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 M. Ferro, Lorraine B. Ferro — Respondents,

And

Molly M. Morphew, — Appellant,

v.

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

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APPELLANT'S AMENDED FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

In this breach of contract action, Appellant Morphew appeals the master-in equity's decision to finalize or close this case granting Specific Performance (by demanding a closing to take place and Morphew to vacate on or before closing), [and especially] without considering newly discovered evidence of alleged fraud/fraud on the courts, or with knowledge of a pending fraud on [his] court case. Additionally, Morphew appeals the Contempt/Ejectment/Attorney Fees and Costs Order based on same and/or lack of jurisdiction and/or being void.

When presented with allegations of fraud on the court, the court has a duty to consider the matter in order to prevent an injustice or corruption of the judicial process, but in this instance failed to do so. First, the power to set aside a judgment exists in every court. (*WRIGHT ET AL.*, supra note 151). Second, in whichever court the fraud was committed, that court should consider the matter. (Id.) (Citing *Universal Oil Prods. Co. v. Root Refining Co.*, 328 U.S. 575

(1946) (other citations omitted) Third, while parties have the right to file a motion requesting the court to set aside a judgment procured by fraud, the court may also proceed on its own motion.(Id.) Indeed, one court stated that the facts that had come to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist."(*Root Refining Co. v. Universal Oil Prods. Co.*, 169 F.2d 514, 521–23 (3d Cir. 1948) (emphasis added). Fourth, unlike just about every other remedy or claim existing under the rules of civil procedure or common law, there is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration of the matter.(See *WRIGHT ET AL.*, supra note 151). The logic is clear: "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits."(*Lockwood v. Bowles*, 46 F.R.D. 625, 634 (D.D.C. 1969)

QUESTIONS ON APPEAL

1. Did the Judge abuse its discretion and/or abuse the process by demanding a closing and/or scheduling closing terms, and especially without first considering fraud on [his] court?
2. Did the Judge abuse its discretion, err and/or abuse the process by ignoring, or deeming "moot" or 'irrelevant', evidence and testimony that the prevailing party may have unlawfully procured a judgment for Specific Performance by fraud?
3. Did the Judge abuse its discretion or err in not allowing or demanding Defendants Dudek and Cross to provide Plaintiff Morphew documented proof of compliance and/or ability to perform per their Specific Performance complaint, and especially with knowledge Morphew has a pending complaint against Dudek/Cross for allegedly procuring their Specific Performance judgment by fraud and fraud on [his] court?

4. Did the Judge abuse its discretion and/or process or err in demanding the [then tenant] Morphew to vacate the property at issue, and be held in Contempt, especially without first considering Dudek/Cross' alleged fraud on [his] court?
5. Did the Judge abuse its discretion or process or err in ordering, sua sponte, Rule to Show Cause (Contempt), and/or issuing an Order for Contempt?

STATEMENTS OF THE CASE

On November 6, 2014, an Order was issued for Specific Performance in favor of Plaintiffs Stephen Dudek and Doreen Cross ("Dudek/Cross" or "Respondents"). Both Defendants/sellers Ferro and Plaintiff Morphew filed an appeal. On February 17, 2017, the Appellate court affirmed the lower court ruling and remitted back to the lower court. On March 27, 2014 a hearing was held for the Dudek/Cross Motion for Closing/Attorney Fees. At said hearing, the court gave leave for the opposing litigants to file an Answer to the Dudek/Cross Motion, but filed its Order before receiving the Answer. Order was filed April 3 and Answer was filed April 6, 2017, so the Judge scheduled a second hearing and sua sponte deemed the Answer to be a Rule 59(e) Motion. On May 12, said second hearing took place, fees were established and an Order was filed May 17, on which Morphew has appealed.

On May 30, Morphew received notice from Dudek/Cross attorney that a closing was scheduled for June 2, 2017. On June 1, Morphew received notice from the sellers that a closing was scheduled and if the closing took place the buyers will be in touch with me regarding the rent. On June4th, Morphew contacts sellers to ask for closing status. On June 5th, Morphew receives Dudek/Cross Motion for Contempt/Ejectment/Attorney Fees and costs. On June 7th, Morphew receives email from court a Rule to Show Cause hearing is scheduled for tomorrow. Morphew files answer and attends hearing, at which the Judge dissolves the Rule to Show Cause

due to the Motion being defective, specifically, did not contain the required Affidavit, and hearing was continued for the following week to hear the additional items on the Motion.

On June 12, the Ejectment hearing turned into a Contempt Hearing as the judge, sua sponte, Ordered a Rule to Show Cause for Contempt, and to be heard immediately. Even though Morphew had presented documentation in her defense, the judge found Morphew in contempt, and ordered her Ejectment within 3 days or she would be arrested. He also awarded attorney fees and costs and ordered those paid within 3 days too or else Morphew would be arrested. Order issued June 14, 207.

Since then, Morphew has appealed the Contempt/Ejectment/Attorney Fees and costs.

ARGUMENTS

1) ***Did the Judge abuse its discretion and/or abuse the process by demanding a closing and/or scheduling closing terms, and especially without first considering fraud on [his] court?***

In March, 2017, the Dudek/Cross Motion for Closing/Closing Schedule/Fees was heard. During this hearing, Cross verbally made the court aware of Appellant Morphew's separate action alleging fraud and/or fraud on the court against them.

Plaintiff confirmed this statement, stating her separate action in the civil court for fraud/fraud on the court addresses the unlawful acts or non-actions of Dudek and Cross, their attorney, sales agent, and loan officer, and their alleged fraud on his court during the litigation of the 2 complaints for Specific Performance. Morphew stated Dudek and Cross failed to comply with the requirements of Specific Performance as they were never "ready, able and willing to perform" under their contract, making them legally required to sign the termination request so Morphew could close, but instead 'frauded' the court in order to mislead the court into making

an unlawful ruling in their favor. Instead of considering the matter of fraud before finalizing the Order for closing, the judge chose to ignore the possibility of fraud on his court, and declared the alleged fraudulent facts to be irrelevant to his hearing.

Morphew claims the master-in-equity had a duty to consider the fraud[1] before demanding a closing on said property or attempting to 'close' this case. Because of this standard, Morphew appeals that the Closing Order of May 17, 2017, the Contempt/Ejectment/Attorney Fees and Costs Order of June 14, 2017, and the Order for Specific Performance of November 6, 2014, be reversed or set aside due to the judgment(s) being allegedly obtained by fraud on the court. **(R. pg. 43-54) (R. pg. 62-75) (R. pg. 1-20).**

2) ***Did the Judge abuse its discretion, err and/or abuse the process by ignoring, or deeming "moot" or 'irrelevant', evidence and testimony that the prevailing party may have unlawfully procured a judgment for Specific Performance by fraud?***

After the trial, but even before his decision, Defendants/Sellers Ferro filed a petition with the lower court presenting newly discovered evidence proving Respondents Dudek and Cross had filed a frivolous complaint for Specific Performance, while never meeting the strict and unique principles it's governed by; specifically, were denied mortgage credit because they ultimately applied for financing with an expired sales contract and never completed their mortgage application. Their petition clearly pointed out:

a. *The Defendants applied for financing AFTER their contract had already expired, therefore,*

[1] First, the power to set aside a judgment exists in every court. (WRIGHT ET AL., supra note 151). Second, in whichever court the fraud was committed, that court should consider the matter. (Id.) (citing Universal Oil Prods. Co. v. Root Refining Co., 328 U.S. 575 (1946) (other citations omitted). Third, while parties have the right to file a motion requesting the court to set aside a judgment procured by fraud, the court may also proceed on its own motion.(Id.) Indeed, one court stated that the facts that had come to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist."(Root Refining Co. v. Universal Oil Prods. Co., 169 F.2d 514, 521–23 (3d Cir. 1948) (emphasis added). Fourth, unlike just about every other remedy or claim existing under the rules of civil procedure or common law, there is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration of the matter.(See WRIGHT ET AL., supra note 151). The logic is clear: "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits."(Lockwood v. Bowles, 46 F.R.D. 625, 634 (D.D.C. 1969).

b. *at all times material, did not have a valid, enforceable sales contract, and,*

c. *were denied lending [due to an incomplete application for not providing a valid and enforceable sales contract],*

d. *which led to their lending file being closed, therefore;*

e. *proving Defendants were, at their own hand, at fault for their inexcusable failure to obtain financing (serious breach of contract, and*

f. *were ultimately responsible for their inexcusable failure to close escrow (serious breach of contract).*

The Ferros petitioned the court to consider this new evidence before making his ruling (**R. pg. 128-192**), and eventually, the evidence discovered led to a separate action for fraud/fraud on the court against Dudek/Cross, their agent, lending officer and attorney, claiming a frivolous lawsuit was filed, forgery committed, false statements and/or misrepresentations of material facts in filings, answers, at depositions, discovery, at trial, on appeal and at hearings, and conspiracy to commit fraud. Supporting documentation discovered includes but not limited to, expired and/or an illegible sales contract, incomplete application, mortgage credit denied, and failure to respond to adverse 10-day notice, all transpiring before Dudek/Cross filed their claim for Specific Performance.

The court was applied to, several more times, to review the unlawful actions of Dudek/Cross or to compel proof they lawfully met their Specific Performance requirements.

On June 14, 2016, and after several "unanswered" requests, Defendants Ferro filed a Motion to Compel Response from Respondents Dudek/Cross for proof of lending (**R. pg. 195-204**). In this Motion, said contentions to Defendants Dudek and Cross' ability to previously close or currently close were raised. Motion was refused. On August 9, 2016, the lower court

removed Motion to Compel from roster stating the "*court does not have jurisdiction*" [to compel proof of ability to close escrow]. **(R. pg. 25-26)**

On the March 27, 2017. hearing for Dudek/Cross' Motion for Closing, in defense of the court's inquiry as to their status to closing, Cross stated they weren't ready as Morphew's fraud complaint filed last year against them [and First Federal] has prevented them from securing financing on their 2012 sales contract. Adding their lender "refused to accept their application for financing on their October 24th, 2012 sales contract" until the court filed an Order for closing. Morphew raised the issue of fraud on its court, and that the Defendants were never ready, able and willing to close escrow, and were denied mortgage credit. The court declared that information as no bearing on this case.

On April 6, 2017, with leave of the court, Morphew and sellers submitted an answer to Defendants Motion for Closing/Fees, again bringing in detail evidence of unlawful behavior, and requested proof of financing per Specific performance complaint. **(R. pg. 341-362)**

On May 12, 2017, a hearing on Ferro/Morphew Answer [converted sua sponte by the court as a Motion 59(e)] was conducted and again Morphew requested proof of financing. Denied. **(R. pg. 426 line 23 through R. pg. 428 line 11)**

On June 8, 2017, Morphew filed an Answer to Dudek/Cross Notice and Motion for Rule to Show Cause (Contempt), Ejectment and Attorney's Fees. Within that Answer, Morphew again asked for proof of financing per Specific performance complaint. **(R. pg. 373-374, para. 9(b), bullet 3) (R. pg. 374, para. 10(b) and para. 10(d)) (R. pg. 375, para. (f)) (R. pg. 377, para. (b))**.

Though the court had apparent knowledge of Dudek and Cross' unlawful or fraudulent behavior, was pressed several times by opposing litigants to compel the truth from Dudek/Cross,

it appears by ignoring, or deeming "moot" or 'irrelevant' such legally damaging and material facts, the court has abused its discretion and the processes, as it had a duty to consider the fraud before attempting to close the case. (**R. pg. 52, para. 12**) Morphew prays this court will set aside, the Closing Order of May 17, 2017, and the Contempt Order of June 14, 2017, and reverse the Order for Specific Performance of November 6, 2014, based on the judgment(s) being allegedly obtained by fraud.

3) ***Did the Judge abuse its discretion or err in not allowing or demanding Defendants Dudek and Cross to provide Plaintiff Morphew documented proof of compliance and/or ability to perform per their Specific Performance complaint, and especially with knowledge Morphew has a pending complaint against Dudek/Cross for allegedly procuring their Specific Performance judgment by fraud and fraud on [his] court?***

Plaintiff contends that no documented proof of the Defendants Dudek and Cross' initial "ready, able and willing" status was EVER required, but instead requests for this proof was over and over again, refused by the Judge (Argument for Questions on Appeal #2 incorporated herein). Moreover, By law, "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2)... 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." *Campbell v. Carr*, 361 S.C. 258, 262, 603 S.E.2d 625, 628 (Ct.App.2004). 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." *Ingram*, 340 S.C. at 106 n. 1, 531 S.E.2d at 291 n. 1.

Even though the judge ruled Morphew's initial request and then her Motion for request for such proof to be reasonable, and was approved by the court **(R. pg. 52, para. 13),** the judge

ultimately denied her request because "he changed his mind". (**R. pg. 427 line 8 through R. pg. 428, line 11**). Plaintiff contends such action is abuse of discretion and should be deemed unlawful--as there appeared to be no legal reason or justification (besides "changing one's mind") to deny her request after previously approving it (twice). Plaintiff suggests if the court had ordered such proof from Dudek and Cross, the court most likely would have concluded the Defendants Dudek/Cross had no legal right to file a complaint for Specific Performance, rendering the judgment(s) were void due to frauding its court, and the Order of November 6, 2012 may have been reversed and/or Morphew would have been granted Specific Performance instead.

Additionally, to the Plaintiff Morphew, and to any reasonable person, this questionable action of the judge gives the appearance of prejudice or partiality, as Morphew's Motion and request was simple, deemed reasonable, seemed no hardship on the Dudek and Cross, did not prejudice the Respondents. Furthermore, providing Morphew with such an easy request would have provided her a clear conscious to expend the vast amount of time, stress and money to vacate her home of 4 years, and, most importantly, would clear up any question(s) at issue, resulting in a conclusion to both complaints (including her complaint alleging fraud and/or fraud on the court).[2]

Because of the court and Dudek and Cross' intentional refusal of Morphew's simple request for proof of Dudek/Cross' compliance and/or ability to perform per their specific

[2] Because, in order to stifle fraud, South Carolina requires a non-breaching party to prove he or she has performed his or her part, or has been and remains "ready, willing, and able to perform" under the contract. *Lowcountry Open Land Rf. v. Charleston S. Univ.*, 376 S.C. 399, 408, 6956 S.E.2d 7755, 780 (Ct. App. 2008) ("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 Assoc.*, 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. *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.

performance complaint, Morphew claims she has been prejudiced, and undue delay has been caused in these proceedings, and in its Fraud on the Court proceedings.

Plaintiff argues the lower court abused its discretion by intentionally ignoring the governing principles of the remedy for Specific Performance, even when discovered evidence of unfair dealings, fraud or overreaching by Dudek and Cross was presented before its ruling in 2014, and should have reconsidered the matter. Additionally, the court should have allowed and/or demanded documented proof to support there was no fraud or intent to fraud the courts from Dudek/Cross, and in order to satisfy the elements required in order for a party to compel Specific Performance. The remedy of specific performance is equitable in nature and governed by equitable principles. *Strahan v. Haynes*, 33 Ariz. 128, 139, 262 P. 995, 999 (1928). Thus, it is not an appropriate remedy if there is evidence of unfairness, fraud, or overreaching on the part of the non-breaching party. *Shreeve v. Greer*, 65 Ariz. 35, 39, 173 P.2d 641, 644 (1946). Moreover, a non-breaching party does not have the right to specific performance, but must prove several elements and overcome various equitable defenses in order to succeed in such an action. *Canton v. Monaco P'ship*, 156 Ariz. 468, 470, 753 P.2d 158, 160 (Ct. App. 1987).

Morphew prays this court will consider the matter and reverse or set aside, the Closing Order of May 17, 2017, the Contempt Order of June 14, 2017, and the Order for Specific Performance of November 6, 2014.

4) ***Did the Judge abuse its discretion and/or process or err in demanding the [then tenant] Morphew to vacate the property at issue, and be held in Contempt, especially without first considering Dudek/Cross' alleged fraud on [his] court?***

Morphew claims the court, by forcing a Closing Order and forcing a Contempt/Ejectment Order on Morphew, and doing so with knowledge it may have been unlawful, appears to be unjust and a violation of its discretion.

Morphew has consistently, openly, and with legal cause, requested documented proof in hand that Dudek/Cross performed their part, or has been and remains "ready, willing, and able to perform" under the contract per Specific Performance.

Moreover, she formally requested and received approval "*to be allowed 45-days, <u>after</u> receiving proof of financing per their Specific Performance complaint in hand, to vacate her home. And if closing took place within that 45-day timeframe and she was still in the house, she would pay a daily rate per the current lease agreement with the sellers until vacating.*" Morphew openly stated her justification for such a request is that , 1) she had a pending fraud/fraud on the court complaint against Dudek/Cross, which in itself indicates Morphew had no faith in their words nor their actions, 2) they failed to close previously, 3) they lied to all parties involved –including the court(s) -- about their ability to close, and many other material facts, and 4) have held up the sale of the house for 4 years. In light of these facts, before expending the excessive time and cost to vacate the property in which she had a valid and legal sales contract to purchase if Dudek and Cross failed to close, Morphew simply asked for proof of financing per Specific Performance and a reasonable amount of time to seek alternate residence and vacate the premises.

All parties had agreed to her request, but 6 weeks later, sua sponte, and for the reason-- the judge "changed his mind"— the judge dissolved the agreement and demanded she '*vacate on or before closing*'. Appellant contends that this action and demand is unlawful and unfair, and what was not agreed to by the parties in the hearing. And such an 'ambiguous' demand

places Morphew in an impossible position, as it is without boundaries. As an example, if notice is given at 8 am that a closing will take place at 9am that same day, then per the court Order, Morphew would be legally required to vacate in 1 hour-- or could be held in contempt of court.

This is not only unfair and unjust, but it contradicts another legal document already in place, the Morphew lease agreement with the Ferros. It states 30-day notice to terminate is required. Morphew, as a tenant, never received notice to terminate her lease.

When Dudek/Cross purchased the property, Morphew's lease transferred[3], and they became the landlords. Morphew was not served a termination notice, therefore Ejectment proceedings were improper. Pursuant to SC Code § 27-40-770 (b), South Carolina has a minimum 30-day notice on a month-to-month lease agreement. ("Periodic tenancy; holdover remedies: (b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days before the termination date specified in the notice.")

As there was no termination of her lease, there was no expiration of the term of the rental agreement or its termination, therefore Dudek/Cross unlawfully or improperly brought an action for possession against Morphew. SC Code § 27-40-770 (c) "If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. ").

[3] Ordinarily, if your landlord sells the rental property where you live, your lease doesn't end (or "terminate"). Rather, the buyer of the property becomes your new landlord and must comply with both the length and terms of the existing lease. Likewise, you remain bound by the lease and must perform all your obligations and duties under it, such as paying rent, keeping the premises clean, and not destroying or damaging the property. Month-to-month lease. If your lease is month-to-month, the new owner can terminate your tenancy by giving you the required amount of notice, typically 30 days under state law, though it could be less. (For example, Colorado law requires only seven days' notice to terminate a month-to-month lease.) (https://www.lawyers.com/legal-info/real-estate/landlord-tenant-law/lessees-rights-on-foreclosure-and-on-sale.html)

The court lacked both subject matter jurisdiction and personal jurisdiction of Morphew, therefore the entire judgment is void and should be vacated. Morphew respectfully request this court to render the Order of Contempt/Ejectment/Fees void, and to be dissolved.

Even if the Ejectment was proper, Morphew argues she did not willfully or with bad faith remain in possession of the property, therefore fees should not have been awarded. ("If the holdover is not in good faith, the landlord may recover reasonable attorney's fees. If the tenant's holdover is a willful violation of the provisions of this chapter or the rental agreement, the landlord may also recover an amount not more than three months periodic rent or twice the actual damages sustained by him, whichever is greater and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, SC Code § 27-40-310(d) applies). Morphew clearly brought forth evidence and testified that she was under the impression that a closing was tentative, as Dudek and Cross were hesitant to purchase the property with a tenant in place, and that they were aware they would be inheriting Morphew as a tenant if they closed. Further, Morphew was given the impression that Dudek/Cross 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 (one day before scheduled closing), stating "*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-thru. If the closing finalizes tomorrow, the buyers or their attorney will contact you as to their information regarding the rent.*" **(R. pg. 439)**.

Even if the court had no duty to reconsider the matter of his Order, and vacating was lawful, Dudek/Cross failed to serve a Rule to Show Cause for Ejectment, which is required under South Carolina law ("Any tenant may be ejected in the following manner, to wit: Upon

application by the landlord or his agent or attorney any magistrate having jurisdiction shall issue a written rule requiring the tenant forthwith to vacate the premises occupied by him or to show cause why he should not be ejected before the magistrate within ten days after service of a copy of such rule upon the tenant.") SC Code § 27-37-20; therefore the [Ejectment] Order is invalid, as the court did not have subject matter[4] or personal jurisdiction[5] over the tenant. Also note, a Rule to Show Cause for Contempt was never served on Morphew, therefore this court should also find the [Contempt] Order and Fees/Costs to be void.

Morphew argues due to the ambiguity of the Order, the direction of her landlord/other litigant to the case, no notice of termination of tenancy, lack of subject matter jurisdiction and/or personal jurisdiction, and/or the pending fraud on the court case against Dudek/Cross, Morphew prays for relief from the Closing Order of May 17, 2017, and the Contempt Order of June 14, 2017.

5) ***Did the Judge abuse its discretion or process or err in ordering, sua sponte, Rule to Show Cause (Contempt), and/or issuing an Order for Contempt?***

As stated above, the court lacked personal jurisdiction over the Defendant Morphew, for failure to be properly served a Rule to Show Cause (Contempt), therefore the Order for Contempt/Eviction/Attorney Fees and Costs should be rendered void and dissolved. "A judgment is void if a court acts without personal jurisdiction." *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). "A court generally obtains personal jurisdiction by the service

[4] See Simmons v. Simmons, 370 S.C. 109, 116, 634 S.E.2d 1, 4 (Ct.App.2006) ("It is axiomatic that an order entered by a court without subject matter jurisdiction is utterly void.").

[5] The court lacked personal jurisdiction over Morphew, for failure to be served or properly served an Order to Show Cause for Ejectment, therefore the Order for Contempt/Ejection/Attorney Fees and costs is void. A judgment is void if a court acts without personal jurisdiction." BB & T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). "A court generally obtains personal jurisdiction by the service of a summons." Morphew was never properly served the Rule to Show Cause, therefore the courts acted without personal jurisdiction and all orders in this matter are void.

of a summons."(Id). Morphew was not served or never properly served the Rule to Show Cause, therefore the court acted without jurisdiction over Morphew.

Though an Affidavit of Service was provided her during the hearing for Ejectment, which sua sponte turned into a hearing for Contempt, she contests she was not properly served, nor did she waive her right to object to service by attending the hearing, as she 'objected' in her Answer and during the hearing **(R. pgs. 366-368, para. 2 & 3)**.

First, the Affidavit of Service for the Rule to Show Cause (Contempt) is defective for the following reasons, and should be rendered void: **(R. pg. 76)**

1) The Affidavit did not include the Rule. The service date of said Affidavit was June 6, but the Rule was signed and issued on June 7, therefore a signed Rule was not available until the following day, making service of the Rule on June 6th impossible.
2) The Affidavit says that it was served on a female, approx. 60 years of age, grey hair, approx. height of 5'9'' and weighing approx. 160 lbs. Morphew meets none of those description(s), except 'female'.
3) Morphew was not in residence at that time. The Affidavit says it was served on Morphew at 8:45pm on June 6th, 2017. Morphew was working out of state, and was still at work until approx. 8:15pm. It would have been impossible for her to be home at that time.

Even if the Appellant was properly served, the Motion and Motion for Rule to Show Cause (Contempt), Ejectment, and Attorney Fees 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 was therefore incomplete or improper. As a result, the court dissolved the Rule to Show Cause at start of the hearing and issued an

Order for such on June 7, 2017, as improvidently granted, and specifically stated in the Order, "*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.*" **(R. pg. 57-58)** To this date, no Affidavit has been presented. The hearing was continued for the following week to hear the final items on the motion (Ejectment/Fees/Costs).

The following Monday, Morphew attended what she thought was a continued hearing on Ejectment/Fees/Costs, but before she knew it, the Judge issued an immediate Order to Show Cause, sua sponte, and without justification or Affidavit supporting why an "emergency hearing" that moment was required, the court immediately directed the Movants attorney to call his witnesses and started proceedings. Before Appellant knew what was going on she was called to the stand and aggressively questioned by the judge. Surprisingly, the more she defended herself against Ejectment and Contempt, the angrier the judge became. He called her a liar, even when she told him she had material documentation to prove that she did not willfully or knowingly fail to obey a court Order. When questioned where her proof was, she stated it was in his hand [contained in her Answer she had provided last week], which indicates the judge had not taken the time to read her Answer to such serious charges before accusing her of bad character and charging her thousands of dollars as punishment. As Morphew tried to object that she was not given proper notice, nor given time to obtain witnesses in her defense to his charges (due process was violated[6]), or as she tried to prove she was not those awful things he was

[6] Due process was violated as there was no adequate notice, leading to an inadequate opportunity for a hearing, and her right to obtain witnesses or testimony in her defense was violated. Due process is a flexible concept which "calls for such procedural protections as the particular situation demands." 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, 341 (1991). At a minimum, certain elements must be met in order for procedural due process requirements to be satisfied, including adequate notice, adequate opportunity for a hearing, the right to introduce evidence, and the right to confront and cross-examine witnesses. Huellmantel v. Greenville Hosp. System, 303 S.C. 549, 402 S.E. d. 489 (Ct. App. 1991).

accusing her of (liar, obstructionist), the judge continued to raise his voice, and stated "I am in charge of this court, not you".

Appellant admits she was afraid to anything else as he eventually threatened her, saying she is a liar and obstructionist, he finds her in Contempt, and if she does not vacate the property within 3 days, she will be arrested and detained for 30 days and her child could be retained in state custody. Morphew refused to object or defend herself any further as she was afraid she would be arrested on the spot, which would guarantee the loss of her job and possibly her child detained. The bailiff had even stood up and started to come forward as the judge got angrier, giving the impression Ms. Morphew was some sort of criminal. The judge further threatened her by saying she will pay the costs Attorney Smith had presented [during the hearing] (over $6K) by Friday 9am, or she will be arrested for failure to pay. When she exclaimed that she does not have that kind of money on hand, the judge suggested if she could afford the house and down payment she could afford to pay the damages, and she'll just have to find it. Court was adjourned.

Appellant asserts she is actually frightened of Judge Chellis, and no longer feels comfortable in his presence. Though she understands his frustration in the proceedings, feels this was clearly a personal attack on her person, abuse of discretion and/or process, prejudice and loss of control. Morphew stresses the way she was treated in Court was unfair, unjust, unreasonable, without justification, embarrassing, and meant to shame her into feeling she was the criminal, not the innocent party, and feels he is no longer impartial and unable to provide Morphew with fair proceedings.

The severe mental distress during and after this hearing, and excessive costs, time and effort to secure alternate living arrangements, pack and move – all in 3 days-- was almost

unbearable and undue. On top of all that, Morphew was forced to miss a week's pay which is very critical to supporting her family. Morphew prays for relief from the Closing Order of May 17, 2017, and the Contempt Order of June 14, 2017, and also to be reimbursed for all costs to defend herself in these improper or unlawful actions, including but not limited to, loss of work, travel, cost of Ejectment, and any other damages this court may find acceptable.

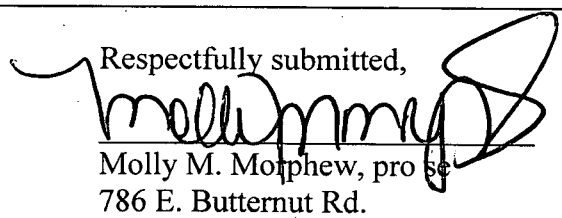
CONCLUSION

Plaintiff contends the court abused its discretion and/or processes as it had a duty, in fairness to all the parties and to protect the judicial system, to demand further consideration of the matters in this case due to the alleged fraud, but [as it had intentionally chose to ignore the material documentation of supporting the legal failures of Dudek/Cross' complaint and trial testimony], it again intentionally chose to turn a blind eye to the possibility of fraud on its own court, which may have prejudiced Morphew and caused or currently causing the courts, and all parties involved, additional stress, time, money and resources. Therefore, the Appellant is asking the Order of November 5, 2014 should be rendered void and reversed, or as an alternate, void and vacated with this case remanded back for re-trial.

As to the June 14, 2017 Order for Contempt/Ejectment/Attorney Fees and cost, and the May 17, 2017 Order for Closing, the court did not have subject matter or personal jurisdiction on the Matters concerning Morphew, therefore Morphew is asking this court to void and vacate said Order(s), or in part, along with vacating any fees or damages awarded to Dudek/Cross. If any part of the Orders remain, Morphew is asking those parts be reconsidered based on the fraud presented, and overturned.

In addition, Morphew is asking this court to award costs to defend herself in these improper or unlawful actions, including but not limited to, loss of work, travel, cost of Ejectment, and any other damages this court may find acceptable.

Respectfully submitted,



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July 25, 2018

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.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that its Amended Final Brief(s)s comply with Rule 211(b) as to the Content are identical to its brief(s) previously served under Rule 208, except the initial briefs have been revised to indicate where the material appears in the Record on Appeal, and only to correct obvious typographical errors and misspellings which were contained in the initial briefs.

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July 26, 2018