v. JW Constr. Co., 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct. App. 1994) ix

Statutes

Reinstatement (First) of Contract § 295 (1932) ..... xii, xvi

Other Authorities

South Carolina Association of Realtors (SCAR) x
Specific Relief Act, S -20 vi

Rules

SCACR Rule 413 xviii
South Carolina Rule 7(b): Interim Suspension xviii

Table of Contents

TABLE OF AUTHORITIES ii
INTRODUCTION iii
APPELLATE MORPHEW's MEMORANDUM OF LAW IN SUPPORT OF ITS PETITION FOR REHEARING 1
I. Brief 1
II. Issue 1: Respondents Failure to Meet Specific Performance 1
III. Issue II: The Breach(es) Of Contract 12
IV. Issue III: Bad Faith and Unfair Dealings 13
CONCLUSION 14

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 any[1]. Because of this exclusion Appellant Morphew 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 Morphew 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 Morphew and/or use the legal system to force the sellers to sell [their home and property] to them and not to Morphew. 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 Morphew submits the incorporated Memorandum. Morphew 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 acknowledge 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 Morphew 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 application[2] 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 valid[3] (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 illegible[4]. 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 Frauds[5] 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.

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[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 application[6] 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

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[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 Morphew 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 Addendum[9], 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.

292

[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 Morphew 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 Morphew 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'] attorney[11] 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)

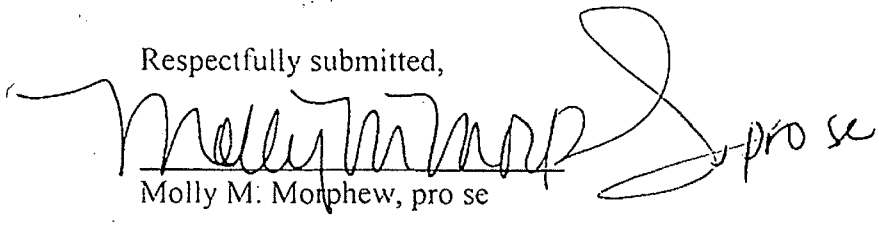
[11] The Respondents no longer retain the "attorney" referenced herein due to his suspension by the Supreme Court, per SCACR Rule 413 7(b).

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 Morphew 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,



Molly M. Morphew, 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:

Select One

☑ Charge my Visa/Mastercard/Discover Card in the amount of $ 425.00

☐ 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):

#127221
processed
12/6/12
DB

FOR CREDIT CARD USE ONLY:

Type of Credit Card: VISA

Credit Card Number: 4149 4001 1386 8499

Expiration Date of Card: 9/2013

VCode on Back of Card: _____ _____

FIRST FEDERAL OF CHARLESTON
1441 ASHLEY RIVER BLVD
CHARLESTON, SC 29412

TERMINAL I.D.: 00000007

MERCHANT ID: 4234188335078

VISA
[redacted]
SALE

DATE: [redacted] TIME: [redacted]

AUTH CODE: [redacted]

CARD ENTRY METHOD: [redacted]

APPR

TOTAL $425.00

FOR FIRST FEDERAL CHECKING/SAVINGS ACCOUNT

Account Number: _____

Signature: [signature] Date: 12/5/12

Loan Officer Signature: [signature]

WILLIAMS, ALLISON

CRCDAU
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 1:36:21 PM MADDY: PLR LOAN STILL TO TO BE REVIEWED BY UW ONCE ITEMS ARE RECIEVED:
1. CONTRACT WITH ADDEMS 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 VOE LABLES. 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 COMPLETLY 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.

Attach. #2

THE COURT: Thank you.

Q If I can refer you back to the contract and I will give you a moment to find it. Paragraph 8 of the contract, please?

A Yes, sir, I'm there.

Q Now, paragraph 8 had some obligations that you were required to meet to apply for your financing, is that right?

A That is correct.

Q Paragraph 8 required you to apply for financing within 10 days and provide the Ferro's with proof of financing within 20 days of the contract?

A Yes, sir.

Q We didn't talk about this before, but I think the Judge brought it up, you submitted the contract initially on October 20th, is that right?

A That is the date that we signed it and handed it off to Ms. Nicholson, so if she sent it -- it was a Saturday, I believe.

Q If we look over on page 6 of the contract we see that the Ferro's signed it on the 24th?

A Correct.

Q Using the 24th as a contract day that meant that you were required to apply for your financing no later than November the 3rd, right?

Gmail by Google

Rick Willis< rwillisteam@gmail.com>

Fwd: Butternut Plat is Attached

4 messages

Rick Willis < rwillisteam@gmail.com> Mon, Nov 26, 2012 at 11:13 AM
To: Susan Nicholson <snicholson@carolinaone.com>

Susan,

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

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

That would be Nov 22

Charlene

——— 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***.

300

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

302

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

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

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

A I have no idea.

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

A No.

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

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

Q CL100s are only good for how long?

A 30 days.

Q Your may have answered my question and I missed

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

Q But you all were still negotiating?

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

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

RECEIVED
JAN 24 2017
SC Court of Appeals

The Honorable James E. Chellis
Master in Equity

Appellate Case No. 2014-002633

Molly M Morphew, 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 Morphew, pro se

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

CC: Thomas & Lorraine Ferro, pro se

82430

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

RECEIVED
FEB 09 2017
SC Court of Appeals

Appellate Case No. 2014-002633

Molly M Morphew, Thomas M. Ferro and Lorraine B. Ferro.....
Appellants,

v.

Stephen Dudek and Doreen Cross.....
Respondents

MOTION TO DISMISS PETITION FOR REHEARING

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

Mr. Stephen L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423

Pursuant to South Carolina Appellate Rule (SCAPR) 221, Appellant Molly Morphew recently submitted a petition to the Court of Appeals requesting a rehearing on its Decision released January 11th, 2017 ("Decision"). Appellants Ferro did not submit a Petition for Rehearing, nor were included in the previous Petition.

It's been 4+ years since the case started, and 2+ years since Appellants Morphew and Appellants Ferro had appealed the lower court's Order for Specific Performance of November 2014. In the interim, the sellers, Appellants Ferro have found themselves under dangerous

economic stress and emotional distress. In order not to cause an innocent party further harm or damages, Appellant Morphew has agreed to withdraw any further continuances of the appeal for Specific Performance. Morphew would like to respectfully make clear to the lower court and to this court, that this is neither an agreement with the Courts' rulings nor an acquiescence in favor of the Defendants Dudek and Cross, but instead agreed to as a matter of 'what is right' as to as not cause any further harm than what has been caused the Ferros.

CONCLUSION

For the reasons set forth herein this Motion, and governed under Rule 240, Motions and Petitions Generally, Morphew regrettably and most respectfully requests the Court to dismiss its Petition for Rehearing.

Respectfully submitted,

Molly M. Morphew, pro se

Molly M. Morphew, pro se
788 E Butternut Rd.
Summerville, SC 29483
843-514-7299

307

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

RECEIVED
FEB 09 2017
SC Court of Appeals

Appellate Case No. 2014-002633

Molly M Morphew, 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 Motion to Dismiss Petition for Rehearing on Respondents Stephen Dudek and Doreen Cross by depositing a copy of it in the United States Mail, postage prepaid, on February 7, 2017, addressed to their attorney of record, Mr. Stephen L. Smith, Esquire, P.O. Box 40578, Charleston, SC 29423.

February 6, 2017

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

CC: Thomas & Lorraine Ferro, pro se

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

AND

Molly M. Morphew

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro

Defendants.

NOTICE OF MOTION AND MOTION TO SET CLOSING SCHEDULE AND FOR ATTORNEY'S FEES

FILED - RECORDED
2017 MAR 16 AM 11:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Stephen Dudek and Doreen Cross ("Dudeks"), by and through their undersigned attorneys, hereby move to set a schedule for the Dudeks to close on the home and real property located at 788 E. Butternut Road, Summerville, SC, TMS # 128-00-00-090 ("Property"), and for attorney's fees and costs.

These actions arose out of separate sales contracts to purchase the Property, one contract between the Dudeks and the Ferros, and the other contract between Morphew and the Ferros. Both the Dudeks and Morphew sought specific performance in separate suits, which were consolidated under the above case number. Following a trial, this Court issued an order ("Order") awarding the Dudeks specific performance and the right to apply for attorney's fees against the Ferros. (See Final Order, November 6, 2014). Both Morphew and the Ferros appealed the Order. By way of a per curiam order, filed January 11, 2017, the South Carolina Court of Appeal affirmed the Order. Morphew initially filed a petition for rehearing, but she

voluntarily withdrew it, leading the Court of Appeals to dismiss the appeal and remit the case back to this Court on or about February 15, 2017.

The Dudeks are prepared to proceed with closing on the Property, pursuant to the Order, which noted, at the time of issuances, that two years had passed since this sales contracts had been entered into by the Dudeks and the Ferros. (Order, p. 12). Due to the passage of considerable time, the Court held that certain steps were to be required, including, but not limited to, the parties obtaining a property inspection and an updated CL 100. Now, with the appeal, an additional two years have passed, so the above steps are even more important.

The Dudeks move to have this Court set a schedule for closing on the Property. In addition, also pursuant to the Order, they seek attorney's fees.

Pursuant to direction of this Court, **this motion is scheduled to be heard on March 27, 2017, at 3:00 p.m., in front of the Dorchester County Master-In-Equity, 5200 E Jim Bilton Blvd, St George, SC 29477**. The Ferros will be permitted to attend via telephone.

SMITH | CLOSSER, P.A.

Steven L. Smith – ssmith@scnlaw.com
(SC Bar No.: 05173)
Zachary J. Closser – zclosser@scnlaw.com
(SC Bar No.: 74005)
Samuel M. Wheeler – swheeler@scnlaw.com
(SC Bar No.: 101008)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for Dudek and Cross

March 14, 2017
Charleston, South Carolina

16-232

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

AND

Molly M. Morphew

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro

Defendants.

CERTIFICATE OF SERVICE

FILED - RECORDED
2017 MAR 16 AM 11:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Notice of Motion and Motion to Set Closing Schedule and for Attorney's Fees was served by mailing, hand delivery or electronic mail on the following:

Molly M. Morphew
788 E. Butternut Road
Summerville, SC 29483

Thomas and Lorraine Ferro
5501 Carson Street
Denver, CO 80239

Peggy M. Rochay

March 14, 2017
16-232

1) 25.00 KED

MB

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED - RECORDED
2017 MAR 16 AM 11:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS

Stephen Dudek and Doreen Cross,
(x) Plaintiff
v.

Thomas M. Ferro, et al.,
( ) Defendant
check box above indicating submitting party

Case No. 2013-CP-18-183

MOTION INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Samuel M. Wheeler - 101008 Smith | Closser, PA P.O. Box 40578 Charleston, SC 29423 telephone: 843-760-0220 fax: 843-552-2678 e-mail: swheeler@scnlaw.com	Thomas and Lorraine Ferro 5501 Carson Street Denver, CO 80239 telephone: fax: e-mail: lbferro3200@gmail.com

(x) MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
( ) FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
( ) PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: minutes Court Reporter Needed: YES / NO

SECTION II: Motion Type

(x) Written motion attached
( ) Form Motion --

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant — Date submitted: 3/14/17

SECTION III: Motion Fee

(x) PAID - AMOUNT: $25.00
( ) EXEMPT: (check reason)
( ) Rule to Show Cause in Child or Spousal Support
( ) Domestic Abuse or Abuse and Neglect
( ) Indigent Status ( ) State Agency v. Indigent Party
( ) Sexually Violent Predator Act ( ) Post-Conviction Relief
( ) Motion for Stay in Bankruptcy
( ) Motion for Publication ( ) Motion for Execution (Rule 69, SCRCP)
( ) Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
( ) Other:

JUDGE'S SECTION

( ) Motion Fee to be paid upon filing of the attached order.
( ) Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____ _____(print name)
( ) MOTION FEE COLLECTION:_____
( ) CONTESTED - AMOUNT DUE:_____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

AND

Molly M. Morphew

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro

Defendants.

NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE (CONTEMPT), EJECTMENT, AND ATTORNEY'S FEES

FILED - RECORDED
2017 JUN -5 PM 1:12
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiffs, Stephen Dudek and Doreen Cross, by and through their undersigned attorneys, respectfully move this Court for an order holding Molly M. Morphew in contempt of Court for failing to adhere to this Court's Order, issued April 3, 2017, and upheld in an Order issued May 17, 2017, which ordered Morphew to vacate the property in question in this litigation, 788 E. Butternut Road, Summerville, SC, TMS # 128-00-00-090 ("Property"), on or before Dudek and Cross closed on the Property. In its April 3rd Order, this Court held, "Morphew, as the current tenant of the Property, is ordered to vacate the Property on or before the closing date, which will be provided to her by the parties or their counsel." (April 3rd Order, p. 3, ¶ 8). Dudek, Cross, Thomas Ferro and Lorraine Ferro completed closing today, June 2,

2017. Morphew was notified of this closing, she has failed to vacate the Property pursuant to this Court's April 3rd Order, and she has otherwise refused to respond to inquiries regarding her intentions with respect to vacating the Property. In its May 17th Order, this Court noted that Dudek and Cross cancelled one closing to give Morphew ample time to vacate the Property. (May 17th Order, p. 8, ¶ 13). It further stated that Morphew's actions "raise the inference that she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross." (*Id.*). This pattern of behavior has continued up until closing and, now, through closing. Morphew should be held in contempt and further ordered to vacate the Property. If she fails to appear for this motion, or continues to refuse to vacate the Property, this Court should order the Dorchester County Sherriff's Department to eject Morphew and her belongings from the Property.

Dudek and Cross further move for their attorney's fees and costs associated with bringing this motion, pursuant to the above-referenced orders.

SMITH | CLOSSER, P.A.

Steven L. Smith – ssmith@scnlaw.com
(SC Bar No.: 05173)
Zachary J. Closser – zclosser@scnlaw.com
(SC Bar No.: 74005)
Samuel M. Wheeler – swheeler@scnlaw.com
(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

June 2, 2017
Charleston, South Carolina

16-232

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

AND

Molly M. Morphew

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro

Defendants.

CERTIFICATE OF SERVICE

FILED - RECORDED
2017 JUN -5 PM 1:12
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Rule to Show Cause was served by mailing and electronic mail on the following:

Molly M. Morphew
788 E. Butternut Road
Summerville, SC 29483

Thomas and Lorraine Ferro
76 Elk Range Drive
Snowmass, CO 81654

Samuel M. Wheeler

June 2, 2017
16-232

JUN 12 AM 11:43
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA,)
COUNTY OF Dorchester)
Molly M. Mayhew, pro se)
Plaintiff,)
vs.)
Darren Cross & Stephen Duck)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2017-CP-18-987

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Summerville, SC, South Carolina

Dated: 6/12/17

Molly M. Mayhew pro se
Plaintiff/Attorney for Plaintiff

Address: 788 E Butternut Rd
Summerville, SC 29483

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP-18-987
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**COMPLAINT FOR CONSTRUCTIVE TRUST**
	)	
Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

FILED
2017 JUN 12 AM 11:43
CLERK OF COURT
DORCHESTER COUNTY

INTRODUCTION

COMES NOW, Molly M Morphew, Plaintiff in the above entitled matter, and brings her cause of action for claim of right of possession and right of property [actual and legal], abuse of process, fraud, and unclean hands against, Defendants Dudek and Cross who allegedly and unlawfully acquired property (as hereinafter described), and by said actions intentionally prevented, and by same actions are still preventing, the Plaintiff from her legal right to acquire.

1. That the Plaintiff, Molly Marie Morphew, (hereafter "Plaintiff") is a citizen and resident of the County of Dorchester, State of South Carolina.

2. That upon information and belief, Defendants Stephen Dudek and Doreen Cross are residents of Dorchester County, State of South Carolina.

3. That the property as stated herein, is located in Dorchester County, South Carolina.

4. That the Defendants named above used the lawful judicial system and its processes to unlawfully obtain said property.
5. That the Defendants, at all times material, had no legal right to said property.
6. That the Defendants, at all times material, intentionally prevented, and are currently preventing, the Plaintiff from her legal right to said property.
7. That the Plaintiff has a legal and/or equitable claim, and is in possession of said property.
    a. Morphew ratified a sales contract on December 16th, 2012.
    b. Morphew secured financing on said sales contract had a closing scheduled January 31st, 2013.
    c. Morphew has had, and currently has, tenancy of said property since June 2013.
8. At all times material, the misleading or unlawful acts of the Defendant(s) violated the Plaintiff's Constitutional right by preventing the Plaintiff from presenting all of her case or deprived her of the opportunity to be heard fully.
9. That due to the Defendants unlawful acts or fraudulent misrepresentations, the Judge was influenced to make an uninformed ruling (thus where the impartial function of the court have been directly corrupted), the judicial machinery was prevented from performing, and the court itself was defiled.
10. Though the Judge in the prior proceedings 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 and violating the Due Process Clause of the U.S. Constitution, inferring partiality towards the Defendants by rewarding them for their unlawful actions.

VENUE AND JURISDICTION

11. That the Plaintiff hereby incorporates paragraphs one (1) through ten (10) above, the same as if set forth again verbatim.

12. Venue is proper pursuant to S.C. Code § 15-7-30, as Defendants Dudek and Cross reside in Dorchester County, and the actions set forth herein occurred in Dorchester County.

13. Venue is proper pursuant to S.C. Code § 15-7-10, as the property in dispute is located in Dorchester County.

14. The acts and omissions of the Defendants were conducted, disseminated, published and/or performed in South Carolina, at its jobsites and offices and to its employees and/or agents, including in Dorchester County, in a way to affect, reach and cause injury and/or damage to the Plaintiff in the State of South Carolina.

15. The Plaintiff consents to the jurisdiction of this court since she is a resident of the County of Dorchester, State of South Carolina.

16. Morphew is currently, and was during the relevant period, a citizen and resident of South Carolina in Dorchester County.

Plaintiff complains and for causes of action alleges as follows:

FIRST CAUSE OF ACTION
(Right of possession; right of property)

17. That the Plaintiff Morphew argues she is the equitable owner of title to the property referenced herein, and claims right of possession and right of property [actual and legal],

18. Therefore, Plaintiff alleges she is under no legal obligation to vacate the said property, but instead seeks restitution to recover the property and obtain legal title by constructive trust, or as the alternate, damages equivalent to the loss of the property and any costs associated with this claim.

19. That the Plaintiff has had a legal binding, valid and enforceable sales contract since December 16th, 2012. (Sales Contract, **Attachment 1**)

20. That the Plaintiff had secured financing per said sales contract as of December 23rd, 2012.

21. That the Plaintiff had final approval as of January 3rd, 2013.

22. That the Plaintiff has had possession of said property since June 2013.

23. That the Plaintiff has a lease agreement, and still currently has, tenancy of said property.

24. That the Defendant, at any time material, had no legal or equitable claim to said property.

25. That the Defendant obtained said property unlawfully including, but not limited to, filing frivolous claims, fraudulent misrepresentations, and said acts on the court.

SECOND CAUSE OF ACTION
(Abuse of Process)

26. That the Plaintiff hereby incorporates paragraphs one (1) through twenty-five (25) above, the same as if set forth again verbatim.

27. The Plaintiff contends that the Defendants utilized the legal process to prevent the plaintiff from closing on the said property.

    a. Plaintiff contends Defendants filed a lis pendens the very day they became aware the sellers of the said property ratified a sales contract with Plaintiff Morphew to prevent its closing.

    b. Plaintiff contends Defendants, knowing full well they did not meet the lawful requirements or rules to compel specific performance, frivolously filed a complaint for Specific Performance against the sellers to prevent said sale to Morphew and/or to use the legal process to "blackmail" the sellers into selling to them.

28. The Plaintiff contends that the Defendants utilized the legal process to unlawfully or fraudulently obtain the property.

a. Plaintiff argues the Defendants unlawfully requested and litigated Specific Performance to obtain said property by:

1) The Defendants, at all times material, did not have a valid and enforceable contract.

2) Defendants did not complete a mortgage application per their sales contract.

3) The Defendants were denied lending.

4) The Defendants requested Specific Performance with full knowledge they had been denied lending.

5) The Defendants were never "ready, able and willing" to perform their sales contract.

6) The Defendants requested Specific Performance with full knowledge they never were "ready, able and willing" to perform their sales contract.

c. The Defendants 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.

d. The Defendants falsely testified in filings, depositions and at trials and hearings as such (including, but not limited to):

1) Defendants falsely testified in filings, depositions and at trials and hearings they had approved financing per their sales contract.

2) Defendants falsely testified in filings, depositions and at trials and hearings they were ready, able and willing to close escrow per their sales contract.

3) Defendants falsely testified in filings, depositions and at trials and hearings they were ready, able and willing to close escrow but could not because of a seller breach.

29. The Defendants continue to utilize the legal process in order to unlawfully possess the property in which they have, at all times material, never had a legal or equitable claim to.

a. Plaintiff alleges that the Defendants, at all times material, did not have a legal or equitable claim on said property.

b. That all times material, the Defendants did not have valid enforceable sales contract.

e. The Defendants sales contract expired on November 30th, 2012.

f. The Defendants did not complete a mortgage application per their sales contract.

g. The Defendants had been denied lending at application and/or before filing for Specific Performance.

h. The Defendants did not have a valid and enforceable sales contract when they filed for Specific Performance.

i. The Defendants did not have a valid and enforceable sales contract during their depositions or at trial or at any time material.

j. Plaintiff alleges, that all times material, the Defendants did not have equitable ownership or right to said property.

k. Plaintiff alleges, that all times material, the Defendants did not have possession or right of possession to said property.

30. Plaintiff alleges the Defendants violated the Federal and State Constitutional Right to Due Process.

31. The Defendants or their agent acted, and is continuing to act, with Unclean Hands (i.e., unjustly in the very transaction of which he complained and still continues to act unjustly), as stated herein complaint.

THIRD CAUSE OF ACTION
(Fraud)

32. That the Plaintiff hereby incorporates paragraphs one (1) through thirty-two (31) above, the same as if set forth again verbatim.

33. The Defendants made false statements or misrepresentations as to material facts critical to the prior civil proceedings.

a. Defendants falsely stated or misrepresented in filings, depositions, at the trial and hearings, they had, included but not limited to, applied for financing per their sales contract, did not breach their sales contract, secured mortgage financing per their sales contract, were ready, able and willing to close escrow, and the sellers prevented them from closing.

34. The Defendants created false document(s) and was provided as evidence to support their false claims.

35. The Defendants or their agents misrepresented, concealed or failed to disclose the material fact(s) pertinent to the prior proceedings, even on direct questioning in filings, depositions, trials, hearings or subpoenas.

36. The Defendants and their attorney, real estate agent and its agent, loan officer and its agent, and closing attorney or its employee(s) committed conspired to commit fraud on the court by providing false documentation or testimony, including by not limited to, stating or inferring Cross and Dudek had applied for mortgage financing, secured mortgage credit, and were ready, able and willing to close escrow per their sales contract, or that the sellers were at fault for Cross and Dudek failing to close escrow.

37. The Defendants or their agents knew the statements or forgery were false.

38. Plaintiff contends the Defendants or their agents made the false statements or misrepresentations or forgery in order to persuade the Plaintiff to act or not act, and to fraudulently sway the court to make a ruling in their favor (i.e., make an uninformed ruling).

39. Plaintiff contends the misrepresentations is of such character that if it had not been misrepresented, obstructed, concealed or forged, there would have never been a trial or Specific Performance would not have been awarded.

40. The Defendants made the false statements or misrepresentations or forgery in order to unlawfully obtain said property.

41. The Plaintiff or the courts were ignorant of the representation's falsity.

42. The prior case continued and/or was adjudicated unlawfully because of these fraudulent actions or non-actions of the Defendants.

43. Plaintiff relied on the representations in order for her to present her case fully or be heard fully as due process allows.

44. Plaintiff's Question in Fact to her prior case was based solely on these representations.

45. The court relied solely on these representations to make an informed ruling.

46. The Courts made an unlawful and uniformed ruling because of the reliance on the representations.

47. In consequence, an injustice has been served.

48. The judicial machinery was intentionally disrupted by the Defendants.

49. The courts have spent an undue amount of time and resources litigating the Defendants complaint.

50. The Plaintiff has been unable to obtain rightful ownership of the property.

51. The Plaintiff has extended undue amounts of distress, money, and time in order to defend her right to the property and to due process.

52. The Plaintiff argues the said above property was therefore "stolen" from her by the Defendants.

53. As a proximate result of the Defendants Cross and Dudek's fraudulent misrepresentations and otherwise wrongful conduct as alleged herein, Plaintiff Morphew was or has been prevented from closing on or obtaining 788 E. Butternut Rd., Summerville, SC for over 4+ years, has spent an excessive amount of money to obtain said property, and respectfully asks the court for restitution by "returning" said property and for all costs associated to obtain said property. In lieu of, Plaintiff would ask the court for damages, specifically for the difference in her sales price and the current market value, plus all costs associated with the litigation of her prior case and this case.

54. By reason of the fraudulent and otherwise wrongful manner in which the Defendants Cross and Dudek, obtained their alleged right, claim or interest in and to the property, Defendants Cross and Dudek, have no legal or equitable right, claim or interest therein, but, instead, Defendants Cross and Dudek are involuntary trustees holding said property

and profits therefrom, if applicable, in constructive trust for Plaintiff Morphew with the duty to convey the same to Plaintiff Morphew forthwith.

WHEREFORE, Plaintiff Morphew pray judgment against Defendants Cross and Dudek and each of them, as follows:

<> For a declaration that Defendants Cross and Dudek hold the property [with the duty to convey] as constructive trustees for the benefit of the Plaintiff Morphew; or in lieu, damages as stated in #53 above;

<> For costs of suit incurred herein; and

<> For such other and further relief as the court may deem proper.

Molly M. Morphew, pro se

6/12/17
Dated

VERIFICATION

I, Molly M. Morphew, am a Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Summerville, South Carolina.

DATED: 6/12/17 BY:

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

FILED
17 JUN 12 AM 11:44
CLERK OF COURT
DORCHESTER COUNTY

1. **PARTIES:** This legally binding Agreement entered into on December 16, 2012 between, Buyer(s), Molly M. Morphew, (hereinafter called "**BUYER**"), and Seller(s), Thomas Ferro, Lorraine Ferro, (hereinafter called "**SELLER**"). The property shall be deeded in the name(s) of: Molly M. Morphew

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres) Tract B-1

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____.

No personal property will convey as a part of this sale, except as described: Elec Cooktop, Dishwasher, Weher/Dryer Connections, Garbage Disposal, Satellite Dish

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 1/30/13, 1/30/13, not later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ 280,000.00
Two Hundred Eighty Thousand dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: N/A

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 5,000.00 Pd. To Seller's Atty ~~Buyer and Seller authorize _____ as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☐Check or ☐Other. Buyer does not guarantee payment of a check or check accepted for earnest money. All earnest money received shall be deposited as required by South Carolina and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money shall be credited to the Buyer.~~

MM BUYER [____] BUYER [MM] SELLER [MM] SELLER HAVE READ THIS PAGE

The Group, LLC. 2040 Skyhawk Ct. Mt. Pleasant, SC 29466 Phone: 843-971-4002 Fax: 888-803-1570 788 E. Butternut
Charlene Willis
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A-327

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 96.500 % loan (loan-to-value ratio) within 5 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 30 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. **Time is of the essence.** Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☒will ☐will not be added to the mortgage. VA funding fee ☐will ☒will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller agrees to pay up to $7,000 towards buyers closing costs, prepaids, allowables and non allowables at closing.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐will ☒will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐Buyer or ☐Seller not to exceed $ N/A.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at N/A o'clock N/A M. on N/A unless accepted or countered by Seller in written form prior to such time. **Time is of the essence.**

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed N/A consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☐ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

BUYER [____] BUYER [____] SELLER [____] SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will **not** complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by N/A, N/A. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. **Time is of the essence.** If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before At Closing. **Time is of the essence.** If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs**: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978**: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. **(Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information)**. This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

[MM] BUYER [____] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. ~~**COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.~~

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See Addendum "A"

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M Morphew Molly M. Morphew Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Thomas Ferro Thomas Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Lorraine Ferro Lorraine Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY The Group, Llc

SELLING AGENT AND COMPANY The Group, Llc

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐BUYER'S AGENT OR ☐SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

332

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ADDENDUM A

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres)

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Property is being purchased in "As Is" condition. This contract is a "back up" contract. It is contingent upon an existing contract of sale to receive a signed release so that this contract becomes the primary contract. In the event the existing contract does not receive a signed release this agreement may be declared null and void by either party on or before December 30, 2012 with written notice and deposit money returned to purchaser.Attached plat shows property being purchased. Seller agrees to pay 6% of the sales price at closing to The Group, Llc as compensation for this transaction.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Morphew — Date 12/16/12 — Time _____

WITNESS: _____ — Date _____ — Time _____

BUYER: _____ — Date _____ — Time _____

WITNESS: _____ — Date _____ — Time _____

SELLER: Thomas Ferro — Date 12/16/12 — Time _____

WITNESS: _____ — Date _____ — Time _____

SELLER: Lorraine Ferro — Date 12/16/12 — Time _____

WITNESS: _____ — Date _____ — Time _____

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The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466
Phone: 843-971-4002 Fax: 888-803-1570 Charlene Willis

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STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: _____ Seller Date _____ Buyer Date 12/16/12

Rev. 1/04

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM, MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

		Yes	No	No Representation
1.	Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure Brick monolithic pour Green house	☐	☑	☐
2.	Roof (leakage or other problem)? a. Approximate age of roof covering steel roof 8yrs.	☐	☑	☐
3.	Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☑	☐
4.	Electrical system (outlets, wiring, panel, switches, fixtures, etc.)?	☐	☑	☐
5.	Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☑	☐
6.	Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ /cooling unit ___	☐	☑	☐
7.	Water supply (including water quality, quantity and water pressure)? a. Water supply is: city/county ✓ community system ___ private well ✓ b. Water pipes are: copper ___ galvanized ___ PVC/CPVC ✓ polybutylene ___	☐	☑	☐
8.	Septic system? a. Type system: septic tank ✓ community system ___ connected to city/community system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ✓ c. Has the septic system been serviced/pumped during your ownership?	☐	☑	☐
9.	Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☑	☑	☐
10.	Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ✓	☐	☑	☐
11.	Drainage, grading or stability of soil or retaining structure?	☑	☑	☐
12.	Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ✓ exhaust fan ___ ceiling fan ✓ sump pump ___ irrigation system ✓ cable TV wiring or satellite dish ✓ security system ___ or other systems ___	☐	☑	☐

Initials: Seller Date Buyer Date 12/16/12

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

		Yes*	No	No Representation
13.	Room additions or other structural changes?	☐	☑	☐
14.	Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☑	☐
15.	Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☑	☐
16.	Previous damage caused by fire?	☐	☑	☐
17.	Violations or variances of building codes or zoning ordinances?	☐	☑	☐
18.	Restrictions to property use? (covenants or deed)	☐	☑	☐
19.	Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☑	☐
20.	Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☑	☐
21.	Owners' association fees or "common area" expenses or assessments?	☐	☑	☐
22.	Flood hazards or that the property is in a federally-designated flood plain?	☐	☑	☐
23.	Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☑	☐
24.	Any outstanding charges owed by the tenant for gas, electric, water, sewer, trash, or garbage services provided to the property?	☐	☑	☐

"IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.

Initials: Seller _____ Date _____ Buyer mm Date 12/6/12

Rev. [illegible]

"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 788 E Butternut Rd Summerville SC 29483

The property is currently: owner-occupied ✓ leased ___ in an estate ___ in foreclosure ___
vacant ___ (If vacant, how long? ___)
Owner's Name(s): Ian Ford

Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date: 12/16/12

Owner Signature: _____ Date: 12/16/12

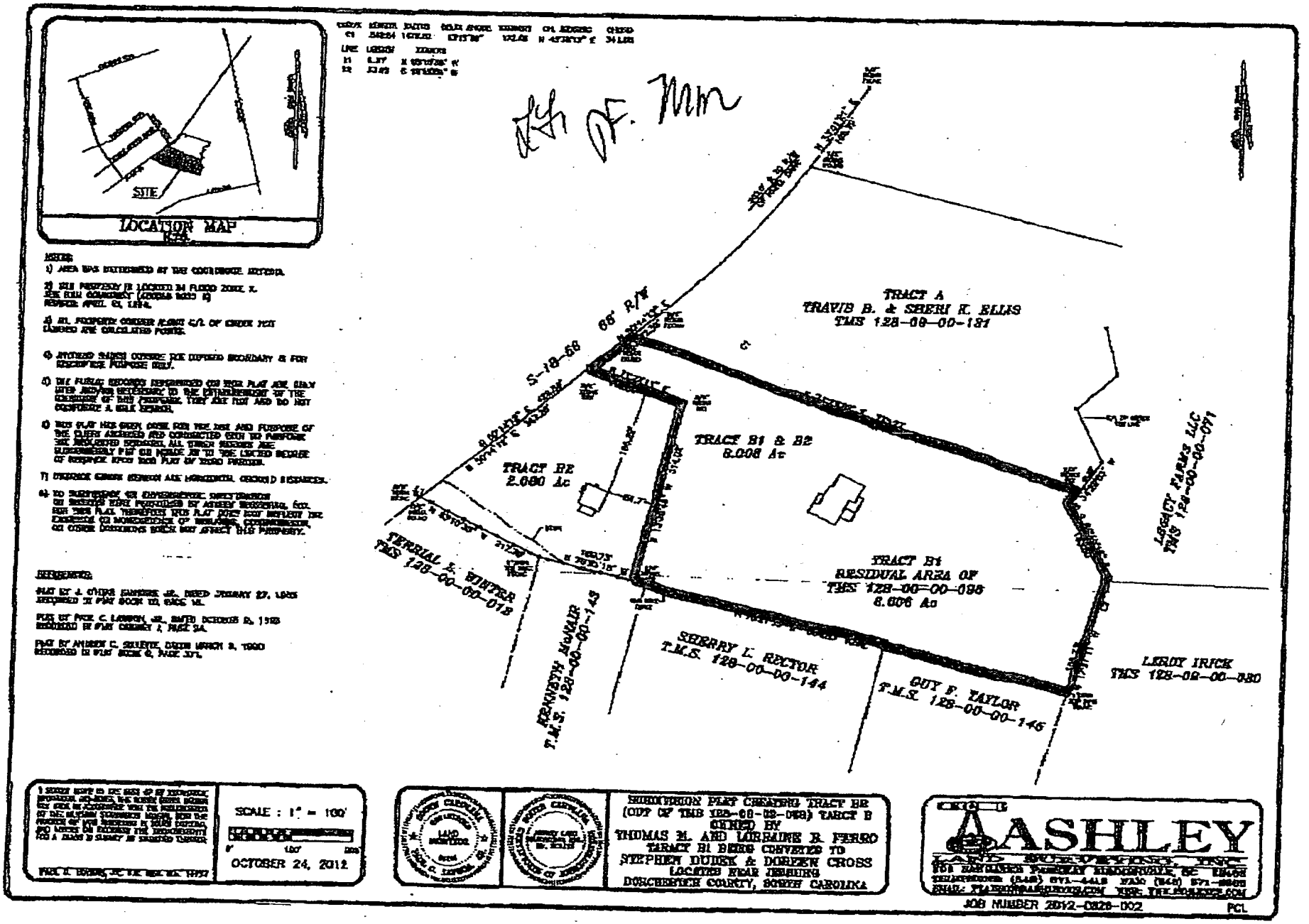
Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: _____ Date: 12/16/12

Purchaser Signature: _____ Date: _____

This form is approved by the South Carolina Real Estate Commission


SITE
LOCATION MAP
TRACT A
TRAVIS B. & SHERI K. ELLIS
TMS 128-00-00-131
TRACT B2
2.090 Ac
TRACT B1 & B2
8.006 Ac
TRACT B1
RESIDUAL AREA OF
TMS 128-00-00-096
6.006 Ac
LEGACY FARMS LLC
TMS 128-00-00-091
TERRIAL E. WINTER
TMS 128-00-00-013
KENNETH McNAIR
T.M.S. 128-00-00-143
SHERRY L. RECTOR
T.M.S. 128-00-00-144
GUY F. TAYLOR
T.M.S. 128-00-00-146
LEROY IRICK
TMS 128-00-00-080
S-18-68
66' R/W
SCALE : 1" = 100'
OCTOBER 24, 2012
SUBDIVISION PLAT CREATING TRACT B2
(OUT OF TMS 128-00-00-096) TRACT B
OWNED BY
THOMAS M. AND LORRAINE B. FERRO
TRACT B1 BEING CONVEYED TO
STEPHEN DUDEK & DOREEN CROSS
LOCATED NEAR JEDBURG
DORCHESTER COUNTY, SOUTH CAROLINA
ASHLEY
LAND SURVEYING, INC.
JOB NUMBER 2012-0826-002
PCL

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP-18-987
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

FILED FOR RECORD
2017 JUN 12 AM 11:44
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Complaint for Constructive Trust and Quiet Title, and Lis Pendens was served by mailing USPS, certified mail, restricted Delivery with signature confirmation on the following:

Doreen Cross
236 Cady Dr.
Summerville, SC 29483

Stephen Dudek
236 Cady Dr.
Summerville, SC 29483

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

Molly M. Morphew, pro se

June 12, 2017

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP- 18-987
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**LIS PENDENS**
	)	
Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

FILED-RECORDED
2017 JUN 12 AM 11:43
CLERK OF COURT
DORCHESTER COUNTY

Notice is hereby given that action 2017-CP-_____, has been commenced and is pending in this Court upon complaint of the above named Plaintiff against the Defendants for Constructive Trust and Quiet Title of the below described real property:

All that certain piece, parcel, or lot of land, situate, lying and being near Jedburg. Dorchester County, South Carolina, being shown and designated as Tract B1 containing 6.006 acres, more or less, and being delineated on a plat entitled "Owned by Thomas M. and Lorraine B. Ferro", dated November 20, 2012, prepared by Ashley Surveying, Inc., and recorded in the RMC Office for Dorchester County in Plat Book (L-195). Said lot having such size, shape, dimensions, etc., as will more fully appear by reference to said plat.

TMS Number 128-00-00-090

Molly M. Morphew

Molly M. Morphew, pro se
788 E. Butternut Rd.
Summerville, SC 29483
843-514-7299

June 11, 2017
Summerville, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER MOLLY MORPHEW, Plaintiff, v. STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE B. FERRO, Defendants	IN THE COURT OF COMMON PLEAS Civil Action No. 2013CP1800183 consolidated with Civil Action No. 2013CP1800074 **DEFENDANTS FERRO AND PLAINTIFF MORPHEW'S ANSWER TO DUDEK AND CROSS' NOTICE OF MOTION AND MOTION TO SET CLOSING SCHEDULE AND FOR ATTORNEY'S FEES; AND RESPONSE TO PROPOSED ORDER**
STEPHEN DUDEK AND DOREEN CROSS, Plaintiffs, v. THOMAS M. FERRO and LORRAINE B. FERRO, Defendants	

FILED-RECORDED
2017 APR -6 PM 12:43
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Defendants Ferro and Plaintiff Morphew, both Pro Se, hereby Answer the **Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees** filed by Plaintiff/Defendants Stephen Dudek and Doreen Cross, and hereby Respond to the **DRAFT ORDER** (by same), as follows:

BRIEF FACTS

On March 27th, 2017, a hearing took place before this Court to set a closing schedule and award attorney's fees and costs to Plaintiffs/Defendants Dudek and Cross in regards to the above

referenced case. During this hearing, it was brought to the Court's attention that any damages to be awarded per the Court Order filed November 6th, 2014, had been waived due to the Plaintiff's failure to submit the required Motion and Affidavit within the time limit set by said Order. The Court requested Plaintiffs Dudek and Cross to update their DRAFT ORDER as applicable to the hearing, and Defendants Ferro to submit an Answer to the Plaintiff's **Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees.** No time limit for submitting said Answer was set.

To save time and prevent redundancy, this Answer and Response "references" the **DRAFT ORDER** only, but which covers any applicable items within the **Motion to Set Closing Schedule and for Attorney Fees.**

ARGUEMENTS

1. **Pg. 2** ***"...the SC Court of Appeals affirmed the order and this Court's ruling that the Dudeks were entitled specific performance under the prevailing*** **contract"**. As stated below (see below **#3**) , there is a substantially supported concern brought forth at this hearing that Dudek and Cross MAY NOT be entitled to specific performance as it now seems that at no time were they "Ready, able and willing" to close on the contract, and currently are not 'ready, able and willing'. It seems Dudek/Cross, their lawyer and their lending officer, may ALL have falsely testified they were "ready, able and willing" to close escrow per the sales contract, at the exact moment they requested specific performance, and at trial. Meaning, the courts may have been victims of fraud, and both Morphew and Defendants Ferro were prevented from lawfully presented their cases fully, as is their Constitutional right. Morphew testified at this hearing that Dudek/Cross' lender **denied** them lending and closed their file as of January 18th, 2013-- due to an

incomplete application (see **Attachment 1A**). It seems they applied for mortgage credit after their sales Contract had expired, which voided the sales contract, and never provided First Federal with a signed Extension Addendum to make their contract valid as required on the day of application (see **Attachment 1D**). Based on the facts brought forth in this hearing, Defendants Ferro request the courts to review the lawful validity that "the Dudeks were entitled specific performance under the prevailing contract" before making a final decision.

2. **Pg. 2, paragraph 1 under Brief Facts and Procedural History**: "***Morphew initially filed a petition for rehearing, but she voluntarily withdrew it....***" Morphew would like to clarify to this Court that though she voluntarily withdrew her petition for a rehearing, she did so neither freely nor in agreement to this Court's or the Appellate Court's review and decision. Instead due to the request of the sellers Ferro stating they were in severe financial and economic distress, Morphew honored her promise to the Ferros that if at any time they were in severe economic or mental distress and could not continue with the appeal, she would withdraw her part of the appeal as to not cause any further harm to an innocent party.

3. **Pg. 2, paragraph 2 under Finding and Rulings: "*The Dudeks[1] are prepared to proceed with closing on the Property, pursuant to the Order...*"** The Defendants Ferro and Plaintiff Morphew question this statement as "prepared" indicates they are currently "ready, able and willing" to close. During the hearing, Plaintiff/Defendant Doreen Cross testified their lender, First Federal Bank (now known as South State Bank) is not willing

[1] "Dudeks" may be incorrect (as it assumes a "marriage contract"); if so, the accurate application is 'Stephen Dudek and Doreen Cross' or 'Dudek and Cross', and should be corrected in said Order.

to accept their application because of another case against them[2] [Morphew's separate action for Fraud/Fraud on the Court]; which brings forth the questions, were and are they {Dudek and Cross] currently "ready, able and willing" to close escrow? Specific Performance strictly requires by law that in order for the Court to compel Specific Performance. And why does another separate case against First Federal prevent them from accepting and processing a loan Dudek/Cross and First Federal had stated was approved for closing [and pending this case]? And why would their lender require a new or separate application if they were and have maintained their ability to close escrow as required to compel Specific Performance?

The Estate Agents (Provision of Information) Regulations 1991 define a Purchaser who is 'ready, willing and able' as a person (or persons) who "is prepared and is able to exchange unconditional contracts for the sale of your property". 'Ready and willing' means that the purchaser must be prepared to enter into the contract on the terms offered and such a position should not be impeded by an outside factor..." (Comley v Wellman (1948) 65 WN (NSW) 268 (Aus); Dellafiora v Lester [1962] 1 WLR 1208, [1962] 3 All ER 393 (CA); Nelson v. Bolton, 72 Ill App.3d 519, 391 N.E.2d 182 (1979); Savills Land & Property Ltd v Kibble [1998] EGCS 170 (CA)). A purchaser cannot be said to be 'ready' if the essential terms are not agreed upon (Gabrielli v. Fabian, 167 AD.2d 684, 563 NYS.2d 266 (1990)). In particular, 'willing' means that the purchaser should be prepared to put his signature to a binding contract on the terms offered and be

[2] When questioned by the Judge as to why Dudek and Cross had not started their due diligence (specifically the house inspection or scheduling said inspection), Doreen Cross replied to the Court that it was *because of (Morphew's other) complaint against the lender, and she was not going to obtain an inspection until the bank agreed to move forward*...while her attorney, Smith, replied the lender *wouldn't move on the court Order until the Judge filed the final Order* (even though the case was remitted back to the lower court 38 days prior to this hearing).

bound thereby; "for the words 'ready and willing' imply not only the disposition, but the capacity to do the act", De Medina v Norman (1842) 11 LJ Ex 320, 322. As a rule, a person is not 'willing' to purchase if all he has done is sign a conditional contract, such as a contract 'subject to finance', at least until the condition is fulfilled (Graham & Scott (Southgate) Ltd v Oxlade [1950] 2 KB 257 (CA); Woodland Realty, Inc. v. Winzenreid, 82 Wis.2d 218, 262 N.W.2d 106 (1978)). A purchaser cannot be said to be 'willing to purchase' if he is unable to complete the purchase or, at least, prove a willingness to execute an unconditional and binding contract (and the seller is able to do so) (McCallum v Hicks [1950] 2 KB 271 (CA); Ellsworth Dobbs v. Johnson, supra at 855; Bennett Realty, Inc. v. Muller, 396 S.E.2d 630 (NC Ct App 1990)).

In this case, the Buyers' Dudek and Cross' ability to complete[3] the transaction was dependent on, (1) a satisfactory survey and division of the Seller's property, (2) searches[4], and (3) a successful mortgage application[5]. Only #(1) had been completed. #(2) has yet to be confirmed[6], and #(3) has never been achieved per First Federal (see **Attachments 1A-D**, including Dudek and Cross' denial letters due to an incomplete application). Therefore, on the basis of the testimony of the hearing and evidence herein provided to the Courts, we are not persuaded that the Buyers satisfied the definition of 'ready, willing and able' purchasers. Indeed, given the Buyers' circumstances, it was clear that, at the point that the transaction broke down, the Buyers were neither 'ready' nor 'able' (regardless of whether they could be considered 'willing') to complete the

[3] "Complete" meaning closing escrow, not start an application process.
[4] At a hearing on March 27, 2017, Defendants Dudek and Cross were unsure if a title search was ever completed, though they are requesting a 'title search' fee in their damages.
[5] Meaning "applied, approved and secured for closing".
[6] Id

transaction. More importantly, if this is the case, then allegedly Dudek and Cross' award for specific performance/damages may have been obtained unlawfully or fraudulently (including fraud upon the Court), and requires further review by this court in order to support or uphold the Judicial Machinery of the Court. The Court can ONLY be effective, fair and "just" if is allowed to function as the laws proscribe, which in this case the Defendants Dudek and Cross may have prevented such functioning. In any case, it is illegal, and EVERY case which has had fraud involved can be re-opened AT ANY TIME, because there is no statute of limitations on fraud. "A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23.

4. **Pg. 2** ***"The Dudeks and Ferros entered into the Prevailing Contract on October 20, 2012..."*** This is incorrect. Please correct Order to read "...on October 24th, 2012", as this is the correct date of original ratification. Additionally, closing is for a period of thirty-seven (37) days, not forty (40), and will also need to be corrected in said Order. As well, it was understood that the sixty (60) day maximum closing time set by the Judge covers the initial thirty-seven (37) day contract expiration date, the forty-five (45) day stipulation by Morphew (as stated above), and the five (5) day extension request from the Defendants Dudek and Cross' proposal during the hearing, and any possible reasonable delays. It was agreed that all other terms and conditions remain the same, meaning that the proof of financing per said Contract will be provided within twenty (20) days of this hearing, all buyer inspections shall be accomplished within twenty-seven (27) days from this hearing; and closing shall take place within sixty (60) days of this hearing, and no more. **Time is of the Essence.**

*Proof of financing will not contain or list any 'buyer' contingencies (i.e., income, credit, asset or application contingencies), and if it is presented and contains any buyer financing contingencies as listed, then said 'proof' will not be accepted. Note, appraisal and title search are not buyer contingencies; these are not required to obtain *proof of financing per sales contract; they are required only for "final approval" to prepare the loan package for closing.

5. **Pg. 3, #2 under IT IS THEREFORE ORDERED**: Per the authority of the court during the hearing on March 27th, 2017, Defendants Ferro have been instructed to Answer the Plaintiffs Dudek and Cross' Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees before final Order.

   A. Attorney Collins failed to file the damages via Motion and Affidavit within the 10-day period and as instructed to by the courts. This right for damages was therefore waived, and cannot be awarded in this case. Even if damages were allowable at this time, total at that time, Nov 2014, was $12,833.79, and is incorrect. Included in this amount is $1,000 being held in escrow by Dudek and Cross' real estate agent. This fee is not a "recoverable expense", as it is not an expense and it is refundable. Also, a title search fee of $285 is included, but during the hearing the Defendants Dudek and Cross could not answer the Judge's inquiry if a title search had indeed been performed, nor has any documentation been provided proving such search has been performed. Proof of a completed title search sent directly from Wooddy Law Firm to Defendants/sellers Ferro is being requested before agreeing to pay such fee.

B. Secondary charge on Collins: total claimed = $16,592.60 less the $12,833.79 (above, and which is not correct) = $5292.53. This amount is very questionable and a complete breakdown, including all invoices, is requested for a complete review before resolution.

C. Smith and Closser = $3758. Defendants Ferro request actual invoices. Need to compare this breakdown to verify no charges overlap from the Dudek/Cross Fraud case which may be included in his total. Also, the way this breakdown is presented it is very confusing by the parameters they set on the fees.

6. **Pg. 3, #3 under IT IS THEREFORE ORDERED:** "Purchase price @$281,731.18 with $21,268.82 damages deducted from $303,000" is not applicable in this Order, since damages were waived (see #5A above). Even if damages were applicable, the total would still need to be determined (see #5A-C above), and said Motion/Affidavit and Order updated to reflect such decision.

7. **Pg. 3, #4 under IT IS THEREFORE ORDERED:** At said hearing, Judge Chellis stated closing as soon as possible, as TIME IS OF THE ESSENCE, but will happen between forty-five (45) and sixty (60) days maximum from date of hearing, March 27th, 2017. Verbiage in final Order should reflect this parameter and make clear, and include "Time is of the Essence".

8. **Pg. 3, #5 under IT IS THEREFORE ORDERED:** *"The Dudeks will apply for a loan and secure lending as soon as feasible"*. This is not acceptable in both verbiage and terms. First, a new 'application' should not be required, as Dudek and Cross have clearly stated they had <u>secured</u> lending and have been "ready, able and willing" to close escrow per their sales contract, and at all times, including pending this case and its

appeal, as required by law to compel specific performance. Second, the hearing on March 27th, 2017, provided and all agreed, the terms and conditions of the contract will remain the same, with the exception for the 60-day max allowance from the date of the hearing to close escrow (see #4 above), therefore this paragraph should be removed wholly from this Order.

As this case has been officially 'disposed' as of 2/17/2017, Plaintiffs/Defendants Dudek and Cross SHOULD have no trouble closing within the terms since they have allegedly maintained their "ready, able and willing" status, therefore only a FINAL loan approval is pending, with the final loan approval being based on the lender's verification of the buyer's documentation (income, credit and assets, meaning credit report, bank statements, verification of employment, W-2's, tax returns) . If Plaintiffs/Defendants Dudek and Cross were indeed "ready, able and willing" to complete the purchase at the time their performance was due under the agreement and at the time of the decree of Specific Performance (filed their complaint), it is legally assumed the lender has already "accepted" their original application, and are only required to update the buyers documentation to verify they still qualify (i.e., there is no "application" to reject since Dudek and Cross and the bank both testified at trial the application had already been accepted and approved and they were ready, able and willing to close.) More so, as strictly regulated by the remedy of Specific Performance, if at any time the ability of Defendants Dudek and Cross to perform said Contract has changed, such as their financial condition of the contract cannot be performed (see denial letters **Attachment 1B**), this would automatically terminate their sales contract and they were to immediately inform the courts, the Ferros and Morphew. Dudek and Cross failed to maintain their

ability status, and failed to inform the courts as such, therefore failing to comply with the Court Order and to act in good faith and fair dealings at all times.

Due to Dudek and Cross' failures, and because of the concerns brought forth during the hearing and within this Draft Order, Defendants/sellers Ferro respectfully request Dudek and Cross' pending application and sales contract currently on file with South State Bank (formally named First Federal) be provided directly from South State to them and to the courts for review.

9. **Pg. 3, #6 under IT IS THEREFORE ORDERED:** Dudek and Cross are required to adhere to the contract terms as agreed upon in the hearing, meaning all inspections are due on or before twenty-six (26) days of the hearing, not "prior to closing". The CL-100 shall be obtained per contract. Per Dudek and Cross' contract, the CL-100 is not required by the Ferros until the "contract expiration date", in this current instance meaning sixty (60) days from the hearing. This term was initially provided by Dudek and Cross. If Dudek and Cross require this document any sooner than the term they had set in the original contract, they are to request in writing, to the Ferros, a specific time needed and the reason why they are requiring a contract change. In writing and hand written signatures are required by both parties (per sales contract terms and conditions for "contract changes"). Furthermore, only a CL-100 report is required per contract and as agreed on during this hearing. IF an additional inspection to obtain a clearance "letter" is required by the closing attorney or lender to clear the CL-100 for closing, that request shall be in writing (with handwritten signatures) and shall originate from the closing attorney or South State Bank and addressed to ALL parties to this case. Also, it will be the responsibility of the buyers Dudek and Cross to obtain said clearance letter, as per

original contract. Note, Susan Nicholson, agent for the buyers Dudek and Cross, testified during the trial that she herself was responsible for clearing the CL-100 but failed to do so because she didn't want to be left "holding the bag".

10. **Pg. 3, #7 under IT IS THEREFORE ORDERED:** No term or condition within the contract has been agreed to be extended upon during the hearing except for the sixty (60) day maximum closing date. Please remove #7 or update to reflect as such.
11. **Pg. 3, #8 under IT IS THEREFORE ORDERED:** During the hearing, Morphew had agreed to vacate the property within forty-five (45) days of receiving proof of financing from Dudek and Cross. She had not agreed to this Orders verbiage "*on or before closing*", but instead Morphew had proposed that she will pay a daily rate based on what she is currently paying for rent to the Ferros for every day she occupies said property after closing, if applicable. Morphew reaffirms the reason for her stipulation is due to her distrust in Dudek and Cross [as reflected in her separate action for Fraud/Fraud on the Courts) and that the effort and cost to move out and find another location for living and then possibly have to move back in is too excessive to accomplish if Dudek and Cross fail to perform. Morphew also assures this court that she will not intentionally delay vacating said property within forty-five (45) days from receiving the acceptable Dudek/Cross loan approval per contract, if applicable, and that she will do her best to vacate the house on or before closing. Therefore, #8 of the Defendants proposed Order needs to be reflected to what she agreed upon in the hearing.
12. **Pg. 3, #9 under IT IS THEREFORE ORDERED:** *"Morphew is ordered not to change or damage the property in any manner. Any violation of this order will be considered contempt, punishable by fine, arrest, attorney's fees and costs."* Morphew

respectfully takes exception to this paragraph, and would note that this 'order' is insulting in many ways. First of all, Morphew has a vested interest in the property, and as any decent person(s) would do, would not damage property that does not belong to her, especially one that she may own. Second, there is no way to measure or determine a "violation" of this 'paragraph, unless blatant destruction or major changes are visible. Even if there were blatant destruction or major changes, in order for Morphew to be held responsible irrefutable proof would have to be provided by Dudek and Cross that it was in no doubt performed at the hands of Morphew. Furthermore, there is no way to measure "any violation" (any accusation by Dudek and Cross can only be based on their personal opinion, which is not lawful in this instance); therefore for the reasons so stated, this 'Order' in part is not proper and cannot be [so generally] enforced.

13. This Order failed to address the Dudek/Cross requirement to immediately obtain a real estate attorney to make sure they meet all requirements and comply with all their contract contingencies and requirements, as Time is of the Essence. Defendants Ferro respectfully request confirmation that Dudek and Cross have obtained a real estate attorney as required by the Order filed November 6th, 2012 (see Order, para. 18, FINDINGS OF FACT). Confirmation is requested to be sent directly from said acquired Attorney to the Ferros and the Courts. Please insert an additional paragraph in the Draft Order, stating such.

Due to the reasons, allegations and requests above, Defendants Ferro and Plaintiff Morphew respectfully request this Court further review of the Defendants Dudek and Cross' proposed Order and Motion and amend as applicable.

Respectfully submitted,

Thomas M. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
843-327-1262

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
843-327-1262

Molly M. Morphew, *Pro Se*
788 E. Butternut Rd.
Summerville, SC 29483
(843)514-7299

May 1, 2017

ATTACHMENT 1A

Underwriting Approval Conditions

Loan Officer: WILLIAMS, ALLISON 10334
MLA/CAM: MADDY-MCWHIRTER
Underwriter: SANDI

Permanent Loan #: 2100321356
FF Loan ID: W12AW08756
DU/LP#: 1073556662
FHA/VA#:
Broker Name:
Application Date: 12/5/12

Borrowers: DOREEN CROSS STEPHEN C DUDEK
Property: 788 E BUTTERNUT RD SUMMERVILLE,SC 29483 County: DORCHESTER

Loan Amt: $242,400 Sales Price: $ 303,000 Appraised Val: $ 340,000 Land Value: $ 80,000 Stop Sale?: N	Loan Type: C FIX 1000 Occupancy: Occupant Purpose: Purchase Interest Rate: 3.750 Term: 360 Empl Int Rate/P&I: ADJ Index: Margin:	LTV: 80.00 CLTV/HCLTV 80.00 80.00 Cr Score B 803 Cr Score CoB 697 Housing Ratio: 13.62 Debt Ratio: 29.26	Lock Expiration: 2/3/13 Est. Close Date: 1/30/13 Cr Rept Expir: 3/5/13 Verbal Expir: Self Emp Verb Exp: N/A Income Expiration: 2/28/13 Asset Expiration: 1/29/13 Appraisal Expir: 4/9/13 Approval Date: 12/11/12
P & I Pymt: $1122.60 Escrows Waived: N Orig Fee Buyer: $2424.00 Discount Pts: $0.00	Sp Feature 127 180 Code:	PMI Company: PMI Coverage: PMI/MIP Mthly: 0.00 PMI/MIP fin: 0.00 VA FF: $0.00	

Note: signed by: DOREEN C CROSS, STEPHEN C DUDEK — Settlement Agent:
Mortgage/Title Name: DOREEN C CROSS, STEPHEN C DUDEK — AUBREY J WOODDY JR

Request Date	Resp Party	Cleared By ClearDate	Description/Notes DOREEN CROSS W12AW08756
1/18/13	Z2	SANDI 1/18/13	Loan is declined as of 01/18/2013 - INCOMPLETE APPLICATION - NO RESPONSE TO 10 DAY LETTER
12/17/12	Z1	SANDI 12/17/12	Loan Approval as of 12/17/2012 in the amount of $242400). Interest rate is 3.750. LTV is 80% and DTI is 29.262%
12/11/12	Z	SANDI 12/11/12	Loan Approval as of 12/11/2012 in the amount of $242400). Interest rate is 3.750. LTV is 80% and DTI is 28.832%
12/11/12	UW	SANDI 12/20/12	Fully ratified sales contract, including all pages, addenda - MISSING ADDENDUM C, SELLER NAME TO SHOW ON PAGE 1 with a sales price of 303000.00 NEED ADDENDUM C & SELLER NAMES TO SHOW ON PG 1
12/11/12	UW	SANDI 12/20/12	LEGIBLE COPY OF sales contract, including all pages, addenda with a sales price of 303000.00
12/11/12	UW	SANDI 12/17/12	Satisfactory Appraisal with a minimum value of 303000.00

2013 APR 2 PM 12:44
FILED-RECORDED
CLERK OF COURT
DORCHESTER COUNTY

First Federal

FILED/RECORDED
2017 APR -6 PM 12:44
CHERYL CRAWFORD
CLERK OF COURT
DORCHESTER COUNTY

January 31, 2013

DOREEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

Loan Application # W12AW08756

DOREEN CROSS

Thank you for considering First Federal for your mortgage needs. Enclosed you will find our check number #643216 in the amount of $13.20, for the unused portion of your loan application fee, and a Statement of Credit Denial, Termination or Change. Please keep us in mind for any mortgage and banking services you may need in the future.

***If you have any questions regarding this loan application, please contact your loan officer*.** Thank you for your prompt attention to this matter.

Thank you,

Margie Vincent

Margie Vincent
Compliance Auditor

Enclosure

355

1B pg 2



RE-RECORDED
2017 APR -6 PM 12:44
CHERYL S. FEATHERMAN
CLERK OF COURT
DORCHESTER COUNTY

January 31, 2013

DOREEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

Loan Application # W12AW08756

STEPHEN DUDEK\

Thank you for considering First Federal for your mortgage needs. Enclosed you will find our check number #643216 in the amount of $13.20*, for the unused portion of your loan application fee, and a Statement of Credit Denial, Termination or Change. Please keep us in mind for any mortgage and banking services you may need in the future.

Sent with Doreen's letter

If you have any questions regarding this loan application, please contact your loan officer. Thank you for your prompt attention to this matter.

Thank you,

Margie Vincent

Margie Vincent
Compliance Auditor

Enclosure

356

1B P73

Statement of Credit Denial, Termination or Change

Lender	Applicant	Date
FIRST FEDERAL BANK	DORSEN CROSS	January 31st, 2013
2440 MALL DRIVE NORTH CHARLESTON, SC 29406	236 CADY DRIVE SUMMERVILLE, SC 29483	Application or Loan Number W12AW08756
"We" means Lender.	*"You"* means Applicant.	

Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Description of Account, Transaction or Requested Credit.

Mortgage Loan

Description of Action Taken. SEE BELOW

ED-RECORDED
2017 APR -6 PM 12:44
CHERYL BERRY
CLERK OF COURT
DORCHESTER COUNTY

Principal Reasons for Credit Denial, Termination or Other Action Taken Concerning Credit

- [X] Credit Application Incomplete
- [ ] Insufficient Number of Credit References Provided
- [ ] Unacceptable Type of Credit References Provided
- [ ] Unable to Verify Credit References
- [ ] Temporary or Irregular Employment
- [ ] Unable to Verify Employment
- [ ] Length of Employment
- [ ] Income Insufficient for Amount of Credit Requested
- [ ] Excessive Obligations in Relation to Income
- [ ] Unable to Verify Income
- [ ] Length of Residence
- [ ] Temporary Residence
- [ ] Unable to Verify Residence
- [ ] No Credit File
- [ ] Limited Credit Experience
- [ ] Poor Credit Performance with Us
- [ ] Delinquent Past or Present Credit Obligations with Others
- [ ] Collection Action or Judgment
- [ ] Garnishment or Attachment
- [ ] Foreclosure or Repossession
- [ ] Bankruptcy
- [ ] Number of Recent Inquiries on Credit Bureau Report
- [ ] Value or Type of Collateral not Sufficient
- [ ]
- [ ]
- [ ]
- [ ]

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

16 pg 4

Statement of Credit Denial, Termination or Change

Lender	Applicant	Date
FIRST FEDERAL BANK	STEPHEN DUDEK	January 31st, 2013
2440 MALL DRIVE	236 CADY DRIVE	Application or Loan Number
NORTH CHARLESTON, SC 29406	SUMMERVILLE, SC 29483	W12AW08756
"We" means Lender.	*"You"* means Applicant.	

Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Description of Account, Transaction or Requested Credit.

Mortgage Loan

Description of Action Taken. SEE BELOW

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RECORDED
CLERK OF COURT
DORCHESTER COUNTY

Principal Reasons for Credit Denial, Termination or Other Action Taken Concerning Credit

- [X] Credit Application Incomplete
- [ ] Insufficient Number of Credit References Provided
- [ ] Unacceptable Type of Credit References Provided
- [ ] Unable to Verify Credit References
- [ ] Temporary or Irregular Employment
- [ ] Unable to Verify Employment
- [ ] Length of Employment
- [ ] Income Insufficient for Amount of Credit Requested
- [ ] Excessive Obligations in Relation to Income
- [ ] Unable to Verify Income
- [ ] Length of Residence
- [ ] Temporary Residence
- [ ] Unable to Verify Residence
- [ ] No Credit File
- [ ] Limited Credit Experience
- [ ] Poor Credit Performance with Us
- [ ] Delinquent Past or Present Credit Obligations with Others
- [ ] Collection Action or Judgment
- [ ] Garnishment or Attachment
- [ ] Foreclosure or Repossession
- [ ] Bankruptcy
- [ ] Number of Recent Inquiries on Credit Bureau Report
- [ ] Value or Type of Collateral not Sufficient
- [ ]
- [ ]
- [ ]
- [ ]

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Statement of Credit Denial, Termination or Change [continued]

Consumer Reporting Agency Name	Mailing Address	Telephone Toll-Free	Web Address
EQUIFAX MORTGAGE SOLUTI	6 E. CLEMENTON RD STE A2 GIBBSBORO, NJ 08026	800-333-0037	www.equifax.com

☐ We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

- **Your credit score:**
- **Date:**
- **Scores range from a low of to a high of**
- **Key factors that adversely affected your credit score:**

2017 APR -6 PM 12:44
CLERK OF COURT
DORCHESTER COUNTY
NOT RECORDED

If you have any questions regarding your credit score, you should contact
Equifax 800-685-1111 Experian 888-397-3742 TransUnion 800-916-8800

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the *Fair Credit Reporting Act*, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

Statement of Credit Denial, Termination or Change [continued]

Questions

If you have any questions regarding this notice, you should contact:

Creditor's Name: FIRST FEDERAL BANK
Address: 2440 MALL DRIVE
NORTH CHARLESTON, SC 29406
Telephone: 888-529-2220

Notice. The federal *Equal Credit Opportunity Act* prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the *Consumer Credit Protection Act*. The federal agency that administers compliance with this law concerning this creditor is:

Federal Reserve Consumer Help Center
P. O. Box 1200
Minneapolis, MN 55480

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2017 APR -6 PM 12:44
CLERK OF COURT
DORCHESTER COUNTY

mos for Loan: W12AW08756
Generated on 01-31-2013 at 11:07:43.

1/23/2013 10:40:39 AM MARGIE: PLR; FILE TO 2ND REV--SINGLE FEMALE--DECLINE FOR INCOMP APP

1/25/2013 1:25:26 PM KAY: PLR RECEIVED A REQUEST FROM THE SELLING AGENT FOR SPECIFICS ABOUT WHEN FILE WAS RECEIVED, APPROVED, WHEN SHE MADE APPLICATION ETC... I HAVE CALLED MRS. CROSS TO ASK IF THE BORROWER WANT ME TO PROVIDE THE LISTING AGENT. IF SO,
NEED STATEMENT IN WRITING.

1/29/2013 8:14:25 AM KAY: PLR NO RETURN CALL FROM BORROWER. FILE IS GOING BACK TO MARGIE FOR SECOND REVIEW.

1/29/2013 4:41:56 PM KAY: PLR BORROWER CALLED ME BACK. GOT MY VOICE MAIL..I LEFT HER ANOTHER VOICE MAIL.

1/30/2013 8:22:59 AM KAY: PLR BORROWER CALLED ME BACK AND REQUESTED THAT I EMAIL HER THE QUESTIONS THAT WERE BEING ASKED FROM THE SELLING AGENT. I DID AT 08:20AM TODAY

1/30/2013 9:57:20 AM KAY: PLR BORROWER EMAILED ME THE NAME OF HER ATTORNY..DAVID A COLLINS 843-760-0220 AND ASKED ME TO DIRECT ALL QUESTIONS THUR HER ATTORNEY.

1/31/2013 11:05:44 AM MARGIE: PLR; REC'D FILE FROM 2ND REV; LETTER AND REFUND CK MAILED TODAY; FILE TO W/R STORAGE DRAWER

CO-RECORDED
2017 APR -6 PM 12:44
SHERIFF'S OFFICE
CLERK OF COURT
DORCHESTER COUNTY

ID

First Federal

W12AW08756

Date 01/03/2013

DORSEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

2017 APR -6 PM 12:44
FILED-RECORDED
CLERK OF COURT
DORCHESTER COUNTY

Re: Request for additional information

Dear Applicant(s):

Thank you for trusting us with your residential loan application.

As discussed during the application process, we require all necessary loan documents within 10 days of your initial application. As of today, First Federal has not received all the requested documents. We are missing the following items:

1. PLEASE PROVIDE A SALES CONTRACT EXTENSION SIGNED BY ALL PARTIES.
2. FIRST FEDERAL TO OBTAINA VERBAL VERIFICATION OF EMPLOYMENT PRIOIR TO CLOSING.
3.

Please fax or drop off these documents at any one of our convenient locations.

We must receive all the above documentation within 10 days from the date of this letter. Otherwise, First Federal will regrettably be unable to give further consideration to your credit request and any corresponding interest rate lock agreements. Should you decide at a later date to furnish the above items, we can assist you with a new application.

Please call me with any questions. My contact information is shown below. I look forward to providing you with your home financing.

Sincerely,

NMLS Registry #000000607897

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER STEPHEN DUDEK and DOREEN Plaintiffs, v. THOMAS M. FERRO and LORRAINE B. FERRO, Defendants	IN THE COURT OF COMMON PLEAS Civil Action No. 2013CP1800183 consolidated with Civil Action No. 2013CP1800074
MOLLY MORPHEW, Plaintiff, v. STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO Defendants	

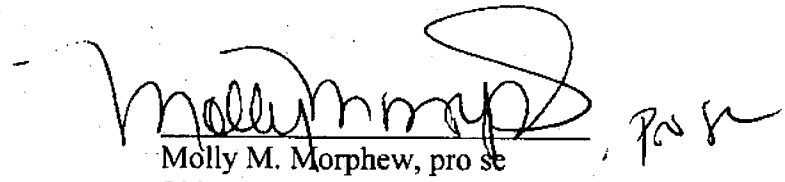
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2017 APR -6 PM 12:43
CHERYL STRICKLAND
CLERK OF COURT
DORCHESTER COUNTY

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Plaintiff [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with the **DEFENDANTS FERRO AND PLAINTIFF MORPHEW'S ANSWER TO DUDEK AND CROSS' NOTICE OF MOTION AND MOTION TO SET CLOSING SCHDULE AND FOR ATTORNEY'S FEES; AND RESPONSE TO PROPOSED ORDER** by mailing

a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Stephen L. Smith, Esquire
Samuel M. Wheeler, Esquire
P.O. Box 40578
Charleston, SC 29423



Molly M. Morphew, pro se
788 E Butternut Rd
Summerville, SC 29483
843-514-7299

April 7, 2017

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2013-CP-18-0183
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**PLAINTIFF MORPHEW'S ANSWER IN OPPOSITION TO DEFENDANTS DUDEK AND CROSS' NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE (CONTEMPT), EJECTMENT, AND ATTORNEY'S FEES**
	)	
Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	
AND	)	
	)	
Stephen Dudek and Doreen Cross,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Thomas M. Ferro and Lorraine B. Ferro,	)	
	)	
Defendants.	)	

2017 JUN -8 PM 12:09
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

Respondent hereby submits its Answer in Opposition to the Applicant's Motion for Rule to Show Cause (Contempt), Ejectment, and attorney's fees filed June 5th, 2017 and received via mail June 6th, 2017. For the reasons stated below, Respondent respectfully requests the Motion be dismissed with prejudice for including, but not limited to, its failure to be proper [complete], that it is unambiguous, for failure of proper service of the Order for Rule to Show Cause, and/or failure to be served on or before the proposed hearing date, or failure to provide sufficient time to prepare for its defense, and that said Motion was prematurely filed before the time to appeal the final order has expired, hearing was impulsively scheduled before the time lapsed to file allowed Answer to said Motion, lack of jurisdiction or personal jurisdiction over the matter of the alleged

Respondents contempt, ejectment and fees, and for additional reasons provided in paragraphs 9 through 13.

1. Respondent received an unfiled/unstamped Motion on June 5th, 2017, labeled "NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE (CONTEMPT), EJECTMENT, AND ATTORNEY'S FEES". As this Motion contains a petition for Rule to Show Cause to this court, the Motion contained a fatal defect as it did not include the required affidavit or verified petition specifically required to support the rule to show cause, nor did the Motion claim with specificity the allegations, and is therefore incomplete or improper (see **MOTION, ATTACH. 1**). Respondent contends there was no verified complete showing or basis provided by the Applicants in order for the Respondent to deliver, with confidence, a true and informed defense. Respondent respectfully moves this court to dismiss the Motion in its entirety due to being improper.

   > Any rule to show cause that an attorney files will allege "constructive contempt." "Constructive contempt ... is that occurring outside the presence of the Court."Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611, 617 (1994) (citations omitted). "Charges of constructive contempt are brought by a rule to show cause which must be based upon an affidavit or verified petition. The failure to support the rule to show cause by an affidavit or verified petition is a fatal defect." Id. An Order to Show Cause must be supported by an Affidavit or a verified petition.

2. The Order to Show Cause, which serves as legal notice of the hearing date and time for the Respondent to show cause, has not been served or properly served on the Respondent

per the strict and lawful manner, Rule 4(c). Therefore Respondent respectfully moves this court to dismiss the Motion in its entirety due to improper service of the Rule to Show Cause.

> By Whom Served. Service of summons may be made by the sheriff, his deputy, or by any other person not less than (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy or any other duly constituted laws enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 45.
>
> Rule 4(c), SCRCP (emphasis added).
>
> Since a rule to show cause is not a summons, a strict reading of Rule 4(c) indicates that, unless the court orders otherwise, service needs to be done by sheriff or his deputy or any other duly constituted law enforcement officer.
>
> Gregory Foreman, "Four Rule to Show Cause Pitfalls to Avoid" (Published in *South Carolina Trial Lawyers Magazine*, Fall 2001; Material for South Carolina Bar "Cool Tips" Lecture, April 2001)

3. Respondent contends that she has not been served or properly served an Order to Show Cause, or on or before the proposed hearing date, therefore the court lacks personal jurisdiction, rendering the Order to Show Cause unenforceable. Respondent is not required to appear [without proper service]. Respondent is not intentionally wanting to not defend herself, but also does not want to waive her objections to personal jurisdiction by appearing voluntarily to a scheduled hearing in which she was not served or properly

served. Therefore Respondent objects to appearing at today's hearing and respectfully moves this court to dismiss the Motion in its entirety due to lack of personal jurisdiction.

> "Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance." Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007). "Voluntary appearance by [a] defendant is equivalent to personal service . . . ." Rule 4(d), SCRCP. "A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." State v. Dudley, 354 S.C. 514, 542, 581 S.E.2d 171, 186 (Ct. App. 2003); see Cheraw Motor Sales Co. v. Rainwater, 125 S.C. 509, 513 119 S.E. 237, 239 (1923) ("The defendant filed his answer and tried his case on the affidavit in attachment, and thereby waived his right to his motion [to dismiss the proceedings because there was no summons and complaint served].").
>
> This failure to object resulting in waiver of personal jurisdiction applies equally in constructive contempt cases. See Bakala v. Bakala, 352 S.C. 612, 629, 576 S.E.2d 156, 165 (2003) (finding constructive contempt proceedings are commenced by a rule to show cause and that the record indicated service of the rule to show cause was not accomplished correctly, but because the appellant never raised the issue, his objections to personal jurisdiction were waived).

4. The question of ambiguity is raised by the Respondent as it seems a Motion was filed, not just a petition for Rule to Show Cause, as it also 1) contained within its title and actions,

"Ejectment", 2) there was no Order to Show Cause included, and 3) the Motion's title includes "Notice of Motion", all which contribute to the filing being "open for interpretation" or just "downright confusing". For these reasons, Respondent interprets the filing as a Motion. As such, it should follow the rules and process of a "Motion" first; and Respondent respectfully claims the right to file an Answer within the time stipulated for said Motion; she further reasons a hearing scheduled before the time to Answer a Motion has expired is inappropriate, specifically since it's been only 3 days since the Motion was filed, and violates the Respondents right of due process. Additionally, the Respondent feels harassed and unduly pressured to defend herself in this court, with no time given to obtain affidavits or bring witnesses, and when not once has the Defendants attempted to communicate with her outside of court to resolve any alleged differences; Such actions appear to be harassment as the Applicants may be unnecessarily wasting all parties, including the courts, time, money and resources when this may have been resolved amicably outside of court, showing good faith and fair dealings. Respondent respectfully moves this court to dismiss the Motion in its entirety due to being ambiguous, and the Applicants lack of good faith and fair dealings.

> A show cause order is similar to a motion but it can produce a court order on the requested relief much more quickly than a motion can. For example, after a motion is served on the opposing party, that party has a certain number of days under the jurisdiction's rules of Civil Procedure to prepare a response. A show cause order is submitted to a judge, who reads the applicant's papers and decides the deadline for the responding party's submission of papers. The judge may order an opposing party to appear "forthwith" in urgent cases. The judge may hear

arguments on the matter at some place other than the courthouse, if necessary, and may allow papers to be served on opposing parties by a method not ordinarily permitted.

http://legal-dictionary.thefreedictionary.com/Show+Cause+Order

5. The Applicant's Motion for Rule to Show Cause for contempt of a Court Order seems to have been filed prematurely, as the Rule 59(e) Order was filed May 17th and the 30-day time to file a timely appeal has not lapsed, therefore the Motion requesting an order to show cause for contempt does not seem to be within this court's jurisdiction to make such a decision at this time. Respondent respectfully moves this court to dismiss the Motion in its entirety due to lack of jurisdiction at this time.
6. Applicants bought a house with a tenant in possession. When a buyer purchases a house with a tenant, the lease "is a legal and binding contract that must be honored"[1]. According to property lawyer Tessa Shepperson, "When you buy a property with a tenant in situ, you take over from the original landlord, the rights and obligations that he had." So whatever your plans are, you're going to have to become their landlord (if only for a short period of time)[2]. A tenant in possession at the time of closing becomes the tenant of the new owners, therefore the Respondent cannot be held in contempt for not vacating on or before closing. Closing while the tenant was still in place waives the buyers right to contend the tenants continuing possession (i.e., contempt), therefore makes moot any claim of contempt on said tenant [for not vacating on or before closing]. If a lease agreement is in place at the exact moment the transfer of the deed (closing) is in effect,

1 http://closinglawyer.pro/for-buyers/common-problems-of-buying-a-house-with-tenants/
2 https://easyproperty.com/what-to-expect-when-you-buy-a-property-with-sitting-tenants/

that buyer must honor that lease, as the original landlord had. Once the Respondent became a "tenant" of the new buyers, it made moot the prior Order ordering the tenant to vacate on or before closing, and removing any jurisdiction the court had over the tenant in regards to the subject matter. As the Applicants claim, the closing took place on June 2nd, therefore any Order prior to that date stating the tenant had to vacate on or before closing has been superseded by the transferred lease agreement. Additionally, Respondent argues that not at any time since the Respondent took possession 4 years ago did the Applicants make an objection to her tenancy. They took the risk of pursuing specific performance of property that included a tenant during pending litigation. They must now accept the risk that their contentions are misplaced. Respondent respectfully moves this court to dismiss the Motion in its entirety due to the Applicants waiving their rights to contend contempt, or this courts lack of personal jurisdiction.

7. Additionally, Mr. Smith's (the Applicant's attorney) request via e-mail for an expedited hearing contained no justification why an expedited hearing is necessary, and further does not allege any prejudice on his clients (**see ATTACH. 2**) Moreover, the Motion did not contain the required affidavit or verified petition, nor did the Motion state with specificity the allegations. Respondent alleges the court has inappropriately issued an Order for Rule to Show Cause, and scheduled a hearing within 1 day of approving the Order [inferring an 'emergency' hearing] without legal justification. Such short notice did not give the Respondent time to appropriately prepare to defend herself or obtain affidavits or witnesses in her defense. Respondent alleges abuse of discretion and moves this court to dismiss the Applicants Motion and Order for Rule to Show Cause.

Furthermore, the Respondent moves for costs associated with bringing forth the Answer to a frivolous petition, and especially on such short notice.

8. Even if the Motion were ambiguous and proper, an Order to Show Cause must not only be served on the Respondent, but it should allow appropriate time for the Respondent to prepare for her defense. It has been well voiced to the courts and the opposing party that the Respondent does not work in the State of South Carolina and that travel time is an average of 2.5 hours one way for any action required in South Carolina during the working week/day, and needs proper notice for time off work in order not to not lose income or cause a disrupt in the scheduled processes. In order to prepare for any legal proceeding, and given the travel time it takes to get home, this limits the amount of time in any one day for preparation, usually resulting in, including but not limited to, loss of work and travel costs. It seems an Order was approved on June 7th, sometime after 2 p.m. with a hearing scheduled on June 8th, therefore Respondent contends this is not appropriate notice to attend a Rule to Show Cause hearing, and the Respondent will be prejudiced if commanded to appear at court on such short and unjustified notice.

NOW COMES THE RESPONDENTS ADDRESS OF THE MOTION ITSELF:

9. Pg. 1 of 2, first paragraph: "*...move this Court for an order holding Molly M. Morphew in contempt of Court for failing to adhere to the Court's Order, issued April 3, 2017, and upheld in an Order issued May 17, 2017, which ordered Morphew to vacate the property in question....on or before closing*"

    a. Respondent alleges this Motion is without merit and not enforceable due to, including but not limited to, the reasons stated above paragraphs 1-9, exactly repeated herein.

372

b. Even if the Motion is proper and enforceable:

- On March 27th at the initial hearing for the Motion for Closing...and Attorney's fees, all parties agreed (did not contend) to the Respondents stipulation to receive proof of financing per Specific Performance in hand before being required to vacate the said property, after which time she had 45 days to seek, secure and move from the property.
- The April 3rd Order was filed prematurely (before the Answer to the Applicants prior Motion for Closing...and Attorney's fees was received by the Court for review, and most items [specifically which ordered Morphew to vacate the property on or before closing] within the filed Order was contested in that Answer filed by the Respondent [and Defendants/Sellers Ferro] (**Answer pg. 11, paragraph 11, ATTACHEMENT 3**) and argued at the additional hearing held on May 12th.
- The April 3rd order was not upheld in the Order issued May 17th, as it clearly agrees Morphew made a reasonable request, and should be given item #1 (GFE) before requiring to vacate, but other 4 items she has no right to. Respondent had requested this item before closing, but received no response (**May 17th Order, pg. 8, paragraph 13, ATTACHMENT 4**), and still has not received the required documentation per the Court order of May 17th. In lieu of this fact, the Applicants should be held in contempt for failure to

adhere to the Court Order of May 17th, or at the very least be commanded to produce proof of financing per Specific Performance, which is also a reasonable request as that proof should be at their fingertips, but has been continuously refused or never provided to the courts in the prior or current proceedings.

10. Motion, Pg. 2 of 2, first paragraph: "*Morphew was notified of this closing, she has failed to vacate the Property pursuant to..... and she has otherwise refused to respond to inquiries regarding her intentions with respect to vacating the property.*"

    a. Morphew was not notified of the closing until receiving the Applicants Motion for Rule to Show Cause (Contempt), Ejectment, and Attorney's Fees via USPS mail on Monday, June 5th, 2017. Motion was filed June 5th, 2017.

    b. Morphew was only given proper notice of a tentative scheduled closing date 2 days before said date (**see ATTACH. 5**), but still had not received, and still has not received, the proof of financing per the May 17th court order (#9 above as repeated exactly herein) before she was required to vacate.

    c. Even as of May 24th, there was no closing scheduled, as Attorney Smith stated they had to change closing attorneys (no fault of the seller or Morphew) and a new title search was in progress (**see ATTACH. 6**)

    d. Morphew has never refused to respond to inquiries regarding her intentions with respect to vacating the property. Morphew has received only 1 request from the Applicants, 2 days before closing (May 31st, 2017), requesting Morphew to vacate per the Order of April 3rd. Morphew responded the same day, noting the tentative

closing date and time, and asking to provide proof of financing (GFE) per the Court Order. She received no response. (**see ATTACH. 5**)

e. Alternately, Morphew was given the impression that the Applicants were transferring the lease agreement, and she was not required to vacate on or before closing, as an e-mail was received from the sellers on June 1st, stating their Agent will be in touch with her to schedule a walk-thru, and that if the closing finalizes the buyers (Applicants) or their attorney will contact her will (**see ATTACH. 7**)

f. Additionally, Morphew received an inquiry from the seller's agent on May 31st, 2017, inquiring when she'll be vacating the property. She responded as soon as possible [as she was waiting on proof of financing (GFE) or a response from Attorney Smith requesting the GFE that very day] (**see ATTACH. 8**).

11. Motion, pg. 2 of 2, first paragraph: "*In its May 17th Order, this Court noted that Dudek and Cross cancelled one closing to give Morphew ample time to vacate the Property*".

a. Respondent alleges false testimony during a hearing, as proof provided, it was the Sellers Ferro who postponed the May 3rd closing via e-mail on April 27th, 2017, due to the pending hearing to rule on the damage claim by the Applicants, as it wholly effected the closing documents (**see ATTACH. 9**). The sellers' were responding to Attorney Smith's e-mail dated April 26th, 2017, threatening possible contempt if they did not show up to the May 3rd scheduled closing.

b. Respondent objected and argued Smith's testimony was false (as stated above, paragraph a), and offered the e-mail as material evidence during the hearing. The court chose to ignore Morphew's testimony and the availability of material proof,

and instead elected Attorney Smith's testimony [alone] as the truth, as clearly indicated by the Order of May 17th, pg. 8, #13 (**see ATTACHMENT #4**).

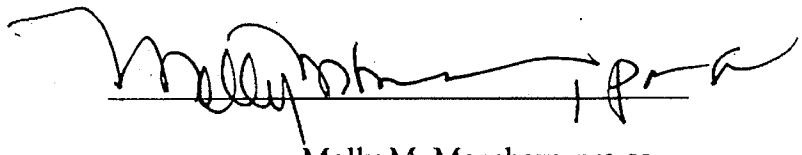
12. Motion, pg. 2 of 2, first paragraph: The Applicants have claimed #11 above as a fact within their Motion, blaming Morphew for 'holding' up a closing and inferring "*...she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross*".
    a. Morphew objects to this falsity, claims defamation of character, and requires strict and irrefutable proof as to the validity of their inference.
    b. If such material evidence cannot be provided, Morphew asks the court to have the Applicants remove the negative connotation about the character of Morphew, as this inference is only a subjective perspective, not based on fact, and is not admissible or cannot be used to measure or quantify alleged actions of contempt of a court order (needs to be struck from the record).
    c. There was no other closing scheduled or notice given of any other closing date/time besides the May 3rd and the June 2nd notice.
13. Motion, pg. 2 of 2, first paragraph: "*If she fails to appear for this motion, or continues to refuse to vacate the Property...*"
    a. #3 as repeated exactly herein, Morphew objects to the validity of the command to appear, but if she does, states it does not waive her contention of improper service. Unfortunately, she may not receive proper guidance from the court, as to her rights in this instance, and would choose to preserve her right per the Rule to Show Cause as published/law dictates in lieu of silence from the court. Morphew clearly emphasizes that she is not refusing to appear with bad intent, but instead only to preserve her right to claim improper service. As indicated by the

detail provided herein Answer, and on very short notice, she is very much prepared to appear and defend herself.

b. Morphew has never refused to vacate the property, in which she has continuously defended in every filing or hearing in this court. Morphew has only requested strict proof of financing per their Specific Performance complaint. If the Applicants continue to refuse to provide such proof, than any delay to vacate the property is on them, as this should have been a very easy remedy to cure Morphew's claim that Dudek and Cross, that at all times material, never had a legal claim to said property, and Morphew's exit from said property would be made with confidence. Respondent argues the Dudek/Cross action in the Order to provide her with said proof of financing is a pre-requisite to her action in the Order to vacate the property, and before Respondent can be held in contempt, Dudek and Cross must perform their action as required by the Court Order of May 17th. Morphew requires strict proof from the Applicants that she "continues" to refuse to vacate the Property, as this allegation is presented as a fact, and clouds her character once again. Furthermore, since the Applicants are claiming contempt, a very serious charge against her person and character, Morphew respectfully moves the court to compel Dudek and Cross to prove what has been a very simple Question in Fact in the recent proceedings, and may provide an easy fix to this whole issue, saving the court, and all parties involved, excessive amounts stress, time, money and resources. If they refuse to provide said documentation, then the Respondent respectfully moves the court to find the Applicants instead in contempt for refusing to follow the Court order of May 17th.

Conclusion:

Due to the reasons and evidence provided wholly herein Answer, Respondent respectfully moves this court to dismiss the Motion in its entirety. Respondent further move for any and all costs associated with the bringing of this Answer, pursuant to the above-referenced allegations or failings.



Molly M. Morphew, pro se

Summerville, South Carolina
June 8, 2017

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2013-CP-18-0183
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	
AND	)	
	)	
Stephen Dudek and Doreen Cross,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Thomas M. Ferro and Lorraine B. Ferro,	)	
	)	
Defendants.	)	

2017 JUN -8 PM 12:09
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Plaintiff Morphew's Answer in Opposition to the Applicant's Motion for Rule to Show Cause (Contempt), Ejectment, and Attorney's Fees was served by mailing USPS and electronic mail on the following:

Stephen L. Smith, Esq.
P.O. Box 40578
7455 Cross County Rd., Suite 1
Charleston, SC 29423

Thomas and Lorraine Ferro
76 Elk Range Drive
Snowmass, CO 81654

Molly M. Morphew, pro se

June 8, 2017

379

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO. 2013-CP-18-183
Stephen Dudek and Doreen Cross, Plaintiffs, vs. Thomas M. Ferro and Lorraine B. Ferro, Defendants. AND Molly M. Morphew Plaintiff, vs. Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro Defendants.	)	**NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE (CONTEMPT), EJECTMENT, AND ATTORNEY'S FEES**

2017 JUN -8 PM 12:09
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

The Plaintiffs, Stephen Dudek and Doreen Cross, by and through their undersigned attorneys, respectfully move this Court for an order holding Molly M. Morphew in contempt of Court for failing to adhere to this Court's Order, issued April 3, 2017, and upheld in an Order issued May 17, 2017, which ordered Morphew to vacate the property in question in this litigation, 788 E. Butternut Road, Summerville, SC, TMS # 128-00-00-090 ("Property"), on or before Dudek and Cross closed on the Property. In its April 3rd Order, this Court held, "Morphew, as the current tenant of the Property, is ordered to vacate the Property on or before the closing date, which will be provided to her by the parties or their counsel." (April 3rd Order, p. 3, ¶ 8). Dudek, Cross, Thomas Ferro and Lorraine Ferro completed closing today, June 2,

380 (1)

2017. Morphew was notified of this closing, she has failed to vacate the Property pursuant to this Court's April 3rd Order, and she has otherwise refused to respond to inquiries regarding her intentions with respect to vacating the Property. In its May 17th Order, this Court noted that Dudek and Cross cancelled one closing to give Morphew ample time to vacate the Property. (May 17th Order, p. 8, ¶ 13). It further stated that Morphew's actions "raise the inference that she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross." (*Id.*). This pattern of behavior has continued up until closing and, now, through closing. Morphew should be held in contempt and further ordered to vacate the Property. If she fails to appear for this motion, or continues to refuse to vacate the Property, this Court should order the Dorchester County Sherriff's Department to eject Morphew and her belongings from the Property.

Dudek and Cross further move for their attorney's fees and costs associated with bringing this motion, pursuant to the above-referenced orders.

SMITH | CLOSSER, P.A.

Steven L. Smith – ssmith@scnlaw.com
(SC Bar No.: 05173)
Zachary J. Closser – zclosser@scnlaw.com
(SC Bar No.: 74005)
Samuel M. Wheeler – swheeler@scnlaw.com
(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

June 2, 2017
Charleston, South Carolina

16-232

STATE OF SOUTH CAROLINA)) COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO. 2013-CP-18-183
Stephen Dudek and Doreen Cross, Plaintiffs, vs. Thomas M. Ferro and Lorraine B. Ferro, Defendants. AND Molly M. Morphew Plaintiff, vs. Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro Defendants.	CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Rule to Show Cause was served by mailing and electronic mail on the following:

Molly M. Morphew
788 E. Butternut Road
Summerville, SC 29483

Thomas and Lorraine Ferro
76 Elk Range Drive
Snowmass, CO 81654

Samuel M. Wheeler

June 2, 2017
16-232

From: Samuel M. Wheeler [mailto:swheeler@scnlaw.com]
Sent: Friday, June 02, 2017 3:55 PM
To: Sheryle Young
Cc: Molly Morphew; Steven L. Smith
Subject: 2013-CP-18-0183; Dudek v. Ferro

Ms. Young,

The attached Rule to Show Cause motion is being mailed to the Court today. We would like to schedule a hearing before the Master as soon as possible, given that Ms. Morphew is failing to abide by the Court's orders.

Please let us know what we need to do to facilitate this motion/hearing.

Thank you.

Best,

Sam

FILED RECORDED
2017 JUN -8 PM 12:09
CLERK OF COURT
DORCHESTER COUNTY

Smith | Closser, P.A.
Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578
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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

MOLLY MORPHEW,

Plaintiff,

v.

STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE B. FERRO,

Defendants

STEPHEN DUDEK AND DOREEN CROSS,

Plaintiffs,

v.

THOMAS M. FERRO and LORRAINE B. FERRO,

Defendants

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013CP1800183
consolidated with Civil Action No. 2013CP1800074

FILED-RECORDED
2017 JUN -8 PM 12:09
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DEFENDANTS FERRO AND PLAINTIFF MORPHEW'S ANSWER TO DUDEK AND CROSS' NOTICE OF MOTION AND MOTION TO SET CLOSING SCHEDULE AND FOR ATTORNEY'S FEES; AND RESPONSE TO PROPOSED ORDER

FILED-RECORDED
2017 APR -6 PM 12:43
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Defendants Ferro and Plaintiff Morphew, both Pro Se, hereby Answer the **Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees** filed by Plaintiff/Defendants Stephen Dudek and Doreen Cross, and hereby Respond to the **DRAFT ORDER** (by same), as follows:

BRIEF FACTS

On March 27th, 2017, a hearing took place before this Court to set a closing schedule and award attorney's fees and costs to Plaintiffs/Defendants Dudek and Cross in regards to the above

384

(2)

referenced case. During this hearing, it was brought to the Court's attention that any damages to be awarded per the Court Order filed November 6th, 2014, had been waived due to the Plaintiff's failure to submit the required Motion and Affidavit within the time limit set by said Order. The Court requested Plaintiffs Dudek and Cross to update their DRAFT ORDER as applicable to the hearing, and Defendants Ferro to submit an Answer to the Plaintiff's **Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees.** No time limit for submitting said Answer was set.

To save time and prevent redundancy, this Answer and Response "references" the **DRAFT ORDER** only, but which covers any applicable items within the **Motion to Set Closing Schedule and for Attorney Fees.**

ARGUEMENTS

1. Pg. 2 "***...the SC Court of Appeals affirmed the order and this Court's ruling that the Dudeks were entitled specific performance under the prevailing*** **contract"**. As stated below (see below **#3**) , there is a substantially supported concern brought forth at this hearing that Dudek and Cross MAY NOT be entitled to specific performance as it now seems that at no time were they "Ready, able and willing" to close on the contract, and currently are not 'ready, able and willing'. It seems Dudek/Cross, their lawyer and their lending officer, may ALL have falsely testified they were "ready, able and willing" to close escrow per the sales contract, at the exact moment they requested specific performance, and at trial. Meaning, the courts may have been victims of fraud, and both Morphew and Defendants Ferro were prevented from lawfully presented their cases fully, as is their Constitutional right. Morphew testified at this hearing that Dudek/Cross' lender **denied** them lending and closed their file as of January 18th, 2013-- due to an

incomplete application (see **Attachment 1A**). It seems they applied for mortgage credit after their sales Contract had expired, which voided the sales contract, and never provided First Federal with a signed Extension Addendum to make their contract valid as required on the day of application (see **Attachment 1D**). Based on the facts brought forth in this hearing, Defendants Ferro request the courts to review the lawful validity that "the Dudeks were entitled specific performance under the prevailing contract" before making a final decision.

2. **Pg. 2, paragraph 1 under Brief Facts and Procedural History**: "***Morphew initially filed a petition for rehearing, but she voluntarily withdrew it....***" Morphew would like to clarify to this Court that though she voluntarily withdrew her petition for a rehearing, she did so neither freely nor in agreement to this Court's or the Appellate Court's review and decision. Instead due to the request of the sellers Ferro stating they were in severe financial and economic distress, Morphew honored her promise to the Ferros that if at any time they were in severe economic or mental distress and could not continue with the appeal, she would withdraw her part of the appeal as to not cause any further harm to an innocent party.

3. **Pg. 2, paragraph 2 under Finding and Rulings: "*The Dudeks[1] are prepared to proceed with closing on the Property, pursuant to the Order...*"** The Defendants Ferro and Plaintiff Morphew question this statement as "prepared" indicates they are currently "ready, able and willing" to close. During the hearing, Plaintiff/Defendant Doreen Cross testified their lender, First Federal Bank (now known as South State Bank) is not willing

[1] "Dudeks" may be incorrect (as it assumes a "marriage contract"); if so, the accurate application is 'Stephen Dudek and Doreen Cross' or 'Dudek and Cross', and should be corrected in said Order.

to accept their application because of another case against them[2] [Morphew's separate action for Fraud/Fraud on the Court]; which brings forth the questions, were and are they {Dudek and Cross] currently "ready, able and willing" to close escrow? Specific Performance strictly requires by law that in order for the Court to compel Specific Performance. And why does another separate case against First Federal prevent them from accepting and processing a loan Dudek/Cross and First Federal had stated was approved for closing [and pending this case]? And why would their lender require a new or separate application if they were and have maintained their ability to close escrow as required to compel Specific Performance?

The Estate Agents (Provision of Information) Regulations 1991 define a Purchaser who is 'ready, willing and able' as a person (or persons) who "is prepared and is able to exchange unconditional contracts for the sale of your property". 'Ready and willing' means that the purchaser must be prepared to enter into the contract on the terms offered and such a position should not be impeded by an outside factor..." (Comley v Wellman (1948) 65 WN (NSW) 268 (Aus); Dellafiora v Lester [1962] 1 WLR 1208, [1962] 3 All ER 393 (CA); Nelson v. Bolton, 72 Ill App.3d 519, 391 N.E.2d 182 (1979); Savills Land & Property Ltd v Kibble [1998] EGCS 170 (CA)). A purchaser cannot be said to be 'ready' if the essential terms are not agreed upon (Gabrielli v. Fabian, 167 AD.2d 684, 563 NYS.2d 266 (1990)). In particular, 'willing' means that the purchaser should be prepared to put his signature to a binding contract on the terms offered and be

[2] When questioned by the Judge as to why Dudek and Cross had not started their due diligence (specifically the house inspection or scheduling said inspection), Doreen Cross replied to the Court that it was *because of (Morphew's other) complaint against the lender, and she was not going to obtain an inspection until the bank agreed to move forward*...while her attorney, Smith, replied the lender *wouldn't move on the court Order until the Judge filed the final Order* (even though the case was remitted back to the lower court 38 days prior to this hearing).

bound thereby; "for the words 'ready and willing' imply not only the disposition, but the capacity to do the act", De Medina v Norman (1842) 11 LJ Ex 320, 322. As a rule, a person is not 'willing' to purchase if all he has done is sign a conditional contract, such as a contract 'subject to finance', at least until the condition is fulfilled (Graham & Scott (Southgate) Ltd v Oxlade [1950] 2 KB 257 (CA); Woodland Realty, Inc. v. Winzenreid, 82 Wis.2d 218, 262 N.W.2d 106 (1978)). A purchaser cannot be said to be 'willing to purchase' if he is unable to complete the purchase or, at least, prove a willingness to execute an unconditional and binding contract (and the seller is able to do so) (McCallum v Hicks [1950] 2 KB 271 (CA); Ellsworth Dobbs v. Johnson, supra at 855; Bennett Realty, Inc. v. Muller, 396 S.E.2d 630 (NC Ct App 1990)).

In this case, the Buyers' Dudek and Cross' ability to complete[3] the transaction was dependent on, (1) a satisfactory survey and division of the Seller's property, (2) searches[4], and (3) a successful mortgage application[5]. Only #(1) had been completed. #(2) has yet to be confirmed[6], and #(3) has never been achieved per First Federal (see **Attachments 1A-D**, including Dudek and Cross' denial letters due to an incomplete application). Therefore, on the basis of the testimony of the hearing and evidence herein provided to the Courts, we are not persuaded that the Buyers satisfied the definition of 'ready, willing and able' purchasers. Indeed, given the Buyers' circumstances, it was clear that, at the point that the transaction broke down, the Buyers were neither 'ready' nor 'able' (regardless of whether they could be considered 'willing') to complete the

[3] "Complete" meaning closing escrow, not start an application process.
[4] At a hearing on March 27, 2017, Defendants Dudek and Cross were unsure if a title search was ever completed, though they are requesting a 'title search' fee in their damages.
[5] Meaning "applied, approved and secured for closing".
[6] Id

transaction. More importantly, if this is the case, then allegedly Dudek and Cross' award for specific performance/damages may have been obtained unlawfully or fraudulently (including fraud upon the Court), and requires further review by this court in order to support or uphold the Judicial Machinery of the Court. The Court can ONLY be effective, fair and "just" if is allowed to function as the laws proscribe, which in this case the Defendants Dudek and Cross may have prevented such functioning. In any case, it is illegal, and EVERY case which has had fraud involved can be re-opened AT ANY TIME, because there is no statute of limitations on fraud. "A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶60.23.

4. Pg. 2 ***"The Dudeks and Ferros entered into the Prevailing Contract on October 20, 2012..."*** This is incorrect. Please correct Order to read "...on October 24th, 2012", as this is the correct date of original ratification. Additionally, closing is for a period of thirty-seven (37) days, not forty (40), and will also need to be corrected in said Order. As well, it was understood that the sixty (60) day maximum closing time set by the Judge covers the initial thirty-seven (37) day contract expiration date, the forty-five (45) day stipulation by Morphew (as stated above), and the five (5) day extension request from the Defendants Dudek and Cross' proposal during the hearing, and any possible reasonable delays. It was agreed that all other terms and conditions remain the same, meaning that the proof of financing per said Contract will be provided within twenty (20) days of this hearing, all buyer inspections shall be accomplished within twenty-seven (27) days from this hearing, and closing shall take place within sixty (60) days of this hearing, and no more. **Time is of the Essence.**

*Proof of financing will not contain or list any 'buyer' contingencies (i.e., income, credit, asset or application contingencies), and if it is presented and contains any buyer financing contingencies as listed, then said 'proof' will not be accepted. Note, appraisal and title search are not buyer contingencies; these are not required to obtain *proof of financing per sales contract; they are required only for "final approval" to prepare the loan package for closing.

5. **Pg. 3, #2 under IT IS THEREFORE ORDERED**: Per the authority of the court during the hearing on March 27th, 2017, Defendants Ferro have been instructed to Answer the Plaintiffs Dudek and Cross' Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees before final Order.

   A. Attorney Collins failed to file the damages via Motion and Affidavit within the 10-day period and as instructed to by the courts. This right for damages was therefore waived, and cannot be awarded in this case. Even if damages were allowable at this time, total at that time, Nov 2014, was $12,833.79, and is incorrect. Included in this amount is $1,000 being held in escrow by Dudek and Cross' real estate agent. This fee is not a "recoverable expense", as it is not an expense and it is refundable. Also, a title search fee of $285 is included, but during the hearing the Defendants Dudek and Cross could not answer the Judge's inquiry if a title search had indeed been performed, nor has any documentation been provided proving such search has been performed. Proof of a completed title search sent directly from Wooddy Law Firm to Defendants/sellers Ferro is being requested before agreeing to pay such fee.

B. Secondary charge on Collins: total claimed = $16,592.60 less the $12,833.79 (above, and which is not correct) = $5292.53. This amount is very questionable and a complete breakdown, including all invoices, is requested for a complete review before resolution.

C. Smith and Closser = $3758. Defendants Ferro request actual invoices. Need to compare this breakdown to verify no charges overlap from the Dudek/Cross Fraud case which may be included in his total. Also, the way this breakdown is presented it is very confusing by the parameters they set on the fees.

6. **Pg. 3, #3 under IT IS THEREFORE ORDERED:** "Purchase price @$281,731.18 with $21,268.82 damages deducted from $303,000" is not applicable in this Order, since damages were waived (see #5A above). Even if damages were applicable, the total would still need to be determined (see #5A-C above), and said Motion/Affidavit and Order updated to reflect such decision.

7. **Pg. 3, #4 under IT IS THEREFORE ORDERED:** At said hearing, Judge Chellis stated closing as soon as possible, as TIME IS OF THE ESSENCE, but will happen between forty-five (45) and sixty (60) days maximum from date of hearing, March 27th, 2017. Verbiage in final Order should reflect this parameter and make clear, and include "Time is of the Essence".

8. **Pg. 3, #5 under IT IS THEREFORE ORDERED:** *"The Dudeks will apply for a loan and secure lending as soon as feasible"*. This is not acceptable in both verbiage and terms. First, a new 'application' should not be required, as Dudek and Cross have clearly stated they had <u>secured</u> lending and have been "ready, able and willing" to close escrow per their sales contract, and at all times, including pending this case and its

appeal, as required by law to compel specific performance. Second, the hearing on March 27th, 2017, provided and all agreed, the terms and conditions of the contract will remain the same, with the exception for the 60-day max allowance from the date of the hearing to close escrow (see #4 above), therefore this paragraph should be removed wholly from this Order.

As this case has been officially 'disposed' as of 2/17/2017, Plaintiffs/Defendants Dudek and Cross SHOULD have no trouble closing within the terms since they have allegedly maintained their "ready, able and willing" status, therefore only a FINAL loan approval is pending, with the final loan approval being based on the lender's verification of the buyer's documentation (income, credit and assets, meaning credit report, bank statements, verification of employment, W-2's, tax returns). If Plaintiffs/Defendants Dudek and Cross were indeed "ready, able and willing" to complete the purchase at the time their performance was due under the agreement and at the time of the decree of Specific Performance (filed their complaint), it is legally assumed the lender has already "accepted" their original application, and are only required to update the buyers documentation to verify they still qualify (i.e., there is no "application" to reject since Dudek and Cross and the bank both testified at trial the application had already been accepted and approved and they were ready, able and willing to close.) More so, as strictly regulated by the remedy of Specific Performance, if at any time the ability of Defendants Dudek and Cross to perform said Contract has changed, such as their financial condition of the contract cannot be performed (see denial letters **Attachment 1B**), this would automatically terminate their sales contract and they were to immediately inform the courts, the Ferros and Morphew. Dudek and Cross failed to maintain their

ability status, and failed to inform the courts as such, therefore failing to comply with the Court Order and to act in good faith and fair dealings at all times.

Due to Dudek and Cross' failures, and because of the concerns brought forth during the hearing and within this Draft Order, Defendants/sellers Ferro respectfully request Dudek and Cross' pending application and sales contract currently on file with South State Bank (formally named First Federal) be provided directly from South State to them and to the courts for review.

9. **Pg. 3, #6 under IT IS THEREFORE ORDERED:** Dudek and Cross are required to adhere to the contract terms as agreed upon in the hearing, meaning all inspections are due on or before twenty-six (26) days of the hearing, not "prior to closing". The CL-100 shall be obtained per contract. Per Dudek and Cross' contract, the CL-100 is not required by the Ferros until the "contract expiration date", in this current instance meaning sixty (60) days from the hearing. This term was initially provided by Dudek and Cross. If Dudek and Cross require this document any sooner than the term they had set in the original contract, they are to request in writing, to the Ferros, a specific time needed and the reason why they are requiring a contract change. In writing and hand written signatures are required by both parties (per sales contract terms and conditions for "contract changes"). Furthermore, only a CL-100 report is required per contract and as agreed on during this hearing. IF an additional inspection to obtain a clearance "letter" is required by the closing attorney or lender to clear the CL-100 for closing, that request shall be in writing (with handwritten signatures) and shall originate from the closing attorney or South State Bank and addressed to ALL parties to this case. Also, it will be the responsibility of the buyers Dudek and Cross to obtain said clearance letter, as per

original contract. Note, Susan Nicholson, agent for the buyers Dudek and Cross, testified during the trial that she herself was responsible for clearing the CL-100 but failed to do so because she didn't want to be left "holding the bag".

10. **Pg. 3, #7 under IT IS THEREFORE ORDERED:** No term or condition within the contract has been agreed to be extended upon during the hearing except for the sixty (60) day maximum closing date. Please remove #7 or update to reflect as such.

11. **Pg. 3, #8 under IT IS THEREFORE ORDERED:** During the hearing, Morphew had agreed to vacate the property within forty-five (45) days of receiving proof of financing from Dudek and Cross. She had not agreed to this Orders verbiage "*on or before closing*", but instead Morphew had proposed that she will pay a daily rate based on what she is currently paying for rent to the Ferros for every day she occupies said property after closing, if applicable. Morphew reaffirms the reason for her stipulation is due to her distrust in Dudek and Cross [as reflected in her separate action for Fraud/Fraud on the Courts) and that the effort and cost to move out and find another location for living and then possibly have to move back in is too excessive to accomplish if Dudek and Cross fail to perform. Morphew also assures this court that she will not intentionally delay vacating said property within forty-five (45) days from receiving the acceptable Dudek/Cross loan approval per contract, if applicable, and that she will do her best to vacate the house on or before closing. Therefore, #8 of the Defendants proposed Order needs to be reflected to what she agreed upon in the hearing.

12. **Pg. 3, #9 under IT IS THEREFORE ORDERED:** *"Morphew is ordered not to change or damage the property in any manner. Any violation of this order will be considered contempt, punishable by fine, arrest, attorney's fees and costs."* Morphew

respectfully takes exception to this paragraph, and would note that this 'order' is insulting in many ways. First of all, Morphew has a vested interest in the property, and as any decent person(s) would do, would not damage property that does not belong to her, especially one that she may own. Second, there is no way to measure or determine a "violation" of this 'paragraph, unless blatant destruction or major changes are visible. Even if there were blatant destruction or major changes, in order for Morphew to be held responsible irrefutable proof would have to be provided by Dudek and Cross that it was in no doubt performed at the hands of Morphew. Furthermore, there is no way to measure "any violation" (any accusation by Dudek and Cross can only be based on their personal opinion, which is not lawful in this instance); therefore for the reasons so stated, this 'Order' in part is not proper and cannot be [so generally] enforced.

13. This Order failed to address the Dudek/Cross requirement to immediately obtain a real estate attorney to make sure they meet all requirements and comply with all their contract contingencies and requirements, as Time is of the Essence. Defendants Ferro respectfully request confirmation that Dudek and Cross have obtained a real estate attorney as required by the Order filed November 6th, 2012 (see Order, para. 18, FINDINGS OF FACT). Confirmation is requested to be sent directly from said acquired Attorney to the Ferros and the Courts. Please insert an additional paragraph in the Draft Order, stating such.

Due to the reasons, allegations and requests above, Defendants Ferro and Plaintiff Morphew respectfully request this Court further review of the Defendants Dudek and Cross' proposed Order and Motion and amend as applicable.

Respectfully submitted,

Thomas M. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
843-327-1262

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
843-327-1262

Molly M. Morphew, *Pro Se*
788 E. Butternut Rd.
Summerville, SC 29483
(843)514-7299

May 1, 2017

1B Pg 2

First Federal

RE-RECORDED
2017 APR -6 PM 12:44
CHERYL [illegible] COURT
CLERK OF COURT
DORCHESTER COUNTY

January 31, 2013

DORREN C CROSS
STEPHEN C DOREK
236 CADY DRIVE
SUMMERVILLE SC 29483

Loan Application # M12AH08756

STEPHEN DOREK\

Thank you for considering First Federal for your mortgage needs. Enclosed you will find our check number #542216 in the amount of $13.20* for the unused portion of your loan application fee, and a Statement of Credit Denial, Termination or Change. Please keep us in mind for any mortgage and banking services you may need in the future. *Sent with Doreen's letter

If you have any questions regarding this loan application, please contact your loan officer. Thank you for your prompt attention to this matter.

Thank you,

Margie Vincent

Margie Vincent
Compliance Auditor

Enclosure

1B P13

Statement of Credit Denial, Termination or Change

Lender	Applicant	Date
FIRST FEDERAL BANK	DORSEN CROSS	January 31st, 2013
2640 MALL DRIVE	236 CADY DRIVE	
NORTH CHARLESTON, SC 29406	SUMMERVILLE, SC 29483	Application or Loan Number W12AN08756
"We" means Lender.	"You" means Applicant.	

Property Address: 788 B BUTTERNUT RD
SUMMERVILLE, SC 29483

Description of Account, Transaction or Requested Credit

Mortgage Loan

Description of Action Taken. SEE BELOW

2017 APR -6 PM 12:44
RECORDED
CHERYL STRICKLAND
CLERK OF COURT
DORCHESTER COUNTY

Reasons for Action Taken; Consumer Credit

- [X] Credit Application Incomplete
- [ ] Insufficient Number of Credit References Provided
- [ ] Unacceptable Type of Credit References Provided
- [ ] Unable to Verify Credit References
- [ ] Temporary or Irregular Employment
- [ ] Unable to Verify Employment
- [ ] Length of Employment
- [ ] Income Insufficient for Amount of Credit Requested
- [ ] Excessive Obligations in Relation to Income
- [ ] Unable to Verify Income
- [ ] Length of Residence
- [ ] Temporary Residence
- [ ] Unable to Verify Residence
- [ ] No Credit File
- [ ] Limited Credit Experience
- [ ] Poor Credit Performance with Us
- [ ] Delinquent Past or Present Credit Obligations with Others
- [ ] Collection Action or Judgment
- [ ] Garnishment or Attachment
- [ ] Foreclosure or Repossession
- [ ] Bankruptcy
- [ ] Number of Recent Inquiries on Credit Bureau Report
- [ ] Value or Type of Collateral not Sufficient
- [ ]
- [ ]
- [ ]
- [ ]

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

16 pg 1

Statement of Credit Denial, Termination or Change

Lender	Applicant	Date
FIRST FEDERAL BANK 2440 MALL DRIVE NORTH CHARLESTON, SC 29406	STEPHEN DUDEK 236 CADY DRIVE SUMMERVILLE, SC 29483	January 31st, 2013 Application or Loan Number W122R08756
"We" means Lender	"You" means Applicant.	

Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Description of Account, Transaction or Requested Credit.

Mortgage Loan

Description of Action Taken. SEE BELOW

2017 APR -6 PM 12:44
RECORDED
CLERK OF COURT
DORCHESTER COUNTY

Principal Reason(s) for Credit Denial, Termination or Unfavorable Change

- [X] Credit Application Incomplete
- [ ] Insufficient Number of Credit References Provided
- [ ] Unacceptable Type of Credit References Provided
- [ ] Unable to Verify Credit References
- [ ] Temporary or Irregular Employment
- [ ] Unable to Verify Employment
- [ ] Length of Employment
- [ ] Income Insufficient for Amount of Credit Requested
- [ ] Excessive Obligations in Relation to Income
- [ ] Unable to Verify Income
- [ ] Length of Residence
- [ ] Temporary Residence
- [ ] Unable to Verify Residence
- [ ] No Credit File
- [ ] Limited Credit Experience
- [ ] Poor Credit Performance with Us
- [ ] Delinquent Past or Present Credit Obligations with Others
- [ ] Collection Action or Judgment
- [ ] Garnishment or Attachment
- [ ] Foreclosure or Repossession
- [ ] Bankruptcy
- [ ] Number of Recent Inquiries on Credit Bureau Report
- [ ] Value or Type of Collateral not Sufficient
- [ ]
- [ ]
- [ ]
- [ ]
- [ ]

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

18 p45

Statement of Credit Denial, Termination or Change [continued]

EQUIFAX MORTGAGE SOLUTI	6 E. CLEVELAND RD STE A2 GREENSBORO, NC 08026	800-333-0037	www.equifax.com

☐ We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

- Your credit score:
- Date:
- Scores range from a low of to a high of
- Key factors that adversely affected your credit score:

RE-RECORDED
2017 APR -6 PM 12:44
CLERK OF COURT
DORCHESTER COUNTY

If you have any questions regarding your credit score, you should contact
Equifax 800-685-1111 Experian 888-397-3742 TransUnion 800-916-8800

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the *Fair Credit Reporting Act*, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

Statement of Credit Denial, Termination or Change [continued]

[redacted]

If you have any questions regarding this notice, you should contact:

Creditor's Name: FIRST FEDERAL BANK
Address: 2440 MALL DRIVE
NORTH CHARLESTON, SC 29406
Telephone: 888-529-2220

Notice. The federal *Equal Credit Opportunity Act* prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the *Consumer Credit Protection Act*. The federal agency that administers compliance with this law concerning this creditor is:

Federal Reserve Consumer Help Center
P. O. Box 1200
Minneapolis, MN 55480

FILED-RECORDED
2017 APR -6 PM 12:44
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

1C

Memos for Loan: W12AW08756
Generated on 01-31-2013 at 11:07:43

1/23/2013 10:40:39 AM MARGIE: PLR; FILE TO 2ND REV--SINGLE FEMALE--DECLINE FOR INCOMP APP

1/25/2013 1:25:26 PM KAY: PLR RECEIVED A REQUEST FROM THE SELLING AGENT FOR SPECIFICS ABOUT WHEN FILE WAS RECEIVED, APPROVED, WHEN SHE MADE APPPLICATIONS ETC... I HAVE CALLED MRS. CROSS TO ASK IF THE BORROWER WANT ME TO PROVIDE THE LISTING AGENT. IF SO, NEED STATEMENT IN WRITTING.

1/29/2013 8:14:25 AM KAY: PLR NO RETURN CALL FROM BORROWER. FILE IS GOING BACK TO MARGIE FOR SECOND REVIEW.

1/29/2013 4:41:56 PM KAY: PLR BORROWER CALLED ME BACK. GOT MY VOICE MAIL..I LEFT HER ANOTHER VOICE MAIL.

1/30/2013 8:22:59 AM KAY: PLR BORROWER CALLED ME BACK AND REQUESTED THAT I EMAIL HER THE QUESTIONS THAT WERE BEING ASKED FROM THE SELLING AGENT. I DID AT 08:20AM TODAY.

1/30/2013 9:57:20 AM KAY: PLR BORROWER EMAILED ME THE NAME OF HER ATTORNY...DAVID A COLLINS 843-760-0220 AND ASKED ME TO DIRECT ALL QUESTIONS THUR HER ATTORNEY.

1/31/2013 11:05:44 AM MARGIE: PLR; REC'D FILE FROM 2ND REV; LETTER AND REFUND CK MAILED TODAY; FILE TO W/R STORAGE DRAWER

CO-RECORDED
2017 APR -6 PM 12:44
SHERRY G. CONDON
CLERK OF COURT
DORCHESTER COUNTY

1D

First Federal

W12AW08756

Date 01/03/2013

DOREEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

2017 APR -6 PM 12:44
RECORDED
CLERK OF COURT
DORCHESTER COUNTY

Re: Request for additional information

Dear Applicant(s):

Thank you for trusting us with your residential loan application.

As discussed during the application process, we require all necessary loan documents within 10 days of your initial application. As of today, First Federal has not received all the requested documents. We are missing the following items:

1. PLEASE PROVIDE A SALES CONTRACT EXTENSION SIGNED BY ALL PARTIES.
2. FIRST FEDERAL TO OBTAIN VERBAL VERIFICATION OF EMPLOYMENT PRIOR TO CLOSING.
3.

Please fax or drop off these documents at any one of our convenient locations.

We must receive all the above documentation within 10 days from the date of this letter. Otherwise, First Federal will regretfully be unable to give further consideration to your credit request and any corresponding interest rate lock agreements. Should you decide at a later date to furnish the above items, we can assist you with a new application.

Please call me with any questions. My contact information is shown below. I look forward to providing you with your home financing.

Sincerely,

NMLS Registry #000000507897

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER STEPHEN DUDEK and DOREEN Plaintiffs, v. THOMAS M. FERRO and LORRAINE B. FERRO, Defendants	IN THE COURT OF COMMON PLEAS Civil Action No. 2013CP1800183 consolidated with Civil Action No. 2013CP1800074
MOLLY MORPHEW, Plaintiff, v. STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO Defendants	

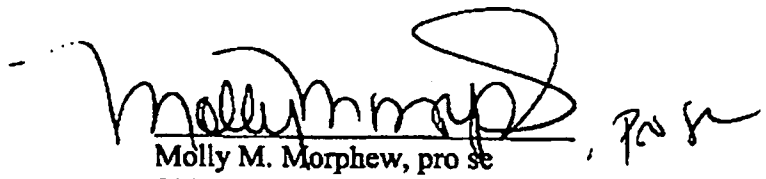
FILED-RECORDED
2017 APR -6 PM 12: 43
CLERK OF COURT
DORCHESTER COUNTY

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Plaintiff [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with the **DEFENDANTS FERRO AND PLAINTIFF MORPHEW'S ANSWER TO DUDEK AND CROSS' NOTICE OF MOTION AND MOTION TO SET CLOSING SCHDULE AND FOR ATTORNEY'S FEES; AND RESPONSE TO PROPOSED ORDER** by mailing

a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Stephen L. Smith, Esquire
Samuel M. Wheeler, Esquire
P.O. Box 40578
Charleston, SC 29423



Molly M. Morphew, pro se
788 E Butternut Rd
Summerville, SC 29483
843-514-7299

April 7, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
EQUITY DIVISION

Civil Action No.: 2013CP1800074
consolidated with Civil Action No. 2013CP1800183

Stephen Dudek, Doreen Cross,
Plaintiffs

Versus

Thomas M Ferro, and Lorraine B Ferro,
Defendants

AND

Molly M Morphew,
Plaintiff

Versus

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

ORDER

FILED-RECORDED
2017 JUN -8 PM 12:40
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
2017 MAY 17 PM 2:06
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This matter is before me pursuant to the Remittitur from the Court Of Appeals filed on February 17, 2017, affirming this Court's decision entered November 6, 2014. At question is this Court's Order Setting Closing Schedule & Awarding Attorneys Fees entered April 3, 2017 (the April 3, 2017 order) on the Dudek/Cross Motion for the same.

On April 6, 2017, Morphew/Ferros[1] filed a joint Answer to Dudek & Cross Notice of Motion and Motion to Set Closing Schedule and Award Attorneys Fee. The joint Answer is construed as a Rule 59(e) Motion to alter or Amend the April 3, 2017 order. The joint Answer has 13 points of contention. Paragraph 5 of the joint Answer, addressing the award of attorneys' fees, has merit. Paragraph 6, addressing the issue of the purchase price, has merit. Additionally, at the close of

[1] Morphew as used herein refers to Molly M. Morphew; Ferros as used herein refers to Thomas M. Ferro, a/k/a Thomas Ferro and Lorraine B. Ferro a/k/a Lorraine Ferro, jointly and severally. Dudek/Cross as used herein refers to Stephen Dudek and Doreen Cross, jointly and severally.

the hearing, Mr. Smith requested the Court order cancellation of the Lis Pendens filed in this action. This too has merit. All remaining issues raised in the joint Answer have no merit.

Morphew and Ferros are *pro se*. Hence, this Court has given broad latitude to them, particularly, in matters of procedure. The Answer follows entry of an Order on a Motion heard in open court and on the record. Morphew appeared in person. Ferros attended by telephone with consent of all parties inasmuch as they live in Colorado. As to the present matter the hearing conducted May 12, 2017 at 10:00 A.M. the same appearances were made, Ms. Morphew *pro se* and in person and the Ferros via telephone[2]. All parties presented arguments. The Ferros were placed under oath as was Ms. Morphew.

Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339, 1991 WL 113654 (1991) This Court liberally construes pleadings to conform them to the rules of civil procedure in such a manner that promotes substantial justice between the parties. The primary aim being to give, especially with pro se litigants, is to assure them notice of proceedings and an opportunity to be heard, the fundamental of procedural due process[3].

Striking this balance is often at the detriment of represented parties by competent counsel. Nonetheless in this case, since a hearing on the record pursuant to adequate notice to all parties on the Dudek/Cross Notice of Motion and Motion to Set The Scheduling For Closing And Award Attorneys' Fees, and all parties were given liberal opportunity to speak to the motion, this Court deems the joint Answer as a Motion pursuant to Rule 59 (e) SCRCP to alter or amend the April 3, 2017 order. At the hearing on the Dudek/Cross Motion, Ferros asserted that the requests

[2] Since the Ferros attended this hearing by telephone, the Court will enter an order dismissing their motion to attend by telephone filed May 3, 2017 as moot.

[3] Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350, 2007 WL 4698492 (2008)

for attorneys' fees had been waived because no motion for fees and costs had been timely filed, and they asserted the attorney's fees were too high.

The affirmed Order, dated January 17, 2017, remittitur entered February 17, 2017, provided the following finding of fact:

> "The Court finds Defendants Ferro are in default of the Dudek/Cross Contract for the reasons stated in this Order. Pursuant to Paragraph 16, the Court finds Defendants Dudek and Cross are entitled to recover reasonable costs, including a reasonable attorney fee. To this end, Defendants are at leave to apply, on or before ten (10) days of the date of this Order, for costs and attorneys fees due from Defendants Ferro. This Court will schedule a factual hearing on or after 10 days from the date of filing the application to ascertain a reasonable attorney fee and what costs should be recovered. If Defendants Dudek and Cross fail to apply for costs and attorneys fees within ten (10) days of the entry of this Order, Defendants Dudek and Cross shall be deemed to have waived their rights under Paragraph 16." Page 10, paragraph 21.

As a conclusion of law, this Court stated:

> "Defendants Ferro are in default of the Dudek/Cross Contract. Defendants Dudek and Cross have a contractual right to pursue recovery of a reasonable attorney fee and costs of this action. In order to assert this right, Defendants Dudek and Cross shall apply to recover these costs and fees on or before ten (10) days of the entry of this order." Page 12, paragraph 8.

Dudek/Cross did not file an application for attorneys' fees within ten (10) days of the original trial order. Instead on November 19, 2014, counsel for Dudek/Cross sent the Court an email to which he attached an itemization of fees and costs[4]. In reply, the Court instructed Dudek/Cross' attorney to file a motion and affidavit in support of their attorney's fees so as to allow the Ferros an opportunity to be heard on the motion. No motion was filed. Thereafter, on December 5, 2014, Morphew's then counsel[5] served her Notice of Appeal, which was clocked time-stamped by the Clerk of Court and entered in CMS on December 8, 2014, followed by Ferros' Notice of

[4] All parties had a copy of the itemization. During the hearing the Court reviewed the itemization. See also footnote 8 *infra*.

[5] Mr. Massalon served and filed Notice of Withdrawal as Counsel on December 15, 2014 with the Court of Appeals.

Appeal, dated December 12, served December 11, 2014 (emphasis added) and time stamped by the Clerk of Court on December 15, 2014 but entered in CMS on December 16, 2014.[6]

In any event, the Dudek/Cross failure to timely file the appropriate motion supported by an affidavit of attorney's fees only affects the attorneys' fees through the trial of the case. The failure to file a motion supported by an affidavit of attorneys' fees does not preclude the award of attorneys' fees once the case was appealed and following the appeal. In this regard, as to attorneys fees incurred in responding to the appeal, and matters post remittitur, attorneys fees have not been waived and are appropriately before the Court. To this end, the Court turns its attention first.

Dudek/Cross affidavit of attorneys' fees requests $16,592.60 attorneys' fees for David A. Collins[7]. As stated above, he had previously submitted an itemization of his fees of $10,150.00 and costs of $2,683.79, totaling $12,833.79[8]. Thus, from the affidavit of attorneys' fees, Mr. Collin's fees for representing Dudek/Cross on appeal are $6,442.60. He incurred $1,533.72 in costs. The total fees and costs are $7,976.32.

After Mr. Collins' suspension, Steven L. Smith, Esquire, has appeared on behalf of Dudek/Cross. He claims on behalf of Dudek/Cross a right to recover attorney's fees of $3,107.05 and costs of 35.00 through the motion hearing resulting in the April 3, 2017 order. In addition he claims attorney's fees of $2,067.50 through the Rule 59 (e) motion hearing on the Ferros' joint Answer.

In *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238–39, 616 S.E.2d 431, 434, 2005 WL 1620266 (Ct. App. 2005), the Court of Appeals affirmed Charleston County's Master in Equity who awarded the prevailing party in a contract dispute, in which the contract allowed

[6] The Court of Appeals did not address the timeliness of the Ferro Notice of Appeal. " Pursuant to Rule 203(b)(1), SCACR, a party wishing to appeal an order from the court of common pleas must serve the notice of appeal on the respondents "within thirty ... days after receipt of written notice of entry of the order." *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 413 S.C. 642, 644, 776 S.E.2d 575, 576, 2015 WL 5028852 (Ct. App. 2015). See, also, SCRCP 69 (e) providing an additional five (5) days when served by mail.

[7] In the Matter of David A. Collins, Respondent, *Matter of Collins*, 417 S.C. 72, 789 S.E.2d 577,

[8] Provided to the Court in the May 12, 2017 hearing by Morphew.

for recovery of attorneys fee, attorneys fees and costs, including fees and costs incurred by the prevailing party during the proceedings on appeal (emphasis added). The Court of Appeals cites a plethora of cases to the following: "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees." Citations omitted. In addition, *Berger* sets out the factors a trial judge must consider, utilizing its sound discretion, in a determination of the award of attorneys' fee.

"There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." Id., pp 434-435.

As to Attorneys' Fees due to David A. Collins after the Notices of Appeal

1. Nature, Extent, and Difficulty of the legal services rendered:

Two very talented lawyers tried this case before me. The initial trial order speaks to the nature, extent and difficulty of the legal services. Responding to the appeal equally, if not more, draws into focus the the nature, extent and difficulty of the legal services required. Considering this factual issue, this Court finds the weight of this factual inquiry favors awarding attorneys' fees and costs to Dudek/Cross.

2. Time and Labor Devoted to the Case

Mr. Collins hourly rate according to his itemization of fees is merely $200.00. I find this rate extremely favorable if not, quite frankly, very low for a lawyer with Mr. Collins' experience. At that rate he devoted 32.2 hours to the appeal. I find this fact weighs extremely favorable in awarding attorneys' fees and costs to Dudek/Cross.

3. Professional Standing Of Counsel

The Court notes Mr. Collins is presently suspended from the practice of law in South Carolina. The reason for this is not a matter of record in this case. Prior to his suspension, this Court notes

that he was a member in good standing with the South Carolina Bar, and generally enjoyed a reputation of being fair, even-mined, and well qualified in matters pertaining to contractual disputes. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

4. Contingency of Compensation

Nothing in the record indicates the attorneys' fees were contingent on a successful outcome. This factor is, therefore, neutral between Ferros and Dudek/Cross.

5. Fee Customarily Charged in the Locality for Similar Services

A 10,000.00 plus fee for the trial of a complex real estate contract is extremely reasonable. Most fees for responding to an appeal exceed $6,442.60. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

6. Beneficial Results Obtained.

Mr. Collins successfully tried the case. All of the appellate work was completed by the time of his suspension and, since the decision was rendered without oral argument, he successfully responded to the appeal. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

As To Attorneys' Fees Due To Steven L. Smith From His Appearance Before The Court Of Appeals Through The Present.

7. This Court views each of the 6 factors set forth above with same results. Mr. Smith is a member in good standing with the South Carolina Bar. He is an excellent trial and appellate lawyer[9]. Mr. Smith submits he is entitled to $5,175.00 in fees and $35.00 in costs. His total fees and costs are $5,210.00. He has made 2 court appearances before me as well as undertaken the representation of Dudek/Cross in the appeal albeit primarily perfunctory. At the Court's request he drafted the April 3, 2017 order which the joint Answer addresses (the joint Answer refers to a draft Order although as discussed in the

[9] A Westlaw search reveals he has represented parties on appeal in 39 cases.

Dudek/Cross Motion hearing, the Court accepted Mr. Smith voluntary offer to submit a proposed Order setting forth the rulings from the Bench). He submitted in his presentation that he has shepherded Dudek/Cross through the scheduling process, and has dealt with issues relating to procuring a closing attorney[10]. Although he has failed to prevail on Mr. Collins' fees for the trial, he is blameless for the shortcoming of Mr. Collins' failure to meet the Court's deadline for filing a Motion and supporting affidavit for attorneys' fees and costs. A fair inference to draw from that failure was that Dudek/Cross would likely not have pressed for the attorneys' fees and costs were the case not appealed. However, defending the pursuit of the appeal by the Ferros cannot be ignored when the real estate contract in dispute permits the non-defaulting party to recover costs and attorneys fees.

For the foregoing reasons as to Ferros responsibility for payment of Dudek/Cross Fees and Cost

8. I find as follows: $7,976.32 in attorneys' fees and cost post the trial of the case is fair and reasonable. These are the fees and cost they incurred with Mr. Collins from the date of the first notice of appeal of the November 6, 2014 trial court order to the time of his suspension. And further,
9. I find Ferros are responsible for the payment of these fees; and as to Mr. Smith's Fees and Cost I find $5,210.00 in attorneys' fees and costs Dudek/Cross have incurred with Mr. Smith's representation from the beginning of his representation during the appeal and to the present against Ferros is fair and reasonable.

10. The total judgment against Ferros for attorneys' fees and cost iSection 18-n favor of Dudek/Cross is $13,186.32[11].

[10] In a separate action, Morphew has sued lawyers and their staff who were to represent Dudek/Cross. With actual notice of pending litigation, the closing attorney declined to process the closing. Mr. Smith reports the closing attorney's title company would not remove an exception to the title commitment relating to the separate action.

[11] The Ferros stated under oath that they would give powers of attorney to an agent to close the real estate transaction with Dudek/Cross. The personal judgment against them will be a cloud on the title. The cloud can be satisfied at closing by deducting the judgment amount from Ferros proceeds and shown as a disbursement to the Dudek/Cross as a line itemt on the HUD-1 and disbursed at closing from the closing attorney's escrow and process of disbursement. Likewise, Mr. Smith can submit a satisfaction of the judgment to the closing attorney with

11. Ferros assert the contract price should not be changed. This Court agrees. The Contract price shall remain $303,000.00.
12. Each of the 11 remaining grounds Morphew and Ferros assert in the joint Answer have no merit. In short, all of the remaining terms of the April 3, 2017 order remain in full force.

13. Specifically, Morphew requested proof of financing from Dudek/Cross before she would be required to move from the Ferros property. At the hearing she demanded she receive 5 items: a Good Faith Estimate, Proof of Approved Financing, the HUD 1 closing statement, the Dudek/Cross loan application and the Contract. At the Dudek/Cross Motion hearing to set a closing schedule, proof of approved financing was a fair request though she did not have any legal right to this under the terms of the Ferros and Dudek/Cross contract. The April 3, 2017 order did specifically address granting a right to proof of approved financing, although the Court suggested from the Bench that some evidence of Dudek/Cross's approved financing should be given to her. Morphew's demand for 4 additional items, matters to which she has no right, 46 days after the April 3, 2017 order, when Dudek/Cross cancelled a closing because they had agreed not to close within 45 days to give her ample time to relocate, now raise the inference that she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross. She took the risk of moving into the property during pending litigation. She must now accept the risk that her contentions were misplaced.
14. Morphew/Ferros submitted no independent corroborating affidavits to support the 11 remaining claims. Neither did they proffer any other testimony in support of their contentions.
15. This matter is now concluded by this Court. To this end, this Court directs the Clerk of Court to mark all Lis Pendens associated with this consolidated case cancelled.

---

instructions that it is to be delivered to the Ferros upon payment of the judgment amount to Dudek/Cross. Since the Ferros are pro se, and should choose to appeal this order, the Court suggests they review Rule 241 (b) (1) SCACR stating the exception that money judgments are not stayed by an appeal as provided in South Carolina Code Section 18-9-130.

Conclusions of Law

1. Dudek/Cross have judgment against Ferros in the amount of $13,186.32.

2. The purchase price of the Ferros and Dudek/crosss contract shall remain at $303,000.00.

3. All remaining claims of Morphew and Ferros for alteration or amendment of the April 3, 2017 Order are denied. Except as modified herein, the April 3, 2017 Order remains.

4. Each Lis Pendens is and shall be cancelled. The Clerk of Court for Dorchester County is directed to enter appropriate documentation in the record of this case that each and every Lis Pendens cancelled.

Each of the Court's Findings of Fact shall also be construed as Conclusions of Law. Each of the Court's Conclusions of Law shall are also be construed as Findings of Fact. NOW, THEREFORE, IT IS

1. ORDERED, ADJUDGED, AND DECREED that Dudek/Cross shall be granted judgment against Ferros in the amount of $13,186.32. AND IT IS
2. ORDERED, ADJUDGED, AND DECREED that the purchase price of the Ferros and Dudek/Cross contract shall remain at $303,000.00. AND IT IS
3. ORDERED, ADJUDGED, AND DECREED that this order ends the case on remittitur from Court of Appeal. AND IT IS
4. ORDERED, ADJUDGED, AND DECREED that all Lis Pendens in this action are and shall be cancelled. The Clerk of Court is directed to enter cancellation of lis pendens against each lis pendens filed in this action, including such lis pendens filed prior to consolidation of the cases. AND IT IS
5. ORDERED, ADJUDGED, AND DECREED that the Order Setting Closing Schedule & Awarding Attorneys Fees entered April 3, 2017 is altered and amended only as specifically set forth above. AND IT IS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED - RECORDED
2017 MAY 17 PM 2:06
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	Thomas Ferro Stephen Dudek	Lorraine Ferro Doreen Cross
PLAINTIFF(S)		DEFENDANT(S)

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: Cancel all Lis Pendens; See ¶4, page 9 & 10 & Waive cancellation fees

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stephen Dudek and Doreen Cross	Thomas M. Ferro a/k/a Thomas Ferro and Lorraine B. Ferro a/k/a Lorraine Ferro	$13,186.32

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Larry S. Hamm — 3078 — 5/17/2017

Master in Equity — Judge Code — Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

5/17/17 **For Clerk of Court Office Use Only** 5/17/17

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E Butternut Rd Summerville, SC 29483

~~**David A. Collins** PO Box 40578 Charleston, SC 29423~~
Thomas Ferro 5501 Carson St Denver, CO 80239
Lorraine Ferro 5501 Carson St. Denver, CO 80239
Steven L. Smith PO Box 40578 Charleston, SC 29423-0578
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

From: **Molly Morphew** morphew926@gmail.com
Subject: Fwd: 788 E Butternut
Date: June 7, 2017 at 10:26 PM
To: Bruce Brown kirrayacht@icloud.com

Sent from my iPhone

Begin forwarded message:

From: Lorraine Ferro <[redacted]>
Date: June 3, 2017 at 3:53:58 PM EDT
To: Molly Morphew <[redacted]>
Subject: **Fwd: 788 E Butternut**

RECORDED
2017 JUN -8 PM 12: 10
CLERK OF COURT
DORCHESTER COUNTY

--------- Forwarded message ---------
From: **Molly Morphew** <[redacted]>
Date: Wed, May 31, 2017 at 2:13 PM
Subject: Re: 788 E Butternut
To: "Steven L. Smith" <[redacted]>
Cc: Lorraine Ferro <[redacted]>

Notice of a closing date and time has been noted.

Please provide proof of financing (i.e., GFE) per the Court Order.

Sent from my iPhone

On May 31, 2017, at 2:49 PM, Steven L. Smith <[redacted]> wrote:

9 minutes ago, we received confirmation that the sellers, through a POA, are going to participate in a closing scheduled for Friday at 2:00. Pursuant to the Court's order, please vacate the residence by this time.

Steven L. Smith
[redacted]

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578
[redacted] - Office
[redacted] - Fax
www.smithclosser.com

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On Wed, May 31, 2017 at 2:35 PM, Paul Willis <[redacted]> wrote:
sellers will not attend...POA

On Wed, May 31, 2017 at 9:41 AM, Steven L. Smith <[redacted]> wrote:
Have we received any confirmation that the sellers are going to be there on Friday?

From: **Molly Morphew** morphew926@gmail.com
Subject: Fwd: Closing schedule
Date: June 8, 2017 at 6:54 AM
To: Bruce Brown kirrayacht@icloud.com

FILED RECORDED
2017 JUN -8 PM 12: 10
CLERK OF COURT
DORCHESTER COUNTY

Sent from my iPhone

Begin forwarded message:

From: "Steven L. Smith" <ssmith@scplaw.com>
Date: May 24, 2017 at 4:41:47 PM EDT
To: Lorraine Ferro <lferro3200@gmail.com>
Cc: Sheryle Young <SYoung@dorchestercounty.net>, Mark Weeks <mweeks@weekslawfirm.net>, Rick Willis <rwillisteam@gmail.com>, Molly Morphew <morphew926@gmail.com>
Subject: Re: Closing schedule

We have had to change closing attorneys because of actions that have been taken since the trial. We wish we did not have to do this, but because of the litigious nature of this whole matter, the previous lawyers were reluctant to close. The reason it is now just being done is because the new attorney has to conduct his own title search. That is being done. Closing attorneys are always booked at the end of the month because that is when everyone wants to close. Mark Weeks has told me that he will have what he needs done next week. Hopefully it can close then.

Steven L. Smith
ssmith@scplaw.com

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578
843-760-0220 - Office
843-552-2678 - Fax
www.smithclosser.com

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On Wed, May 24, 2017 at 4:15 PM, Lorraine Ferro <lferro3200@gmail.com> wrote:

Steven,

I had assumed that title work had been completed when our tentative May 3rd closing was suggested by your office. Why has the title search only just begun? You had originally stated that your clients would be able to close within 45 days of the original hearing on March 27th, but Judge Chellis graciously gave a 60 day-plus time frame. This is not a reasonable delay and we find fault with your office for it.

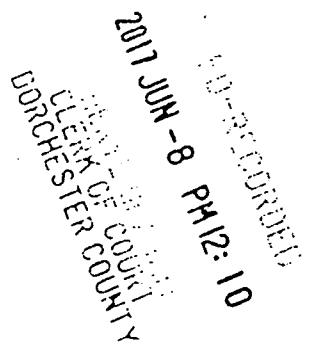
We are disappointed with the undue delays as you had stated many times that your clients were ready, willing and able to close as soon as possible. Per Judge Chellis' April 3rd Order, a closing date needed to be set in order to notify Ms. Morphew. This is an aspect of the case that should have been given top priority in order for your clients to close in the given time period. As of today a closing is still not scheduled, tentatively or otherwise.

These delays are causing us hardship, as we have a pending real estate transaction here in Colorado that is hinging on the Butternut closing. I have been trying to move this transaction along since the Appellate Court decision in January and I have faced much complacency.

I would appreciate your full attention in getting this closing done along with better communication so that we are not left wondering if all is in order.

Regards,
Lorraine Ferro

From: **Molly Morphew** morphew926@gmail.com
Subject: Fwd: Butternut
Date: June 7, 2017 at 10:29 PM
To: Bruce Brown kirrayacht@icloud.com



Sent from my iPhone

Begin forwarded message:

From: Lorraine Ferro <[redacted]>
Date: June 1, 2017 at 1:30:22 PM EDT
To: Molly Morphew <[redacted]>
Subject: **Butternut**

Hi Molly,
Just wanted to let you know that the Weeks Law Firm has a closing scheduled for tomorrow at 2pm. Should it not go through I will contact you right away. Rick will be in touch with you for a walk through. If the closing finalizes tomorrow, the buyers or their attorney will contact you as to their information regarding the rent.

Kind Regards,
Lorraine

From: **Molly Morphew** morphew926@gmail.com
Subject: Fwd: 788 E Butternut
Date: June 7, 2017 at 10:25 PM
To: Bruce Brown kirrayacht@icloud.com

FILED FOR RECORD
2017 JUN -8 PM 12: 10
CHERYL S. COURY
CLERK OF COURT
DORCHESTER COUNTY

Sent from my iPhone

Begin forwarded message:

From: Molly Morphew <[redacted]>
Date: May 31, 2017 at 4:08:14 PM EDT
To: Rick Willis <rwillisteam@gmail.com>
Cc: Lorraine Ferro <[redacted]>
Subject: **Re: 788 E Butternut**

As soon as possible

Sent from my iPhone

On May 31, 2017, at 3:24 PM, Rick Willis <rwillisteam@gmail.com> wrote:

> I was just informed that the property is closing on Friday at 2 pm.....they want to know when you will be vacating the property?
>
> --
>
> ***Please copy my Assistant Stephanie.RWillisTeam@gmail.com on all future communications pertaining to Real Estate. Thank you!***
>
> *Yours in service,*
>
> ***Rick Willis***
> ***843-327-3017 (Cell)***
> ***843-971-4002 (Home/Office)***
> ***888-803-1570 (Fax)***
>
> ***Host of The Real Estate Show:***
> ***Saturdays Noon-1:00 p.m. 94.3 FM or online at 943wsc.com***
>
> ***Visit www.RickWillis.com to view ALL Homes for Sale in the Greater Charleston Area***
>
> Emails sent or received by this real estate licensee/staff of licensee shall not constitute any offer or acceptance of contract terms by this real estate licensee/staff of licensee and do not bind my Principal(s) unless my electronic communication includes one or more of the following: (1) the necessary Party(ies) electronic signature or (2) electronic reproduction of the Party(ies) "wet ink" signature or (3) the Party(ies) electronic written authorization for this real estate licensee or staff to bind my Principal(s) in contract. Licensee nor staff does not have apparent authority to sign for or bind Principal(s) in contract

From: **Molly Morphew** morphew926@gmail.com
Subject: Fwd: Closing date
Date: June 8, 2017 at 7:21 AM
To: Bruce Brown kirrayacht@icloud.com

RE-RECORDED
2017 JUN -8 PM 12: 10
CLERK OF COURT
DORCHESTER COUNTY

Sent from my iPhone

Begin forwarded message:

From: Lorraine Ferro <[redacted]>
Date: April 27, 2017 at 1:46:47 PM EDT
To: "Steven L. Smith" <[redacted]>
Cc: Molly Morphew <[redacted]>, "Samuel M. Wheeler" <[redacted]>, Susan Nicholson <[redacted]>, Rick Willis <[redacted]>, Stephanie Smith <[redacted]>
Subject: **Closing date**

Dear Mr. Smith

In reply to your e mail of yesterday, April 26, 2017 at 9.47am, "*Please be advised that the closing will take place as scheduled. If the closing does not take place as scheduled, the non-performing party may be in contempt of the previously served court order.*"

We have to postpone the proposed closing date of May 3rd until which time that Judge Chellis has made a ruling on the second hearing based on our Answer to your amended Motion for Closing and Motion for Damages of March 28th, the day following the hearing. To avoid repetition, please review our answer as it clearly states the inaccuracies that you drafted versus points that were agreed by the court and all parties in the hearing.

In light of these damages being applied to the sales price and therefore our net proceeds at the closing, these inaccuracies would make the closing not possible until the hearing the Court has requested is heard. So in an effort to avoid added costs and time lost to attend a closing in which the terms and conditions are not correct nor agreed upon at this time, we feel it is in the best interest of all parties to address this in advance. The court has scheduled this hearing on May 12th at 10:00am EST.

Again, we are not refusing to close but rather are postponing the May 3rd date to after the hearing date of May 12th. We are simply pointing out that a closing cannot take place until which time the Judge has ruled on the closing and the damages your clients have requested, and any that all inaccuracies are corrected in all documents/filings to enable the closing.

A CL-100 inspection is scheduled to take place today @ 11:00am. As everything else is in place, we should be on track to close any day after Judge Chellis hands down his ruling.

Regards.

Tom and Lorraine Ferro

From: **Molly Morphew** morphew926@gmail.com
Subject: Fwd: Financial Information Request
Date: June 8, 2017 at 7:22 AM
To: Bruce Brown kirrayacht@icloud.com

Sent from my iPhone

Begin forwarded message:

From: "Steven L. Smith" <[redacted]>
Date: April 26, 2017 at 9:47:56 AM EDT
To: Molly Morphew <[redacted]>
Cc: "Susan Nicholson ([redacted])" <[redacted]>, Rick Willis <[redacted]>, dudeks <[redacted]>, "D. Cross" <[redacted]>, Lorraine Ferro <[redacted]>, "Samuel M. Wheeler" <[redacted]>, Amy Hill <[redacted]>, James Chellis <[redacted]>, Jordan Crapps <[redacted]>, Sheryle Young <[redacted]>, "[redacted]"
Subject: Re: Financial Information Request

Please be advised that the closing will take place as scheduled. If the closing does not take place as scheduled, the non-performing party may be in contempt of the previously served court order. If anyone has any problems with this, they need to seek the court's guidance through the proper motion. Also, if discovery is being sought, it needs to be done pursuant to the rules. Also, I want to make this clear-- Attorney's fees will be sought for time spent responding to any motions. I honestly hate to see money wasted in continuing to fight a case that has already been decided.

Steven L. Smith
[redacted]

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578
843-760-0220 - Office
843-552-2678 - Fax
www.smithclosser.com

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IN THE PROBATE COURT
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

TRANSCRIPT OF MOTION HEARING

STEPHEN DUDEK AND DOREEN CROSS,

Plaintiffs,

vs.

THOMAS M. FERRO AND LORRAINE B. FERRO,

Defendants.

AND CASE NO. 2013-CP-18-183

MOLLY M. MORPHEW,

Plaintiff,

vs.

STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO,

Defendants.

COPY

BEFORE THE HONORABLE JAMES CHELLIS

DATE: MAY 12, 2017

TIME: 10:09 AM

LOCATION: DORCHESTER COUNTY COURTHOUSE
ST GEORGE, SOUTH CAROLINA

REPORTED BY: VALERIE G. MELKUS, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
office@clark-associates.com

A P P E A R A N C E S

ON BEHALF OF STEPHEN DUDEK AND DOREEN CROSS:

SMITH CLOSSER, PA
BY: STEVEN L. SMITH
7455 Cross County Road
Suite 1
North Charleston, SC 29418

APPEARING PRO SE:

MOLLY MORPHEW

APPEARING PRO SE (BY TELEPHONE):

THOMAS FERRO
LORRAINE FERRO

been filed.

THE COURT: Well, let me back up, and I'll explain to you my position on the motion, which I basically -- I sent an e-mail to everybody and explained to you what -- the only way to interpret the Answer, because there's an order that's been entered, is that it must be construed as a Rule 59E motion to amend or alter that order.

So the motion that we're hearing is that motion, the Answer, which asserts in it a number of things. Primarily, the one issue that has any grit in my opinion, is the issue of attorney's fees. So I'd like to hear from you on the -- so that's the motion that we're hearing.

And the reason I asked you to get the court reporter is that the Ferros are pro se. Ms. Morphew is pro se. And I just knew it would be more -- easier for you to contact the court reporter than it would for them.

MR. SMITH: Here's the problem. The Answer that they filed doesn't address at all the order that was issued. What it addresses is the proposed order that was never signed, never even sent to the Court.

over the weekend before I make a decision on what I do.

Again, I'll give you an opportunity to respond to what I've said if you like.

MR. SMITH: Your Honor, if I could just --

MS. FERRO: I --

THE COURT: You want to go, Ms. Ferro?

MS. FERRO: I just wanted to say thank you for allowing us to phone conference. It was a big help, and it allowed us to get this done today.

THE COURT: You're welcome. Thank you.

MR. SMITH: Your Honor, in order to clean up the record, can I request that this Court do two things? Number one, enter a Form 4 to dismiss the lis pendens so we don't have that issue. Form 4 is just a Court's order dismissing the lis pendens.

THE COURT: Okay.

MR. SMITH: And in the order that comes out of this, that we just add one or two sentences that say, and this concludes the

matter. There are no other further pending matters. This case is over.

THE COURT: Over and ended. Right.

MR. SMITH: And the reason is is so we can close. Thank you, Your Honor.

THE COURT: All right. Ms. Morphew, any additional comments to what I said?

MS. MORPHEW: Just to make sure -- you denied me the motion to compel proof of documents. But because I asked for an actual proof of financing in the hearing and I still haven't gotten it, that is one of my things that I'm still requiring. So a GFE. It's -- Your Honor, it's very important to me. And I stated it, and it wasn't contended. I don't see any problem with --

THE COURT: I'm not going to require that they give that to you. If they want to do that on their own voluntarily, they can do it. But if they are scheduled to go forward for closing and the closing is scheduled, then let's let it happen, and you'll need to be out. So you need to get prepared.

MS. MORPHEW: That was not what I said. I said I would -- not until --

THE COURT: I understand what you've asked for, and I'm denying your request.

MS. MORPHEW: But it wasn't denied during the hearing.

THE COURT: I've changed my mind then. I'm denying it now.

Okay. Ms. Ferro, Mr. Ferro, thank you for participating. Mr. Smith, thank you for your participation. And Ms. Morphew, thank you for your participation. That concludes the hearing.

(The hearing was concluded at 12:21 PM.)

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY
MASTER-IN-EQUITY

Stephen Dudek and Doreen Cross,
Respondents,

vs. CASE NO. 2013-CP-18-00183

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

And

Molly M. Morphew,
Plaintiff,

vs.

Stephen Dudek, Doreen Cross,
Thomas Ferro and Lorraine Ferro,
Defendants.

BEFORE THE HONORABLE JAMES E. CHELLIS

DATE: June 12, 2017

TIME: 9:00 AM

COPY

LOCATION: DORCHESTER COUNTY COURTHOUSE
ST. GEORGE, SOUTH CAROLINA

REPORTED BY: ANNE BOULEY MEYER, RPR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Office@clark-associates.com

A P P E A R A N C E S

ON BEHALF OF RESPONDENTS:

SMITH & CLOSSER
BY: STEVEN L. SMITH
7455 Cross County Road
North Charleston, SC 29418

ON BEHALF OF PLAINTIFF:

MOLLY M. MORPHEW
IN PROPER PERSON

THE COURT: We are here today on Dudek cross-motion for a rule to show cause why Molly Morphew should not be held in contempt of court for failure to abide by a court order that I entered on April the 3rd, amended by my court order dated May the 17th.

Mr. Smith.

MR. SMITH: Your Honor, although if you notice, the motion is titled Notice of Motion on Motion for Rule to Show Cause, Ejectment and Attorney's fees.

THE COURT: Yes.

MR. SMITH: What we really want is the ejectment part. We want her out pursuant to this Court's order.

The contempt, the rule to show cause, honestly, I know you -- probably, if you order an ejectment, you're going to not hold her in contempt; you're going to allow the contempt to be purged if she just gets out.

I mean, that's all we want. We don't want Ms. Morphew to do anything except leave us alone and get out of the house we bought. So what we are asking this Court to do is to issue an order of ejectment pursuant to

your previous order that she needs to leave.

I tried to get it resolved earlier in a meeting with her, but I don't think that's going to happen.

You have to understand, we did not buy this house with a tenant in place. When we signed the original contract in 2011 or '12 -- I read her memo -- 2011 or '12 whenever -- I think 2012 when the contract was signed, there was no tenant.

Ms. Morphew wasn't even in the picture at the time. She was a back-up contract at that point. We didn't buy the house with a tenant in place.

Then if you look at the closing which occurred, what, a week-and-a-half ago, a couple Fridays ago, we didn't buy it -- we didn't close with a tenant in place. We closed pursuant to your order, which ordered her to be out.

So at no point did we buy a house that had a tenant in it, and therefore, we are subject to some lease. We signed a contract with no tenant. We closed pursuant to a Court order that ordered her to be out.

The fact that she is there doesn't

yourself in the appeal.

So now what's happened, Ms. Morphew, is you are so subjectively invested in this case, you cannot see the forest for the trees. And I am so -- I am so beside -- I mean, I am really at a point where I cannot believe you have taken this case to this extreme.

I told you -- I told you from the bench on the 59(e) motion hearing, I told you that day, you need to vacate this property now. I told you that. And yet June 2nd, nearly six, seven weeks later -- four weeks later -- I guess it was about month ago -- you're still occupying the property. Why haven't you left?

It defies my understanding, honestly.

All right. Do you have any other comments, Ms. Morphew, as to why you should not be held in contempt of this Court?

MS. MORPHEW: Your Honor, I'm not an obstructionist. I did not prevent the closing. I promised even in a hearing I would not do it, and I did not do it. I really didn't.

And I'm not preventing anything. I'm just making sure that I don't waive rights

anything that would waive my right. If I move right now, it could just -- I don't know all the rules. I am pro se, and I have been working very hard to try to understand it.

But in these hearings, I want to know -- that I really think that I had a right. And I don't want to be held in contempt. And I wanted to say what I had to say and what I really honestly understand it to be.

I am not saying no. I was never asked by them, or never communicated with, never contacted, never saying, here's the lease, here's not the lease, here's -- nothing, except for a contempt order.

THE COURT: All right.

MS. MORPHEW: So I don't know how it works.

THE COURT: Ms. Morphew, let me make it specifically clear to you right now.

MS. MORPHEW: Yes, sir.

THE COURT: I do not find any of that testimony credible.

MS. MORPHEW: What is that, Your Honor?

THE COURT: Because I don't believe

you.

MS. MORPHEW: Your Honor, I took an oath, and I actually --

THE COURT: I don't believe what you stated. Do you understand that?

MS. MORPHEW: Is it because I'm pro se?

THE COURT: No. No. I am -- I do not believe that you did not know you had to leave the property on the date of closing. And I am certain, I am positive, that I told you at the last hearing on the Rule 59(e) motion, I told you to vacate that property now.

MS. MORPHEW: And I thought the sellers and the agents and all of them, and the defendants, Dudek and Cross --

THE COURT: Ms. Morphew, do you understand that I control this courtroom?

MS. MORPHEW: Yes, sir. But they didn't --

THE COURT: Do you understand that what I say has more authority over what you say or what Mr. Smith says?

MS. MORPHEW: I really thought they agreed on something outside the court.

furnishings, everything will be removed from that property and placed on the side of the road by June -- sometime on June the 14th.

MR. SMITH: June 16th.

THE COURT: June 16th. Excuse me. I apologize. June 16th.

So you can't purge the fine by serving the jail sentence. The jail sentence will be for purposes of my -- the inherent power that I have and must exercise when parties fail to obey the Court's orders. It's imperative that our -- that parties to lawsuits abide by orders of the Court.

And the failure to do so affects the administration of justice in ways that you cannot imagine right now, Ms. Morphew. But if I make an order and a party doesn't abide by it, then what's the next party going to do if not abide by the next order?

So it has to be a means by which we, as judges, can enforce rules that we make, or orders that we enter, and your failures in this case to abide by what I have directed you to do on a number of occasions is mystifying. But nonetheless, I will rectify it through my

Joseph K. Qualey

From: Rick Willis [rwillisteam@gmail.com]
Sent: Wednesday, January 16, 2013 8:27 PM
To: Joseph K. Qualey
Subject: Re: FW: Ferro
Attachments: Ferro Butternut.pdf

Joe,

The 10:00 a.m. meeting on Friday will consist of Tommy and Lorraine Ferr (owners of 788 E. Butternut) and the individuals who want to purchase the property. (Not the ones in litigation.)

The sellers want these other people to purchase and they are prepared to have you litigate the lis pendens if needed to be able to purchase the property (Les Pendens was filed yesterday...copy attached.)

All parties want to hear first hand if you believe they can win if you litigate.

Please be prepared to have any and all parties sign whatever documents necessary to allow all parties to meet you and hear your advice and council.

I will be paying your fee so let me know if you want me to pay in advance for this meeting.

Rick
843-327-3017

On Tue, Jan 15, 2013 at 9:09 AM, Joseph K. Qualey <joequaley@qlawfirm.com> wrote:
Mr Ferro we discussed this matter on thursday and you indicated you were moving forward to secure another Contract and that you did not

intend to sell to the present Buyers.

I told you that their atty may file a Lis Pendens to attempt to stop any such sale .

Pls see attached Lis Pendens which was in fact filed.

Sincerely,

Joe Qualey

Joseph K. Qualey
23 Broad Street
Charleston, SC 29401
O: 843-577-3434
F: 843-577-2241
C: 843-693-3434
joequaley@qlawfirm.com

From: Lorraine Ferro <lbferro3200@gmail.com>
To: "firegirl0926@yahoo.com" <firegirl0926@yahoo.com>
Sent: Wednesday, September 10, 2014, 1:43:15 PM EDT
Subject: Judge Chellis

Hi Molly,
I'm not sure if John Massalon let you know but the Judge is not going to consider anything we sent him! He is only going to consider the lawyers responses. It seems like he has made a decision already, but just wants to go over their exhibit list for a final once-over. Very disappointing, plus there is another delay with David being sick.

We still haven't recovered from the whole KY debacle. I thought for sure we would be done with this by now.

Thank you,
Lorraine

From: **Molly Morphew** morphew926@gmail.com
Subject: Fwd: Butternut
Date: June 7, 2017 at 10:29 PM
To: Bruce Brown kirrayacht@icloud.com

2017 JUN -8 PM 12: 10
CLERK OF COURT
DORCHESTER COUNTY

Sent from my iPhone

Begin forwarded message:

From: Lorraine Ferro <[redacted]>
Date: June 1, 2017 at 1:30:22 PM EDT
To: Molly Morphew <[redacted]>
Subject: **Butternut**

Hi Molly,
Just wanted to let you know that the Weeks Law Firm has a closing scheduled for tomorrow at 2pm. Should it not go through I will contact you right away. Rick will be in touch with you for a walk through. If the closing finalizes tomorrow, the buyers or their attorney will contact you as to their information regarding the rent.

Kind Regards,
Lorraine

IN THE PROBATE COURT
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

TRANSCRIPT OF MOTION HEARING

STEPHEN DUDEK AND DOREEN CROSS,
Plaintiffs,
vs.
THOMAS M. FERRO AND LORRAINE B. FERRO,
Defendants.
AND CASE NO. 2013-CP-18-183
MOLLY M. MORPHEW,
Plaintiff,
vs.
STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO,
Defendants.

BEFORE THE HONORABLE JAMES CHELLIS

DATE: MAY 12, 2017

TIME: 10:09 AM

LOCATION: DORCHESTER COUNTY COURTHOUSE
ST GEORGE, SOUTH CAROLINA

REPORTED BY: VALERIE G. MELKUS, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
office@clark-associates.com

APPEARANCES

ON BEHALF OF STEPHEN DUDEK AND DOREEN CROSS:

SMITH CLOSSER, PA
BY: STEVEN L. SMITH
7455 Cross County Road
Suite 1
North Charleston, SC 29418

APPEARING PRO SE:

MOLLY MORPHEW

APPEARING PRO SE (BY TELEPHONE):

THOMAS FERRO
LORRAINE FERRO

INDEX

REPORTER'S CERTIFICATE 101

(No exhibits marked.)

THE COURT: Good morning, everybody. Have a seat, please.

THE CLERK: Can you hear, Ms. Ferro?

MS. FERRO: Yes.

THE COURT: Is everybody's microphone on? Would you check that out and make sure everybody's microphone is on? Give me a few minutes. I'm going to bring the paper file up.

Ms. Ferro, can you hear me?

MS. FERRO: Yes.

THE COURT: Ms. Ferro, is Mr. Ferro with you? Ms. Ferro, can you hear me?

THE CLERK: Ms. Ferro? Ms. Ferro?

MS. FERRO: Yes.

THE CLERK: Is Mr. Ferro with you?

MS. FERRO: I'm sorry?

THE CLERK: Is Mr. Ferro with you there?

MS. FERRO: Yes. Mr. Ferro is here.

THE CLERK: The judge would like for him to --

THE COURT: Put the phone right here so I can talk to them.

Mr. Ferro, I need you to raise your right hand for me. Is your right hand raised?
MS. FERRO: I'm sorry. You guys are breaking up.
(Off-the-record discussion.)
THE COURT: Okay. Can you hear me now better?
MS. FERRO: Yes.
THE COURT: Mr. Ferro, would you raise your right hand, please.
MR. FERRO: Okay.
THE COURT: Is it raised?
MR. FERRO: Yes, sir.
(THOMAS M. FERRO was sworn.)
THE COURT: Ms. Ferro, would you raise your right hand, please.
MS. FERRO: Okay. I have.
(LORRAINE B. FERRO was sworn.)
THE COURT: Ms. Morphew, would you raise -- stand up and raise your right hand?
(MOLLY M. MORPHEW was sworn.)
THE COURT: All three of you are now under oath. At this time, Mr. Ferro, tell me what it is your -- or Ms. Ferro, whoever wants to speak on either of your behalves or both of you

if you want to, tell me what your position is regarding the attorney's fees.
MS. FERRO: Okay. Our position on the attorney's fees is that they were never filed per request of reimbursement of attorney's fees, and we feel they are not -- a valid point that they were waived.
THE COURT: Mr. Ferro, do you have any comments on that?
MR. FERRO: No, sir.
THE COURT: Do you agree with your wife?
MR. FERRO: Yes.
THE COURT: Mr. Smith, let me hear from you on that point.
MR. SMITH: Your Honor, first of all, I have no idea why we're even here today. I would respectfully ask the Ferros, who prepared that motion -- or whatever it is -- I think it was called an Answer. The Morphews said that they didn't file any motion.
I had to get the court reporter today because apparently nobody's filed a motion. I need to find out from the Ferros if they filed a motion. If they didn't file a motion, nothing's

been filed.
THE COURT: Well, let me back up, and I'll explain to you my position on the motion, which I basically -- I sent an e-mail to everybody and explained to you what -- the only way to interpret the Answer, because there's an order that's been entered, is that it must be construed as a Rule 59E motion to amend or alter that order.
So the motion that we're hearing is that motion, the Answer, which asserts in it a number of things. Primarily, the one issue that has any grit in my opinion, is the issue of attorney's fees. So I'd like to hear from you on the -- so that's the motion that we're hearing.
And the reason I asked you to get the court reporter is that the Ferros are pro se. Ms. Morphew is pro se. And I just knew it would be more -- easier for you to contact the court reporter than it would for them.
MR. SMITH: Here's the problem. The Answer that they filed doesn't address at all the order that was issued. What it addresses is the proposed order that was never signed, never even sent to the Court.

THE COURT: Well, yeah. I agree that it mentions the word draft. I don't know where they come up with these terms. But the order that -- or the Answer, the only way to construe it as an Answer is an amendment to -- is to move to amend or alter that a little bit. It was entered and not signed.
It was signed recently and set in motion. What became an Answer -- the Rules of Civil Procedure in this case law require that we construe these -- any pleading, you construe it as broadly as you can or as liberally as you can to do justice under the circumstances.
And I just have to -- the only way I can deal with it is as a motion to alter and amend.
MS. MORPHEW: Your Honor, I'd like to say something if I could.
THE COURT: Please have a seat, Ms. Morphew. Please have a seat.
MR. SMITH: The second point about that, Your Honor, is that the Ferros -- this is a contractual -- this is the interpretation of a contractual provision between my client and th Ferros. The Ferros never -- you awarded attorney's fees last hearing; the amount was the

Page 9

question.
The Ferros never raised any objection to that at the hearing. In order to have a 59E, you've got to ask for reconsideration of the original hearing.
THE COURT: Well, I do recall in that motion that he said he thought that the attorney's fees were too high. He did raise that objection.
MR. SMITH: If we're talking about the amount, not the award, then that's a different argument.
MS. FERRO: Well, I --
THE COURT: Excuse me, Ms. Ferro.
MS. FERRO: I would like to -- I'm sorry.
THE COURT: Ms. Ferro.
MS. FERRO: I'm sorry.
THE COURT: Please, Ms. Ferro.
MS. FERRO: I would like to --
THE COURT: Ms. Ferro.
MS. FERRO: I'm sorry.
THE COURT: Ms. Ferro, I will recognize you when I'm finished hearing from Mr. Smith. Okay?

Page 10

MS. FERRO: Okay. Very good.
MR. SMITH: If the question is, is the amount unreasonable, it's always been in the Court's discretion to set the amount of attorney's fees. The question about entitlement is a totally different question, and that wasn't raised at the last hearing by the Ferros. But I'll go into my -- the rest of my argument, if you'd like, about why we should be entitled to the fees.
THE COURT: All right. Go ahead.
MR. SMITH: Your Honor, this case was tried in 2014. It has been, to say the least, a difficult case because of pro se defendants and because of the title of this Court, which is a court of equity. I get it. You can only go so far though to be equitable to pro se defendants. You can't punish the people who have attorneys.
This case was originally tried in 2014. Your order said, you're entitled to attorney's fees. Let me know within 10 days of the order. At that point you had determined an entitlement, and you had set an arbitrary 10-day period. It really didn't have anything to do with anything.

Page 11

I get it. I mean, you set a 10-day period.
At that time there was a lot of confusion about whether or not attorneys were going to continue to be attorneys. I talked to David -- whether or not they were going to continue to be attorneys. Matter of fact, they weren't attorneys. There was discussion between David and John Massalon at that time. There was a lot of confusion as to exactly what and who was doing what.
And then the case was appealed, which removed jurisdiction from you. We're not talking about long time frames. We're talking about short time frames at this point. Having given them attorney's fees, the only question is how much and asking David to submit the affidavit.
You've already given them the attorney's fees. The question at that point is how much. To say now, I'm not going to give you attorney's fees because you missed this very short window when there was a lot of confusion, is not a waiver of that right because that right's already been given. It's a forfeiture. That's what the Court would do is forfeit -- because you've already given it to them -- is forfeit their

Page 12

right to attorney's fees.
And as you know, the law abhors a forfeiture. They have a contractual right to attorney's fees, and to punish these two people because of the confusion that was occurring at the time and because of what was going on during that appeal period with attorneys being fired or -- I don't know what happened. I'm not going to say that. With attorneys not appearing, not continuing, with pro se defendants appealing cases and you losing jurisdiction, it was confusing at that time.
To say I'm now not going to give you a substantive contractual right in which you're entitled now that I already found you're entitled because you didn't meet this arbitrary deadline would be a forfeiture, and that would be unfair. That would be inequitable at this point. And that's not what this Court is about.
The case gets remitted back, and we are trying to get a hearing. I didn't think that we needed to file a motion because, to this date, today, we still don't have a final order in this case. This case is not over. I mean, if you're entertaining 59E motions, it's still open. When

Page 13

it gets remitted back, it's not closed.
We have to have a hearing. I mean, that's why they remitted it back to you. They remitted it to you to do things, and I anticipated that you would just schedule a hearing sua sponte to do those things. I mean, there were some issues that were still out there.
Matter of fact, we stayed on the Court trying to get a hearing scheduled, and in response -- and we were communicating at that point with Ms. Ferro about -- she wanted to close. And we're saying, look, we're ready to close. We've just got to get some issues straight.
And in response to all this, you actually texted on March 2nd, 2017 -- you e-mailed. I'm sorry. Not text. You e-mailed all of us, and you said, Ms. Ferro, thank you for your correspondence. Because we're talking about getting a closing, and we can't do a closing because there's still a lis pendens in effect because you haven't cancelled lis pendens.
That's one of the things that needed to be done at the hearing. We couldn't close because of the lis pendens. I mean, that is

Page 14

something that this Court physically has to remove by an order because you're not going to get obviously closing title insurance or anything else. So that's one of the issues we had to address.
But you responded to Ms. Ferro and said on March 2nd of 2017, my search of the Court of Appeals online case filing -- Court of Appeals -- whoops, I'm sorry. Oh, yeah. Here it is. Court of Appeals sent their remittitur to Dorchester County February 15th. I have not received the remittitur as of this writing.
So that's why we hadn't been able to get a hearing scheduled because your office had not received the remittitur yet. On that same day you then said, the remittitur has been filed with the clerk of court. I will gladly entertain any motions if the parties cannot work out timing on the conditions and the setting of the closing date. And that was March 2nd, 2017 at 2:45 p.m.
I responded within 16 minutes, and said, Judge Chellis, I would respectfully request a hearing to set up the procedure for the closing going forward. I do not think that the parties will be able to agree on a timeline. Further, in

Page 15

your previous order, you reserved the issue concerning attorney's fees. This will need to be presented and ruled upon.
That was 16 minutes from the date you said we will -- I've received the remittitur. We will entertain motions. I don't think that's a delay. In your e-mail yesterday, you said, I was wondering about the delay on remittitur. 16 minutes from the date you said I received it to give me motions, I requested one.
Now, nothing happened on that e-mail. We didn't get a hearing. I didn't know what was going on. So then I filed a motion. I don't think I needed to. But on the 13th, within a few days, I filed a motion exactly for what I said in there. I, to this day, don't think I needed to because the Court of Appeals remitted it to you to make some final determinations, which is what we're here about in my motion. And that's what started this ball rolling.
So I don't think there was any -- well, I guess there was a 16-minute delay on the remittitur, but other than that, there was nothing, no kind of delay on the remittitur.
So, Your Honor, what you're

Page 1

contemplating doing is forfeiting a contractual right of the prevailing party that they have in their contract because, during a period in which this case was in flux and then got appealed and took jurisdiction away from you, one arbitrary term in your order wasn't reached.
To me, that is not equitable. Clearly you found and clearly there's been no argument, and clearly the Court of Appeals found that these two people sitting here are the prevailing party. And under their contract, they're entitled to attorney's fees. To waive that because of something that their professional didn't do while this case was in flux would be totally inequitable.
I mean, there's no reason to do it. There's no prejudice on their side. If he had done it, if he hadn't done it, there's no prejudice. They'd still get fees. I mean, right now all they're doing is taking advantage of this case being in flux, which it's been ever since the attorneys got let go on the defendants' side, taking advantage of that situation. That's it.
THE COURT: Let me ask you one other question, Mr. Smith, while you're up. Tell

Page 17

me about the right of the trial judge to award attorney's fees for the case while it's on appeal.

MR. SMITH: Well, Your Honor, they remitted it to you. You have jurisdiction.

THE COURT: I have jurisdiction in the trial court, but do I have jurisdiction to determine the reasonableness of the attorney's fees on appeal?

MR. SMITH: Sure. The contractual provision -- hang on one second -- says, Defendants Ferro are in default to the Dudek/Cross contract. Defendants Dudek and Cross -- I'm sorry. Hang on. Let me get to the contract. That's the order.

If buyer or seller -- and this is paragraph 16 of the contract -- if buyer or seller fails to perform any covenant in this agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney's fees and actual costs incurred.

So they're entitled to attorney's fees incurred. It doesn't say attorney's fees incurred through the trial date. It doesn't say attorney's fees incurred to a certain date. It

Page 18

says the attorney's fees incurred. I think actually -- and I've got another affidavit for attorney's fees for today.

I think until this case gets closed and we quit showing up here on these motions that you can continue to award attorney's fees. These people have been found by you and the Court of Appeals to be innocent people, to be the non-defaulting people. And to punish them because of the continuous litigious nature of the defendants is ridiculous. That's not equitable.

So this Court clearly has jurisdiction to award attorney's fees. Court of Appeals remitted it back to you. You can award attorney's fees in the amount you determine is reasonable, and I would suggest that they're all reasonable. I mean, I don't think anybody's billed anything outrageous.

You've got to understand, the only reason we had to do what we had to do on appeal is because the defendants appealed. We haven't done anything voluntarily. We are addressing the defaulting party's actions and incurring fees. I don't know why you couldn't give them.

THE COURT: All right. Mr. Ferro,

Page 19

what's your response to that? Or Ms. Ferro, what's your response to Mr. Smith?

MS. FERRO: Okay. So the lower courts received the decision that was made on January 17th on or about February 17th. This is when I started e-mailing everyone, as Mr. Smith said, and we wanted to start the closing process.

It was at this time that Dudek and Cross were to file a motion asking to receive reimbursement of attorney's fees. It was not filed. And I did bring up on the March 27th hearing that the same thing happened with attorney David Collins, as per your e-mail that stated that he needs to file an affidavit stating and supporting his fees and costs. He never did that, and his right was waived.

Neither filed to reserve the right to ask for their fees. With no such motion filed in a timely manner, we reserve the right to refuse to pay. Any motion filed by us we feel strictly follows the timeline required by the Court. And as pro se, we followed timelines. We filed within 10 days, as any law firm would do, and we were pro se. We knew those timelines.

As far as the contract itself, we do not

Page 20

agree that the contract should be changed. The contract was 303,000, and any adjustment would be made on closing paper.

As far as our fee response, we never got a response from -- I mean, this is now -- they're charging $1,000 for the deposit. That was never discussed, double charging. No one even called us or e-mailed us to say -- well, we never had a conversation. There was never negotiation.

The escrow was included in the fees that were awarded. There was errors that were in there. And this is what this time today is our answer for.

THE COURT: You've got to explain to me about the $1,000 issue. I'm not following you at all on that.

MS. FERRO: Okay. So in the amount that was awarded, there was listed the $1,000 escrow that was included in the total amount from David Collins' printout, the first line on his printout.

THE COURT: All right. Are you talking about in the letter that he sent to me on the 19th of December -- or the 19th of November, I mean?

Page 21

MS. FERRO: It was his -- yeah. It was his printout of fees that were due to him and the total. And included in the total was the escrow of the deposit on the house. So my point is that it was really never looked over.

You know, we were being charged for even the title search. I don't even know if they did a title search. We never got paperwork on that. So, you know, we feel that the amount was just blindly awarded, and we feel that we filed all the appropriate papers. The law firm didn't.

THE COURT: Do you have a copy of that affidavit, Mr. Smith?

MR. SMITH: I do, Your Honor. It's attached to your order. May I approach?

THE COURT: Yes, if you would, please. I don't seem to have it at my disposal.

Ms. Ferro, the $1,000 that you're speaking of, is it -- where are you seeing that number, that line item?

MS. FERRO: It was on the listing of David Collins' breakdown. It was the very first line.

MS. MORPHEW: Your Honor, this might help you.

Page 22

THE COURT: Do you have a copy of that, Ms. Morphew? Ms. Morphew is going to bring that up. Show that to Mr. Smith first, please.

MR. SMITH: Your Honor, if I could address that first item, I can tell you what it is. That's a $1,000 retainer that David put in his escrow.

THE COURT: In his escrow?

MR. SMITH: That's correct.

THE COURT: Okay. I was thinking -- as soon as I saw that, I thought, why would he be holding $1,000 in escrow except as a retainer to reduce -- to pay against his hourly charge.

MR. SMITH: That's correct.

THE COURT: Do you understand that, Ms. Ferro?

MS. FERRO: Well, I understood it was the deposit on the house that's included in the fees that we --

THE COURT: No. No. Well, if -- the real estate agent will have the escrowed amount for the purchase of the house. That would be held by the real estate agent. It's not held by or counted as the escrow that Mr. Collins is

Page 23

referring to in his itemization entitled, Cross/Dudek fees. That's an escrow that's very common when a lawyer is retained --

MS. FERRO: Oh, I see. Okay.

THE COURT: -- that he be paid. And normally most lawyers will put that retainer in an escrow account and bill against it. And --

MS. FERRO: Okay. I understand.

THE COURT: -- so that's where that $1,000 is.

MS. FERRO: Okay. That wasn't clear to me. Well, I still feel that the paperwork was not submitted. We submitted paperwork in a timely fashion. We're not -- you know, our only -- our only --

THE COURT: Okay. What I'm wanting -- and this is what Mr. Smith has eluded to is the period between -- well, let me back up. And I want to set out the timeline of events that I reviewed in preparation of this hearing. My order was entered on November the 6th, 2014.

MS. FERRO: Yes.

THE COURT: It contained in it a provision, paragraph 8 on page 12 of my order.

Page 2

And I'm going to publish the paragraph, which says, Defendants Ferro are in default of the Dudek/Cross contract. Defendants Dudek and Cross have a contractual right to recover or to pursue recovery of a reasonable attorney's fee and cost of this action. In order to assert this right, Defendants Dudek and Cross shall apply to recover these costs and fees on or before 10 days of the entry of this order.

Now, what next occurred was on November the 19th, Mr. Collins sent me an e-mail that attached his fees and costs and asked me, is this sufficient, or do you need anything further? To which I replied, file a motion with an affidavit of attorney's fees so that Mr. and Ms. Ferro would have an opportunity to contest the amount of the fees.

And what -- then, according to what I've heard from Mr. Smith this morning, there was some ball-juggling as to who was going to continue to go forward on the case. Because as you know, Mr. Massalon was -- withdrew as counsel for Ms. Morphew, and Mr. Collins did not file an order.

But shortly after that, within the next week or so, 10 days, Ms. Morphew filed an appeal.

Page 25

And when the appeal is filed, automatically I can do no more in this court except for certain things. Okay?

So I lost jurisdiction of the case on or about December the 8th, 2014 by the filing of the Notice of Intent to Appeal by Ms. Morphew. You followed that up with a filing of a Notice of Intent to Appeal on or about December the 18th, I believe it was. Let me just check that specifically so I've got that correct.

MS. MORPHEW: Your Honor --

THE COURT: Ms. Morphew, please have a seat.

MS. MORPHEW: I just --

THE COURT: Please sit down. I do not want to hear from you. You've got to understand, Ms. Morphew, when I'm studying something, I don't want to be interrupted. You don't see Mr. Smith jumping up and down when I pause to look at something, do you?

MS. MORPHEW: No, Your Honor. I apologize. I just -- the dates were --

THE COURT: I'll fix the dates. That's why I'm looking at the computer.

Okay. The Notice of the Morphew filing

Page 26

was December the 8th, and the Notice of Appeal by the Ferros was December the 16th, 2014. Now, at that point in time, at least by the 8th of December, in my opinion, my jurisdiction ended. I didn't have any jurisdiction until it was remitted back to me.

And the Ferros filed by the 16th of December, which was November, December, and I think they were given probably the five-day rule. But at any rate, that was not a contested issue in the appeal so that their appeal was heard.

So the time frame between the 10 days of entry of the order and Mr. Collins' e-mail to me requesting the attorney's fees and asserting the right to attorney's fees by e-mail at best would have been perhaps four days late.

Now, I went back through the order, and I was reconsidering and actually thinking about why I had put this in the order. And the reason was that if there was an appeal of this decision, then the attorney's fees would have been determined by an order supplementing my order.

And so in contradiction to what I said earlier in the hearing on the 27th, having reviewed my order in full, my desire was that Mr.

Page 27

Collins filed his order -- filed his motion within 10 days of the entry of my order, which would have put it at somewhere around the 16th of November. You add five days for mailing his e-mail to me in which he copied everyone -- would have put it within the right time frame for purposes of filing that motion.

Now, there's been recent case law in South Carolina that a notice, electronic notice, sent by a Court to the parties' litigant is sufficient notice to start the timing of a particular -- the timing, the time clock running, on a particular matter to be done within a certain period of time. That's Judge Cooper's case up in Spartanburg County.

In this court, the same rule should apply, and I think the Court of Appeals, if they were looking at this, would say, you know, Mr. Collins put everybody on notice within a proper period of time.

So my preference would have been that he file a motion, but by the time that preference was -- I mean, that time frame ran, the case was out of my hands. It was on appeal. That wasn't the fault of Ms. Cross or Mr. Dudek. That was

Page 28

the doing of the Ferros and Ms. Morphew. So then the remittitur was entered, on February the 17th, I think.

Is that correct, Ms. Ferro?

MS. FERRO: I'm sorry?

THE COURT: The remittitur from the Court of Appeals came on February 17th, 2017?

MS. FERRO: 17th. That's correct, yes.

THE COURT: So tell me, Ms. Ferro, what did you do once you got the appeal, the notice of the entry and the order affirming my decision from the Court of Appeals?

MS. FERRO: Well, I'd been watching it daily. We were ready for a decision. I had e-mailed actually probably every 30 days for the prior six months before, just asking for a decision because we had waited, you know, a long time for this decision.

So when the decision was posted January 17th, I immediately e-mailed Rick Willis, Attorney Smith, everybody involved, and I think even you on some of the e-mails that -- and you had let me know -- could come up on the e-mails.

But I had e-mailed everybody after

Page 29

January 17th to get ready, to get started, to -- you know, get your paperwork ready for closing and that the decision was made.

So, I mean, in our view, everybody should have got their paperwork ready. If you wanted to file for attorney's fees, that should have been in process, loan process, everywhere. I mean, we were ready to go.

THE COURT: Okay. Mr. Smith, talk to me about what my responsibility is on the remittitur.

MR. SMITH: The Court of Appeals remits it to the lower court to handle the remaining matters in accordance with their order. That's why I thought you would just schedule a hearing because there are -- there were open issues that needed to be addressed.

And Ms. Ferro and I discussed the fact that we couldn't close with the existence of an active filed lis pendens, that that would have to be something that would have to be addressed. And then the scheduling going forward would have to be addressed, and the attorney's fees would have to be addressed.

And we attempted to get this Court to

Page 30

schedule a hearing, and you all told us that the file hadn't been remitted yet, which it hadn't, to you all.

THE COURT: Right. We didn't receive it. So I kept looking for it. I knew the decision had been entered, but I never saw a remittitur, so I figured probably there was a petition for rehearing on it.

MR. SMITH: And there was, by Ms. Morphew, but she withdrew it to get the closing done. And Ms. Ferro was staying on top of it trying to get everything moving. That's the reason why -- and we were also. That's the reason why your e-mail of March 2nd is addressed to Ms. Ferro. That says, I have not received the remittitur as of this writing. Now, within 39 minutes, I guess you had found the remittitur.

THE COURT: What do you think I did with those 39 minutes?

MR. SMITH: Well, you were looking for the remittitur.

THE COURT: I wanted to find the remittitur.

MR. SMITH: You e-mail us back and say, the remittitur has been filed with the

Page 31

clerk. I will be glad to entertain any motions. And within 16 minutes of that, I said, great, here are the two motions we need. I didn't realize that -- because the case had been remitted back, I thought you had jurisdiction at that point to conclude the case in accordance with their order and your previous order that had been sustained had been affirmed.

And so I didn't think we needed a separate motion to address the remitted issues, but when we couldn't get another hearing scheduled within about eight or nine days, we went ahead and filed our own motion just to get it heard.

THE COURT: Well, all right. I think -- do you have anything else you want to add, Ms. Ferro, to the issue of attorney's fees?

MS. FERRO: Well, I just believe, as I stated before, this was a very long, drawn-out, high-priority case. We all knew that things were -- you know, to be on top -- we were to be on top of filings and motions and hearings, things like that.

You know, it had been going on a long time, and I think that everybody should have been

Page 3

on top of the time frame and followed as we did.

THE COURT: What you're telling me is as soon as you got the decision, you began communicating with Ms. Cross and Mr. Dudek to try to --

MS. FERRO: Oh, absolutely.

THE COURT: Okay. And what I'm hearing --

MS. FERRO: Absolutely. I reminded everybody. I said, you know, you have to work this case. Please let's get the process moving, you know, as far as financing or anything else that we needed to do. You know, that was February 17th -- I mean -- I'm sorry -- decision after January. January 17th.

THE COURT: All right. Now, Ms. Ferro, you filed a joint Answer with Ms. Morphew that addressed one or two of the issues. Do you want to -- first of all, I'd like to know a couple of things. Who prepared that memorandum -- that Answer? Who prepared it? Did you prepare it, Mr. Ferro?

MS. FERRO: It was a combination.

THE COURT: Tell me how that combination was done.

Page 33

MS. FERRO: Over the phone. We -- you know, Tom, myself and Molly, being that we were going to submit a joint Answer.

THE COURT: What was your input into that filing? What did you suggest?

MS. FERRO: Well, it was -- you know, it was a combination.

THE COURT: No, I don't know, Ms. Ferro. That's why I'm asking you. Tell me what your specific input into that Answer was. What was your -- what did you ask to be included?

MS. FERRO: Well, attorney's fees, you know, were at the top of my list.

THE COURT: Okay. We've covered that. Next?

MS. FERRO: Contract -- the contract being -- the amount being changed. Just in general, the -- you know, the Answer in general. Specifically, Attorney Collins, you know, and I believe I mentioned it earlier, that he -- it's all of the timing. Let's see. The purchase price, the financing, proof of financing.

THE COURT: Let me ask you a question about that. Why is that a particular --

Page 34

if the -- there's something in the Answer about proof of -- let me read it.

Where did this concept of a draft order come from? What is that about?

MS. FERRO: What do you mean, draft order?

THE COURT: Well, in your Answer you said, to save time and redundancy, this Answer response references the draft order only. What draft order?

MS. FERRO: I believe it was for the original hearing that we had.

THE COURT: You don't really know?

MS. FERRO: Well, that's my understanding as far as the draft order. It was for a response to the original hearing from March 25th. And I believe that the draft order would be for your filing from April 5th.

THE COURT: So you thought that was a draft order?

MS. FERRO: Yes. But due to our not coming in to --

THE COURT: So why are you addressing in paragraph 1 the specific performance issue when that's already been

Page 35

decided by the Court of Appeals?

MS. FERRO: Well, we never agreed -- I guess we never came to agreement on that.

THE COURT: Well, you don't need to. The Court of Appeals made that decision for you by affirming my decision that the contract was to be specifically performed by you and the property sold to Mr. Dudek and Ms. Cross. So why are you revisiting that issue?

MS. FERRO: Well, because we -- the mortgage credit, the financing, was never actually finalized, per the contract. We're still stating that we don't agree that the bank ever had a contract -- a sales contract actually from the Realtor. They said the contract they had was illegible and they needed us to sign another contract and --

THE COURT: What does that have to do with ready, able and willing? What does that mean? I mean --

MS. FERRO: Ready, able and willing. They needed to have it approved by the bank -- is my understanding, approved by the bank an accepted contract by the bank, which they

Page 36

asked us to redo the contract.

THE COURT: Well, you make this allegation in the Answer: Dudek and Cross may not be entitled to specific performance as it now seems that at no time they were -- were they ready, willing and able to close on the contract and --

MS. FERRO: Well --

THE COURT: Wait a minute -- and currently are not ready, able and willing. What is your factual basis for that statement?

MS. FERRO: Well, if the bank was still asking for documents from them, even after our contract expired, towards the end of November, it was --

THE COURT: Do you have any documents to support that allegation?

MS. FERRO: I don't have it on me, but I believe that we do have documents from the bank asking in an e-mail for their W-2s and payroll information. And this was the end of December. So I don't believe that they were actually ever -- it was never finalized in the bank.

That also with the contract that they

Page 37

said was illegible, that they would not accept. They wanted us to do another contract. And this was after all the expired time up.

THE COURT: You're talking back in December of 2014?

MS. FERRO: 2012.

THE COURT: 2012, I mean -- no. It was 2014. December 2014.

MS. FERRO: Well, our original closing was November 30, 2012.

THE COURT: No, ma'am. It was -- November 2012?

MR. SMITH: The hearing was in 2014.

THE COURT: The hearing was in 2014. Okay. So you're talking about a document that appeared in 2012?

MS. FERRO: Right. Correct. We're talking about the bank not ever actually giving specific approval on the loan, as they were still asking for documents at the end of December. They were asking for payroll. They were asking for W-2s. They were asking for tax returns. And they were asking for a new contract because the one they had on file was illegible.

Page 38

THE COURT: All right. Well, let me just say though that that particular issue's already been ruled on. That particular issue has been affirmed by the Court of Appeals and therefore has no basis at this -- there's no basis in law or anything for that issue to be raised at this point in time. It's just -- you can't raise it. Okay?

MS. FERRO: All right. Well, we just -- you know, financing was a stickler point as far as why they did not close, and it's something that we focused on as far as this closing.

THE COURT: Well, all right. Let's go to the next paragraph, 2. Morphew would like to clarify with this Court that, though she voluntarily withdrew her petition for rehearing, she did so neither freely nor in agreement to this Court's or the appellate court's review and decision.

What do you know about that? What's the factual basis for that statement?

MS. FERRO: The factual basis is that Molly wanted to keep going, but we asked her to withdraw it because we needed to close.

Page 39

THE COURT: Paragraph 3, you question that the Dudeks are prepared with closing on the property pursuant to the order. What is the basis of that -- what is the basis and fact for that allegation?

MS. FERRO: Well, again, that goes to financing. We -- still questioning financing. I don't want to go to close and then find out they still need paperwork, they still need payroll information. We were told on the first very original closing that they were good to go.

THE COURT: And there was a finding by this Court that they were ready, able and willing, and it was affirmed by the Court of Appeals. There's no question that can be raised at this point about that issue.

MS. FERRO: Okay. I just don't understand why the bank is still messing with paperwork at the end of December. But okay.

THE COURT: Ms. Ferro, let me explain to you something. A bank is going to be asking for paperwork right up until the minute of the closing oftentimes. Sometimes, you're sitting at the closing table, and the bank is still wanting additional paperwork. It's very

Page 4

common.

So that's why I held that that particular provision of the contract was an impossible provision to complete. And if you read my order, it specifically addresses that issue in great detail. So I don't understand, after the Court of Appeals has already affirmed my order, why you're still questioning that.

So in my opinion that just doesn't have any basis for --

MS. FERRO: Okay.

THE COURT: You say in the paragraph, the estate agents. What are the estate agents? What does that mean? The estate agents' provision of information, in parentheses, regulations, 1991, defined purchase of -- I don't understand what that means. What does that mean?

MS. FERRO: What page is that on?

THE COURT: I think it's page 4. Well, if you go on and -- page 4. Middle of the page.

MS. FERRO: Oh, that's just the definition for the ready, willing and able. Somebody who has the prepared financing in hand, paperwork filed.

Page 41

THE COURT: All right. So that's just you trying to explain something to me about ready, able and willing?

MS. FERRO: Yes.

THE COURT: All right. Next paragraph, 4, you assert that the -- it's incorrect to state that the Dudeks and the Ferros entered into the prevailing contract on October 20th, 2012. What's the basis for that, your factual basis for that statement?

MS. FERRO: That's just when we entered into our contract or time of the essence contract.

THE COURT: Is there anything else you want to add to this in terms of argument?

MS. FERRO: No. I think I've covered it.

THE COURT: Paragraph 5 deals with -- that's the attorney's fees issue that we addressed already.

MS. FERRO: Yes.

THE COURT: Paragraph 6, all right. You have a question about how to handle the -- if I rule in favor of the Dudeks, if I don't alter or amend my contract, you have questioned whether

Page 42

or not the $21,268.82 plus any additional fees Mr. Smith might submit today should not be reduced out of the proceeds of the closing.

MS. FERRO: Right. Well, you know, the closing ties into -- even if a mortgage lender has to be paid, it's after the -- at closing on the closing statement, not reducing the purchase price.

THE COURT: So you would be okay with me directing that the -- if I enter a judgment on the attorney's fees, it will be against you and Mr. Ferro. In order to have that judgment cleared, those fees will have to be paid. And the best way that I can see to have those fees paid would be out of the proceeds of the sale.

Would you have any objection to altering the order so that I stated it as such that it would be -- we don't change the purchase price, we just change the method by which it's paid? Instead of reducing the contract price, which is I think what Mr. Smith was -- in his proposed order was getting at, it might be better to leave the purchase price alone. I agree with that and direct that the closing attorney, whoever that

Page 43

person might be, would be to deliver over the amount of the judgment of attorney's fees over to the Dudeks and Crosses at the closing of the escrow.

Would you be -- would you understand what I'm doing there? So therefore, I'm -- I mean, that's just agreeing with you that the contract price remains the same; it's just the proceeds are going to be handled differently. Unless you -- if I order the attorney's fees to be paid, you pay those attorney's fees in advance of the closing.

MS. FERRO: Well, I have no way to do that. And I -- we still do not agree that we need to pay the attorney's fees.

THE COURT: Well, I understand that. But that's up to me to decide.

MS. FERRO: Yes. We're just asking that the contract not be changed, that it remain that 303.

THE COURT: Yeah. Okay. I understand that, and I think that's a reasonable request. Number 7, closing as soon as possible between 45 and 60 days maximum from the hearing date, which was March 27th.

Page 44

Do you have any disagreement with that? I'm not sure why you're alleging that. What's the basis for that? What are you trying to --

MS. FERRO: Well, we just wanted to reaffirm that time was of the essence, that our original contract was time of the essence.

THE COURT: Well, it was time of the essence. But many of those terms and provisions of the time of the essence were deemed by me to be unenforceable.

MS. FERRO: Okay.

THE COURT: Why is it that the statement, the Dudeks will apply for a loan and secure lending as soon as feasible, is not acceptable?

MS. FERRO: Well, our original contract -- per our original contract, they were to have lending, I think it was within 20 days, to us. So we were just going back to the wording of the contract. And actually that -- by this time, they should have all that processed anyway.

THE COURT: So basically that's a moot question or moot issue, right?

MS. FERRO: Well, we just wanted to reaffirm the contract.

Page 45

THE COURT: Well, as I indicated, the structure of that contract, the time of the essence issues in that contract, in large part were -- many of them were just simply not enforceable. And that was part of my ruling originally.

MS. FERRO: Okay.

THE COURT: And so don't you agree that if the matter was closed within 45 to 60 days of March 27th, that would adequately cover your urgency in having the matter closed? Whether you have specific language about terms and, you know, time is of the essence or whatever? I mean, that's the whole purpose --

MS. FERRO: Well --

THE COURT: See, Ms. Ferro, that was the whole purpose of me saying, you people need to work together to get this matter to close. Because when you're fighting -- every time you put up some sort of an argument to the Crosses and the Dudeks to do something, you're causing that delay. They shouldn't --

MS. FERRO: (Inaudible.)

THE COURT: Pardon?

MR. FERRO: Well, when you rule

Page 46

something and it says that they have a certain amount of time, we believe you. So we -- we're not wasting time. We tried to do our rights. We shouldn't have to pay because you're the one that ruled.

MS. FERRO: We're talking about -- we're talking about contract time frame. Okay. Well, it's just that we started that -- I started asking everybody that in January, to get on this, and now we're six months later at June. So it seems like a long time and -- for a time of the essence.

As for number 9, we have the CL-100. That's done. That's been submitted.

THE COURT: Okay. And have the Dudeks and Crosses been allowed to inspect the home?

MS. FERRO: Yes.

THE COURT: So that's been done. Number 10 -- well, the whole -- do you have any statements that you want to make to me regarding paragraph number 10?

MS. FERRO: I would like to close within the 60 days, which would be, I believe, May 30th, given that they were given till Friday

Page 47

of March 27th.

THE COURT: All right. Number 11. Morphew agreed to vacate within 45 days of proof -- hold on --

MS. MORPHEW: That's me, Your Honor.

THE COURT: Well, Mr. and Ms. Ferro, do you have any problem having Ms. Morphew remove herself from the property at the time of closing?

MS. FERRO: Well, given she has somewhere to go. I know she had asked during the March 27th hearing for 45 days to find a place to rent.

THE COURT: And we are how many days from March 27th?

MR. SMITH: 46, Your Honor.

THE COURT: We're 46 days. Okay. So she's been given plenty of time to leave.

MS. FERRO: Well, I know -- well, her request at that time was for actual proof of financing. That's what she had requested as far as the past experience as far as the delay in noncommitment. So that was her request, 45 days.

THE COURT: All right.

Page 4

Paragraph 12, not to change or damage the property in any way. Any problem with that?

MS. FERRO: No.

THE COURT: Paragraph 13, obtain a real estate attorney. Has that been done, Mr. Smith?

MR. SMITH: It has, Your Honor. There is a small issue that I was going to address later, but --

THE COURT: We'll come back to you. Okay. That seems to cover everything, unless it's -- that covers it all. All right.

Ms. Morphew, I'm going to give you a chance to respond to -- or to assert, you know, tell me what your thinking is.

MS. MORPHEW: First of all, I'd like to address the timing. Mr. Smith just stated earlier that one of their reasons why they didn't move forward on -- you know, or actually Mr. Collins probably didn't move forward on filing the motion for damages because of pro se -- because Mr. -- my attorney, Mr. Massalon, he was not the Dudeks' -- I mean, he was not Ferros' attorney at all. He was my attorney.

He was not recused. He did not recuse

Page 49

himself until the following year. He filed my Notice of Appeal and everything. I'm the one who took it over and then filed the debriefs. So if there was any delay, it is not because I was pro se or because there was a timing on him, you know, being recused because that wasn't until later on in January.

So they had the whole month of December to do whatever it was that needed to be done, I mean, minimum, before that happened. Not -- he was being -- in the midst of this 10-day thing, he was being let go because that was not the case at all. He just said he doesn't do appeals. So I just wanted to make that clear. Because that does not seem like a valid reason if that's even happening.

I also fear there's a little discrimination that -- he keeps mentioning how pro se keeps -- is the problem, and that's why there's all these delays. And pro se has -- we have a right to be heard, and if I'm going to sit here in this court and follow all the rules and regulations, then I deserve that respect too.

And by saying that that may have caused delays and issues and that that's a problem in

Page 50

this court --

THE COURT: Ms. Morphew --

MS. MORPHEW: -- that is partiality and discrimination.

THE COURT: Ms. Morphew --

MS. MORPHEW: And I -- and I -- and it just really bothers -- I do my best, Your Honor --

THE COURT: All right. Well, let me -- just stop one second.

MS. MORPHEW: -- to be prepared and it just --

THE COURT: When you make comments in this courtroom pro se, you address me.

MS. MORPHEW: Oh. Sorry, Your Honor.

THE COURT: You were -- for the record, I want it to be pointed out that you were eyeing -- looking directly at Mr. Smith. Okay?

MS. MORPHEW: My apologies. You're right.

THE COURT: So your comments are directed to the Court and not to Mr. Smith.

MS. MORPHEW: I apologize, Mr. Smith. And I feel that that was -- that's --

Page 51

THE COURT: All right, well --

MS. MORPHEW: -- okay? And this Rule 59E, I have to object to it. I mean, this -- as being a motion. The Court -- on March 27th, you gave leave to the Ferros. They said that those damages were waived and that they had no -- they did not get a -- you know, be able to respond because it was never issued, the motion.

So you gave them leave to answer Mr. Smith's motion for the hearing and damages. This is all one motion. And during that hearing -- and they said, yes, they could do that. That motion -- I mean, that Answer -- and this is why it's called an Answer -- was submitted.

The courts did not give any kind of time limit on it, but it was submitted within the 10 days that a normal Answer to a motion is supposed to be submitted. But the order was filed before it was even received. That is undue -- that's like an abuse of process here. And then to say that this is a Rule 59 and that it can't -- you know, we're only going to bring up damages, even though we're going to hear everything else, is just not right. You know, and I --

THE COURT: I want to --

Page 52

MS. MORPHEW: I don't understand why -- that we -- that we have to follow the processes and the timeline, but it's okay that they don't have to. That -- you know, that the defendants, they don't have to.

And to excuse the order -- their order -- I mean, just the instance of the damages, the order -- your order specifically states if they did not submit -- and there's a proper submission for it -- the damages within 10 days because we had to file a notice --

THE COURT: Ms. Morphew, aren't you addressing the arguments of Ms. Ferro?

MS. MORPHEW: No. Well, no -- I'm just -- no, I'm not -- I'm not just stating that. Just saying that this was an -- I just said it was an example that if we had -- you know, I'm to follow it, and I'm to follow these processes, such as an Answer got submitted correctly and in time so that -- why was an order filed before that Answer was even received and reviewed? Because that order had everything to do with the damages and other things.

And I'm going to say that this -- the order, all these little contentions about -- you

Page 53

know, it says October 20th and the verbiage in it is very important because I find that an order, if you don't follow that order to what it says -- obviously it's open to some interpretation -- then I could be found in contempt for not following that order.

I have an issue in here that states that -- that the order says that I am to be removed -- I mean, I have to, you know, vacate the property on or before closing. That's not what was agreed in the hearing. I specifically sat up there and told you, Your Honor, that I am requesting 45 days from proof of financing in my hand, in my hand, not just because someone says it.

Because you have to be aware that the people who are saying there's a closing date and they have whatever are the same defendants in my fraud case that's in another -- that's in a civil action. I told you I did not trust anything that they or anybody that's on that case says and that in order for me to be satisfied -- the amount of expense it would take for me to move, and then if they fail to move back in and it -- and the stress that it would cause.

Page 54

You agreed and said -- so I said I wanted 45 days from proof of financing in my hand. If the closing took place before the 45 days, that I would pay a daily rate compared to the $1,600 rent.

You questioned whether I was actually paying rent or not, but I've got this proof in checks if you'd like to have those -- is that I would pay a daily rate until I can get out. But I promised I would not delay vacating as quickly as I could.

THE COURT: What efforts have you made to get ready to leave since March 27th?

MS. MORPHEW: What efforts have I made to get ready? I am waiting for proof of financing, and I specifically said that I required that, and you agreed to it, Your Honor. And I had -- and I said, it's been asked for. It was asked for in the Answer. Rick Willis, their agent, asked for the documentation. It was refused by the parties.

If there's nothing to hide or there's no problem, why hasn't it been produced? Why -- if it was me, I would have just thrown the file and say, anything you need to satisfy yourself, here,

Page 55

because we want you off our property. Or, you know, sellers, we want you to go to closing, anything. But I have not gotten that yet.

And so -- and they have not addressed it. They could have addressed it. They've had it over a month. They could have contacted me because I'm pro se to say, hey, I see that you're not going to do anything until you get this proof of financing. Here it is, so --

And I feel that verbiage in this order is very, very important, because otherwise that right there can hold me in contempt and I could get, you know, sanctioned. Furthermore, saying that I -- you know, that I'm the damage or -- it just -- it's okay to say that I'm not allowed to change or damage the property. But to the -- the way it sounds, it makes it sound like I'm a, you know, hooligan or something.

You know, you're going to be held in contempt and could be under arrest. And I'm thinking, that's not necessary. I'm not going to damage property that, you know, in the future could be mine. I mean, I -- who knows. So I have not given this Court or even the defendant any reason that I've not told the truth, that

Page 56

I've not followed the processes and that I've not done everything I could, especially as a pro se, everything.

I mean, I've asked for it in e-mails saying, I haven't gotten notice of a hearing. My work requires that for me to get paid for time off that I have an official notice. If I take PTO like today, I don't get it. If I don't have a notice in three to five days -- government. If I don't have a notice that there's something that's required of me, then I don't get paid.

So I kept asking for this notice. Started Monday, Monday afternoon, Tuesday morning, Tuesday afternoon, and finally get the thing saying it's on, it's on, it's off, it's on. I don't know what to say, you know, to work. So I'm just saying that this order and everything that goes on, to me, is called -- I guess a good way to put it -- crossing -- you know, crossing your Ts and dotting your Is because it's very important for me.

And I'm very -- and I'm meticulous in details and making sure that I follow whatever I say and whatever is told. I will do it. Promise you. If I promise, that's it. And I promised

Page 57

that I would not delay it, but I required proof of financing in my hand. I want a GFE. I don't want them to say, here's a closing date because it's a closing date for the same people who are on fraud -- on the fraud case for me, which is the same thing they said four years ago.

So I'm just -- and I don't understand why it's so difficult for the defendants to show good faith and fair dealings. Even if they don't think that I should have it or that the Ferros should have it or Rick should have it, what does it hurt? I mean, I've got the whole First Federal file, and it's 300-and-something pages long. Trust me, there's no confidential, personal information I haven't seen from that file.

But -- so if -- it can't be because it's confidential or because maybe I don't deserve it, but they're closing this whole case -- it's under my case number -- this whole case, it really reflects on what I am going to be able to do afterwards. Because you see, if they default or they don't close or something with the lending happens, then I have a contract that I'm required to have met because I asked for specific

Page 58

performance. That means I have to be ready.

So I'm keeping up my financing. And in order to do that, every three months I give a -- pull another credit report. I pay for everything. The only thing I don't do is an appraisal. In order for me to do that, I've got -- it's a lot for me to maintain my ready, able and willing to close status.

And I said -- but I had -- but again, even in this, I even argued that I don't think that it was lawful. And for me to vacate the property, it's -- I found evidence. I gave it to you. They -- we were denied lending. They never had it. So how can the Court -- how can this -- how can a court system, when they find out these facts -- it would just like -- the four corners of specific performance is just like a high-profile remedy.

And I said -- I've been to two attorneys asking the same thing, am I right? Am I right? Yes, here in Charleston, you are right. Specific performance requires you have a valid and enforceable contract that you had claim to the property. But the -- sitting here, and I've got irrefutable proof that it's not true. So why do

Page 59

I need to vacate the property? I have a valid claim. I have a -- call my bank. I have a valid claim to it. I've had a valid claim. But do they still?

I don't -- the appellate court can say what they want to say because they went on the same thing that you said. You were to give them testimony, Your Honor, and it was at -- there was no documentation proving that they had financing, that they were ready, able and -- not one of it.

The testimony was taken for loan officer, the defendants, Dudek and Cross, and their real estate agent. All stated that they had -- were ready to close, they had secured financing per the contract. But the sellers were -- had stopped them. I have been contending that for years now, saying that is not true. And I tried to find the evidence. Well, now I've got it.

I mean, I -- and that is why, back last year in August, I had a fraud case. And I get -- out on 10 defendants. The bank -- and I said -- then we go to the hearing on March 27th. I didn't think too much about it. I knew it was going on. Ms. Cross mentioned that the reason

Page 60

that they couldn't move forward to do anything on the loan is because the bank -- why don't you -- oh -- knew because they were -- basically it was because of a case against them and themselves.

And you asked specifically, who has a case against the bank and you? And she pointed at me and said, she does. And I said, yes, sir, I do. And I mentioned what it was. Does that not raise flags that there's something wrong here? And to me, I mean, I even quoted -- the Supreme Court says that no ruling based on fraud on the Court is lawful, and therefore, it's never final.

You can sit here and say that that order was final and the appellate court is final, but the appellate court never reviewed it. They stuck to one thing, basically saying because of sellers' breach -- which I have proof they never did -- the sellers' breach that forgave them for not closing. But it did not forgive them for not securing financing because in your ruling, you said that they had a valid, enforceable contract and that they were ready, able and willing to close based on testimony only.

I don't -- I said, that is a fraud on

Page 61

you and your court, Your Honor. And I would -- I'd be appalled. I'd just be -- that, and then they're still doing it. They know right now that they -- there was no law. It doesn't matter what the appellate court said or anything. And it's -- and I know what my options are, and -- I do.

And I also know that the lower courts, they do have their own inherent power to review evidence that's brought to them and look at it and possibly even redo the order or even reopen a case on their own accord. But it may require another action or something, and that's your choice.

But I -- I was just sitting here saying that I don't understand. You know, and it's not just that. They could have closed, and nothing would have ever been said. But they're sitting here making excuses of why they didn't file papers, that it was their fault. It was the pro se people, it was your fault, Your Honor, for not -- when it got remitted, you know, they thought you were going to do it. You thought they were going to do it.

Why would myself or even the sellers be

Page 62

punished for something that's between you two and the Court? It's not up to me or even, I guess, the sellers to even push it. They -- there's a lawful process. I follow the process. And if I have any question in that process, I will file a motion. I'm not going to assume that somebody else is going to do it for me or what -- you know.

And I said, I haven't even been -- I'm not a lawyer, and I have not been -- I've been doing this for four years, almost -- three -- yeah, three, by myself. And believe me, hundreds and hundreds of hours are researching.

And I don't understand why a lawyer, who is obviously doing this for a long time and knows his stuff, comes up with an excuse that it was the pro se people and it was all this thing going on and that we thought it was you doing it and --

They had 41 days from when it got remitted to do their due diligence. I mean, I was in the e-mails -- waiting to let them on the property, and the Ferros go, please, go do what you need to do. Anything that they needed to do, they could have had everything done. But Ms. Cross said that they couldn't do it because the

Page 63

bank wouldn't do it because of this other case that's out there, which should have nothing to do with it.

Now, doesn't that raise a red flag? And I said -- and I'm wondering -- I'm sitting here wondering, does the bank even realize because if -- they knew that they couldn't dispel specific performance. They knew it. But they came in here and testified in this very court and said they had security financing. And this is my contention.

So anything that has to do with an order that makes people move forward that I filed is unlawful. Whether it was an error, you know, undue abuse of discretion is not -- I would call that out for the last trial. But it's not in the order, but it's not at -- the Court's fault because you were just as clouded as we were.

And I said -- and, Your Honor, I said, I would have brought -- I said, think we wouldn't be here today if I had gotten all this evidence before? I asked for it several times. And I said -- but the bank told me that they had no such people at their institution, no such a loan number, no such nothing. But then they come into

Page 6

court saying, yeah, they had secured financing.

So as a pro se person now, I mean, I thought that -- I mean, this Court and this office of the court is to protect the innocent. I am totally innocent in this, and I don't feel like I'm being protected at all. Actually I feel like I'm being blindsided, and there's some partiality going on here. And it's been like this. It's a truth.

I believe in the truth. Ask anybody. I -- to a fault. You see how meticulous I am and how I -- I will not sway from it. Nothing will make me sway from the truth, even at my own -- even at my own demise because it's not right. And I -- and all it is is it has to do with -- about truth. And it was not presented to this Court and then -- at all. And if you choose to ignore that, that's like fraud on your own court.

I mean, this is -- whole -- this whole thing is so frustrating, you just don't know. And I'm sorry. I'm very passionate about it because, as I said before, my biggest pet peeve is bullies and liars. And I said, I don't tolerate them. And I do not do it. And I said -- and I would make a horrible lawyer

Page 65

obviously because I cannot lie. I mean, I cannot. Even when I want to, I can't.

And so I -- I have been honest and forthright with this Court and with the defendants, and I state -- when I -- when I have a problem, I will tell you I have a problem. If I say that this is my terms, this is my terms. If you don't agree with it, contend it. They didn't contend my terms about the 45 days and giving me proof. It was all agreed on. I still haven't gotten it.

But I'm not going to be held in contempt of a court order because of the way it's worded, and I think that that's part of the contention of all this verbiage thing. Just because October 20th and October 24th is different, why can't it be corrected? It's -- this is going to be used as a precedent. This order and this past order are going to be used as a precedent for future cases with similar issues to win unlawfully. And I don't understand.

I said -- we're just garbage in, garbage out, constantly. And that is my contention, and I make an objection. I'm making an objection to this 59E. It was an Answer. It should have been

Page 66

related to the order to be filed. It should have been addressed peripherally. And any -- and any delays is on the defendants.

The Ferros, obviously, as she said, you know, have e-mails saying, let's get going. Let's get going. But they have valid, legal, lawful issues. And it wasn't an issue necessarily for them, obviously, until it was raised at the last hearing.

So didn't it -- didn't it raise a red flag for you that they couldn't move forward that -- because of another case that's out there, that the bank didn't want to do anything? You know, I have lots of question, and I'm sure I'm going to get to the answers with my other case, but this one is just -- this is -- this is -- this case is just as important for me as that one because if I don't raise my hand and make my contentions and my issues, I can't save them up for appeal, and then I can't -- I --

They'll be like -- you know, the lawyer, Mr. Smith, will bring it up at the next one saying, oh, you had a chance to raise it but you didn't. So that's why I'm so meticulous. And in that one paragraph that I stated that I had an

Page 67

issue with, you know, the terming that I, you know, voluntarily dismissed it.

Well, it's not really something that has to be ruled on, but I needed to say it, that, again, I only dismissed it, not because I agreed or because, you know, I'm raising my hand saying, stop. It's only because I made a promise, and I -- to this day, I will -- and it was to my -- obviously, it was to my demise.

I could have gone on with the appeal. I was taking it to the Supreme Court. I mean, it's -- I know I'm right. And believe me. And I can give you the names. A real estate judge, two real estate attorneys and an attorney just last month downtown, same thing. I keep checking. I'm putting out effort to make sure that I'm right before I say anything in here.

And I don't just come in here or e-mail to just throw it out there saying, yeah, this is -- it's exactly -- I researched it, and it's to my best ability. And -- you know, and all I've gotten back, you know, from you is contempt and, you know, you could be held for attorney's fees. And that's what I feel like. It's just threats. There's nothing ever being worked out

Page 68

and, you know, it does work -- Rule 11 does work both ways. You know, and I did it to my best ability, everything I've done.

And I just have a contention here in court that it's being ignored and that excuses are being made. And they're very weak excuses. They're not even lawful excuses. Saying that he didn't do it because you didn't do your -- that he was thinking you were going to do it for him? I mean, 41 days it took, from February 17th to March 27th -- the hearing is 41 days.

You mean for the 41 days, nothing could be settled outside of the hearing or move forward to get questions and answers and to do -- to do -- you asked Ms. Cross on last hearing where they were with their due diligence and their financing. And you specifically asked her if she had scheduled an inspection, and she said yes. And then you waited.

And you said, okay, Ms. Cross, maybe you could tell Ms. Morphew, since she's the one who inhabits the house -- I have a terribly good memory -- who inhabits the house, you know, the home, so she will know when that is. And she said, okay, no. We didn't actually schedule it

Page 69

yet because we can't do anything until the bank, you know, says we can go forward. 41 days, and they can't do anything.

Well, if it was me and it was reversed and I didn't move forward when it got remitted -- I'm going to tell you, the Court would have been all over me on that. And I said, so -- and coming in here with the weak excuse of, I thought you were going to do it, I didn't -- wasn't sure, and this and that and -- you know, is wrong.

And stating that just because the contract says that they were awarded damages -- you did award them damages. But the stipulation is they had to file for it. If you don't file for those damages, it does not -- it does not -- and I'm going to tell you, it does not keep it for appeal. You said he had to file a motion in an affidavit, and he -- David Collins did not because the order stated that.

THE COURT: Are you arguing again for Mr. and Ms. Ferro?

MS. MORPHEW: No. I'm saying -- no. I'm just saying that, again, if I'm -- it's an example. And I've said that before, if I'm supposed to follow the process --

Page 70

THE COURT: Why don't you confine your examples to matters that affect you, not Mr. and Ms. Ferro.

MS. MORPHEW: Yes, sir.

THE COURT: Because --

MS. MORPHEW: Well, wait a minute.

THE COURT: You're getting very close to practicing law without a license.

MS. MORPHEW: Okay. Here's -- the damages affect the closing. The closing affects whether I -- you know, my -- me closing, if they don't close in time.

THE COURT: Ms. Morphew, who advised you to move into that house? I mean, where did that --

MS. MORPHEW: No one advised. It didn't happen right away. It was six months after -- six months after the -- all the -- it wasn't on appeal. They filed a motion -- I mean, their Complaint. I filed my Complaint, and it was six months later the Ferros had an empty house. And they could not get anybody to rent it because -- of course, month-to-month because you never know when this was going to be heard.

So I -- my -- the condo I was living in,

Page 71

this man -- this gentleman was selling it, and I had to find a place to move. So I said, hey, I can go month-to-month. I have hardly anything unpacked still. Month-to-month, and I can do that, and there's no contention that we'll do a month-to-month contract. And I'll pay, you know, the reasonable rent. And that's how it started.

Because I'm ready to move out. It's still a contention, and I knew that it was. And I said, I have rights that -- I have a valid claim to this property, so there's nothing in the law that says I can't move into the house. Nothing. It helped them. It helped me, obviously. And I didn't have to find another place to live.

THE COURT: Now, you having -- you're in this second position in terms of a contract --

MS. MORPHEW: Yes, sir.

THE COURT: -- that you have a right to enforce if the first one isn't completed. But you're saying, I'm not going to move out until I get some proof that they can close?

MS. MORPHEW: I said that at the

Page 7

last hearing, Your Honor, and you -- and they all -- he -- Mr. Smith actually agreed to it. I saw there was a mix between Mr. Dudek and Ms. Cross. One shook their head, and one said no. But there was no raised contention. There was no -- no, we disagree; it should be this way. You said that I get that, and you said that there should be no problem.

If you awarded the 60 days, that would be the five days for Mr. Smith saying he wanted until Friday for the order to get filed, and then it was the 45 days for me. Everything should have been done right. I should have been out. If they had proof of financing, they knew to give it to me. They're refusing.

THE COURT: So why are you -- I'm a little confused about what the -- the proof of financing, if anything, should go to Mr. and Ms. Ferro, not to you.

MS. MORPHEW: Well, then it should have been contended at the hearing. I asked for it.

THE COURT: But they are saying, w are ready to -- my understanding is they're saying, we're ready to go to closing and --

Page 73

MS. MORPHEW: But I have --
THE COURT: But you're saying, no, I have to have proof that they can do it. And that --
MS. MORPHEW: Because, Your Honor --
THE COURT: That is intermeddling in -- you're interfering with their contract by saying that. You're --
MS. MORPHEW: I'm not saying I'm not getting out, Your Honor.
THE COURT: Pardon me?
MS. MORPHEW: I'm not saying I'm not getting out. It's just that I don't want to be held in contempt. It says right here that I have to be out before closing. I got notice of a closing eight days before the closing, and they told me they wanted me out by the 30th, in five days. Really? Is that -- I don't even have --
All of a sudden it's sprung on me. So I think that giving notice to the Ferros -- I should be given notice too because it's specifically stated in the order that I had to follow this. So I do not want to put myself in a position -- I -- with good faith and with legal

Page 74

justification, I stated exactly the terms for me vacating that property, and it should have been no problem within that 60 days.
But it's not my fault that they haven't given me this. They've had the Answer. They had -- they were here at the hearing. They knew this is what I asked for. They agreed to it. They have it in the Answer. I say it right in the Answer. They've had it for over a month, but they said, oh, yeah: You need that, we want you out of there, so here you go.
There has been no good faith towards me. So for me sitting here saying that I'm following what was agreed on during the hearing is not fair. Because if I hadn't raised it, then I could see where it could be. But I raised that. It was not contended. So by law, that respect should be given to me too.
For them to say that this isn't right and that I -- I'm not stopping a closing. It's just that I'm going to have to be paying rent to the defendants, Dudek and Cross, if I can't get out. But believe me, I will make every effort, every effort. But it won't be fair to me if five days before -- you know, like eight days before

Page 75

closing, supposedly closing, they said it was scheduled.
But, again, I have legal justification to question the same verbiage. E-mails are coming out of the same people who are in a really high-profile fraud on the court's complaint that's out there. It's pending. And, you know, it's going to a trial, a jury trial. So I have that. And I stated that. And I -- and I stated that -- I stated that I did not trust what was being said.
So if it was supposed to be contended or if there was a problem with it, they had every right to contend that at the hearing or even on the Answer. They did not file a response to the Answer. They didn't know -- there was no phone calls. There was no nothing. They come in here -- they come in here today with an order that states that I am going to be out.
Now, if I'm not out before closing, then I will be held in contempt of court. And that's not what I agreed on. I agreed exactly what I told you. And I am going to stand firm on it, and I am going to object to that. And I think that that needs to be changed in the order and

Page 76

everything that's technical. Everything should be exactly -- because the order, Your Honor, is the highest form of a court doc -- to me, a court document.
It says, this is what you've got to do. I'll follow it, but not if it's not what I stated I needed and what was agreed on. I will be out, but I'm still -- so I would like to make a motion. If this Court would compel the defendants to provide that proof of financing to me -- and I don't mean just the closing date.
I'm requesting a -- the GFE, the closing attorney's -- the closing statement, the application that's on file and the contract that's on file.
I have legal issues that have been raised since that last hearing, and including what I have already out there as a Complaint, that I would like to -- I'm not saying I am going to stop the closing because I am not stopping a closing. I just need that paperwork to feel secure. And that's what I requested and it's -- and, I mean, and the lis pendens, they -- Mr. Smith --
THE COURT: Give me those three

Page 77

thins again. So proof of the good faith estimate, proof of financing. What's the other one? Or was it just those two?

MS. MORPHEW: I need the GFE, that's proof of finance -- that's somewhat proof. I need a GFE, the closing attorney's statement, the closing statement --

THE COURT: The HUD statement?

MS. MORPHEW: Well, if they said they were ready to close on the 3rd of May, then I'm assuming that they have a closing statement. I'd like to see the application that's on file that you use to process this and secure the loan, and the contract that's on -- in the file that's used to process this financing. If everything's above board, that should not be a problem.

And I know they have possession of it because the bank provided it -- would provide any information that they allow, so -- I also want to state that they said that the lis pendens, you not removing the lis pendens on the -- when the appellate court remitted it back to the Court, prevented them from securing their moving forward and closing.

Well, there's a lis pendens on the

Page 78

property right now. So if that lis pendens -- and the lis -- if their own lis pendens prevented it before, why is it preventing it now? I have a screenshot showing there is a lis pendens that has not been closed out. He filed that in August of last year.

So forgive me, Your Honor, and the courts please forgive me if I question everything because all I'm finding is that one thing is said, but it's not true. And I don't understand. And as for me being the movant on this, I have to disagree. I can't defend the Ferros, but I have to disagree because this is an additional hearing or a second hearing based on the defendant's motion for closing and for damages.

Therefore, they are still considered the movant. If they're considered the movant in the first one, they're considered the movant on the second hearing. This is an Answer.

THE COURT: Let me stop you right there.

MS. MORPHEW: I just --

THE COURT: Let me stop you right there. My recollection -- and I want to address Mr. Smith.

Page 79

Mr. Smith, my recollection was that you said at that hearing, which I think we held on a Monday, that you would have an order for me by the end of the week. Isn't that right?

MR. SMITH: That's -- I had an order with me.

THE COURT: Right.

MR. SMITH: But because you changed it, I said I'd have you an order by the end of the week, and that's what I submitted.

THE COURT: That's what I recall.

MR. SMITH: And I'll agree with her. If she says that this isn't a motion, I'll consent. I consent that she is not the movant, and this is not a Rule 59 motion, and I didn't ask for an additional hearing. I'll consent to that, Your Honor.

MS. MORPHEW: So what's the Court's recourse then when an order -- it was, in my opinion, prematurely filed before the Answer got filed -- I mean, before it submitted. What's the Court's recourse then to amend an order that's already been filed? But it's not -- and it's not an error, and I don't think that I should be held accountable.

Page 80

THE COURT: I think both of you are wrong, and I don't agree with either one of you that it's not a Rule 59 motion. That's the only way to interpret it because an order has already been entered. And the only way to address an order that's been entered is to file a motion to have it altered or amended. And that's in essence what the Answer did.

MS. MORPHEW: But there --

THE COURT: Your objection is noted. It has to be -- if I have to be corrected, let the Court of Appeals correct me. But the only way I can construe it is that it was a motion to amend or alter the order that was entered, as Mr. Smith promised that he would have for me. I think he was maybe -- I think I may have gotten it on Monday or Tuesday of that week, not that Friday, but it did give you some extra time.

MS. MORPHEW: That's the Answer that they gave.

THE COURT: Pardon?

MS. MORPHEW: That was in the Answer that we received. We did receive the -- a motion and the order to -- and that's what was

Page 81

reviewed. Now, the Answer was filed before I received -- I know that the order was filed on a Monday, but the -- I did not receive that until the Answer was actually filed. It was filed within the 10 days of the hearing.

THE COURT: All right. Anything else you want to add, Ms. Morphew?

MS. MORPHEW: No, sir.

THE COURT: Thank you very much. Mr. Smith, any response?

MR. SMITH: Just a few things, Your Honor. You've got to understand that everything that I am telling the Court today that was before I got involved is from what people are telling me. So if Mr. Collins said there was some confusion, that's coming from Mr. Collins.

I would like to clear up this discrimination issue. I think pro ses have every right in the world to do whatever they do as long as they represent themselves. The discrimination, if there's any that I was addressing earlier, was that the Court was discriminating against my clients because they were bending over backwards for a pro se and allowing pro ses to do things that you would

Page 82

never in this world let me do as an attorney.

So if there was any discrimination that I was addressing earlier, it was the fact that this Court had bent over backwards -- and I understand that the Supreme Court has said you are to do that, and I appreciate that. But you allow pro ses to do things that you would never allow me to do to the detriment of my client. And that's what I was saying earlier, not that pro ses don't have rights.

Now, as far as this 41 days that she keeps talking about, on March 2nd -- and I want everybody to understand this -- on March 2nd, the Court informed us, including the Morphews and the Ferros, that they had yet not retained jurisdiction of this from the Court of Appeals.

You sent us an e-mail saying, I have not received the remittitur. That was March 2nd. Within 39 minutes, this Court had done exactly what it needed to do, which was it tracked it down. Most Courts, that would have taken a month. You should be commended for actually doing what you needed to do and getting the file within 39 minutes.

We then got an e-mail that said, I now

Page 83

have jurisdiction. I've received the remittitur. Not until that point could we do anything. Within 16 minutes of receiving your e-mail, I requested a hearing on closing out the case and attorney's fees. I've got all those e-mails.

When we didn't get a hearing scheduled, I filed my own motion, but I didn't think that was necessary. But within 16 minutes of this Court notifying me that they had jurisdiction, I asked for those hearings.

I've never had somebody say, I object, I did not file a motion, but the Court still wants to hear it. But, again, I understand that's the due deference that you're giving to a pro se. If I stood up and I said, Your Honor, I didn't file a motion, you'd be like, fine. Done. And we'd walk out.

But because they're pro ses and they're saying what you know would be wrong, that they, in fact -- if they didn't file a Rule 59 and if they weren't the movants, we wouldn't even be here today. You're giving that due deference to them, again, against my clients. That's what I was talking about earlier as far as pro ses.

THE COURT: I understand.

Page 84

MR. SMITH: Ms. Morphew also talks about this case being something that somebody's going to look at further down the road in the annals of jurisprudences, helping them figure out what they're going to do.

She needs to understand that this was an unpublished opinion, which means unpublished opinions cannot be relied upon as precedent in any case ever. So this is an unpublished opinion. We are ready, willing and able -- matter of fact, we've had one closing scheduled, maybe two, that we just haven't been able to do because she asked for 45 days at the last hearing. I told my client, even though it's not in the order, you gave her 45 days. So we can't schedule a closing until that 45 days runs.

We had a closing scheduled next Friday, the 19th. If we close, great. They're out. If we don't close, we don't close, and they're in. I mean, it's that simple. All this stuff about asking for our loan application with all of our credit information is just not going to happen. If we close, we close. We've already told them we're closing.

Now, I said there was one small issue.

Page 85

Today we're getting everything lined up for the closing, and it's already -- the bank's already sent everything -- the package and everything to the closing attorney. The closing attorney did his title search, and he came up with the other case.

THE COURT: In the circuit court?

MR. SMITH: Yes. Ms. Morphew has filed a case against everybody for all kinds of things. Against Stephen Dudek, Doreen Cross, David Collins, Allison Williams, the closing -- our mortgage officer, First Federal, our financing company, Michael Scarafile, who is the president of Carolina One, Susan Nicholson, who's with Carolina One, she was our agent, Carolina One Real Estate, Carrie Boyer, she's a paralegal at the Wooddy Law Firm, and the Wooddy Law Firm.

We're using the Wooddy Law Firm to close next Friday. The Wooddy Law Firm informed us that because of this other action, they can't get cleared title in their title insurance. I have no idea why. I've got two calls in to a guy called Andrew McLester, who is one of the associates at the Wooddy Law Firm, to find out why an inpersonam action would affect title.

Page 86

We have since called Mark Weeks over at Weeks Law Firm to get him to close, and I think that that's going to happen. So we're still shooting for next week. We'll have a time, and we'll close. But the only thing holding us up at this point -- everything's been sent to the closing attorney. The only thing holding it up is this other action that Ms. Morphew has filed for just a plethora of things against a whole bunch of people.

And I hope it doesn't hold it up, but that seems to be one of the issues with the closing attorney. She's more than welcome to call Andrew McLester at the Wooddy Law Firm and ask him if that's the only issue holding it up because it is. He submitted it to his title insurance company. His title insurance company kicked it back. I have no idea why.

I was going to recommend before they told me, go to another closing attorney. When they do a title search, when they do -- they're not even going to find the other case. I mean, it's an inpersonam action. It has nothing to do with the property. So we'll be able to close.

THE COURT: Well, I could also see

Page 87

the Wooddy Law Firm may consider themselves somewhat of a conflict of interest or conflicted out of the closing by virtue of the fact that they've been named in another lawsuit. If I were in their shoes, I would have run for the hills too.

MR. SMITH: I understand. But we're attempting to close next week, next Friday.

MS. MORPHEW: Your Honor?

THE COURT: Yes, ma'am.

MS. MORPHEW: So if my case was preventing them -- and now, not from Wooddy Law Firm, but from getting a title search, a title search is done by an independent company. If they do a title search and that pops up and they're not going to give -- the title company gives a clear thing to the closing attorney.

I actually have -- I can bring the -- bring that in if you need to see that, the statement from the actual title company who states -- who says that they -- they use a title company. The company does the title search and sends it and clears it and gives it to this attorney. And the attorney looks at -- and I can understand that.

Page 8

THE COURT: Let me stop you right --

MS. MORPHEW: But if they had a closing for May 3rd, then --

THE COURT: Let me stop you right there, Ms. Morphew.

MS. MORPHEW: Well, I -- just one more thing, Your Honor.

THE COURT: Your premise is totally false, totally false. It is not how real estate closings are handled in South Carolina. So I don't want to hear anything about what you think title companies do in South Carolina.

In fact, there's case law in South Carolina that tells you that title companies cannot practice law. And certifying a title is certainly the practice of law. So I don't want to hear it from you that you know all this stuff about how this real estate closing is going to go down because what you just stated to me is totally incorrect.

MS. MORPHEW: Understood, Your Honor. But if they were ready to close on May 3rd but now they're saying that it's not -- the title search that was done just a few

Page 89

weeks -- a few weeks ago or whenever it was. If it would have been -- it's again a statement that I'm wondering where the truth is.

If you were ready to close on May 3rd and had done a title search already with Wooddy Law Firm and with -- then where can you say that you were ready to close if you can't close now because of this?

I am totally confused, Your Honor. And again, I don't feel that it's -- there's honesty that was just told to you. So I can't be blamed because I have another case that was filed last year.

THE COURT: Well, in fact, if that is holding up the matter because the Wooddy Law Firm is saying, wait a minute, we knew about this other lawsuit, we are on an actual notice. We're not relying on a constructive notice, which is some information that might be derived from the records, they have actual notice of a problem.

And moreover, you are a party against whom you've sued. So I can understand the Wooddy Law Firm -- they may have told them that we've got this other suit. That's holding us up. But the truth of the matter is, they don't want to

Page 90

close a transaction with -- in which they have -- I just -- this makes total sense to me -- that they know that they're going to say the issue pending in another lawsuit of which they are a party. So --

MS. MORPHEW: Understood, Your Honor. But they had a closing date with Wooddy Law Firm, and a time, on May 3rd. They submitted a Notice for closing.

THE COURT: Well, let me explain to you how that happens, Ms. Morphew, so you can understand --

MS. MORPHEW: I know --

THE COURT: Wait a minute.

MS. MORPHEW: It's not the fact that it didn't happen. It's the fact that he said that it's now holding up a closing with the same people who already said they had a closing scheduled.

THE COURT: Well, here's what happens. Let me explain it to you. Many law firms who handle real estate closing, their paralegals will schedule the closing two, three weeks out, maybe 10 days out, and schedule the date for the closing. And they put everybody on

Page 91

notice that we're ready to close; we'll be ready to close on the 3rd. And so when someone says, we have a closing scheduled for the 3rd of -- or whatever date, it's because the paralegals have put it on the record -- on their scheduling calendar schedule to get it done.

Now, as that time approaches and materials start to come into that firm for purposes of processing, at some point, the lawyers are going to look at that paperwork. And they probably said, oh, my God, we can't close this. This is the one that they're -- this is the same property on which we're getting sued for, and we're just not going to close this. So that's probably the more likely scenario about what happened.

MS. MORPHEW: They did not send a notice saying that they couldn't close when -- on May 3rd. Actually there's an e-mail saying that any party who prevents the closing -- from Mr. Smith saying a closing will take place on that time. It has been scheduled. We are ready, able and willing to close. Everybody needs to close.

And any party, which meant anybody else besides them who prevents that, can be held in

Page 92

contempt of court. To me, that says that that closing attorney didn't need any more paperwork. The title search had been done, and they were demanding the parties to be -- whoever was supposed to be at closing to be there. I understand that they may have contention now. I just --

MR. SMITH: If I could add something, Your Honor. Ms. Morphew at that time notified me that that was within the 45-day period. I'm the one who cancelled the closing because it was within the 45 days that she had requested. That was the reason that the May 3rd -- and I've got an e-mail to it.

I don't want to waive attorney-client privilege, but she had asked -- Susan had asked me, should we go through with the closing? And I was like, no, because the Court had given her 45 days. And that's within the 45 days. That's why it was cancelled.

MS. MORPHEW: Actually, the Ferros had told you that they could not go to a closing. After you sent the contempt e-mail to all of us, they actually answered saying that --

Your Honor, they actually answered

Page 93

saying that -- that they had -- that they don't understand how a closing can even take place if this Answer to this motion hasn't been ruled on. Because it has everything to do with the closing documents and the damages. So how can a closing take place? And so she suggested that the hearing -- I mean, that the closing would need to be rescheduled until the Court hears that. He agreed. So I --

THE COURT: So it's really a nonissue.

MS. MORPHEW: Yes.

THE COURT: All right. Anything else from you, Mr. Smith?

MR. SMITH: Nothing, Your Honor. I would like to submit my affidavit of attorney's fees for preparation of today.

THE COURT: Okay. You may approach.

MR. SMITH: Thank you, Your Honor. It's an original.

THE COURT: For purposes of -- Mr. and Ms. Ferro, you still with us?

MS. FERRO: Yes.

THE COURT: All right. I'm going

Page 94

to publish the affidavit of attorney's fees and costs that's been handed up to me by Mr. Smith -- is for an additional -- since the hearing of March 27, 2017, an additional $2,067.50 is requested in attorney's fees.

MR. SMITH: Your Honor, I do have one more matter.

THE COURT: Yes.

MR. SMITH: Just for clarification, the Ferros have made it abundantly clear -- I'm going to come up there so they can hear me. Or do you think I should speak into the microphone? What would be better?

THE COURT: If you come up here, it might be better.

MR. SMITH: All right. Your Honor, the Ferros have made it abundantly clear that they're unable to attend this hearing and travel to South Carolina. I want to make sure that they're going to be able to -- if they're going to show up either in person or by power of attorney at the closing that's going to be scheduled.

THE COURT: How do you all -- the question is --

Page 95

MS. FERRO: Your Honor, we've done many closings in the past through power of attorney if we can't get there, so that's not an issue.

MR. SMITH: That's fine.

THE COURT: Okay. Good.

MS. FERRO: And I would just like to say that we are looking for the closing before May 30th, as per your 60 days.

THE COURT: Okay. All right. Well, I'm going to take under consideration the issue of the attorney's fees. At this point in time, I'm not going to rule on that.

I am going to rule on Ms. Morphew's request that she be given a good faith estimate, proof of financing, the HUD 1 that was to be utilized for, I guess, the March -- the May 3rd hearing -- closing, the Morphew's -- excuse me -- the Dudek/Cross application for financing and the contract on which they are using to close.

I'm going to deny her request for those things because I don't think she has any business looking at that stuff at all. And I'll add that to the order that I entered that will address the issue of attorney's fees pursuant to what I am

Page 9

deeming the Answer that was filed to be a motion to alter or amend the prior judgment.

Before I close, Mr. and Ms. Ferro, I did not give you an opportunity to speak one more time, and I apologize to you. Do you have anything else that you need for me to hear before we end the closing?

MS. FERRO: Well, I just want to reiterate that we -- I think that all the attorneys really missed the mark on the filings, and I don't believe that they deserve to be awarded.

THE COURT: All right. Well, what I was asking for was additional information. That information's been given, and I understand it.

MS. FERRO: I'm sorry.

THE COURT: But given the fact that you're pro se, I can understand that you would want to be saying it one more time.

MS. FERRO: Okay. Thank you.

THE COURT: I would like to address the issue of the pro se question, and I would like for both you and Ms. Morphew to understand that I have indeed frankly backed a bit over

Page 97

backwards, if you will, to make sure you're given an opportunity to be heard on issues that you raised.

Mr. Smith is fairly correct that it would be -- indeed, if some of the procedures that you all have followed were done by lawyers, I would be a little bit less receptive to those types of matters. But I recognize you're not lawyers. I recognize that you are doing the best you can under the circumstances that have been put before you.

I do want to again encourage the continued communication between the Ferros and the Dudeks and Crosses and any of the attorneys that are related or that are involved in the transaction.

I am going to consider how to address the issue of attorney's fees, if I am to award them, how they would be paid through the proceeds of the closing. I think that would be the most efficient way in which to handle that. I still want to contemplate it a little while longer.

As I stated in my e-mail of yesterday, I do find that to be the most troubling issue that I'm faced with. And so I want to contemplate it

Page 98

over the weekend before I make a decision on what I do.

Again, I'll give you an opportunity to respond to what I've said if you like.

MR. SMITH: Your Honor, if I could just --

MS. FERRO: I --

THE COURT: You want to go, Ms. Ferro?

MS. FERRO: I just wanted to say thank you for allowing us to phone conference. It was a big help, and it allowed us to get this done today.

THE COURT: You're welcome. Thank you.

MR. SMITH: Your Honor, in order to clean up the record, can I request that this Court do two things? Number one, enter a Form 4 to dismiss the lis pendens so we don't have that issue. Form 4 is just a Court's order dismissing the lis pendens.

THE COURT: Okay.

MR. SMITH: And in the order that comes out of this, that we just add one or two sentences that say, and this concludes the

Page 99

matter. There are no other further pending matters. This case is over.

THE COURT: Over and ended. Right.

MR. SMITH: And the reason is is so we can close. Thank you, Your Honor.

THE COURT: All right. Ms. Morphew, any additional comments to what I said?

MS. MORPHEW: Just to make sure -- you denied me the motion to compel proof of documents. But because I asked for an actual proof of financing in the hearing and I still haven't gotten it, that is one of my things that I'm still requiring. So a GFE. It's -- Your Honor, it's very important to me. And I stated it, and it wasn't contended. I don't see any problem with --

THE COURT: I'm not going to require that they give that to you. If they want to do that on their own voluntarily, they can do it. But if they are scheduled to go forward for closing and the closing is scheduled, then let's let it happen, and you'll need to be out. So you need to get prepared.

MS. MORPHEW: That was not what I said. I said I would -- not until --

Page 100

THE COURT: I understand what you've asked for, and I'm denying your request.

MS. MORPHEW: But it wasn't denied during the hearing.

THE COURT: I've changed my mind then. I'm denying it now.

Okay. Ms. Ferro, Mr. Ferro, thank you for participating. Mr. Smith, thank you for your participation. And Ms. Morphew, thank you for your participation. That concludes the hearing.

(The hearing was concluded at 12:21 PM.)

REPORTER'S CERTIFICATE

I, VALERIE G. MELKUS, Court Reporter and Notary Public in and for the State of South Carolina at Large, do hereby certify that I correctly reported the within-entitled matter and that the foregoing is a full, true and correct transcription of my shorthand notes of the testimony and/or other oral proceedings had in the said matter.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 1st day of July, 2017, at Charleston, Charleston County, South Carolina.

Valerie G. Melkus, RPR
My commission expires
DECEMBER 19, 2026

Page 1

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY
MASTER-IN-EQUITY

Stephen Dudek and Doreen Cross,
Respondents,

vs. CASE NO. 2013-CP-18-00183

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

And

Molly M. Morphew,
Plaintiff,

vs.

Stephen Dudek, Doreen Cross,
Thomas Ferro and Lorraine Ferro,
Defendants.

BEFORE THE HONORABLE JAMES E. CHELLIS

DATE: June 12, 2017

TIME: 9:00 AM

LOCATION: DORCHESTER COUNTY COURTHOUSE
ST. GEORGE, SOUTH CAROLINA

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Page 2

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MOLLY M. MORPHEW
IN PROPER PERSON

Page 3

INDEX

EXAMINATION OF MS. CROSS:

BY MR. SMITH 27
BY MS. MORPHEW 29
BY THE COURT 31
BY MS. MORPHEW 44
BY MR. SMITH 49

EXAMINATION OF MR. DUDEK:

BY MR. SMITH 50

EXAMINATION OF MS. MORPHEW:

BY MS. MORPHEW 56

CERTIFICATE OF REPORTER 95

EXHIBITS

Exhibit No. 1 - Cross-motion 9

ALL EXHIBITS RETAINED BY THE DORCHESTER COUNTY CLERK OF COURT.

Page 4

THE COURT: We are here today on Dudek cross-motion for a rule to show cause why Molly Morphew should not be held in contempt of court for failure to abide by a court order that I entered on April the 3rd, amended by my court order dated May the 17th.

Mr. Smith.

MR. SMITH: Your Honor, although if you notice, the motion is titled Notice of Motion on Motion for Rule to Show Cause, Ejectment and Attorney's fees.

THE COURT: Yes.

MR. SMITH: What we really want is the ejectment part. We want her out pursuant to this Court's order.

The contempt, the rule to show cause, honestly, I know you -- probably, if you order an ejectment, you're going to not hold her in contempt; you're going to allow the contempt to be purged if she just gets out.

I mean, that's all we want. We don't want Ms. Morphew to do anything except leave us alone and get out of the house we bought. So what we are asking this Court to do is to issue an order of ejectment pursuant to

Page 5

your previous order that she needs to leave.
I tried to get it resolved earlier in a meeting with her, but I don't think that's going to happen.
You have to understand, we did not buy this house with a tenant in place. When we signed the original contract in 2011 or '12 -- I read her memo -- 2011 or '12 whenever -- I think 2012 when the contract was signed, there was no tenant.
Ms. Morphew wasn't even in the picture at the time. She was a back-up contract at that point. We didn't buy the house with a tenant in place.
Then if you look at the closing which occurred, what, a week-and-a-half ago, a couple Fridays ago, we didn't buy it -- we didn't close with a tenant in place. We closed pursuant to your order, which ordered her to be out.
So at no point did we buy a house that had a tenant in it, and therefore, we are subject to some lease. We signed a contract with no tenant. We closed pursuant to a Court order that ordered her to be out.
The fact that she is there doesn't

Page 6

mean that she gets to stay just because she is there in violation of a contract and in violation of a Court order.
Your Honor, what we are asking for today, we are asking that she be ejected immediately, because she has had plenty of time to get out. As a matter of fact, at the hearing that we had -- I'm losing track of the number of hearings.
Let me also say that one of the things that you do when you refer a case to a Master is you send it to a judge who retains jurisdiction to hear everything. And you don't have to rehash everything, because you know as much about the case as we do.
You ordered the closing; the closing occurred. You ordered her to be out; she's out. That's why you don't have to keep informing the Court of what's happening.
Also, with a pro se person, I understand that you're more lenient. Our supreme court has said you are to be more lenient with a pro se person; however, you are not supposed to be lenient to the point where you are causing damage to another party. And that's what's

Page 7

occurring now.
We are paying a mortgage on a house that we thought she would be gone, and we are still living somewhere else that we are having to pay for also. So we are getting double-hit just because Ms. Morphew wants to do whatever she is doing. And it's just dragging on and on and on, and it's causing my client damage.
What we are asking for is an ejectment of Ms. Morphew pursuant to your April 17th order. The April -- I'm sorry -- April 3rd order. The May 17th order didn't change any of that; it only dealt with attorneys' fees. The April 3rd order is the one that asks her to leave. And that wasn't questioned or anything else.
Then Ms. Morphew files something that I still am not really sure what it was. It wasn't a motion to reconsider. As a matter of fact, she even said on numerous times -- I don't want to put a number on it, because then next thing you know I'm getting accused of overstating it -- numerous times during that hearing that she wasn't up to moving. She didn't file a motion.
THE COURT: Well, I've already

Page 8

decided that was a Rule 59(e) motion. So you may not interpret it that way. Ms. Morphew may not have to interpreted it that way or thought she was doing that, but that's the only way, after an order has been entered, in my view, given the status of the case at that time, that I could review what she raised in the so-called answer.
MR. SMITH: But the April 3rd order is the one that told her to leave.
THE COURT: Absolutely. Let's be clear. The April 3rd order is the one -- the May 17th order did not amend or change in any way my directive and my order for her to vacate the property on or before the closing of the property that Cross and Dudek would achieve.
MR. SMITH: That's correct.
THE COURT: I'm not concerned about the -- and I stated that, not only in the findings, but also in the order itself. So I'm clear, Mr. Smith, that we are talking about the directive that Ms. Morphew was to vacate the property on or before the closing.
MR. SMITH: That's correct. And that's the April 3rd order. That's the order I'm seeking to enforce.

Page 9

THE COURT: I'm clear on that. Thank you.

MR. SMITH: So I'm asking that she be ejected pursuant to the April 3rd order and that we be awarded attorney's fees -- under this Court's equitable powers, that we be awarded attorney's fees for the last few motions that we have had. Not for the stuff beforehand, but since her refusal to leave that property pursuant to that order.

Because you've asked us to, we have provided a court reporter even for that motion. We have got $1,200 in court reporter fees. We ask that that be reimbursed also.

I have an affidavit of additional attorney's fees plus costs that I would like to present to the Court at this time.

THE COURT: Sure.

MR. SMITH: At least deal only with --

THE COURT: Please mark that Dudek cross-motion, Exhibit 1.

(Exhibit No. 1 was marked for identification.)

THE COURT: All right. You've

Page 10

given me an opening statement, Mr. Smith, and you've submitted an affidavit of attorney's fees.

I'm going to give Ms. Morphew an opportunity for an opening statement only -- that's all I want is an opening statement -- and then I'm going to make a decision on whether or not I convert, sua sponte, your motion into a rule to show cause why she shouldn't be held in contempt of this Court.

MR. SMITH: That's what I was going to get to. I was going to ask you to do it sua sponte. The only two questions are: Did you close, and did you leave.

THE COURT: I understand. But you're going to need to -- if I get to that point, then I'm leaning significantly in favor of doing that. But I'm -- just based on what you said, I need to hear from her further.

MR. SMITH: All right.

THE COURT: We will need some evidentiary information. I need some evidence. I just can't have Counsel's argument on that.

MR. SMITH: I understand. We have got witnesses here.

Thank you, Your Honor.

Page 11

THE COURT: Ms. Morphew, please give me an opening response to Mr. Smith's position is really what I want to hear.

MS. MORPHEW: All right. First of all -- first of all, on the April 3rd order, I was under the impression, filed an answer, a hearing was scheduled for May 12th to hear that answer, and I was working under the impression of what I had agreed on during that March 27th hearing, until that was ruled on.

Furthermore -- which meant that my contention about being able to get proof of financing, or some sort of proof of financing, for what I asked for so that I felt comfortable that everything was aboveboard.

Second of all, I hadn't heard anything about a closing until just a couple days -- I mean, two days before closing. This is the scheduled closing, and here's your notice.

Now, I may have known -- or known that maybe it's coming up, but it's a maybe; it's tentative; it could have been a problem. Because the first closing was canceled because they had to get new --

THE COURT: Ms. Morphew, excuse

Page 12

me --

MS. MORPHEW: I just want to --

THE COURT: No. Wait a minute. I just want to know what your -- your contention is that is what?

MS. MORPHEW: My contention is that I'm working under the impression of something opposite of what I was trying to tell you.

The Ferros gave me a notice before the closing saying that there's a closing taking place tomorrow. And if it closes -- which I wasn't even sure that they would -- the buyers would contact me about the rent.

Now, they had not canceled my lease. I'm still thinking I'm a renter, and I'm still trying to resolve everything else. And the time for appeal still hasn't done [sic] for the other order -- for the order of April 3rd or even of the May 17th -- so I'm sitting here working under the impression that I'm still a leaser because it had not been canceled.

Now, thinking that you're closing a house without a tenant in it is different than knowing you're closing without a house [sic]. They had the option of not closing if there was a

Page 13

tenant in it. And by signing those papers, that waived any right to not have any tenant or whatever contingency they had for it.

That lease automatically transfers over, and I was waiting for that.

THE COURT: Okay. So here's what I got. You've got one point is that you want to raise failure of notice. Is that the issue that you're trying to tell me about? Failure to be notified of the closing?

MS. MORPHEW: Yes.

THE COURT: The second issue is that once the closing occurred, you became a tenant and are no longer subject to this Court's order; is that right?

MS. MORPHEW: And that's all the correspondence I got. Yes, sir.

THE COURT: Anything else? Any other point that you want to raise?

MS. MORPHEW: Yes. That I never received -- and I guess in order to be held in contempt, there has got to be proof that I actually refused to get out of the house by their inquiries.

But I never got any type of inquiry

Page 14

to get out of the house until I received the contempt charge.

THE COURT: All right. So your third contention is that you have not been told to get out of the house? Is that the contention?

The third defense is?

MS. MORPHEW: I have not been -- the defendants have not even -- actually, nobody really did, except for inquiries of the real estate agent asking me two days before when I planned to, and I said as soon as possible. I have not refused to get out.

THE COURT: So you are claiming you haven't refused to get out. Okay.

Any other point that you are going to raise?

MS. MORPHEW: Yes.

THE COURT: What?

MS. MORPHEW: The hearing for the rule -- or the order to show contempt was dissolved, but -- I don't know if I'm allowed to do this.

I want to bring up a point of something that happened at my house before the hearing that I have a big contention with. It

Page 15

seems like the defendants here went and filed a complaint to the sheriff's department to evict me.

And the sheriff showed up at my house -- of course I was not there; my daughter was there and, thank goodness, Mr. Brown was there -- to -- actually to throw me off of the property.

But instead, he went to the house up front first and told the gentleman in there that -- first, when he opened the door, the first thing he said was, you have to leave the premises now. And he said, excuse me? He goes, the owner said that you have to -- you have refused to vacate, and you have to vacate the premises now.

And he said, who? Molly? And he goes, no, not them. And it was very confusing. And they were very, very distressed and -- and --

THE COURT: All right. Hold on a second. I just want the defense. The defense to this --

MS. MORPHEW: Well, I would like to bring that up.

THE COURT: Well, what is the basis? What is it you're bringing up?

Page 16

MS. MORPHEW: It's-- again, it's -- I'm not getting any communication; there is nothing there. And all I feel like is that I'm being harassed instead of communicated with.

And actually, I contend that my rights to -- on this order to get proof of financing -- and closing is not what I've asked for -- was reasonable. And we could settle this. I mean, they could settle it so easily by providing me the GFE.

And if there is nothing to hide, then why don't they produce it? It would be simple.

THE COURT: All right. I just want the -- I really -- you're giving me some sort of elaborate testimony. I want to just know what your defenses are going to be.

So one is: Not being notified of the closing date?

MS. MORPHEW: Yes. Not being notified of the proper -- to leave the prem -- time to leave the premises.

THE COURT: Not being -- notice of the time to leave.

All right. Second?

Page 17

MS. MORPHEW: That I have a lease agreement that has not been terminated.
THE COURT: Lease. You think you're a lessee now.
MS. MORPHEW: Yes.
THE COURT: Third?
MS. MORPHEW: Bad faith and unfair dealings all along.
THE COURT: I haven't heard that before. That's a different element.
MS. MORPHEW: Well, bad faith by not communicating and just filing a contempt charge without --
THE COURT: Well then that's part of the time to leave. All right. Lease.
Third was something to do with an eviction served on you by the sheriff or something. It didn't get to you; it went to somebody else?
MS. MORPHEW: Well, no, it didn't get to me; it went to somebody else. But the sheriff -- well, he had no order or no anything to actually come to --
THE COURT: Well, he didn't show up to your property; he showed up to somebody else's

Page 18

property.
MS. MORPHEW: He actually did show up. They told him that was the other house. I was not there.
THE COURT: The sheriff. And I think you had one other point. I'm struggling to remember exactly what it was.
Would you read that back to me, Madam Court Reporter? There was the failure to give her information about when they were going to close -- or when to leave; that she's now a tenant; and then there was a third point.
(The record was read back by the reporter.)
MS. MORPHEW: Actually, Mr. Smith did tell me that two days -- through Wednesday, two days before the closing, the scheduled closing, that I needed to vacate the property.
And I replied to him that -- to please provide me the proof of financing per the order. I am under the impression that that court order -- since number 13 specifically says that I asked for it and that it was a reasonable request, that I was going to get it.
Or else, I don't even understand

Page 19

why it was in there if that was not allowing me that.
THE COURT: Okay. Do you have anything -- there are four issues that you are raising. I want to know if there is any other issue.
MS. MORPHEW: All in all, that put together, I mean, it could be an issue as to the abuse of the process.
THE COURT: Abuse of process.
All right. Thank you, Ms. Morphew.
Mr. Smith
MR. SMITH: Just a brief --
THE COURT: Let me say this: Based on what I have heard, based on the motion that you filed, Mr. Smith, and based on the admission, basically, by Ms. Morphew that she still resides in the house, I am going to sua sponte issue at this time a rule for Ms. Morphew to show me cause why she should not be held in contempt of this Court for failing to leave the property on or before the closing.
Specifically my order of May -- or excuse me -- April 3rd, I'm going to read from it. Specifically my order entered April 3rd

Page 20

states, in paragraph 8 I believe it is: Morphew, as the current tenant of the property, is ordered to vacate the property on or before the closing date, which will be provided to her by the parties or their counsel.
All right. Secondly, I want to reiterate, my May 17th order states on page 8, paragraph 12: Each of the 11 remaining grounds Morphew and Ferro assert in the joint answer have no merit. In short, all of the remaining terms of the April 3rd, 2017, order remain in full force.
Then again, under my conclusions of law, paragraph number 3: All remaining claims of the Morphew and Ferros for alteration or amendment of the April 3rd, 2017, order are denied. Except as modified herein, the April 3rd, 2017, order remains.
That's on page 9 of the order. And then under the provisions for, that I order in that case, paragraph number 5: Ordered, adjudged, and decreed that the order setting the closing schedule and awarding attorney's fees on April 3rd is altered and amended only as specifically set forth above.

Page 21

Paragraph 6 provides: It is ordered, adjudged, and decreed that all remaining claims set out in the joint answer to alter or amend the April 3rd order are hereby denied.

All right. Clearly, from my order of April 17th -- I mean May 17th, the April 3rd order is still in effect as to the provision number 8, which I first published.

Mr. Smith, I'd like to hear from you on any facts that you have that she is in contempt of this Court.

MR. SMITH: Your Honor, as she stated at the very end -- I was pulling out the e-mail to show her -- you've got to understand, the Ferros' agent and Ms. Morphew's agent are one and the same.

THE COURT: Thank you. I understand that.

MR. SMITH: So, of course, knowledge to an agent is knowledge to the principal.

He knew what was going on. The Wednesday before the closing, I finally got confirmation. We tried for a while to get confirmation that the owner, in fact, was going

Page 22

to show up on Friday at 2:00 at Mark Weeks' office.

Finally -- the agents were really dealing with the closing, because I felt like that was their thing to do: set it up and get it done. However, Mr. Willis wasn't responding. So on Wednesday, I sent him a direct e-mail because he had asked us to deal through him, by the way, and not to contact people directly. There is an e-mail to that effect.

So I e-mailed him on Wednesday, and I said, are the Ferros going to show up Friday -- it's one -- my thing is probably one or two sentences long. Are the Ferros going to show up on Friday to close this house?

And he sent me back three letters, POA, which means power of attorney. So I took it to mean that they weren't, in fact, showing up themselves on Friday, that they were going to be there by power of attorney.

Within nine minutes of receiving that e-mail-- I took that as a confirmation that, in fact, it was going to happen on Friday. Within nine minutes, I sent Ms. Morphew an e-mail that said, the closing is going to occur Friday

Page 23

at 2:00. We just received confirmation nine minutes ago.

Now, I noticed that when I sent it, the little timer on the thing had clicked over to ten minutes. So by the time I sent it, it was, in fact, ten minutes. But within nine minutes of receiving confirmation from Ferro and her own agent that, in fact, the closing was occurring, I sent her notice.

We weren't holding back. We tried to get it scheduled for a while; we just weren't getting a confirmation. We have subpoenaed Mr. Willis' files in the other matter. And I found an e-mail where he says to our agent, Ms. Morphew isn't communicating with me anymore, when it came to the closing time.

But that doesn't have anything to do one way or the other. We provided her notice as soon as we received -- I mean, nine minutes from receiving confirmation of the closing from a dual agent.

We provided her notice. We asked her to leave. We have asked her to leave; I mean, that's no secret. In this court we've asked her to leave at closing. We asked this

Page 24

Court to issue an order ordering it.

I mean, for her to say that we didn't expect her to leave at closing is total nonsense. It's been contained -- I mean, I have argued it the whole time: we don't want a tenant; we want the house. And this Court issued an order.

For her to sit there and say, I didn't know I had to be out when it closed, is just nonsense. I mean, it's in a written order.

We have closed. We closed at the time we gave her the notice. We have expected her to obey, just like anybody would. You would expect anyone to obey a court order saying, you are to be out on or before. And she's not out; she's still there.

The police matter on Monday, I got a call from your office; I knew nothing about it. Cheryl called me and said, your clients are at the police office. I wish they hadn't done that, but that has nothing to do with any of this.

She needs to be out. The two questions that this Court needs to ask are: Did the closing take place Friday at 2:00 as scheduled? Yes. Ms. Morphew, are you out? It's

Page 25

that simple. And that's what I would ask.
I think we need to take testimony, ask those two questions, and then the Court, sua sponte -- which is what I was talking about with that is why you get one judge to retain jurisdiction; they know what's going on; you don't have to reargue everything and re-prove everything. That's why you ask them to retain jurisdiction.
I would ask this Court, sua sponte, to issue an order ordering her for an ejectment, which is on the motion I filed, plus hold her in contempt. Honestly, hold her in contempt if she fails to abide by that ejectment.
I'm not a guy that throws people in jail. I think I'm a live and let live. I think she needs to pay their expenses that have been incurred. I think she needs to pay the court reporter bill -- that you've asked us to obtain, but they're going to bill us, and then go from there.
THE COURT: I have -- if I didn't, let me make it clear. I am issuing a sua sponte order for her to show cause why she shouldn't be held in contempt. And as to the ejectment issue,

Page 26

we will reach that through the -- basically through the contempt rule.
Because I need to hear -- if I do order her in contempt of court, one method by which she could purge herself is to remove herself from the property.
So what I'd like to do is have -- Mr. Smith, since this has been issued sua sponte now, do you want to present some evidence from your clients?
I need some evidence. I cannot just have argument.
MR. SMITH: I understand. I will ask Doreen Cross, please.
MS. CROSS: Your Honor --
THE COURT: Ms. Cross, come on up here, please.
MS. CROSS: Well, I did prepare a statement.
THE COURT: No comments, please. I know you are bursting at the seams to talk, but let's wait until you get under oath.
I want you to raise your right hand for me.
Do you solemnly swear or affirm

Page 27

that you will tell the truth?
MS. CROSS: I do.
THE COURT: Please have a seat and answer any questions Mr. Smith has.

DOREEN CROSS,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SMITH:

Q. Good morning, Ms. Cross. You are the plaintiff in this action, correct?
A. Yes, sir.
Q. And you did enter into a contract with the Ferros to purchase the property that is subject to this action?
A. Yes, sir.
Q. Pursuant to that contract, and pursuant to this Court's various orders, did you close that -- or what date did you close that property on?
A. We closed that property on June 2nd, 2017, at 2:00 PM.
Q. And was that when it was originally scheduled? Not originally, but within the week

Page 28

before?
A. Yes. The week before. But we had additional time scheduled.
Q. And you saw my e-mail to Ms. Morphew giving her notice within nine minutes of receiving confirmation from the seller --
A. I did see that e-mail.
Q. -- that they were, in fact, going to close the property on Friday?
A. I did see that e-mail.
MR. SMITH: I don't have any other questions, Your Honor.
THE COURT: All right.
Ms. Morphew, do you have any questions?
MS. MORPHEW: I would like to have some. Yes, sir.
THE COURT: You need to ask them.
MS. MORPHEW: If can give me a moment to think. I was not expecting to ask questions of a witness.
THE COURT: Well, I will give you a moment.
MS. MORPHEW: Yes, I do.
THE COURT: All right.

Page 29

That's close enough.

EXAMINATION

BY MS. MORPHEW:

Q. Have you given me --

MR. SMITH: I'm not going to be able to hear.

THE COURT: Ms. Morphew, you have somewhat of a soft voice, but you need to project it. Otherwise I'm going to send you back to your desk and we'll have you use the microphone.

Which would you like?

MS. MORPHEW: I will use the microphone, if that's okay.

Can you hear me better with that?

THE COURT: I don't know. I would like to try it. Your voice is very soft. I'm not sure if it's because you're nervous or you don't project your voice.

Is the green light on?

MS. MORPHEW: No.

THE COURT: Sheriff, will you make sure her light is on?

MS. MORPHEW: I just pushed the button.

Page 30

THE SHERIFF: It's on.

THE COURT: Ms. Morphew, I'll give you the ability -- you may sit down while you have your questions.

MS. MORPHEW: Thank you, sir.

THE COURT: Put the microphone in front of you so you can be heard.

MS. MORPHEW: Your Honor, I have never done this before. So forgive me.

THE COURT: You're representing yourself. Let's go.

MS. MORPHEW: Okay.

BY MS. MORPHEW:

Q. Ms. Cross, do you feel that I have been asked -- I mean, been --

MS. MORPHEW: I'm sorry, Your Honor.

Q. Is there any particular reason why you will not provide me with a GFE?

MR. SMITH: Your Honor, I object to that question. It's just not relevant.

THE COURT: Sustained. Next question.

MS. MORPHEW: Your Honor, I had asked for that for a hearing, and it was agreed

Page 31

upon, and then it was reversed at the next hearing. And I feel like it's very relevant.

THE COURT: Well, I find that the question is irrelevant to the proceedings today.

MS. MORPHEW: Yes, sir.

BY MS. MORPHEW:

Q. Ms. Cross, do you feel like you've given me proper communication to vacating the property given the -- given who -- you know, that me being a plaintiff in this case, and the fact of the -- I don't want to say this wrong.

Do you feel you have given me proper notice and communication as to me vacating the premises?

A. 100 percent.

THE COURT: Next question.

MS. MORPHEW: That's it, Your Honor.

THE COURT: No further questions from Ms. Morphew.

I have a couple of questions.

EXAMINATION

BY THE COURT:

Q. Ms. Cross, when you use the term we in

Page 32

your answers to Mr. Smith's questioning, who is the we?

A. Stephen and I.

Q. Stephen Dudek?

A. Dudek.

Q. So you and Mr. Dudek closed the property on June the 2nd, 2017?

A. Correct.

Q. Did you pay over the entire purchase price at that closing to the closing attorney?

A. I'm not really sure how to interpret that. We had a down payment, and the entire --

Q. Wait a minute. Okay. Did you complete the purchase by paying over money to the Ferros?

A. Yes, sir.

Q. Okay. And the way that happened was you handed the check to a lawyer, he escrowed the check, and then the proceeds of that escrow were distributed to Mr. Ferro -- Mr. and Ms. Ferro -- I think he was the only one on the title to the property -- but to the Ferros in exchange for you get a deed for the property.

Did you receive a deed?

A. Yes.

Q. Okay. So now, did you also have to get

Page 33

a mortgage on the property that you acquired by purchasing from Mr. Ferro for the total sum of $303,000, which was then -- various and sundry deductions were taken from that amount of money and ultimately resulted in a net proceeds being paid to Mr. Ferro, correct?

A. Correct. The amount -- the full amount was not 303,000 --

Q. I understand that.

A. Okay. Yes.

Q. That's the gross purchase price. And then out of that, you had lots of costs and expenses and so forth that ultimately come out.

A. Yes, Your Honor.

Q. But you paid over the net -- eventually the net proceeds got to Mr. Ferro; you got a deed. And I want to know if in the course of that closing, did you sign a note to a bank?

A. Yes, sir, I did.

Q. To finance the purchase of the property; is that right?

A. Yes, sir, I did.

Q. And did you give that bank, or lending institution, a mortgage on that property?

A. Yes, sir.

Page 34

Q. Okay. What is the -- if you know, do you know how much money you pay for -- what the payments are on the note that you signed to borrow the money? What is the note? The principal and interest of the note?

A. It's around $1,600 a month.

Q. Now, does that $1,600 include the taxes and the insurance for purposes -- prorated over the term of a year? This is including the taxes and insurance?

A. Yes, Your Honor, it does.

Q. So within the $1,600 a month, you will be paying taxes and insurance?

A. Yes, Your Honor.

Q. All right. Now, when you closed on June the 2nd, did your closing attorney charge you some prepaid interest to the end of the month of June? Do you remember?

Did you have to pay prepaid interest, or did they back out of the month's interest of June the two days that you did not occupy the property?

A. I understand we prepaid.

Q. You prepaid the interest?

A. Yes, sir.

Page 35

Q. So it was like 28 days of interest; is that correct?

In other words, what is the first date that you will owe your payment? Is it June -- is it July the 2nd or is it August the 2nd?

A. It's August 1st.

Q. August 1st is your first payment?

A. Yes, Your Honor.

Q. So that would indicate that you prepaid interest through the month of June so that in July -- in August your payment will be the interest accrual during the month of July and the principal balance due August 1; is that correct?

A. Yes, Your Honor.

Q. All right. Do you remember, by any chance, what the per diem interest -- what your prepaid interest was?

A. Prepaid interest?

Q. That's the interest from June the 2nd through June 30th. Do you remember approximately how much that was?

A. I have no idea, Your Honor.

Q. Do you remember how much money you borrowed?

A. $242,000.

Page 36

Q. Do you know what the interest rate is?

A. It's 4.25 percent.

Q. Do you know if your interest is calculated on a 360- or 365-day period?

A. I don't. No, Your Honor.

Q. Okay. Who is your lender?

A. It is South State.

Q. South State, which was formerly First Federal of South Carolina, right?

A. That's correct.

Q. Do you know how much the taxes for -- you probably -- did they calculate taxes based on the 6 percent interest that the Ferros undoubtedly paid?

A. I do know that they did, Your Honor.

Q. They did it on the 6 percent as opposed to the 4 percent?

A. They did it on the 6 percent.

Q. Have you, since the closing, applied for a residential rate on the --

A. No, Your Honor, I haven't. I was told by the closing attorney that it would take about a month for everything to get filed and to wait that long before I filed for it.

Q. So you are paying taxes at 6 percent.

Page 37

And the insurance, do you know what your annual insurance rate is?
A. I know that it's in escrow.
Q. You escrow it each month. Do you know how much you escrow each month for insurance?
A. I did not bring that paperwork with me either, I believe. The total amount was --
Q. All right. You didn't bring the paperwork. Do you have a closing statement with you, by any chance?
A. No, Your Honor.
Q. All right.
THE COURT: Mr. Smith, I'm going to allow you to supplement the record with a closing statement from the June 2nd, 2017, closing between Dudek, Cross, and Ferro.
MR. SMITH: I will do that, Your Honor.
THE COURT: Thank you.
BY THE COURT:
Q. All right. Ms. Cross, have you and Mr. Dudek entered the property yet? Taken possession of the property yet?
A. No, Your Honor, we have not. We asked the sheriff's deputy to verify that there was

Page 38

still occupants, and that's as far as we went.
The sheriff's deputy asked us not to enter the property. And he stated that he had been to the house a year prior. And that he thought it was in our best interest not to go to the house.
Q. So when you say -- the answer to my question was that you are not in possession of the property; is that correct?
A. I am not in possession of the property. I have not been to the property since we closed on it.
Q. Okay. Did you go to the property and --
A. I have never been to the property since we closed.
Q. Since the closing. Now, where do you currently live?
A. I live about a mile, as the crow flies, from this property. I live in --
Q. Do you have an address?
What's the address?
A. 236 Cady Drive.
Q. 2368?
A. 236 Cady, C-A-D-Y, Drive.
Q. You're in Pine Hill --

Page 39

A. I am in Pine Hill Acres.
Q. Okay. And how much is your monthly payment for that property?
Do you still own that property?
A. I do own that property, and my monthly payment is approximately $840.
Q. Does that include taxes and insurance?
A. It does.
Q. Who resides in that property with you?
A. Stephen Dudek and myself.
Q. Okay. Do you carry utility? Do you have a utility bill there or are you on well?
A. No. I have utility bills.
Q. What are your utility bills there approximately?
Let's start with water.
A. I don't actually pay these bills. It's part of Stephen and I's agreement that he pays those bills, and I pay the mortgage. So I don't even really look at them.
Q. All right. Then what we can do is have Mr. Dudek answer those questions.
And you don't carry that?
A. I do not; that is not my responsibility.
Q. You don't pay the carrying charges aside

Page 40

from the mortgage; is that correct?
A. That's correct.
Q. All right. Ms. Dudek, tell me in your own -- how much do you feel like -- how much do you -- let me put it this way: What is the value to you of not being in possession of the property on -- in possession of the property that you purchased from the Ferros?
What is your -- what do you feel you have been denied, and can you place any value on that?
A. Yes, Your Honor. Since we have been going through this, and in the last six months -- I had migraines earlier, and they have come back to me, and I have not been able to shake those.
But the reason for that is that we cannot move forward, and we cannot move back. My property on Cady Drive, I was in the process, when we were purchasing Butternut, of renovating it.
And after we won the court case in June of 2014, I went out and I purchased some large furniture for the house. I had no place to put it, so it is in my house. I had purchased other items that were going to go to Butternut.

Page 41

My house is a storage unit. I cannot -- I want to replace the floor; I can't replace the floor, because I have to get this stuff out. And so I have been in limbo. I am at the point where I have got possessions inside of a CRX container.

I became a grandmother --

Q. How much did you pay for the CRX container?

A. 2,500 I believe. We also have storage units.

Q. Where do you have storage units?

A. On Butternut Road.

Q. How much do you pay for those?

A. $144 a month.

Q. Okay. Was the CRX container purchased for the purpose of holding the --

A. Yes, Your Honor.

Q. -- furniture that you purchased for this Butternut Road property?

A. I actually have multiples. But one of them was, yes.

Q. One was. And that was $2,500?

A. $2,500.

Q. Do you plan on renting the Cady Drive property?

Page 42

A. Yes. Possibly to my daughter.

Q. Well, I need something more than possibilities. I need to know what your intentions with the Cady Drive property are after you -- if you were in possession of Butternut, what would Cady Drive -- aside from being renovated, what would your intentions -- what are your intentions with regard to that property?

A. My daughter became a mother recently. She lives in an apartment with her husband. And she wants to have a place for the child to go in the yard. And so we are talking now about her coming out there and renting that from me. And she wants to do that.

Whether she stays there, I don't know. If she changes her mind, I really don't know. But that's the intention right now. Otherwise, I could possibly sell Cady.

Q. So you did not have a firm intention as to Cady Drive on the date of the sale what you were going to do with it?

A. Well, back then, my ex-husband had terminal cancer.

Q. Hold on. You misunderstood my question. It was unartfully addressed to you.

Page 43

My question is this: On June 2nd, 2017, did you have a firm understanding of what you intended to do with Cady Drive were you to take possession of the property on June the 2nd on Butternut?

A. My real estate -- excuse me. My bank asked that specific question, and I prepared a document for them that it would either be to rent it -- to renovate and rent or to sell it, depending on the market at that time.

Q. Okay. How much money were you intending to spend on renovation?

A. For Cady?

Q. Yes.

A. About 40,000.

Q. Is the Cady Drive property a mobile home?

A. It is not.

Q. Is it a stick-built home?

A. This is a stick-built home. It's on an acre of land. I have lived there for 33 years. I have tons of blueberries. The lot is very nicely landscaped.

Q. All right.

THE COURT: At this time, I'm

Page 44

completed with her; I've heard enough.

What I'd like to know, Mr. Smith, do you intend to call Mr. Dudek?

MR. SMITH: I don't, Your Honor. But if you would like to ask him questions --

THE COURT: I would like to ask him some questions. But before we go there, I'm going to ask -- do you have any questions of Ms. Cross, Mr. Smith, in response to my questions?

MR. SMITH: I have none, Your Honor.

THE COURT: Ms. Morphew, do you have any questions in response to my questions of Ms. Cross?

MS. MORPHEW: Yes, sir.

THE COURT: All right. Please ask them.

EXAMINATION

BY MS. MORPHEW:

Q. Ms. Cross, during the June 2nd closing, did you order Mr. Dudek or your representatives to discuss with Mr. Willis or the sellers the tenancy -- my tenancy within the house?

Page 45

A. Yes, we did.
Q. Could you please tell the Court what was discussed?
A. Mr. Willis stated that you had not been answering his e-mails and that he wasn't able to get in contact with you. And he felt fairly certain that you would still be in the house.
Q. Did Mr. Willis present any like e-mail to that fact, or is it just a statement?
A. It was a statement. We didn't pass e-mails around.
MS. MORPHEW: For the record, it was Ms. Ferro.
THE COURT: You can ask a question, but you cannot make a speech.
MS. MORPHEW: My apologies, Your Honor.
BY MS. MORPHEW:
Q. When you purchased the property and you signed for the closing, were you aware that I was still in tenancy?
A. I absolutely was not. That's why I sent a sheriff's deputy to find out. And whenever he arrived, no one answered the door. Just dogs were barking inside.

Page 46

But he did say he had been in the home before, and it looked like that there was less furniture in there than there was before. And he said he had been in there on the inside of the home on a gun-related or an arms-related call.
Q. I think that that was the 786 --
THE COURT: Ms. Morphew, I am going to tell you one more time. You cannot make a speech while you're asking questions. All right? You can ask her a question in response to her answer, but you can't make a speech about it.
A. He didn't clarify the big house.
THE COURT: Question?
BY MS. MORPHEW:
Q. So when you closed -- again, the question is: When you closed, Mr. Willis had stated that I was probably still in there. Wouldn't that indicate to you before you signed those papers that I was still in tenancy?
A. It was one more way I could see that you would try to stop us from closing. That's all it was to me; one more way.
Q. And you feel that because I was not in attendance that that was -- that I'm to blame?
A. You were not in attendance to what?

Page 47

Q. The closing.
A. No. I did not see that you belonged at my closing. You belong out my house, but not at my closing.
Q. Did you or Mr. Dudek or your representative contact me after it closed, or any time after it closed, to verify I was on the --
A. You would have to ask them that. I don't know.
Q. No. I meant, did you notify me?
A. I absolutely did not.
Q. Did you --
A. I'm not going to put myself in a position where you can try to pull -- hold something against me in court. I'm not going to do it. That's why I have an attorney.
Q. Do you know if your attorney contacted me?
A. I do not. You can ask him.
MS. MORPHEW: Do I need to have Mr. Smith?
THE COURT: Her answer to your question is that she doesn't know if Mr. Smith contacted you. However, in earlier comments she did state that she received an e-mail from

Page 48

Mr. Smith that was timed nine to ten minutes after he received information from Mr. Willis that they would close on June 2nd, POA.
THE WITNESS: I believe Ms. Morphew's question was after the closing.
THE COURT: So after the closing, you did not.
THE WITNESS: I did not.
THE COURT: You didn't, and you're not aware of Mr. Smith's notification?
THE WITNESS: Not to my knowledge.
THE COURT: Are you aware of the notice of the filing of the motion?
Were you aware that Mr. Wheeler or Mr. Smith was filing the notice of motion to hold her in contempt for failing to remove herself from the property?
THE WITNESS: Yes, Your Honor, I was.
THE COURT: So, would that not be your notice or your notification to Ms. Morphew, through your attorney, that she was continuing to stay in the house?
THE WITNESS: Yes. You can look at it that way.

Page 49

THE COURT: All right.
Next question, Ms. Morphew.
MS. MORPHEW: That's all I have.
MR. SMITH: I have just one more question, Your Honor.
THE COURT: Yes, sir.

EXAMINATION

BY MR. SMITH:

Q. Isn't it your understanding that Mr. Willis is, in fact, both Ms. Ferro and Ms. Morphew's agent?
A. It is my understanding.
MR. SMITH: I don't have any other questions, Your Honor.
MS. MORPHEW: Your Honor, may I ask you a question, please?
THE COURT: Is it a motion of some sort or what? I mean, I'm not sure -- I mean, it's improper to ask me a question during the proceedings.
Do you have a motion that you'd like to make?
MS. MORPHEW: I'm just very confused.

Page 50

THE COURT: All right. Well, at this time, I'm going to let Ms. Cross sit down.
I'd like to call Mr. Dudek, himself, to the stand.
Raise your right hand, sir. Do you solemnly swear or affirm to tell the truth today?
MR. DUDEK: Yes, sir.
THE COURT: You are under oath. Please have a seat.

EXAMINATION

BY MR. SMITH:

Q. I have a couple of questions regarding the Cady property.
A. Sure, sir.
Q. Ms. Cross indicated that y'all have an arrangement; she pays the mortgage, and you pay the utilities?
A. Yes, sir.
Q. Can you run down for me the cost of your utilities at the Cady Drive property?
A. Okay. Most all mine come as automatic drafts, so I don't monitor them that much. But the water is about $35 a month.
Q. Okay. Hold one. Water is 35.

Page 51

A. Sewer is about 25 -- excuse me. Strike that. Water is 35 a month. Sewer is about 45; they changed the rates on me a while back. The electric bill is auto draft. And that is one of those that they balance it over the year, so it's about between 200 and 250 a month.
Q. Would you agree to $225 a month?
A. Yes, sir.
Q. All right. $225 a month.
A. Cable bill is 144. Telephone bill is $30 a month.
Q. Is that a landline?
A. Yes, sir.
Q. $130 a month?
A. No. No. No. Internet and cable, the cable bill. The TV and internet combined, from Spectrum now, is about $144 a month for the internet, the TV and the cable -- the cable.
Q. Internet, cable 144.
A. Yes, sir.
Q. What about a telephone? Do you have a landline?
A. Yes, sir. About $30 a month.
Q. All right. Do you have any other recurring expenses for carrying the property?

Page 52

A. I have a cell phone bill.
Q. Well, that's not part of the property?
A. No.
MS. CROSS: ADT.
Q. Do you have a security --
A. Oh, ADT. It's about $30 a month, sir. And besides the grocery, yeah, that's it.
Q. The telephone bill and the ADT bill are not combined on the same --
A. No, sir. None of those are combined. No, sir, they're separate.
Q. Now, Mr. Dudek, can you put a value on the inability to possess the -- I'm looking for a value to compensate you for the inability to possess the Butternut Road property that you purchased from the Ferros.
A. You want a dollar value?
Q. I want a dollar value.
A. Explain to me. Like, an inconvenience fee or pain and suffering or --
Q. Well, how much -- if I were to compensate you for not being in possession of that property, how much should I compensate you on a per-day basis?
Aside from -- let me just put -- aside

Page 53

from the mortgage and interest that you are paying, aside from the -- you know, you're not having to pay utilities there; is that correct?

A. Correct.

Q. You are not paying any utilities, so we're not counting any of those, but taxes and insurance. So it's interest, taxes, and insurance that you've paid for, or are paying for, on Butternut.

A. Yes, sir.

Q. Aside from those items, is there a number, a value, a monetary statement, that you can make to me that would say, Judge Chellis, this will compensate me and Ms. Cross for failing to have possession of our property?

A. 200 a day.

Q. $200 a day.

A. And you said, like, not including all the expenses?

Q. That's right.

A. Okay.

THE COURT: All right.

Mr. Smith, do you have any questions?

MR. SMITH: I have none, Your

Page 54

Honor.

THE COURT: Ms. Morphew, do you have any questions?

MS. MORPHEW: I'd like to make a motion.

THE COURT: All right. Well, make a motion.

MS. MORPHEW: I'd like to make a motion to object to the attorney's fees, costs and things, because I'm under the impression that I was still a tenant. And I got that from both Rick Willis and the Ferros in an e-mail the day before.

Now, since I had no communications --

THE COURT: Ms. Morphew, hold on a second, ma'am. We have gone through two witnesses. You have yet to make your testimony. All right?

I'm going to rule that motion out of order. And if you want to speak to those issues when you testify, I will be happy to have you speak to those issues. But it's really an improper motion, because it's part of your responsive reply to Mr. -- a return to

Page 55

Mr. Smith's motion --

MS. MORPHEW: Yes, sir.

THE COURT: -- based on points that you listed earlier as to what your defenses were going to be. Okay?

MS. MORPHEW: Yes, sir.

THE COURT: All right.

Any questions for Mr. Dudek?

MS. MORPHEW: No, sir.

THE COURT: All right.

Thank you, Mr. Dudek.

THE WITNESS: Thank you, sir.

THE COURT: Mr. Smith, do you have anything further?

MR. SMITH: I have nothing further, Your Honor.

THE COURT: All right.

Ms. Morphew, I'm going to ask you to come up here, because you are now under a rule to show cause why you shouldn't be held in contempt of my court.

If I haven't already done so today, I'm going to place you under oath again. You really would be under oath from all previous hearings anyway.

Page 56

But raise your right hand for me.

Do you solemnly swear to tell the truth today?

MS. MORPHEW: Yes.

THE COURT: All right. Have a seat.

Ms. Morphew, the floor is yours. The seat in which you are sitting is yours. You can speak to me about why you should not be held in contempt of court.

EXAMINATION

MS. MORPHEW: Well, Your Honor, I really felt like I was a tenant as of the day before the closing, and I was going to be contacted and to -- that the closing took place, they were now my new landlords, and they would want me out or however that worked.

I received a notice from Ms. Ferro, and that same -- similar communication from Mr. Willis. When he asked me when I planned to vacate, I said as soon as possible and that I was waiting for notice -- I mean, either for the closing or the proof of financing that I had asked for; that's still been my contention.

And I really felt, honestly, that I -- that that order, because of number 13 in the

Page 57

May 17th order, addressed that. It was -- and because of today's hearing, I feel like that the order was a little bit ambiguous.

Whereas in one sentence it said everything else would stay the same, but in the very next paragraph it addressed it saying that that was a reasonable request and that the bench even suggested to give some sort of proof of financing, is what I asked, but the other four items were denied.

So it was --

THE COURT: So you're shifting now from the points that you gave me earlier to another defense.

MS. MORPHEW: No, sir.

THE COURT: What does this fall under that you are testifying to now?

MS. MORPHEW: My understanding of the court order of why I have not vacated. And there's two reasons: One is I was waiting to receive that, which I thought I was going to get the proof of financing. And the other, which I asked for from Mr. Smith when he told me to vacate per the court order, and my response was, then please provide the proof of financing per

Page 58

the court order, which he did not respond.

And then the very next day I get a thing from the Ferros and with Rick Willis saying that they would contact me about the rent. And that Mr. Willis was going to contact me about a walk-through prior to closing, which he never did contact me.

I was in contact with Ms. Ferro and Mr. Ferro the whole week in which they were relaying information to the agent.

THE COURT: Ms. Morphew, let's take it up one at a time.

You are raising paragraph 13 of my May 17th order.

MS. MORPHEW: Yes, sir.

THE COURT: I'm going to publish that paragraph for the record. Okay?

MS. MORPHEW: Yes, sir.

THE COURT: So we know exactly what we are talking about.

MS. MORPHEW: Yes, sir.

THE COURT: Paragraph 13, May 17th order. Specifically, Morphew requested proof of financing from Dudek/Cross before she would be required to move from the Ferros' property.

Page 59

At the hearing she demanded she receive five items: A good faith estimate, proof of financing, the HUD-1 closing statement, the Dudek/Cross loan application, and the contract.

At the Dudek/Cross motion hearing to set a closing schedule, proof of approved financing was a fair request, though she did not have any legal right to this under the terms of the Ferro-Dudek-Cross contract.

On April -- the April 3rd, 2017, order did specifically address granting a right to approve financing; although the Court suggested from the bench that some evidence of the Dudek/Cross's approved financing should be given to her.

Morphew's demand for four additional items -- matters to which she has no right -- 46 days after the April 3rd, 2017, order, when Dudek/Cross canceled a closing because they had agreed not to close within 45 days to give her ample time to relocate, now raise the inference that she is an obstructionist who seeks to derail the Ferro's real estate sale to Dudek/Cross.

She took the risk of moving into

Page 60

the property during pending litigation. She must now accept the risk that her contentions were misplaced.

Do you understand that now?

MS. MORPHEW: I understand that I was allowed to be given some sort of proof of financing.

THE COURT: No. I said in this paragraph 13 you had no legal right to. It was a reasonable request back in April, but in May -- but in May, after they had already scheduled a closing in which they then canceled because you threw your hands up and said, oh, I haven't had my notice, Mr. Smith advised his clients not to close on that date and reschedule it.

Now, when they told you they were ready to close and then you objected because you hadn't been given the full 45 days, but only, what, 44 days I think it was, they canceled the closing.

MS. MORPHEW: Two days.

THE COURT: No. 44 days was the May 2nd closing. They were scheduled to close, and you pitched a fit about that because you hadn't been given 45 days, and therefore, they

Page 61

canceled their closing to reschedule it.
I'm telling you in paragraph 13 that your actions, the way you have conducted yourself since the filing of the appeal to the Court's decision, your failure to get out of that property knowing full well the court of appeals has affirmed my earlier order that you had no right to this property, that the Dudek/Cross contract was enforceable, and yet today, June 12th, you are still occupying the property on Butternut Road; isn't that correct?
MS. MORPHEW: Your Honor, I did not contend that.
THE COURT: I'm asking you: Are you still in the property?
MS. MORPHEW: I'm still in the property, but I have not refused to get off.
Furthermore, I have to make an objection that the May 3rd was not canceled. I have proof in an e-mail where it was not canceled because of me. I did not ever say that I didn't get my 45 days and I'm raising my hands.
It was Ms. Ferro who said that the closing could not take place because the damages were not ruled on, which had everything to do

Page 62

with the closing papers and what they would be receiving back. It had nothing to do with me.
Furthermore, Mr. Smith testified at the hearing that he said the reason they couldn't close on May 3rd is because they had to get a new closing attorney because of a title search that came back.
So between those two, it had nothing to do with me. And I never raised my hands saying I wasn't going to get off or that I said -- or that it was canceled. There is no communication where it said that it was canceled. It was only the testimony of Mr. Smith that it was canceled because of me.
I have e-mails to prove all these items. It had nothing to do with me. It came from Ms. Ferro, who requested it to be rescheduled.
THE COURT: Do you have those e-mails with you?
MS. MORPHEW: Yes, sir. It's attached to the answer that I filed.
THE COURT: Okay. I will review that.
MS. MORPHEW: And also is the

Page 63

e-mail from Ms. Ferro saying that, as a renter, that the new purchasers will be getting in contact with me for the rent if it closes; plus me saying I will get out ASAP as soon as I know what's going on.
I will be honest; I'm very, very -- was very, very confused about which direction I'm supposed to take besides just getting out.
And I also -- Your Honor, I have probable cause to be questioning. I know that the Court ruled and the appellate court ruled that they had a valid, enforceable contract. But I have irrefutable proof from First Federal, and I have a complaint out there for the very fact from fraud.
THE COURT: All right. Ms. --
MS. MORPHEW: So I'm just saying that that is a very valid reason why I am concerned. And I want to follow the rules, and I want to make sure I don't lose any rights. So I'm --
THE COURT: Okay.
MS. MORPHEW: I thought I was -- first I couldn't get out; then I was a tenant; then if there was a closing; then there was no

Page 64

closing. It's very confusing. And I know that they want me out, but because I have claim to this property --
THE COURT: Ms. Morphew --
MS. MORPHEW: And I will get out. It's not a problem.
THE COURT: -- let me tell you something: You do not have a claim to this property.
By my order in June of 2014, the original order that was appealed, I specifically ruled that upon the closing of the real estate transaction between Morphew -- between Ferro, Dudek and Cross, your contract would be dissolved or canceled and that you no longer have a contract with the Ferros.
And that's part of my order -- if you want to go back and reread it -- but I specifically made that decision because I knew that if your contract was remain -- remained on the property, it would create a cloud to the title that the Dudeks and Crosses would acquire.
So I specifically made that finding in that order. I haven't read that order in almost three years, and I can specifically

Page 65

remember that point because I have -- when I practiced law, I had to deal with that kind of thing all the time.

You had a contract that would have been a lien against the property, a cloud against the property, because they had actual notice of it. And my order at that time was that upon the closing, immediately upon the closing when that transaction occurred, your contract was canceled, null and void.

End of story as to your interest in that property.

Now, Ms. Morphew, you have stated repeatedly today, and in earlier conversations we've had in this courtroom, that you would vacate the property immediately, or as soon as possible, when you were notified of the closing.

June the 2nd was ten days ago. Have you vacated the property?

MS. MORPHEW: No, sir.

THE COURT: All right. Give me some reason why you are still located in -- you're still occupying the property that belongs to Mr. Dudek and Ms. Cross?

MS. MORPHEW: I thought I was a

Page 66

tenant, and I received a contempt order. So before I do anything -- I don't want to lose any rights -- I wanted to have the hearing. And also, I really do believe that I have a lease still that overrides everything.

If they close on the property knowing I was still there, and my lease -- the sellers have not terminated my lease -- it does get transferred.

THE COURT: Well, here's the problem with your thinking, Ms. Morphew. You have been involved in ligation for over four years on this property.

MS. MORPHEW: Yes, sir.

THE COURT: You are well aware of the fact that I entered an order that directed the Ferro-Dudek-Cross contract to be specifically performed. You are well aware -- is that true?

MS. MORPHEW: Yes, sir.

THE COURT: And are you well aware that the court of appeals affirmed my decision?

MS. MORPHEW: Yes, sir.

THE COURT: All right. That affirmed decision came down on January 17th, or so, I think it was; is that correct?

Page 67

MS. MORPHEW: February 17th.

THE COURT: February 17th. You read that decision on or about that date; is that correct?

MS. MORPHEW: Yes, sir.

THE COURT: And did you also know that the -- that on that date, your decision -- my decision had been affirmed, that you were ordered that upon the closing of the property between Dudek and Cross and Ferro, you no longer have any rights.

Did you not understand that?

MS. MORPHEW: Yes, sir.

THE COURT: Are you telling me you didn't understand that?

MS. MORPHEW: No, I understood that.

THE COURT: Okay.

Anything else you want to add, Ms. Morphew, as to why I shouldn't hold you in contempt of my order? Specifically that April 3rd, 2017, paragraph number eight.

MS. MORPHEW: Well, the answer to that order, that hadn't been filed yet, was filed after the order was filed. And we had a 59(e)

Page 68

motion. Yes, I understand that.

But I have been acting under the whole thing that I -- for my contention that I have been asking for proof of financing for the specific performance.

THE COURT: And I dispelled --

MS. MORPHEW: Yes, sir.

THE COURT: I took care of that on the April 17th -- the March 17th -- excuse me -- the May 17th --

MS. MORPHEW: But you agreed for it --

THE COURT: Hold on a second, please.

MS. MORPHEW: I'm sorry. Yes, sir.

THE COURT: Strike March and April, I meant May 17th.

All right. Now, you knew that I had told you you had no legal right to that in the May 17th order. And I also -- you understood in the May 17th order that I said that none of the provisions of the April 3rd order are amended, except as specifically set forth in this order; correct? Do you understand that?

That's what that order says,

Page 69

doesn't it?
MS. MORPHEW: I still think that number 13 gave me that right to have that.
THE COURT: Well --
MS. MORPHEW: I really honestly do. I don't understand why it was in there if there was --
THE COURT: Because I wanted to make a point, Ms. Morphew, that -- this is the point of setting out that paragraph: Morphew's demand for four additional items -- which were matters to which she has no right -- 46 days after the April 3rd, 2017, order, when Dudek/Cross canceled their closing because they had not agreed to close within -- because they had agreed not to close within 45 days to give her ample time to relocate.
Ample time to relocate. 45 days from the April 3rd order. In that order you were ordered to leave the property as soon as they closed. So you should have had that in your mind all along to get out of there.
And then I made -- so I went through all of this because I wanted you to know that I think you are an obstructionist. And your

Page 70

actions speak a lot louder than your words. Because I think all along you have planned, you have plotted, you have taken every effort that you can, to deny Ms. Cross and Mr. Dudek the right to occupy a property that they now own.
And the finding that I made in paragraph 13 is just that: that you are an obstructionist. And you are seeking, in my opinion, my findings -- I have the right to make the findings of fact; that's my duty here -- based on your actions, I have found that your actions indicate that you have sought all along to derail the Ferro and Dudek/Cross closing.
You took the risk of entering that property while there was a contract pending. You have -- and now you must bear that burden of having now -- now to understand that your -- your thinking, all of what was filled in your head by -- maybe Mr. Willis; I don't know who it was -- has been misplaced.
I can tell you this; let me make this clear: You had an outstanding -- one of the best lawyers in Charleston, South Carolina represent you in the trial of this case. He could not have done a better job for you;

Page 71

however, the facts of this case simply did not support your position.
Now, when a lawyer -- and, you know, I practiced law for 36, 37 years before I took the bench. When a lawyer gets an order that he has been -- that his request -- that he has failed in his attempt for his client, I am sure that he had a long conversation with you.
That the -- the words and comments of which I don't know specifically what they were, but I am fairly certain that he would have said, you have a right to appeal this decision. And if you want me to appeal it, it's going to cost X number of dollars for me to take on the appeal. It's going to cost money to do that.
I feel fairly certain that he would have said, this is a pretty well-drafted order, it's going to be very difficult to overturn because most of the decision is based on the judge's discretion.
And for that reason, or whatever reason, you -- he filed the notice of intent to appeal for you. But for some reason, after the filing of that notice, you and he decided to part ways and you decided you were going to represent

Page 72

yourself in the appeal.
So now what's happened, Ms. Morphew, is you are so subjectively invested in this case, you cannot see the forest for the trees. And I am so -- I am so beside -- I mean, I am really at a point where I cannot believe you have taken this case to this extreme.
I told you -- I told you from the bench on the 59(e) motion hearing, I told you that day, you need to vacate this property now. I told you that. And yet June 2nd, nearly six, seven weeks later -- four weeks later -- I guess it was about month ago -- you're still occupying the property. Why haven't you left?
It defies my understanding, honestly.
All right. Do you have any other comments, Ms. Morphew, as to why you should not be held in contempt of this Court?
MS. MORPHEW: Your Honor, I'm not an obstructionist. I did not prevent the closing. I promised even in a hearing I would not do it, and I did not do it. I really didn't.
And I'm not preventing anything. I'm just making sure that I don't waive rights

Page 73

and that I'm following what I was told and what I really thought that the order said.

THE COURT: Well, why haven't you followed my instructions, the legal --

MS. MORPHEW: Because I really thought that your order said that I deserved a right to number one. All four, no; but one of them I did. Honestly.

And I could bring in witnesses that I said, no, I'm allowed to get this. I really honestly did.

And then I have a lease, and I really thought -- because there is -- Mr. Willis was no longer my agent after the closing, and the Ferros were no longer my tenants [sic]. So I wasn't totally expecting them, but I was expecting the defendants to contact me.

And not in a contempt order, just in a normal thing. And I really honestly said that I will vacate the premises. But communication was very important to me.

THE COURT: June the 2nd was ten days ago. Why haven't you vacated the property?

MS. MORPHEW: Because I got a motion for contempt, and I don't want to do

Page 74

anything that would waive my right. If I move right now, it could just -- I don't know all the rules. I am pro se, and I have been working very hard to try to understand it.

But in these hearings, I want to know -- that I really think that I had a right. And I don't want to be held in contempt. And I wanted to say what I had to say and what I really honestly understand it to be.

I am not saying no. I was never asked by them, or never communicated with, never contacted, never saying, here's the lease, here's not the lease, here's -- nothing, except for a contempt order.

THE COURT: All right.

MS. MORPHEW: So I don't know how it works.

THE COURT: Ms. Morphew, let me make it specifically clear to you right now.

MS. MORPHEW: Yes, sir.

THE COURT: I do not find any of that testimony credible.

MS. MORPHEW: What is that, Your Honor?

THE COURT: Because I don't believe

Page 75

you.

MS. MORPHEW: Your Honor, I took an oath, and I actually --

THE COURT: I don't believe what you stated. Do you understand that?

MS. MORPHEW: Is it because I'm pro se?

THE COURT: No. No. I am -- I do not believe that you did not know you had to leave the property on the date of closing. And I am certain, I am positive, that I told you at the last hearing on the Rule 59(e) motion, I told you to vacate that property now.

MS. MORPHEW: And I thought the sellers and the agents and all of them, and the defendants, Dudek and Cross --

THE COURT: Ms. Morphew, do you understand that I control this courtroom?

MS. MORPHEW: Yes, sir. But they didn't --

THE COURT: Do you understand that what I say has more authority over what you say or what Mr. Smith says?

MS. MORPHEW: I really thought they agreed on something outside the court.

Page 76

THE COURT: I don't know about that. I'm telling you --

MS. MORPHEW: Well, I have got e-mails. And she is pro se in this. And always they received that notice. I don't understand why I would think anything different.

THE COURT: Well, that's because you don't want to hear it.

MS. MORPHEW: No, Your Honor. It's confusing. It's a cross between law and what I'm supposed to do, and what is happening with a pro se party and another party who is represented.

THE COURT: Okay. Well --

MS. MORPHEW: I had no communication. I was not involved in any e-mails except for like three or four. That was it. And it was, hey, there's closing, and this is two days before. And I'm like, well.

I got an e-mail on the 24th from Mr. Smith. I was notified -- not notified, but I was copied -- where it said that they're still trying to schedule a closing, but they do not know when it will be.

So it's still -- and it was very

Page 77

important to me to have the closing.
THE COURT: Do you have those e-mails?
MS. MORPHEW: It costs a lot to move out with what I've got.
THE COURT: Do you have --
MS. MORPHEW: And it was -- for me to know that a closing -- and even the day before, if a closing takes place.
THE COURT: Okay. Ms. Morphew, do you have any of those e-mails that you want to submit into evidence before I go on?
MS. MORPHEW: Actually, they're on the answer.
THE COURT: They're on the answer?
MS. MORPHEW: Yes, sir.
THE COURT: I don't have those e-mails to be on the answer. They didn't occur until June -- at the earliest, June the 1st or May 31st.
MR. SMITH: She is talking about the answer to the motion.
THE COURT: I understand that. But, I mean, she is saying she didn't get notice of the closing until two days before, which was

Page 78

your e-mail, Mr. Smith, that you sent her within nine to ten minutes of having Mr. Willis give you a cryptic message stating POA -- which most lawyers could understand what that stands for -- it's certainly not communicative, and it speaks wildly of the bad faith -- in my opinion, the bad faith of the buyer -- of the sellers, in this case, and Ms. Morphew, who happen to champion the same cause.
And the court of appeals even actually quoted that language from the -- they didn't quote it, but they made that part of their findings in the opinion. That they acknowledged that Ferros and Crosses -- Ferros and Morphew were championing the same cause.
I can tell you why. I know exactly why that happened. Because you had one real estate agent who was going to recoup about 10- to 12,000 more in commissions if you purchased the property rather than if the Cross/Dudeks did.
I did that calculation. I didn't make it a finding of fact in my order because there was no testimony to that effect. But as soon as I heard that Mr. Willis was the same agent for you and the same agent for

Page 79

Mr. and Ms. Ferro, you can do the calculations, and you can see exactly why Mr. Willis was advising you to go forward, or whatever he was trying to tell you to do, and it was all to better his -- in my opinion, to better his income.
You have been caught in a trap. And the trap has got you now in serious trouble.
MS. MORPHEW: Well, Mr. Smith stated previously that there was an e-mail where -- I guess I don't know about this e-mail -- where it quote me -- correct me if I'm wrong, Mr. Smith -- but there's an e-mail where Rick Willis said not to speak to the parties directly.
So -- and he's -- and until the closing, I guess he was representing me. But I'm pro se in this.
So this is where the balance between, as Your Honor said, being a dual agent and me being pro se, that I specifically requested I be copied on all e-mails, even a couple weeks before, because I needed to know where everything was and to make sure that I was being communicated with and understood where

Page 80

everything stood.
But if there was e-mails saying that they weren't to communicate with me directly and only through the agents, I don't understand how I can be found at fault for thinking one thing. It's like -- and not knowing anything else but what I'm getting in e-mails.
I mean, not once was I -- besides Mr. Willis making a statement, and the Ferros making their statements, and then I get a contempt charge, I don't -- what happened between them and who signed what and how the closing went down, I have no idea. I still don't have any idea.
I have not had any communications except for Mr. Willis, an offhand thing, because he's no longer my agent. But I don't -- how am I expected to understand and to -- when I'm being pulled in two different directions and not being communicated with directly.
I mean, I understand your order, Your Honor.
THE COURT: Ms. Morphew, there's a very simple answer to that: You are pro se.
MS. MORPHEW: I asked for

Page 81

information. I asked to be copied.
THE COURT: Ms. Morphew, you know, you are pro se. So whatever you've got is what you got because you're pro se.
MS. MORPHEW: Am I discriminated against because I'm pro se?
THE COURT: No, ma'am. It's just you don't have -- you didn't have a representative, a legal representative. You had a real estate agent. That has nothing to do with, and has no authority in this courtroom. None.
MS. MORPHEW: But Mr. Smith would have known that, correct? Then why would he agree to not communicating with me directly?
THE COURT: He did communicate to you. You --
MS. MORPHEW: Two days before saying that he -- because he was required to give me notice, because the Ferros told him in an e-mail on Monday that he needed to provide notice because they -- they didn't even have notice. She didn't even have notice. She said she just got it.
THE COURT: Ms. Morphew, I'm going

Page 82

to repeat it one more time.
MS. MORPHEW: Okay.
THE COURT: At the hearing that was conducted that resulted in the order dated May 17th, I think that hearing was about seven days before -- let's see what time here. The motion hearing -- that hearing was scheduled for -- I think it was May the 7th or May the 6th. Let's say May the 6th.
Do you have any other date? Or was it May the 7th; do you remember?
MS. MORPHEW: When it was scheduled?
THE COURT: When it was heard.
MS. MORPHEW: There was a March 27th, and then the 59(e) motion was on May 12th.
THE COURT: Okay. On May the 12th.
On May the 12th, one more time, I told you to vacate the property.
Do you recall that?
MS. MORPHEW: Yes, sir.
THE COURT: Okay.
MS. MORPHEW: And I feel very confused with the order.

Page 83

THE COURT: Ms. Morphew --
MS. MORPHEW: I really felt like it said something different.
THE COURT: -- please don't give me a speech. You answered my question; I don't need any more. You answered my question.
Ms. Morphew, you had notified my office that you were scheduled to be on vacation this weak; is that correct?
MS. MORPHEW: Yes, sir.
THE COURT: And where was your scheduled vacation to take place?
MS. MORPHEW: North Carolina.
THE COURT: Where in North Carolina?
MS. MORPHEW: Jacksonville, North Carolina.
THE COURT: What is in Jacksonville, North Carolina?
MS. MORPHEW: My mother. She has terminal cancer.
THE COURT: All right. Well --
MS. MORPHEW: But I'm available if you need me.
THE COURT: Yeah. Because what I'm

Page 84

going to do is I'm going to -- I am going to find you in contempt of court. I am going to order that you vacate this property by 9:00 AM on June the 16th. That is Friday morning, June the 16th, 9:00 AM.
I am going to order the -- I'm going to order that you pay a compensatory fine to Ms. Cross and Mr. Dudek which consists of a loss of their rights to possess the property from June the 2nd until June the 16th at the rate of $200 a day, plus you've got to pay $509 for the cost of their utilities for the month of June on the Cady Drive property.
Plus I'm going to charge you with the total amount of interest that they will have paid from June the 2nd to June the 16th, interest on the current balance of their loan, which is 230.
Would you calculate this for me, please?
$242,000 at the rate of 4.25 percent on a 360-day per month -- 360-day year. And multiply that per diem times 12 -- 14. Per diem times 14, please.
THE CLERK: 394.52.

Page 85

THE COURT: $394.52?
THE CLERK: Yes, sir. $28.18 per day.
THE COURT: $28.18 per day. The loss of occupancy for 14 days is $2,800.
Mr. Smith is entitled to recovery of attorney's fees pursuant to the doctrine of indemnification, and I need to look at his affidavit. I don't think I have it.
MR. SMITH: Your Honor, on the attorney's fees, the court reporter should be reduced from 1,200 to 900. One of the appearances was three just for the first one. The bills were sent to the Dudeks. So this is the third, there should be three.
THE COURT: So I have attorney's fees -- let's do the costs first. Costs in the amount of $1,340?
MR. SMITH: That's correct, Your Honor. That should reduced by $300.
THE COURT: Okay. So it's $1,040?
MR. SMITH: That's correct.
THE COURT: Costs. Attorney's fees, 1,925.
Mr. Smith, do those attorney's fees include today's hearing?
MR. SMITH: That's correct, Your Honor.
THE COURT: Okay. By my calculations, Ms. Morphew, I'm going to order you in contempt, civil contempt, with a compensatory fine to be paid to Ms. Dudek -- excuse me -- Ms. Cross and Mr. Dudek. Are y'all married? Is it Dudek and Dudek now?
It's Cross and Dudek, right? Okay.
To Dudek and Cross, a compensatory fine of $6,583.52. I'm also going to confine you to the Dorchester County jail for a period of 30 days beginning June the 15th. You will report to the jail if you have not vacated the property by June the 14th.
MS. MORPHEW: I have a sick mother and a daughter that I'm the sole --
THE COURT: Ms. Morphew, did you hear what I said? I'm confining you to jail for a period of 30 days beginning June the 15th.
You can purge your jail sentence by being out of the property on or before June 14th at 9:00 AM. Which means this: That if you leave the property and get all of your possessions out,

Page 86

Page 87

and you get it all out of there, every bit of it, and yourself out of that property on or before June 14th at 9:00 AM in the morning, you will have purged your confinement.
That means that you hold the keys to your confinement.
MS. MORPHEW: I understand.
THE COURT: Do you understand that?
MS. MORPHEW: I do understand that.
THE COURT: All right. If you fail to vacate that property, you are to report to the Dorchester County jail at -- let's do it this way: I'm going to have you report to the Dorchester County jail on June the 14th at 12:00 noon.
If you fail to report, I will have the sheriff's office from Dorchester County find you and put you in that jail for a period of 30 days.
Now, Ms. Morphew, you'll have 10 days -- no. Let's do it this way: You'll have until June the 14th at 9:00 AM to pay the civil fine, the compensatory fine that I have awarded to Ms. Cross and Mr. Dudek.
So that we are clear, if the fine is not paid and you are not vacated from the property by June the 14th at 9:00 AM, you will report to the jail because you have failed to purge your contempt.
Do you understand that? At 12:00 on June the 14th, you better be at the Dorchester County jailhouse or else -- on Deming Way or else I will have the sheriff come after you. I will issue a bench warrant for your arrest.
MS. MORPHEW: Vacating the premises isn't a problem, but I don't have the money to pay and vacate for -- I put --
THE COURT: You better find it. You said you had enough money to buy this house.
MS. MORPHEW: That's making a payment every month.
THE COURT: No, ma'am.
MS. MORPHEW: I don't have $6,000 --
THE COURT: You had a down payment that you had to make that was somewhere in the 10 to 20 percent range of close to 290 -- almost $300,000. So if you had that down payment to close on this property, you should have six-thousand-some-odd dollars left that I fined

Page 88

Page 89

you. Or else your credibility is even diminishing more.

MS. MORPHEW: I'm sorry, Your Honor. My down payment was only like $5,000.

THE COURT: Did you have any money in escrow?

MS. MORPHEW: No, sir.

THE COURT: You didn't pay any escrow?

MS. MORPHEW: I did, but --

THE COURT: Mr. Willis has it?

MS. MORPHEW: Not any longer.

THE COURT: He gave it back to you?

MS. MORPHEW: To the Ferros.

THE COURT: Why did he give it to the Ferros?

MS. MORPHEW: For their loss.

THE COURT: Well, I don't know why he would do that. But there again, you failed to have representation, so you're paying for your naivete, if you want to call it that, at best, or your ignorance at worst.

Okay. Mr. Smith, do you have any questions?

MR. SMITH: None, Your Honor.

Page 90

THE COURT: All right.

Ms. Morphew, do you have any questions?

MS. MORPHEW: No, Your Honor.

THE COURT: I will do my best to have a written order by the end of the week. I have got a full day today. I'm not sure what we have planned for tomorrow, but I should have a completed order of it.

You have four days to get out of that property. If you don't leave, you will report to the Dorchester County sheriff at 12:00 on June the 14th, and you have four days to pay the $6,583.52. And if you don't pay that --

THE CLERK: You said June 14th. I think it's June 16th.

THE COURT: I mean the 16th. I'm sorry. I apologize. June 16th.

And if you haven't been able to take care of that, I will have the sheriff's department -- if you don't voluntarily appear, I will have the sheriff's department pick you up under a bench warrant that I will issue on that date.

All right. Do you have anything else, Ms. Morphew?

Page 91

MS. MORPHEW: No, sir.

MR. SMITH: Your Honor, if I could. I just want to clarify the times, because we switched from the 16th to the 14th.

THE COURT: Yes.

MR. SMITH: She is to vacate by June the 16th at 9:00 AM.

THE COURT: June the 16th at 9:00 AM.

MR. SMITH: If she fails to pay both the civil contempt amount of $6,583.52 and vacate the property by June 16th, at 12:00, she is to report to Dorchester County.

THE COURT: Jail, right.

MR. SMITH: I just wanted to make sure, because we had switched to the 14th.

THE COURT: That's right. When I said the 14th, I meant the 16th. I had four days in my head.

Let me make another point clear. That if she has failed to vacate on or before June the 16th at 9:00 AM, I will direct the sheriff of Dorchester County to forcibly eject her from the property, so that we will have her ejected and all of her property placed on the

Page 92

side of the road so that the Crosses and the Dudeks can make their -- can take possession of the property on that date.

I do have one question that I'm going to answer, Mr. Smith. And my order, Ms. Morphew, may vary slightly from what I just directed verbally. I need to double-check the rules on the civil contempt as to whether or not I can order the purging of the contempt by payment of a civil fine.

I don't think I can give you choice, though. You have to pay the civil fine irrespective. If you don't pay the civil fine and elect to do the 30 days' time in the Dorchester County jail, I will -- I'm not sure if I can make you do that in lieu of not paying the fine.

In other words, you are going to still have that fine pending when you leave. If you choose jail, you are still going to have pay the fine. You are not going to be -- that fine is going to stay in place.

But if we have to forcibly eject you from the property, you will go into jail for a period of 30 days. Your furniture, fix --

Page 93

furnishings, everything will be removed from that property and placed on the side of the road by June -- sometime on June the 14th.

MR. SMITH: June 16th.

THE COURT: June 16th. Excuse me. I apologize. June 16th.

So you can't purge the fine by serving the jail sentence. The jail sentence will be for purposes of my -- the inherent power that I have and must exercise when parties fail to obey the Court's orders. It's imperative that our -- that parties to lawsuits abide by orders of the Court.

And the failure to do so affects the administration of justice in ways that you cannot imagine right now, Ms. Morphew. But if I make an order and a party doesn't abide by it, then what's the next party going to do if not abide by the next order?

So it has to be a means by which we, as judges, can enforce rules that we make, or orders that we enter, and your failures in this case to abide by what I have directed you to do on a number of occasions is mystifying. But nonetheless, I will rectify it through my

Page 94

contempt order.

That concludes the hearing. Thank you very much. I appreciate your attendance.

Ms. Morphew, good luck to you. I hope we don't have to send out a bench warrant for your arrest.

MR. SMITH: Thank you, Your Honor.

(The hearing was concluded at 10:53 AM.)

Page 95

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, Anne Bouley Meyer, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the witnesses in the foregoing hearing were by The Court duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said hearing was taken at the time and location therein stated; that the testimony of the witnesses and all objections made at the time of the hearing were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; and that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the hearing.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on 26th day of November, 2017 at Charleston, Charleston County, South Carolina.

Anne Bouley Meyer
NCRA
REGISTERED PROFESSIONAL REPORTER
My Commission expires
February 5, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

Stephen Dudek, Doreen Cross, Respondents,

v.

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

And

Molly M. Morphew, Appellant,

v.

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

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Amended Record on Appeal contains all materials proposed to be included by any of the parties and not any other materials, or matter that was not presented to the lower court or any such matter not relevant to the Appeal.

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
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July 25, 2018

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Court of Common Pleas

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And

Molly M. Morphew, — Appellant,

v.

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

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on July 30, 2018, served counsel below with a copy of the Amended Record on Appeal, pursuant Rule 209 and 210, for its review and reference in preparation of its final brief by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

Steven L. Smith, Esquire
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Attorney for Respondents

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SC Court of Appeals

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786 E. Butternut Rd.
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(843) 514-7299

July 30, 2018

Cc: Thomas and Lorraine Ferro, pro se (who are not parties to this appeal)