

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Molly Morphew,

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, David Collins,
Allison Williams, First Federal, Michael
Scarafile, Susan Nicholson, Carolina One
Real Estate, Carrie Boyer, Woody Law Firm,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 2016-CP-18-1706

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
STEPHEN DUDEK AND DOREEN
CROSS' MOTION TO DISMISS

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SC Court of Appeals

FILED-RECORDED
2017 JAN 31 AM 8:58
SHERRYL SANDERS
CLERK OF COURT
DORCHESTER COUNTY

Presiding Judge:
Plaintiff's counsel:
Defendants' counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Molly Morphew, *Pro Se*
Steven L. Smith, Esq.
November 7, 2016
Karen Andersen

This matter came before the Court on November 7, 2016 for a hearing on Defendants Stephen Dudek and Doreen Cross' Motion to Dismiss, filed September 21, 2016. Present at the hearing were Steven L. Smith, attorney for Defendants Stephen Dudek and Doreen Cross, and Molly Morphew¹, appearing *pro se*. For the reasons stated below, the Dudeks' Motion is hereby granted in part and denied in part.

BRIEF FACTS AND PROCEDURAL HISTORY

The Plaintiff, Molly Morphew (hereinafter referred to as "Plaintiff" or "Morphew"), proceeding *pro se*, filed the above-captioned action against, *inter alia*, the Dudeks on August 24, 2016. The Plaintiff's sixty-four (64) page Complaint enumerates eighteen (18) causes of action.

¹ Ms. Morphew was accompanied by a next of friend that assisted her during the hearing but did not speak on the record.

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[Signature]

As to the Dudeks, the Complaint alleges the following eleven (11) causes of action: As a First Cause of Action, "Fraud, Extrinsic Fraud – Fraud on the Court;" as a Second Cause of Action, "Perjury;" as a Seventh Cause of Action, "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud;" as an Eighth Cause of Action, "Slander of Title;" as a Ninth Cause of Action, "Breach of Contract Accompanied by Fraudulent Act;" as a Twelfth Cause of Action, "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive;" as a Thirteenth Cause of Action, "Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal;" as a Fourteenth Cause of Action, "Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d);" as 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);" as a Seventeenth Cause of Action, "Intentional Infliction of Emotional Distress; and as an Eighteenth Cause of Action, "Tortious Interference with Existing Contractual Relations."

The Complaint correctly asserts that the Plaintiff and the Dudeks are currently parties to several other cases that were consolidated and subsequently affirmed by the Court of Appeals on January 11, 2017. (Compl., ¶ 2). The Prior Civil Actions arose out of two separate real estate contracts between the Dudeks and a seller and between Morphew and the same seller. Both the Dudeks and Morphew filed suit under their respective contracts, and their cases were consolidated. Ultimately, Judge James E. Chellis, the Master in Equity, for Dorchester County ruled in favor of the Dudeks, causing both Morphew and the sellers to appeal. On appeal, the Court of Appeals affirmed the decision of the Master in Equity by Order dated, January 11, 2017.² In the Prior Civil Actions, the Plaintiff asserted the following cause of action:

² The underlying suit bears Case Nos. 2013-CP-18-00183 and 2013-CP-18-00074. On September 18, 2013, the above cases were consolidated under Case No. 2013-CP-18-00183. Thereafter, on December 30, 2013, by Consent

“Declaratory Judgment,” “Specific Performance,” “Breach of Contract” and “Tortious Interference with Existing Contractual Relations.”

This instant action, arises out of the same real estate contracts and the actions of various parties, including the Dudeks, during the course of the Prior Civil Actions. Plaintiff's Complaint contains forty-nine (49) factual allegations, some with subparts. (Compl. ¶¶ 25-73). The factual allegations begin with activity occurring on October 24, 2012, when the Dudeks entered into the sales contract with the sellers. (See Compl. ¶ 26). Plaintiff then gives a date-by-date recount of what occurred leading up to the Prior Civil Actions. (Compl. ¶¶ 27-49). Plaintiff further outlines what occurred during the course of the Prior Civil Actions. (Compl. ¶¶ 28-73). The final factual allegation is a clear reference to how this case concerns Plaintiff's issues with the Prior Civil Actions. (See Compl. ¶ 73) (stating, “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.”). The Complaint, as to the Dudeks, does not make a factual allegation that does not involve either the facts leading up to the Prior Civil Actions or the procedural history of the Prior Civil Actions.

LAW AND ANALYSIS

A. Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action, Declaratory Judgment That No Contract Exists, and Eighteenth Cause of Action, Tortious Interference with Existing Contractual Relations, is heard and granted.

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), SCRPC. In *Capital City*

Order, the matter was referred to the Master in Equity. The Master in Equity ruled in favor of Defendants Dudek and Cross, and Plaintiff and the Sellers appealed the decision. (Complaint, ¶¶ 64-65). The South Carolina Court of Appeals affirmed the decision in opinion number, 2017-UP-019, dated January 11, 2016.

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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), SCRPC. 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).

382 S.C. 92, 105-106, 674 S.E.2d 524, 531-532.

Arguably, Plaintiff's entire Complaint should be dismissed pursuant to Rule 12(b)(8). As stated above, all of her factual allegations in this action concern what led up to the Prior Civil Actions and what occurred during the Prior Civil Actions. (Compl. ¶¶ 25-73). However, given the Court of Appeals narrow interpretation in *Capital City*, this Court limits dismissal to Plaintiff's Thirteenth Cause of Action, for "Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal," and Eighteenth Cause of Action, for "Tortious Interference with Existing Contractual Relations."

In comparing these two claims with Plaintiff's pleadings in the Prior Civil Actions, it is evident that she previously and identically asserted against the Dudeks in the Prior Civil Actions these two claims based on the same or similar facts. For these reasons, Defendants' Motion to Dismiss Plaintiff's Thirteenth and Eighteenth Causes of Action is granted.

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B. Defendants' Motion to Dismiss Plaintiff's Ninth Cause of Action, Breach of Contract Accompanied by Fraudulent Act, is heard and granted.

Plaintiff alleges in her Ninth Cause of Action, for "Breach of Contract Accompanied by Fraudulent Act," that "Defendants Dudek and Cross failed or intentionally failed to perform the court Order of November 15th, 2014 for specific performance." (Compl. p. 40). She then cites to South Carolina's Appellate Court Rules, stating, "Per SC Rule 241(b)(4), orders, judgments, decree or decision[s] 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."

While this Court agrees, without deciding the merits of this cause of action, that matters not on appeal can be heard, Plaintiff has brought the matter in a new action, as opposed to bringing it in the Prior Civil Actions. Further, this Court lacks jurisdiction to hear this matter because the underlying civil suit was referred to the Master in Equity by Consent Order, filed December 30, 2013. Because these claims were adjudicated by the Master in Equity and affirmed by the Court of Appeals, by Order dated January 11, 2017, this Court lacks jurisdiction over any claim that was encompassed in the Master in Equity's Order. S.C. Code Ann. § 14-11-85 states that "[w]hen some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action, and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules." S.C. Code Ann. § 14-11-85. Accordingly this Court lacks jurisdiction to hear any claim that was already litigated and decided by the Master in Equity. As such, Defendants' Motion to Dismiss Plaintiff's Ninth Cause of Action is granted.

C. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action – Perjury and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct, Rule 1.4(a)(4) and Rules 3.4(a)(d) is heard and granted.

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Plaintiff's Second Cause of Action is a claim of perjury against all Defendants. South Carolina Code Ann. § 16-9-10 provides, in relevant part,

(A)(1) It is unlawful to give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

(2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Perjury is a criminal felony punishable with a fine and up to five years imprisonment.

See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 462, 574 S.E.2d 739 (2002). Accordingly, perjury is a criminal charge – not a civil cause of action.

Obstruction of justice is a common law criminal offense. Specifically, “it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice.” State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). It is a criminal charge and not a basis for civil liability.

As an initial matter, Plaintiff's claim fails because there is no independent civil cause of action for perjury. Moreover, this purported perjury claim contains no specific allegations directed at Defendants. Plaintiff's obstruction of justice claim likewise fails because it is not a civil cause of action. Therefore, Plaintiff's claims for perjury and obstruction of justice are dismissed.

Further, the claims by Plaintiff of Defendants' violation of the South Carolina Rules of Professional Conduct are also without merit. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules “are not designed to be a basis

for civil liability.” S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) (“A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation”). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff’s claims grounded on such violations are dismissed.

D. Defendants' Motion to Dismiss Plaintiff's Eighth Cause of Action, Slander of Title, is heard and granted.

Plaintiff's Eighth Cause of Action, for “Slander of Title,” alleges damages as a result of the Dudeks filing a Lis Pendens in the Prior Civil Actions, followed by their filing of a suit to enforce their contract for the real estate in question. (Compl. ¶¶ 213-217).

“[T]o maintain a claim for slander of title, the plaintiff must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties.” *Huff v. Jennings*, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct.App.1995).

At no point in her Complaint does Plaintiff claim that she holds title to the property alleged to have been slandered. (Compl. ¶¶ 213-217). In fact, who should hold title, the Dudeks or Morpew, was precisely the purpose of the Prior Civil Actions. It must be noted that the Plaintiff herself filed a Lis Pendens and suit over the same property. As such, Plaintiff is claiming that the Dudeks slandered a title by virtue of the exact same actions that she also took. Plaintiff does not and has never held title to the property that she alleges has been slandered. Nor does she allege that she holds or has held this title. Under no set of facts could she meet the

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fourth element necessary to prevail under a slander of title claim. Therefore, Defendants' Motion to Dismiss Plaintiff's Eighth Cause of Action is granted.

E. Defendants' Motion to Dismiss Plaintiff's Fourteenth Cause of Action Causes of Action - Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d) is heard and granted.

These two causes of action, for "Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d)," is brought under the South Carolina Rules of Professional Conduct. "A review of the Scope of Rule 407, SCACR [i.e., the Rules of Professional Conduct] clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation." *Spence v. Wingate*, 395 S.C. 148, 716 S.E.2d 920 (2011). Plaintiff has unequivocally asserted causes of action under the Rules of Professional Conduct. As such, her Fourteenth Cause of Action is dismissed.

F. Defendants' Motion to Dismiss Plaintiff's First Cause of Action, Fraud, Extrinsic Fraud - Fraud on the Court, Seventh Cause of Action, Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud, and Twelfth Cause of Action, Fraud - Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive is heard and granted pursuant to 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.*

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Accordingly, the above Causes of Action are barred by the doctrine of *res judicata*. As previously stated, Plaintiff does not assert a factual allegation beyond what occurred leading up to or during the Prior Civil Actions. She had knowledge of these facts at all relevant times leading up to and during the Prior Civil Actions, thus her current claims involve "issues which might have been raised in the former suit." *Id.* As such, Defendants' Motion to Dismiss Plaintiff's First, Seventh, and Twelfth Causes of Action is granted.

With regards to Plaintiff's First Cause of Action, for "Fraud, Extrinsic Fraud – Fraud on the Court," Plaintiff has attempted to cast this claim and the underlying facts as "extrinsic fraud," because such a cause of action would not be barred by *res judicata*. Extrinsic fraud "induces a person not to present a case or deprives a person of the opportunity to be heard." *Chewning v. Ford Motor Company*, 354 S.C. 72, 81, 579 S.E.2d 605, 610 (citing *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). On the other hand, intrinsic fraud "is fraud which was presented and considered in the trial" and which "misleads a court in determining issues and induces the court to find for the party perpetrating the fraud." *Id.* (citing *Hagy v. Pruitt*, 339 S.C. 425, 529 S.E.2d 714 (2000)). "Extrinsic fraud, as opposed to intrinsic fraud, is often difficult, if not impossible to discover during the litigation. For example, concealing assets through an unknown third-party not subject to discovery is extrinsic fraud in that it constitutes conduct or activities outside of the court proceedings which deprive the other party of the opportunity to fully exhibit and try his case." *Ray v. Ray*, 374 S.C. 79, 647 S.E.2d 237 (2007). In looking at Plaintiff's factual allegations, this Court finds that Plaintiff has made a claim for intrinsic fraud, as opposed to extrinsic fraud. Accordingly, Plaintiff's First Cause of Action is also barred by *res judicata*.

G. Defendants' Motion to Dismiss Plaintiff's Seventeenth Cause of Action, Intentional Infliction of Emotional Distress, is heard and denied.

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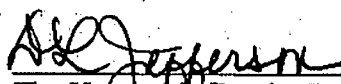
For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress would be improper. Accordingly, Defendants' Motion to Dismiss the Seventeenth Cause of Action of Plaintiff's Complaint is heard and respectfully denied.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED that, for the foregoing reasons, Defendants' Motion to Dismiss is Granted in part and Denied in part.

IT IS SO ORDERED.



The Honorable Deadra L. Jefferson
Presiding Judge
First Judicial Circuit

January 25, 2017
Charleston, South Carolina
at chambers

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP1801706

Molly M Morphey

2017 JAN 31 AM 8:58

FILED-RECORDED
 CHERYL GAVINS
 CLERK OF COURT
 DORCHESTER COUNTY

Stephen Dudek
 David Collins
 First Federal
 Susan Nicholson
 Carrie Boyer

Doreen Cross
 Allison Williams
 Michael Scarafie
 Carolina One Real Estate

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), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - 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: _____

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 DEC 12 2018
 SC Court of Appeals

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.

Deadra L. Jefferson, Circuit Court Judge

2128
 Judge Code

1/31/2017
 Date

11/31/17

For Clerk of Court Office Use Only

11/31/17

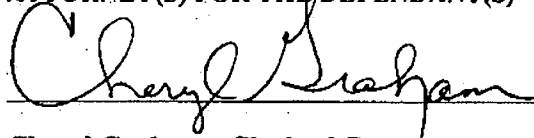
This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morpew 788 E. Butternut Road Summerville, SC 29483

Michael Christopher Scarafile 4024 Salt Pointe Parkway N. Charleston, SC 29405
Steven L. Smith/Zachary James Closser/Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill/Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer/William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter: Karen Andersen

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), SCRPC.

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.

