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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, First Judicial Circuit

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SC Court of Appeals

Appellate Case No. 2017-001393

Molly M. Morphew

Appellant

v.

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

Respondents

PETITION FOR REHEARING AND REQUEST TO AMEND ITS OPINION

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TO THE HONORABLE PRESIDING JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL, SOUTH CAROLINA:

Pursuant to rule 221 and 240 of the South Carolina Rules of Court, Appellant Molly Morhew, hereby respectfully petitions this Court for a rehearing in the above-entitled matter after an unpublished opinion, dated May 20, 2020, which affirmed the Respondents' grant of their motions for a closing order and rule to show cause/contempt/ejectment.

INTRODUCTION

On May 20, 2020, this Court affirmed the lower court's grant of Respondents' grant of their motions for a closing order and rule to show cause/contempt/ejectment:

- A. *"...Morphew is precluded from relitigating any matters relating to the master's November 2014 order granting the Buyer's motion for specific performance, which this court affirmed on appeal, under the law of case doctrine."*
- B. *"To the extent Morphew argues the master erred by not ordering the Buyers to provide her with proof of their financing to purchase the property, Morphew failed to point to any legal basis entitling her to proof of the Buyers' financing."*
- C. *"As to issues four and five, the master did not err by finding Morphew in contempt of court."*

Appellant petitions this Court for rehearing regarding its decisions above and the undecided arguments included in (Argument I, II).

In its decision, this Court decided that under doctrine of law of case, Appellant is precluded

from relitigating *matters relating to the master's November 2014 order granting the Buyer's motion for specific performance, which it affirmed on appeal.*

In its Opinion, this Court specifically quotes cases, "Under the law of the case doctrine, "a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Judy v. Martin, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009)' (citing *Bakala v. Bakala*, 352 S.C. 612, 632, 576 S.E.2d 156, 170*170 166 (2003)). "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Nelson v. Charleston & Western Carolina Railway Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957). No such conclusion can be made here.

This court has provided no reasoning, findings of fact, or law analysis in which its ruling can be supported to prevent Appellant from relitigating matters relating to the November 2014 Order in-part specifically granting the Respondents specific performance.

In fact, this Court's decision presumes to present 'its hands are tied' and there's nothing to be done or nothing a court can do to change the lower court's decision. Appellant disagrees. In fact, in this case, it appears this Court should have no choice but to void the master's Order.

Though the doctrine of law of case should be followed in most instances, the doctrine is not an inexorable command, nor does completely bind the appellate court to a trial court ruling. "Because the law-of-the-case doctrine closely parallels preclusion rules such as collateral estoppel and res judicata, some lawyers insist that under the doctrine, any ruling by any court in the same case becomes binding. That's wrong. Trial-court rulings are generally not binding on appellate courts, which have the power to reverse, vacate, or modify *erroneous lower-court rulings* when issues are properly presented to them." Bryan A. Garner et al., *The Law of Judicial Precedent* 231–32, 328, 441–89, 797 (2016). *Black's Law Dictionary* 1020 (10th ed. 2014). "While the "law of the case" doctrine is not

an inexorable command, a decision of a legal issue or issues by an appellate court establishes the "law of the case" and must be followed in all subsequent proceedings in the same case in the trial court or on a later appeal in the appellate court, unless *the evidence on a subsequent trial was substantially different*, controlling authority has since made a contrary decision of the law applicable to such issues, or *the decision was clearly erroneous and would work a manifest injustice.*" *White v. Murtha*, 377 F.2d 428, 431-32 (5th Cir.1967) (emphases added) (footnotes omitted). "The South Carolina Supreme Court has also recognized that the doctrine does not apply when the evidence is substantially different on a second appeal. In *Nelson v. Charleston & Western Carolina Railway Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957), the court stated that the doctrine

has no application where the facts relating to the question decided are *substantially different* on a second appeal. In order to escape the application of the doctrine, however, there must be a material change in the evidence. Additional evidence cumulative in nature will not take the case out of the rule and constitute a material change where *evidence of the same class and character* was considered on the former appeal." *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 776 SE 2d 397 (2015).

Here, the facts relating to the questions decided are *substantially different*, plus there's a material change in the evidence, and many questions of fact or unanswered questions of law, which the doctrine does not apply.

i. First, the matters Appellant has raised, including but not limited to, fraud committed to obtain the award (i.e., perjury, forgery, misrepresentation, conspiracy); void order; expired (i.e. abandoned) sales contract; Respondents failure to comply with the critical requirements required to compel specific performance, and duty to consider. These are matters not precluded as they were raised on appeal both in the original appeal and in this appeal but neither expressly

rejected, explicitly decided nor even necessarily decided by the appellate court in either instance. In fact, it appears *the facts and evidence were not even considered*.

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).

Appellant 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).

ii. Even so, a void order cannot be barred by this doctrine and can be raised at any time, at any place directly or collaterally by Appellant, whose rights were substantially affected, and *incapable of confirmation, ratification, or enforcement in any manner or to any degree*. As in *McNair v. Rainsford*, II,

A Void order may be attacked, either directly or collaterally, at any time. They are not “voidable”, but simply “void”; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.” *Elliot v. Piersol, supra*; Black’s Law Dictionary, Sixth Edition, page 1574: Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and *incapable of confirmation, ratification, or enforcement in any manner or to any degree*.

McNair v. Rainsford, II 330, S.C. 332, 499 S.E.2d 488(Ct.App. 1998)

“A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court.” See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). “Judgment is a void judgment if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process”, Fed. Rules Civ. Proc., Rule 60(b)(4)¹, 28 U.S.C.A., U.S.C.A. Const. Amend. 5 & 14. “A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court”, *Old Wayne Mut. L. Assoc. v McDonough*, 204 U. S. 8, 27 S. Ct. 236 (1907). “A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid.

Based on the facts and evidence in this appeal, the Order of November 2014 in part granting specific performance to the Respondents meets all these failures, therefore fails on its face and is Void and must be dismissed.

Let’s start at the beginning with ‘specific performance’, an extreme remedy with critical, pre-conditional requirements that the movant *must* meet before a court has the power to enter its award. If a movant fails to meet or comply with the requirements, there is no relief to grant, and the case no longer presents a live controversy. The Court therefore lacks subject matter jurisdiction. The only thing left to do is dismiss.

The Respondents are attempting to get away with the crime of fraud or fraud upon the court with illegal orders, on a void judgment. The Respondents and the court of equity violated all the laws and rules or requirements that cannot be ignored. This is a rule in every state and federal court. “A Party Affected by VOID Judicial Action Need Not APPEAL. *State ex rel. Latty*, 907 S.W.2d at 486.

¹ SCRCF Rule 60(b) is identical to the Federal Rule, except for minor changes.

It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J., concurring). If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case, because a void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment. When an appeal is taken from a void judgment, the appellate court *must* declare the judgment void, because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal.

A Void Judgment is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel*, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001). Such affect is also on any subsequent Order the trial court entered after entry of the void order.

Further, the Respondents had intentionally allowed their TIME IS OF THE ESSENCE sales contract expire, or in other words – abandoned – their sales contract, resulting in a denial or refusal for mortgage credit. Such is a failure of the maxims, "he who seeks equity must do equity" and "he who comes into equity must come with clean hands," both guiding doctrines in the prior case *and* this case. "The 'clean hands' maxim 'is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with *bad faith or inequitableness* relative to the matter in which he seeks relief, however improper may have been the behavior of defendant" *New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc.*, 291 F.2d 471 [5th Cir. 1961]. Thus the Respondents here are the sole fault of their failures and breaches, intentionally failed to do equity and come into equity with clean hands, therefore *cannot* seek relief, or continue to obtain the property, when they have been the very cause of the actions or damages. To allow Respondents relief would be against the rules and laws of these courts, the maxims of equity, the strict guidelines and precedents set in regards to the remedy of specific performance, a violation of public policy, and a gross injustice and prejudice to the courts and Appellant, a violation of Appellant's due process and

denial of the same protections of the rules and laws so generously, though unlawfully, given to the Respondents, especially when Appellant, the innocent party, was also awarded specific performance.

Based on the above, this court *must* set aside the original order in-part granting specific performance to the Respondents. Consequently, it must dismiss the order for closing and rule to show cause/contempt/ejectment, or any order arising from the void order, and dismiss both appeals in this original action.

To make things clear, at the start of litigation and through the first appeal, the Respondents testified over and over, in their filings, depositions, meetings between counsel, and trial, they were ready, able and willing but it was totally the fault of the sellers they failed to close or tender payment. Appellant initiated substantial discovery, including requests for admission, request for documentation, interrogatories, and several subpoenas to their lender, meetings between counsel, and depositions, but got the same answers as what was presented at trial and in their filings. It wasn't until Appellant proceeded pro se on the first appeal that she discovered the fraud committed by the Respondents and their witnesses and closing attorney. It was discovered the Respondents, their sales agent, lending officer, closing attorney- and even Respondents' lawyer- conspired and presented nothing but false evidence by committing perjury, forgery of financial documents, misrepresentations, or made false promises in order to obtain the Respondents' award for specific performance.

It was discovered the Respondents abandoned their sales contract by letting it expire before making initial application for mortgage credit. Consequently, they were refused or denied financing for failure to present a valid and negotiable sales contract at initial application, or more specifically, for failure to have any legal claim to the property after November 30, 2012. Ultimately, through their

own negligence and *absolutely* no fault of the sellers², could not perform therefore had no claim in which the court could grant a remedy.

As stated in *Bishop v. Tolbert*,

“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. *Mobley v. Quattlebaum*, 101 S.C. 221, 85 S.E. 585; *Mitchum v. Mitchum*, 183 S.C. 75, 190 S.E. 104; *Flowers v. Roberts*, 220 S.C. 110, 66 S.E. (2d) 612. It has been said that "there is no branch of equity jurisdiction in which the Court is allowed the greater exercise of a sound and reasonable discretion, 'which governs itself, as far as it maybe, by general rules and principles,' than that which relates to the specific performance of agreements. 'The question is not what the Court must do, but what it may do, under the circumstances'". *Lesesne v. White*, 5 S.C. 450 (emphasis added).

Among the established principles by which the court is guided and governed in the exercise of the sound discretion is that laid down in the early case of *Cureton v. Gilmore*, 3 S.C. 46: “He, therefore, who demands the execution of an agreement, ought to show that there has been no default in him in performing all that was to be done on his part; for, if either he will not, or through his own negligence cannot perform the whole on his side, he has no title in equity to the performance of the other party, since such performance could not be mutual. And, upon this reasoning, it is that

² Regardless, securing financing per their contract was pre-conditional to any performance of the sellers, and its failure was their own fault, particularly in this case where the Respondents critical breach was an abandonment of the contract.

where a man has trifled or shown a backwardness in performing his part of the contract, equity will not decree a specific performance in his favor."

And, as is said in *Thompson v. Dulles*, 5 Rich. Eq. 370, "The principle is sound and just, and demanded alike by morals and by policy, that he who has neglected to perform a duty which he might have performed, and ought to have performed, has no claim upon the court to compel the other party to perform his engagements. Whenever such negligent party comes into this Court, he must be told that he has neglected to do Equity, and has, therefore, deprived himself of the equity he claims."

Bishop v. Tolbert, 249 S.C. 289, 299, 153 S.E.2d 912 (1967)

The record clearly shows, the original Order of November 6, 2014 awarded specific Performance equally to *both* Appellant and Respondents³. It also confirms the Order *equally* applied the same rules, statutes, guidelines, maxims and precedence(s) (or "requirements") to both Appellant and Respondents in their ability to compel specific performance *and* in its jurisdiction or ability to act or award the remedy of specific performance to the litigants. It is uncontested that the Appellant has completely complied with the requirements. While at the same time, the record and evidence presented here undoubtedly shows the Respondents critically, and at their own hand, failed all requirements, first and foremost by abandoning their time is of the essence sales contract⁴. Therefore the Master did not have the power to enter specific performance in favor of the Respondents, and since it had not the power to so act, it *did not have jurisdiction over the subject matter*. "Therefore, if it [any court] acts without authority, its judgments and orders are regarded as nullities." As presented in *Ross v. Richland County*, 270 S.C. 100, 240 S.E.2d 649 (1978),

³ The only difference, the award gave Respondents *first* shot at performing because they contracted first.

⁴ The Respondents intentionally allowed their time is of the essence sales contract to expire before making initial application, therefore had no legal claim to the property. No legal claim to the property means no legal claim to the courts.

The law is well settled that when a court has no authority to act, its acts are void. *Russell v. Bea Staple Mfg. Co.*, 266 N.C. 531, 146 S.E. (2d) 459 (1966); *Davis v. Page*, 125 S.E. (2d) 60 (Ga. 1962); *Cruikshank v. Duffield*, 138 W. Va. 726, 77 S.E. (2d) 600 (1953).

An analogous case is *Fox v. Board of Regents of University of Michigan*, 375 Mich. 238, 134 N.W. (2d) 146 (1965), in which the plaintiff filed suit in the circuit court when his action should have been brought in the court of claims. Upon finding the court of claims to have exclusive jurisdiction over such suits, the circuit court ordered the case transferred. The Michigan Supreme Court ruled the transfer of the case to be a nullity and stated:

"[W]hen a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void." 134 N.W. (2d) at 148.

Similarly, in *Caudell v. Leventis*, 43 So. (2d) 853 (Fla. 1950), the plaintiff filed suit in the circuit court but failed to allege sufficient damages to meet the court's jurisdictional requirement. The Florida Supreme Court, in holding the circuit court's transfer of the case to the proper court to be void, stated, "in the absence of some such authority the only lawful order which could have been entered by the trial judge was an order of dismissal." 43 So. (2d) at 855.

This Court has consistently adhered to the rule that the acts of a court without jurisdiction are without effect. *Toomer v. Toomer*, 244 S.C. 399, 137 S.E. (2d) 406 (1964); *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972). We stated in *Ex parte Hart*, 186 S.C. 125, 133, 195 S.E. 253, 256 (1938): It is a universal principle as old as the law, that the proceedings of a Court without jurisdiction are a nullity, and its judgment without effect, either on the person or property."

An order that fails any grounds in which to support it or fails to comply with its own rules, guidelines and case law in which it granted the award fails on its face and is VOID (in this case, void in-part granting specific performance to the Respondents, leaving its award of specific performance to Appellant in place). To deny the Order [in-part] as Void violates the rules, laws and processes of this court, and so, without argument, denies Appellant the equal protection of the laws. The courts, through its laws and power, have been protecting the Respondents, while at the same time penalizing Appellant by not affording the same and equal protection and construing to bar the litigation of issues and questions of fact that have not been explicitly nor necessarily decided. If the courts can protect litigants who critically and intentionally violate the rules, laws or guidelines of the courts and contract law -- *and* have committed fraud to obtain an award, HOW on the other hand can the same courts ultimately refuse or fail to protect a litigant who has complied completely to those SAME rules, laws, guidelines, statutes, precedents or case law -- *and has not* committed any criminal offense in obtaining the *same* award in the same proceeding. Not only is this unlawful, but a grave miscarriage of justice, a violation of Appellant's due process and protection, highly partial, discriminatory, and an offense to public policy and the process(es) of the judicial system.

To what purpose do the courts refuse to address these issue? Meaning, what laws or rules allow a court to protect the Respondents regardless of their fraud or a gross miscarriage of justice when at the same time continually and intentionally fail to protect the Appellant? In the name of 'ending litigation'? Or that it would be easier and less cost for the courts to constructively bar or dismiss any Appellant claim in order to avoid dealing with the repercussions? Or frustrated that it's a pro se litigant? What is unlawful or improper in the fact a litigant is demanding a judgment that does not fail the rules, laws, guidelines, statutes, maxims or case law, and that is truly 'fair'

and 'just'. In layman's terms, a ruling that is not illegal, unlawful improper, or a grave injustice such as in the original action.

Even so, Appellant understands why 'ending litigation' may be more desirable, and fully supports that it is needed in some cases, but to bar Appellant from her legal rights and construct to end this case when the original Order in-part is clearly void and results in a substantial injustice, a violation of public policy and severe prejudice to Appellant? The facts are the facts, and those facts of the case have not been dismissed nor barred, and are totally supported by the record in the lower court.

Additionally, the Respondents purchased the property even with express notice Appellant's claim to it. To allow the Respondents to retain the property when the Respondents, at all times material, had no legal claim to the property in the first place and where the Master had no authority or jurisdiction to enter specific performance in their favor in the original action, is completely inequitable, especially since Appellant was equally awarded specific performance in that same proceeding⁵. To do so is a complete and utter fail of the judicial system and its processes.

What good do the rules and laws serve public interest if the courts can ignore them, or apply them or deny them to whomever and whenever they choose? Does the need to end litigation overrule due process, a void order, extreme prejudice, a violation of our judicial system and its processes, a blatant violation of public policy, and what appears to be constructive fraud by the courts?

Regardless, by law Appellant was granted specific performance. By those same laws the Respondents have no legal claim to the property. By law Appellant *alone* has legal right to the

⁵ Where the ruling gave them 1st chance to close because their contract came first. Not only is their contract invalid, but the entry of specific performance in the Respondents' favor was only due their, their counsel and their witnesses' (including their lending officer, and sales agent), and their closing attorney's, perjury, suborning of perjury, forgery, misrepresentation and/or conspiracy. All fraudulent actions are supported by the record.

property. By the laws, guidelines, rules, statutes and maxims of equity the order in-part granting specific performance to the Respondents is VOID. By those same guidelines, rules, statutes and maxims of equity neither this court or the lower court can construct to validate Respondents' right to property that was not, at all times material, there in the first place nor disregard or construct to bar Appellant's right, claim or award to that property.

iii. Respondents were not ready, able and willing, the overall defining and *critical* condition precedent to compel and award specific performance. In order to compel and award specific performance-- the movant **must be ready, able and willing** to perform or tender payment the moment their sales contract expired AND the moment the movant compelled specific performance, not sometime in the future. *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 SE 2d 287 (2000) (Where movant must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future). Here, the master in the original litigation found the Respondents met this requirement based on the testimony and evidence presented at trial by the Respondents and its witnesses. Its main support was witness First Federal, the Respondents' lender, where she committed perjury and gave false promises to the court that it was extending mortgage credit to the Respondents and they were ready to close, when in fact it was discovered the Respondents were refused or denied financing before they even filed for specific performance for lack of a valid and negotiable sales contract, which was never remedied.

This is not only a failure of a critical requirement and precedent to compel specific performance but it's an abandonment of their TIME IS OF THE ESSENCE sales contract. Consequently, they had no remedy available since they had no legal claim to the property. An abandoned and expired contract is invalid and non-negotiable, which itself renders the Order void, let alone their failure to be ready, able and willing – all at fault of the Respondents alone. No court

can ignore this and then pretend to construct its validity for *any* reason, including ‘fairness’ or ‘to end litigation’, when it does not exist. There is nothing ‘fair’ or lawful about the Respondent’s favorable ruling nor does the requirement to end litigation present to come close to outweighing the grave injustice and severe prejudice to Appellant. Public policy does not allow it.

iv. The case cited by this Court, *Flexon v. PHC-Jasper, Inc.*, is substantially different and not even similar to the instant case here. Without a need for the details, unlike this instant case where the Appellant presented the newly discovered evidence when she discovered it, in the 1st appeal, the Appellant in *Flexon* failed to present ‘newly discovered evidence’ it could have presented to the judge in *Flexon I*. Further, unlike this case, there was no material change in the evidence. Regardless, the doctrine of law of case in this instance does not apply to void orders, fraud, questions of fact, clearly erroneous earlier holdings, and a later stage of litigation that presents different parties, issues or facts. The application of the doctrine is within the court’s discretion. Appellate courts have discretion to depart from the law of the case doctrine in exceptional circumstances.

This case clearly meets exceptional circumstances.

Further, the matters Appellant has raised are not precluded as they were raised on appeal both in the original appeal and in this appeal but not expressly rejected, explicitly decided or even necessarily decided by the appellate court in either instance. There was a material change in the evidence and the evidence presented here substantially changed the issues, questions of fact or questions of law, and the legal positions of the Respondents. Just as important, the evidence and new facts change the outcome of the original litigation and what a court may do under the circumstance. None of these issues or matters have been explicitly decided or even necessarily decided.

“Under the law of the case doctrine, "a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Judy v. Martin, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009) (citing *Bakala v. Bakala*, 352 S.C. 612, 632, 576 S.E.2d 156, 170*170 166 (2003)). "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Nelson v. Charleston & Western Carolina Railway Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957).

It's apparent the courts(s) have failed or refuse to take into consideration the fraud and questions of fact when applying to the laws, rules, principle guidelines, maxims and case law in this case for specific performance, though both have a duty to do so. Appellant is afraid this court has overlooked the importance of these issues, and respectfully requests this Court to decide, based on the record of the lower court, the undecided issues raised and further supported herein.

Due the reasons above and within its Briefs, the doctrine of law of case does not apply here. Based on a void in-part Order and the lower court's lack of jurisdiction and inherent power to enter the judgment for specific performance in favor of the Respondents, notwithstanding the Respondent's fraud committed to obtain the judgment, Appellant respectfully requests this court to declare the judgment in-part void and set aside the master's judgment awarding specific performance to the Respondents and dismiss this appeal. Additionally, Appellant requests this Court to set aside any subsequent order based on the void order, including but not limited to the Master's closing order and rule to show cause/contempt/ejectment order and dismiss any applicable appeal.

- A. *“To the extent Morphew argues the master erred by not ordering the Buyers to provide her with proof of their financing to purchase the property, Morphew failed to point to any legal basis entitling her to proof of the Buyers' financing.”*

Based on the issues, facts and evidence discovered and presented in the first appeal and to the master, as argued above and in is briefs and incorporated herein, Appellant should not need to present any further legal basis entitling her to proof of the Buyer's financing, given the amount of substantial costs, stress and prejudice it would be to her and her family if the Appellant moved and the Respondents failed to close. Appellant most likely would have been placed in a position that prevented her from her ability to perform her contract, supporting 2 rentals, utilities, insurance,, etc. for a minimum a year; securing a rental, moving costs, time off from work. Notwithstanding the fact the Order granting the Respondents specific performance also granted Appellant specific performance. Appellant's ability to perform her contract was directly related to the Respondents' ability to perform its contract. If they had to admit to the Master they weren't ready, willing and able per specific performance, he would have had no choice but to dismiss their complaint and reverse its Order in part. Consequently, we wouldn't be in this position we're currently in today.

Further, Appellant had her attorney offer several times to opposing counsel in the original litigation and before trial, and when questioned by opposing counsel in a separate action with same parties, if [they] provided such proof of financing of 2012 Appellant would drop all cases and walk away. They refused, though contend they secured financing and were ready to close. The Respondents had every opportunity to mitigate the damages and prevent the vast litigation and undue resources of this court in that one act. An act that was simple, did not prejudice them and allegedly available at their fingertips. Of course, after discovering the evidence of their failures, fraud and deceit, it's not hard to put 2 and 2 together why they and the master refused, and now why this court refuses, to grant Appellants request...they don't have it. Admittance would support their critical breach, fraud and continuing fraud, though why the validated evidence proving they were denied financing for abandonment of their time is of the essence sales contract doesn't bring the same result, who knows,

except maybe the courts just want to end the case(s) and don't want to deal with the repercussions of the Respondents critical failures and criminal acts of fraud.

Appellant contends she can find no cases even similar to this that would support this claim, but on the same hand should not be denied the documentation requested or at least the opportunity for the Respondents to address the lack of, based on Appellant's failure to specifically call out a legal right to it that would satisfy this court. This court has granted requests for documentation on far less justification or just on the fact it would not prejudice the one being requested to produce.

Due the argument here and within its Brief(s), Appellant asks this court to grant Appellants request for proof of financing and amend its Opinion accordingly.

B. "As to issues four and five, the master did not err by finding Morphew in contempt of court."

Based on a Void order which these orders arose from, as argued above and incorporated here, this order is also void. Consequently, the Appellate court is required by law reverse and dismiss it, and dismiss this appeal. Regardless, Appellant asks this Court to reconsider its decision for the reasons within its Brief(s) and for the reason that Appellant would swear on all that she holds dear that she did not intentionally disobey an Order, that she understood the Order of May 2017 the master changed his mind once again⁶ and granted her request, that regardless of that the Respondents were supposed to give her proper notice of a closing, not less than 24 hours' notice, then expect her to be out⁷.

⁶ Where in one hearing he granted her request for proof of financing before she was required to start her 45-day process of moving out of said property, in the next denied it, specifically "I changed my mind". Finally, in the May order, again granting her request. Appellant even explained this to the master and pointed out in his order where he agreed to her request, stating that particular document was a reasonable request. He denied it. When Appellant asked him why that statement was in there if he didn't mean to grant it to her, when the very next line specifically denied the other 4 document requests. His reply was just for reference. . Appellant raised unambiguous order. Master ignored her.

⁷ Though Respondents presented to this court that they pushed out a closing date so that it would give me ample time to vacate, that is not true nor is there any evidence in the record proving this or the fact they had an earlier closing date. The fact is, the Respondents could not schedule a closing date until June because they hadn't secured financing

This Court stated Appellant was supposed to follow the April 3rd Order, but Appellant would like to make clear that the April 3 order was in error, which the master admitted.

An order was not to be issued until the Ferros and Appellant filed a response to the damages and. So:

March 28: Hearing on Respondents' motion for closing order:

- Respondent's attempt to change the terms of the contract, the purchase price, which the Ferros objected to, among several other objections and issues raised by Ferros and Appellant such as fraud, invalid contract, objecting to closing order as improper since Respondents did not meet the requirements for specific performance, specifically failed to secure financing.
- Master stated the Ferro's could review the damages and decide if they would allow the contract terms to change based on the damages
- Master gave Sellers and Appellant an [undisclosed] amount of time to file a response before issuing an order
- Master granted Appellant's request for proof of financing before requiring her to vacate.
- Opposing counsel gave court a draft order

April 3: Order prematurely filed

- Order stated Appellant to be out on or before closing and Respondents to give proper notice of closing date
- Ferros object as Order changed the contract terms not agreed by the sellers

and at the same time, Respondents attempted to change the contract terms, specifically the purchase price, based on the damages they were awarded. The sellers objected to the damages and changing the purchase price, and that had to be resolved *between them* first. It had nothing to do with Appellant, obstruction or Respondent's 'feigned' generosity. In fact, not once did Appellant try to prevent them from closing.

- Appellant and Ferros object as their response wasn't filed and considered by the court
- Master declares in email to parties that the only way he can fix it is to declare the response as a 59e motion and schedule another hearing. Appellant objects but is overruled.
- Because of the court errors and premature filing, Appellant assumes the order is invalid and the hearing is just a continuance of Respondents' motion. Still assuming the grant for proof of financing before required to vacate was valid.

May 12: Hearing to consider response of Appellant and sellers [cloaked as a 59e motion]

instead of a continuance of the Respondents' motion for closing order

- Appellant asked the master for proof of financing like he granted at the last hearing, he denied her on the grounds of "I changed my mind".

May 17: Order issued

- Master specifically denies Appellant 4 of the 5 document requests.
- Master approves 1 of the 5 document requests: proof of financing; does not specifically deny.
- Appellant to be given proper notice of closing

May 31 PM: Sellers agent sends email to Respondents' attorney reminding him to give Appellant notice of closing date. Notice given that closing scheduled in less than 2 days. Appellant waiting for proof of financing as order stated.

Thursday June 1 PM: Email from Defendants/Sellers that if a closing doesn't take place, seller sales agent will get with me for a walk-thru [so I can close]. If a closing does take place, the Respondents will get with me about my lease. Appellant assumes it hasn't gotten proof of financing of 2012 and from the email, she'll be paying rent to the Respondents for some reason...

Monday June 5: Appellant asks sellers if a closing took place. The said yes. Instead of 'getting with Appellant regarding the lease' Appellant receives a motion for rule to show cause/contempt/ejection. A hearing was scheduled in 2 days. Appellant scrambles to respond and prepare. Unknowing that until served with rule to show cause she was not supposed to show up or else it would waive her right to plead lack of personal jurisdiction.

So this court should see the dilemma Appellant was put in. Since March she had been waiting proof of financing before looking for another place to live because that's what the master granted in March. She assumed the April 3 order was invalid (it's supposed to be), still under the impression her agreement to vacate was still proper. She goes to the hearing to continue the respondents' motion by presenting its response filed, where the master 'un-granted' the agreement to vacate he previously granted, but when the order came out 5 days later he re-granted the agreement to vacate. Appellant still under impression agreement to vacate is in place. Appellant is not included on any emails or communications regarding the status of closing. Then less than 2 days before closing date she gets notice on top of defendants notice a closing may not take place and instructions in either circumstance. Appellant doesn't even know if a closing took place until she asked, but on same day receives a Rule to show cause/contempt/ejection motion. Not sure what's going on but trying to make sure she does the right thing, she does everything she can to make the hearing, then agrees to attend a continuance hearing on respondents motion for ejection⁸, though giving notice to court that week she was on vacation but would take the time for the hearing on her way out of town, literally heading out of state to the last family reunion with her terminally ill mother. Instead, the hearing turned into a sua sponte rule to show cause hearing. Appellant admits that she had no idea what was going on when the opposing side called witnesses. It was obvious by the long silent pauses Appellant did that she had

⁸ the rule to show cause motion was dissolved until the Respondents filed the appropriate affidavit

had no idea what to do when the master asked her if she wanted to ask Respondents questions. Again, unfortunately, Appellant didn't know she could object to the hearing, though at that point it most likely wouldn't have helped. Appellant feels like it was a setup and was railroaded, but that doesn't help either. Ultimately, the master told her she had to get out in 3 ½ days or she'd be arrested and her child taken into child services. That was enough to "shut Appellant up", which appeared to be his intention.

Appellant contends she did not intentionally fail to follow an order, but was obviously under the wrong impression what was going on. Appellant was given the impression the Respondents were transferring the lease agreement, and she was not required to vacate on or before closing, as an e-mail was received from the seller, Lorraine Ferro, 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."*

Appellant further contends that she never once obstructed their closing ability, and they had plenty of chances to close during the appeal, but they didn't do that either. Appellant has offered resolutions that would not prejudice the Respondents or herself, even one that would have ended all the litigation –provide proof of financing. They refused, the courts refused Appellant's motions and the sellers motions to compel same. Appellant has tried very hard to follow the rules and have knowledge in the courtroom, but just like any lawyer, let alone a pro se, it's impossible to know all the rules and processes. Appellant has done nothing but been honest [to the best of her knowledge], and act in good faith and fair dealings. Appellant has done nothing but follow the rules and laws to the best of her ability. In return she's only been punished, while the Respondents have only been rewarded for their dishonesty, bad faith and unfair dealings, fraud and their intentional and critical failures.

CONCLUSION

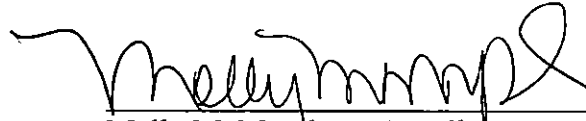
Based on a void in-part Order and the lower court's lack of jurisdiction and inherent power to enter the judgment for specific performance in favor of the Respondents, notwithstanding the Respondent's fraud committed to obtain the judgment, Appellant respectfully requests this court to declare the Ejectment and Rule to show cause/contempt/ejectment order void and set aside same and dismiss this appeal.

Regardless, due the reasons above and within its Briefs, Appellant 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 fraud on its own court, which has severely prejudiced Appellant and caused or currently causing Appellant and the courts, , additional stress, time, money and resources.

The Appellant should not have been held in rule to show cause/contempt/ejectment or ejected, or held to same as Appellant attests her failure to follow a court order was not intentional but due to the ambiguity of the Order, the direction of her landlord/other litigant to the case, no notice of termination of tenancy, she was sure the April 3, 2017 order was invalid and the order that replaced on May 17 where it appeared to grant her proof of financing before she was required to vacate. Even so, Appellant had no confidence that a closing would take place due the prior lack of performing and the fact their sales contract was rendered invalid and non-negotiable by the very same lender who was 'allegedly' processing their mortgage application. Further, their perjury, forgery, and misrepresentations did little to raise Appellant's confidence in the Respondents actions or words. For

these reasons, Appellant asks this Court to reconsider its Opinion and reverse the ejection and rule to show cause/ contempt/ejection order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Molly M. Morphew". The signature is written in a cursive style with a large initial "M" and a long horizontal stroke extending to the left.

Molly M. Morphew, Appellant pro se
121 Sterling Dr.
Rincon, GA 31326
(843-514-7299)

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2017-001393

Molly M. Morpew

Appellant

v.

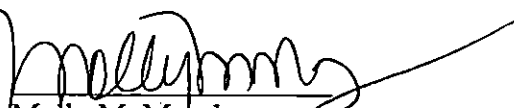
Stephen Dudek, and Doreen Cross,
Thomas Ferro, Lorraine Ferro

Respondents

CERTIFICATE OF SERVICE

I, Molly M. Morpew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with an Appellants PETITION FOR REHEARING AND REQUEST TO AMEND ITS OPINION and Certificate of Service 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
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents


Molly M. Morpew, pro se

June 3, 2020

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JUN 04 2020
SC Court of Appeals

June 1, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

Re: Appellate Case No. 2017-001393
Molly M. Morphew v. Stephen Dudek, Doreen Cross

Dear Ms. Kitchings:

Please find enclosed the Appellant's Petition for Rehearing and Certificate of Service, to be recorded and filed.

Also enclosed is a said copy of above to be kindly recorded and returned in the self-addressed, stamped envelope, and a money order in the amount of \$50.00 representing the filing fee.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Molly Morphew', written in a cursive style.

Molly Morphew, pro se

RECEIVED
JUN 04 2020
SC Court of Appeals

ORIGIN ID: SAVA (843) 574-0697
MOLLY MORPHEW

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ACTWGT: 3.00 LB
CAD: 104726038/NET4220

121 STERLING DR

BILL SENDER

RINCON, GA 31326
UNITED STATES US

TO HONORABLE JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
1015 SUMTER STREET

56B/1/CTDD/FE4A

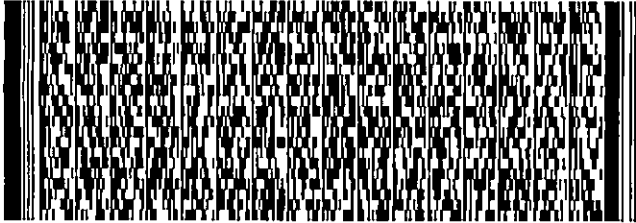
COLUMBIA SC 29211

(803) 734-1890

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