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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

Appellate Case No. 2018-000507

Molly M. Morphew — Appellant

v.

Stephen Dudek, and Doreen Cross — 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Appellant Molly Morphew, hereby respectfully petitions this Court for a rehearing in the above-entitled matter after an unpublished opinion, dated May 20, 2020, which affirmed the dismissal of Appellant's complaint for constructive trust.

INTRODUCTION

On May 20, 2020, this Court affirmed the lower court's grant of respondents' motion to dismiss Appellant's claim for constructive trust based on the doctrine of res judicata, specifically:

A. "*Although Morphew's claim for a constructive trust could not have been raised in the prior suit, because the basis of the claim was predicated on the allegations of fraud that were previously adjudicated, Morphew's constructive trust claim is barred by res judicata,*",

B. "*Although Morphew argues on appeal that Stephen Dudek and Doreen Cross did not plead the doctrine of res judicata in their motions to dismiss, this issue was not raised to or ruled on by the circuit court, and thus is not preserved for appellate review. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [Master]*")

Appellant petitions this Court for rehearing regarding the undecided arguments included in (Argument I, II) and its ruling as a whole, rehearing of decided argument B above, and for clarification of the procedural ruling related to its decision of A above.

Specifically, Appellant respectfully asks this court to, 1) deny and reverse the lower court's order due to lack of grounds or lack of grounds to which this Court affirmed, and amend its Opinion of A above to include clarification for its basis for its ruling to preserve this issue for appeal or any subsequent litigation, 2) include in its Opinion Appellant's claim Respondents are not bona fide purchasers; a void Order; violation of due process and denial of equal protection of the laws, 3) to reconsider its Opinion of B above and amend accordingly, and 4) reconsider its ruling as a whole as its ruling is unsupported by the record.

1. This Court ruled "*Although Morphew's claim for a constructive trust could not have been raised in the prior suit, because the basis of the claim was predicated on the allegations of fraud that were previously adjudicated, Morphew's constructive trust claim is barred by res judicata.*"

First, Appellant can find nowhere in the record the allegations of fraud or any 'allegation of fraud' that was previously adjudicated that would or could completely bar its' Constructive Trust complaint. In its Opinion, this Court has not referenced or pointed to the specific allegations of fraud or a prior adjudication on same that supports its ruling completely barring Appellant's complaint for Constructive Trust. "The doctrine of res judicata only acts to preclude relitigation of issues actually litigated or that might have been litigated in the first action." *Hayes v. Hayes,* 312 S.C. 141, 439 S.E.2d 305 (Ct.App.1993). No such conclusion can be made here. Due to this reason, barring completely Appellant's complaint is improper and without justification and must be reversed.

Regardless, Appellant respectfully asks this court to amend its Opinion to provide the allegations of fraud which it found were adjudicated or adjudicated in a way to completely bar Appellant's complaint, and what prior suit those allegations were adjudicated in, by which it based its decision so Appellant is able to fully and fairly address and to preserve this issue for appeal or any subsequent litigation.

Second, Additionally, based on its' verbiage, "*because the basis of the claim was predicated on allegations of fraud that were previously adjudicated, Morphew's constructive trust claim is barred by res judicata*" it presumes to present that only allegations of fraud or the lack of fraud control a claim for constructive trust, and thus would bar the complaint in its entirety. Actual fraud is not the only basis to a constructive trust claim, and was not so in Appellant's claim. Constructive trust also results from bad faith, abuse of confidence, or violation of a fiduciary duty, or <u>any circumstance under which the property was acquired making it inequitable being retained by the Respondents</u>[1]. The case of *Bank of Williston v. Alderman*, 106 S.C. 386, 91 S.E. 296, 298 (1917) states: "Actual fraud is not necessary, but such trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who holds the legal title." See also *Dominick v. Rhodes*, 202 S.C. 139, 24 S.E. (2d) 168 (1943). Constructive trust "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty <u>which gives rise to an obligation in equity to make restitution</u>." *Carolina Park Associates, LLC v. Marino*, 732 S.E.2d 876, 879 (2012). (quoting, *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 560 (1987)); *Searson v. Webb*, 208 S.C. 453, 38 S.E. (2d) 654 (1946).

In addition to allegations of fraud, it provides facts of circumstance under which the property was obtained making the Respondents' ownership contrary to the principles of equity.

[1] Such as a Void or invalid time is of the essence sales contract or a Void court order.

Appellant has raised an invalid and non-negotiable time is of the essence sales contract, a void in-part order, which in its briefs specifically asked this Court to render the prior judgment of November 6, 2014 Void; lack of subject matter jurisdiction; violation of due process; and the Respondents were not bona fide purchasers. Therefore, granting the Respondents' motion to dismiss the constructive trust based on fraud or the lack of is not proper, and res judicata in this instance cannot bar or bar completely Appellant's complaint, therefore dismissal is improper.

As presented below and in its Briefs, the original order in-part granting specific performance in favor of the Respondents is Void, therefore a nullity. Therefore res judicata is not available as a defense in *either* proceeding in which this appeal encompasses.

2. *Appellant has raised and would like this Court to rehear the undecided arguments:*

a) the original action Order is VOID in-part, which in its briefs specifically asked this Court to render the prior judgment of November 6, 2014 Void, including lack of jurisdiction and an invalid sales contract, its due process was violated, and b) the Respondents were not bona fide purchasers.

The prior original action between the parties involved only the rights of Appellant and Respondents to specific performance of their sales contracts; while this present action seeks to set and establish a constructive trust based on the Dudeks' unlawful obtainer of the property. Further, it has raised additional claims in its complaint, not subject solely to fraud or the lack of, therefore dismissing Appellant's complaint completely is improper. "Such a motion [12(b)(6)] cannot be granted if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. *Brown v. Leverette*, 291 S.C. 364, 353 S.E. (2d) 697 (1987).

This Court has not decided these issues in its Opinion. Appellant is afraid this court has overlooked the critical importance of these matters, or which res judicata has no effect, and respectfully asks for this Court decide these matters based on the evidence in the record of the lower court, especially considering these issues are not subject to fraud or the lack of, and have not been opposed or denied by the Respondents.

"It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases when the appellant satisfies this court that the finding is against the preponderance of the evidence." *Crowder v. Crowder,* 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965). An action to declare a constructive trust is in equity, *Bank of Williston v. Alderman*, 91 S.E.2d 296 (1917), and this Court finds facts in accordance with its own view of the evidence. *Gray v. South Carolina Pub. Serv. Auth.*, 284 S.C. 397, 325 S.E. (2d) 547 (1985); *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E. (2d) 773 (1976).

The South Carolina courts rely on the equity maxim: "He who seeks equity must do equity." *Norton v. Matthews,* 249 S.C. 71, 152 S.E.2d 680 (1967). S Schwartz, 'The Case for Specific Performance' (1979) 89 Yale Law Journal 271. In the original specific performance case, equity did not favor the granting of specific performance as a matter of sound judicial discretion. The power to set aside a judgment exists in every court. (CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE, supra note 151). 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. (*Universal Oil Prods. Co. v. Root Refining Co.*, 328 U.S. 575 (1946). 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). 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 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE, 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).

a. **VOID Order**: The record clearly shows, the original Order of November 6, 2014 awarded specific Performance equally to both Appellant and Respondents[2]. It also confirms the Order *equally* applied the same rules, statutes, guidelines 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 and was also awarded specific performance. While at the same time, the record undoubtedly shows the Respondents critically, and at their own hand, failed practically all, if not all, the rules, statutes, guidelines and precedence(s) required for specific performance, therefore the judgment granting specific performance to the Respondents failed to comply with the same rules, statutes, guidelines and precedence. Thus in turn violates Appellant's constitutional right of due process, which includes the right to be fully and fairly heard and a judgment that complies with rules, statutes, guidelines and precedence(s) in which it was granted the power to enter a specific judgment.

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

An order that fails to comply with its own rules, guidelines and case law fails on its face, and an order that fails on its face is VOID (in this case, void in-part). To deny the Order 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. 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 constitutional rights of due process and protection, highly partial, discriminatory, and an offense to public policy and the process(es) of the judicial system.

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.

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 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)

For example, possibly the overall defining and *critical* condition precedent 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. It's a 'yes' or 'no' question and does not take into regard the reason for its failure to comply, for in this strict remedy of specific performance failure completely bars the remedy of specific performance. The Respondents were not ready, able and willing. In fact, they were denied or refused lending, for failure

to possess a valid and negotiable sales contract![3] The Respondents had intentionally allowed their sales contract to expire before making initial mortgage application. 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.

The Respondents did not have the ability by law or the guidelines of the courts to compel or to be awarded such remedy. This 'ability' was just as critical in order for the court of equity *to have or retain jurisdiction* to rule specific performance in their favor. Due this critical failure, 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),

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).

[3] A fact discovered by Appellant in January 2015 when proceeding pro se on appeal in the original case for specific performance. It was raised to this court, but was not considered or decided, nor contested by the Respondents.

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.
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> 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.
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> 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."

So again, such a failure renders the court order of November 6, 2014 Void in-part, and to turn a blind eye or fail to reverse the grave injustice is a violation of the courts own rules, maxims, guidelines and precedents of law and equity, a violation of public policy, and severely prejudices the judicial process and Appellant and denies her equal protection of the laws. Nevertheless, a void Order does not allow, under any circumstance, the ruling, or any subsequent ruling which arose from a void order, to stand and must be reversed. As in *McNair v. Rainsford:*

> A void judgment is one that is void on face of judgment roll, **Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828): * Under Federal law which is applicable to all states, the U.S.

Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities." *Cockett Oil Co. v. Effie*, 374 S.W.2d 154 (Mo.App. 1964). Decision is void on the face of the judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered, *B & C Investments, INC. v. F & M Nat. Bank & Trust,* 903 P.2d 339 (Okla.App.Div 3, 1995). 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)

Strict compliance was required in order for the court to have the ability to act, in this case, to grant them specific performance, resulting in the court's lack of inherent power to enter its judgment or lack of jurisdiction of the subject matter. 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)[4], 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

[4] SCRCP Rule 60(b) is identical to the Federal Rule, except for minor changes.

court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. 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).

If compliance of a critical requirement is a "must" to retain jurisdiction to enter an award, then non-compliance of that same critical requirement is a "must" to sustain *lack of jurisdiction* to enter that same award, and that award *must* be refused or reversed. Meaning, a court cannot award or affirm[5] a remedy based on law and specific requirement(s) but also fail to refuse or reverse that same remedy based on a lack of those same specific requirement(s). To do so is contrary in itself and not just prejudicial to Appellant and her due process, but is unlawful as it violates the laws and rules of the courts and may be considered constructive fraud.

Appellant is plainly being penalized and prejudiced for its complete of a contract compliance and to the rules and laws while at the same time the Respondents are being awarded for their fraud, critical failures and complete non-compliance and disregard for the same rules and laws, including abandoning their time is of the essence sales contract by intentionally allowing it to expire. What is fair and just in a ruling that is totally unsupported by the record and that is only supported by perjury, forgery, conspiracy,

[5] Where this Court affirmed the lower court's order based on the master's position, but reviewed all questions of law de novo. In its review of the laws, it confirmed and identified the critical requirements in which the master had the ability or jurisdiction to enter specific performance, and the critical failings of a movant which prevents it from its ability or jurisdiction to enter same. The record substantially, if not completely, shows non-compliance of the critical requirements and the critical failures of the Respondents. Therefore, for this Court to do anything but VOID the order, that by law, and on its own Opinion, fails on its face, and which the master had no ability to act or jurisdiction to enter specific performance in favor of the Respondents is unlawful, an abuse of discretion, a gross injustice, a violation of due process and public policy, and contrary to the rules, laws, precedents and maxims of the courts and equity.

misrepresentations, and bad faith and unfair dealings? What is fair and just about a ruling that fails on its face or fails the very laws, rules, guidelines and case law in which it was granted its power to enter the judgment? What is fair and just about a ruling that violates public policy? What is fair and just about a ruling that denied Appellant the equal protection of the laws?

To what purpose do the courts refuse to address this issue? Meaning, what laws or rules allow a court to protect the Respondents regardless of their fraud or a gross injustice 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 an Order in-part is clearly void would result in a substantial injustice and severe prejudice to Appellant. Indeed, it matters not if actual fraud was adjudicated. The facts are the facts, and those facts of the case have not been dismissed nor barred, and are upheld by the record. 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 proceeding[6]. 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 constitutional rights, a void order, extreme prejudice, a violation of our judicial system and its processes, what appears to be constructive fraud by the courts, and a blatant violation of public policy?

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 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, regardless of actual fraud or lack of.

The reality is that both Appellant and Respondent had current, real interests in the property, and the definition of property rights is a matter of state law. Resolution of the due process question must take account not only of the interests of the Respondent but those of the Appellant as well. The Respondents' intentional abandonment of their rights to the property weighs heavy in favor of Appellant's due process claim, notwithstanding the void order in-part. Under these circumstances and facts of the case, Respondents cannot be

[6] 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.

granted relief, and Appellant cannot be denied relief, therefore a constructive trust is required.

The Respondents are attempting to get away with the crime of fraud and 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. 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 Judgement 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 failing to do equity and failed to 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 contempt, or any order arising from the void order, and dismiss both appeals in the original action. It must reverse the Order in which this appeal arose, award constructive trust and dismiss this appeal.

b. **The Respondents are not bona fide purchasers**. As argued in its briefs and herein, a void order is without any effect and created no legal rights. A void order for specific performance grants no rights to purchase, therefore without needing to argue, the Respondents are not bona fide purchasers. Any subsequent orders or rulings based on a void order is also void. Consequently, the Order dismissing completely Appellants constructive trust must be set aside, a constructive trust ordered, and this appeal dismissed.

Regardless, the Respondents were denied lending for failure to produce a valid and negotiable sales contract at initial application, after they intentionally let their TIME IS OF THE ESSENCE expired on November 30, 2012, thus held no legal claim after such time to the property at question. Respondents' purchase of the property which they had no legal or equitable interest in was without foundation in law or fact. In fact, their purchase was ultimately acquired due their illegal orders in the original action. In this case fraud was indeed committed by the Respondents in order to procure the award for specific performance.

Even so, the status as a bona fide purchaser is also an affirmative defense, which must be plead in order to receive protection from a claim to title. As argued above and in its Brief, the Respondents have failed to plead *any* defense in their motions to dismiss or in an answer, therefore the defense is not available to them. Also, to receive this special protection, one must acquire property, 1) in good faith, 2) for value, and 3) without notice of any third-party claim or interest. The record clearly shows, and as argued herein and its briefs, the Order in-part granting specific performance to the Respondents is Void, at all times material, their sales contract was or is invalid, they had no legal claim to the property, and they failed to be ready, able and willing; It's clear by the record, the Respondents critically failed #1. As a consequence, neither is res judicata available as a defense to completely bar Appellant's constructive trust complaint nor did the Respondents acquire the property in good faith.

Additionally, the Respondents had specific notice of Appellant's interest or claim to the property, therefore fail #3[7]. In fact, once Appellant discovered the fraud [during the appeal of the original action in 2015], she made no effort to hide their fraud or her 'sole'

[7] As to #2, Appellant has no knowledge, as Appellant has been given no opportunity for discovery.

claim to the property, in filing a subsequent complaint for fraud/fraud on the court, this instant complaint, even in the original action. Even when directly asked by Respondents' attorney regarding damages in the subsequent case for fraud, if she was still claiming the property, she replied 'yes'. Appellant has been fighting to right this grave injustice ever since it discovered the fraud, but the court(s) have been turning a blind eye and attempting in any way possible to avoid the matter by dismissing Appellant's claims, even if improper, without addressing the critical matters.

Based on the record, above and herein, Respondents are not bona fide purchasers, the order granting them specific performance in the original action is void, particularly that fraud was committed to obtain that ruling. Therefore, this court *must* reverse the lower court orders, award constructive trust, and dismiss the applicable appeals due to a void order. To allow or rule otherwise would be a grave miscarriage of justice, improper and unlawful.

3. In its' Opinion, this Court stated, "*Although Morphew argues on appeal that Stephen Dudek and Doreen Cross did not plead the doctrine of res judicata in their motions to dismiss, this issue was not raised to or ruled on by the circuit court, and thus is not preserved for appellate review. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [Master].*"). Appellant disagrees and asks this Court to reconsider its decision as presented below.

As supported by the record, the Respondents had no legal claim to property. No legal claim means no defense is available. Period. Including the affirmative defense of 'res judicata', especially to completely bar Appellant's complaint for constructive trust due to the alleged lack of actual fraud. Even so, a void order of the original action would render this issue moot, as this appeal must be dismissed as previously argued above.

Regardless, Appellant raised to the circuit court that the Respondents "*failed to state or plead even one ground for granting their motion*" (See ROA pg. 367). The Respondents' motion only repeated SCRCP Rule 12(b)(6), and completely failed to plead at all, hence, nowhere was res judicata raised or pleaded [that would or could] completely bar Appellant's complaint for constructive trust (See ROA pg. 286). Appellant is not required to argue defenses not raised or plead in their motion, or affirmative defenses such as re judicata, if not plead in an Answer. Besides, no answer was filed, therefore the Respondents abandoned a plea, if any considered, of res judicata. An abandonment, regardless of intention or the lack of, waives any right the defense of res judicata, and neither the Appellant or the courts can present to 'un-waive' that right. The doctrine of *res judicata* is not usually raised by motion. Under the federal rules[8], it must be raised by affirmative defense. In most situations, if a defendant does not raise the defense of *res judicata*, it is waived." *Rotec Industries, Inc. v. Mitsubishi Corp.*, 348 F.3d 1116, 1119 (9th Cir. 2003). No defense was plead. Even if it was, it was not plead to support the ruling of this Court. Further, the affirmative defense is required to be plead in an answer, regardless whether it was raised or plead in a motion to dismiss or any other court document or proceeding. Until such pleading, res judicata is not an available defense, and any judgment pursuant res judicata by the lower court or this court prior to, is improper.

Due to reasons here and in its Brief, Appellant contends dismissal or barring Appellant's complaint in its entirety is improper, that the defense of res judicata is unavailable as a defense for the Respondents, and such issue was preserved for appeal.

[8] SCRCP rules are identical

4. Appellant asks this Court to reconsider its ruling as a whole as res judicata does not bar a separate suite based upon an existing final judgment rendered upon the merits with *fraud* or collusion.

Res judicata is also defined as the principal that an existing final judgment rendered upon the merits *without fraud* or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction. BALLENTINE'S LAW DICTIONARY 1105 (3d ed. 1969). Black's Law Dictionary 1312 (7th ed. 1999).

First, no conclusion could be found from this Court's ruling or the ruling of the lower court in which this appeal arose, the allegations of fraud previously adjudicated or that a judgment was rendered with proper jurisdiction and without fraud. Due to this reason, barring completely Appellant's complaint is improper and without justification and must be reversed.

Even so, the record shows without a doubt the Respondents committed fraud to obtain an award of specific performance (*see* Attachment A, pg. 9 para. 2), where the fraud alleged [to obtain the ruling] is intrinsic as opposed to extrinsic. No where did the court find fraud was not committed to obtain the ruling. To the extent this ruling was not opposed or appealed by the Respondents, and that res judicata cannot bar a claim if *either* intrinsic or extrinsic fraud exists, Appellant's complaint for Constructive Trust cannot be barred or barred completely.

Due to this reasons above, barring completely Appellant's complaint is improper or without justification and must be reversed.

CONCLUSION

The Respondents have neither appealed the Order which this appeal arose from nor the January 31, 2017 Order referenced in the appealed order, deeming the allegations of Respondents' fraud committed to obtain a judgment for specific performance as admitted, therefore res judicata cannot

bar Appellant's complaint. The Respondents have completely failed to plead res judicata, or have abandoned their plea, if any, therefore the defense has been waived and is unavailable to them or this court. Both the Respondents' TIME IS OF THE ESSENCE sales contract and the original case order is void or void in-part, as it appears on the face of the record and as admitted by allegations of fraud committed in a prior court order in a separate case, which Respondents did not appeal. The Respondents have failed to plead bona fide purchaser, have not obtained the property in good faith, and had express notice of Appellant's claim to the property therefore have waived protection from Appellant's claim to title.

Based on the above, and Appellant's briefs, its' constructive trust complaint cannot be barred by res judicata, therefore the Order of the lower court in this instant case must be reversed and a Constructive Trust ordered; the Order of November 6, 2014 is void and must be reversed, and that appeal dismissed; and any subsequent order based on the void order also reversed and any applicable appeal dismissed, including this appeal. Nonetheless, Appellant respectfully asks this court to amend its' Opinion to include the 'allegations of fraud' previously adjudicated in which it specifically supports its ruling to completely bar Appellant's complaint pursuant res judicata, including reasoning, findings of fact, standard of review or law analysis so Appellant is able to fully and fairly address and to preserve this issue for appeal or any subsequent litigation.

Respectfully submitted,

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

ATTACHMENT A

FORM 4

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

FILED-RECORDED
2017 JAN 31 AM 8:
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801706

Molly M Morphew	Stephen Dudek David Collins First Federal Susan Nicholson Carrie Boyer	Doreen Cross Allison Williams Michael Scarafile 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

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

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

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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	1/31/2017
	Judge Code	Date

1/31/17 **For Clerk of Court Office Use Only** 1/31/17

This judgment was entered on 1/31/17 and a copy mailed first class or placed in the appropriate attorney's box on 1/31/17 to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 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)

Cheryl Graham

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), SCRCP.

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

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

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER 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**

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's counsel:	Molly Morphew, *Pro Se*
Defendants' counsel:	Steven L. Smith, Esq.
Date of Hearing:	November 7, 2016
Court Reporter:	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 Morphew[1], 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.

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 Exiting 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 Exiting 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 or 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 Exiting 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), SCRCP. 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.

Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524 (2009), the South Carolina Court of Appeals explained dismissal under this rule as follows:

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

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 Exiting 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.

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.

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 Morphew, 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

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.*

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 to 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.

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

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. 2018-000507

Molly M. Morphew — Appellant

v.

Stephen Dudek, and Doreen Cross — Respondents

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with an Appellant's 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. Morphew, pro se

June 2, 2020

May 31, 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. 2018-000507
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,

Molly Morphew, pro se

ORIGIN ID:SAVA (843) 514-7299
MOLLY MORPHEW

121 STERLING DR

RINCON, GA 31326
UNITED STATES US

SHIP DATE: 01JUN20
ACTWGT: 2.00 LB
CAD: 104726038/INET4220

BILL SENDER

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

COLUMBIA SC 29211
(803) 734-1890 REF: PET. REHEARING BOTH APPEALS
INV:
PO: DEPT:

56BJ1/C7DD/FE4A

FedEx Express

TUE - 02 JUN 3:00P
STANDARD OVERNIGHT

TRK# 0201 **7705 9805 8747**

XH USCA

29211
SC-US **CAE**

RECEIVED
JUN 03 2020
SC Court of Appeals

RECEIVED
JUN 04 2020
SC Court of Appeals