IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Deadra L. Jefferson, Circuit Court Judge
Edgar W. Dickson, Circuit Court Judge
Maite Murphy, Circuit Court Judge

Case No.: 2016-CP-18-01706
Appellate Case No.: 2018-002185

Molly M. Morphew, ... Appellant

v.

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

INITIAL BRIEF OF RESPONDENTS ALLISON WILLIAMS AND FIRST FEDERAL

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STATEMENT OF THE CASE

This appeal arises out of the Trial Court's partial dismissal pursuant to Rule 12(b)(6) and grant of summary judgment as to the remainder of Appellant's case in favor of Respondents. Appellant initiated this action by filing her Summons and Complaint on September 8, 2016 alleging eighteen causes of action, eleven of which were at least facially directed at First Federal[1] and Allison Williams (the "Bank Respondents"). On September 26, 2016, the Bank Respondents filed a Motion to Dismiss based upon Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. (Bank Respondents' Motion to Dismiss, R. ___). As a result, on January 31, 2017, the Trial Court dismissed seven of the eleven causes of action directed at the Bank Respondents and allowing the case to proceed on (1) Appellant's first cause of action – "Fraud, Extrinsic Fraud – Fraud on the Court"; (2) Appellant's seventh cause of action – "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud"; (3) Appellant's seventeenth cause of action – "Intentional Infliction of Emotional Distress"; and (4) Appellant's eighteenth cause of action – "Tortious Interference with Existing Contractual Relations." (Amended Order granting in part and denying in part Bank Respondents' Motion to Dismiss, R. ____).

Following fourteen additional months of discovery, the Bank Respondents filed a Motion for Summary Judgment on March 5, 2018 which was supported by a memorandum of law filed on May 25, 2018. A hearing on the Bank Respondents' Motion for Summary Judgment, and several other motions, was scheduled for May 29, 2018 but was continued when the Appellant failed to appear – claiming a health emergency. The hearing was eventually held on October 1,

[1] First Federal Bank is properly identified as South State Bank, National Association, formerly known as CenterState Bank, N.A., as successor in interest by merger to South State Bank. South State Bank, in turn, was formerly known as SCBT successor in interest to First Federal Bank. For convenience, Respondents will refer to the bank entity as First Federal as it is captioned here.

2018 in front of the Honorable Judge Maite Murphy. Summary judgment as to the entirety of the case was granted by order of the court dated November 15, 2018. (Order Granting Bank Respondents Motion to Dismiss, R. ___). This appeal followed.

STATEMENT OF THE FACTS

The seeds of this particular action can be found in Appellant's disappointment in Judge Chellis' order dated November 6, 2014 resolving Appellant's initial assault upon a 2012 real estate transaction (Civil Action No. 2013-CP-18-00074) (hereafter referred to as the "Original Litigation"). The Original Litigation revolved around Appellant's attempt to purchase a property located in Summerville, South Carolina. Respondents Dudek and Cross (the "Buyer Respondents") entered into a contract for the purchase of the property with the sellers of the property (the "Sellers"). (November 6, 2014 Order, R. ___) Appellant also entered into a backup contract with the Sellers for purchase of the property. (*Id*., R. ___) Respondents First Federal's and Allison Williams' only involvement in the 2012 transaction was as lender and loan officer (respectively) to the Buyer Respondents. (*Id*., R. ___) With competing contracts for the property outstanding, litigation between the Buyer Respondents, Sellers, and Appellant ensued. The Bank Respondents were not party to the Original Litigation. However, prior to trial, First Federal produced documents pursuant to a subpoena issued by Appellant's counsel, and Allison Williams testified at the trial. After a year and a half of discovery and a two-day trial where Appellant was represented by counsel, Judge Chellis eventually found that the Buyer Respondents were "willing, able and ready purchasers of the Real Property" and granted specific performance to the Buyer Respondents over Appellant. (November 6, 2014 Order, R. ___).

Appellant appealed Judge Chellis' ruling *pro se*. (Appellate Case No. 2014-002633). In reviewing her attorney's trial notebook from the Original Litigation, the evidence presented at

trial, and the transcript of the trial, Appellant claims she discovered the purported misrepresentations and "fraud on the court" that underlie this litigation. (Deposition of Molly Morphew, pg.79 – 80, 92, R. ___)(see also, Morphew Initial Brief dated February 4, 2015, R. ___). In other words, every piece of evidence Appellant uses to support her incredible allegations was available to her attorney before trial of the Original Litigation or is testimony at the trial itself. (Deposition of Molly Morphew, p. 41, R. ___).

Appellant, proceeding *pro se*, alleged the following causes of action against one or both of the Bank Respondents in her Complaint: **First Cause of Action --** Fraud, Extrinsic Fraud, Fraud on the Court; **Second Cause of Action** -- Perjury; **Fifth Cause of Action** -- Violation of the Federal Rules of Civil Procedure Rules 26, 37 and Sanctions, South Carolina Rules of Professional Conduct Rule 8.4(c) and Rules Regulating the South Carolina Bar; **Seventh Cause of Action** -- Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud; **Twelfth Cause of Action** -- Fraud; **Thirteenth Cause of Action** -- Declaratory Judgment that No Contract Exists; **Fourteenth Cause of Action** – Forgery/falsifying documents with intent to defraud another, SC Rules of Professional Conduct Rule 1.2(d); **Fifteenth Cause of Action** -- Violation of Federal Rules and Regulations of Banking Rules and Regulations (FDIC); **Sixteenth Cause of Action** -- Obstruction of Justice and South Carolina Rules of Professional Conduct Rule 1.4(a)(4) and 3.4 (a)(d); **Seventeenth Cause of Action** -- Intentional Infliction of Emotional Distress; and **Eighteenth Cause of Action** -- Tortious Interference with Existing Contractual Relations. (Compl., R. ___).

However, despite the various window dressings, as admitted by Appellant, every cause of action against the Bank Respondents arise out of their conduct during the Original Litigation (Deposition of Molly Morphew, p. 279, R. ___)("Q: Is it fair to say that the only thing you're

suing First Federal Bank and Allison Williams for is false testimony and misleading the court? A: well, currently, yes."). In fact, Appellant testified that the entirety of the Bank Respondents' offensive conduct occurred within the four walls of the courtroom. (Deposition of Molly Morphew, p. 283, R. ___).

On September 26, 2016, the Bank Respondents filed a Motion to Dismiss based upon Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. (Bank Respondents' Motion to Dismiss, R. ___). The Trial Court agreed and dismissed seven of the eleven causes of action Appellant leveled at the Bank Respondents. (Amended Order granting in part and denying in part Bank Respondents' Motion to Dismiss, R. ___). Therefore, the case proceeded as to the Bank Defendants under Appellant's First, Seventh, Seventeenth, and Eighteenth causes of action for (1) Fraud, Extrinsic Fraud, Fraud on the Court; (7) Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud; (17) Intentional Infliction of Emotional Distress; and (18) Tortious Interference with Existing Contractual Relations. (Id., R. ___)

During the following months, discovery was had and the Bank Respondents responded to discovery requests propounded by Appellant. Appellant did not file any motions to compel directed to the Bank Respondents. Following the deposition of the Appellant on January 15, 2018, the Bank Respondents filed their Motion for Summary Judgment on January 31, 2018. (Bank Respondents Motion for Summary Judgment. R. ___). The hearing on that Motion, initially scheduled for May 29, 2018, was not actually heard until October 1, 2018. At no time in the intervening eight months did Appellant seek or pursue additional discovery.

On November 15, 2019, the Court granted the Bank Respondents' Summary Judgment Motion in its entirety relying primarily on Appellant's admissions set forth in her pleadings and

in her deposition. (Order granting the Bank Respondents' Motion for Summary Judgment, R. ___). This appeal followed.

In addition to the Original Litigation, the above referenced appeal of the same, and this matter, Appellant has initiated a "labyrinthine string of litigation." (Order Granting Defendants' Motion to Dismiss, Case No. 2017-CP-18-00987, R. ___). Several of these matters have preceded the current matter presently before this Court. (See, Appellate Case Nos. 2018-000507; 2017-001528; 2017-001393; 2014-002633). Appellant has been universally unsuccessful in these repeated actions.

ARGUMENT

I. The Appellant's allegations are fundamentally flawed and their dismissal is appropriate as a result

The Appellant's allegations against the Bank Respondents are fatally flawed at their core. No matter how Appellant captions the allegations, they are flawed and, as the Trial Court found, insufficient to support any cause of action.

This case is a continuation of Appellant's dogmatic pursuit to undo a 2012 residential real estate sale by a third-party to the Buyer Respondents. As is crystal clear from the Complaint and Appellant's initial brief, this matter is nothing more than yet another attempt to re-litigate the issue decided by Judge Chellis in the Original Litigation – namely, were Buyer Respondents entitled to specific performance? Judge Chellis ruled that yes, they were, and on appeal of that matter to this Court, this Court said yes. (Appellate Case No. 2014-002633).

Appellant's whole case against the Bank Respondents is premised entirely on her belief that the Bank Respondents mislead the court through Allison Williams' testimony. (Deposition

of Molly Morphew, p. 279, R. ___)("Q: Is it fair to say that the only thing you're suing First Federal Bank and Allison Williams for is false testimony and misleading the court? A: well, currently, yes."). In fact, Appellant testified that the entirety of the Bank Respondents' conduct occurred within the four walls of the courtroom. (Deposition of Molly Morphew, p. 283, R. ___). Further, despite litigating this issue for the better part of a decade, Appellant has failed to produce a scrap of evidence not available to her and her attorney prior to trial or testimony at that trial. (Deposition of Molly Morphew, pg. 79-80, 98-99, R. ___).

Appellant's allegations that the Bank Respondents committed perjury or mislead the court, even if true (which the Bank Respondents strongly deny), fail as a matter of law because no civil cause of action exists for such conduct. "As a general rule, no civil action lies for damages resulting from false statements under oath constituting perjury or from subornation of false testimony. Thus, no action for damages lies for false testimony in a civil suit whereby the litigant fails to recover a judgment, or a judgment is rendered against him or her." 60A Am Jur 2d Perjury § 7. "Authorities are unanimous in holding that generally a person who is damaged by perjured testimony in a civil suit does not have a cause of action for damages arising out of such perjured testimony." *Frist v. Gallant*, 240 F.Supp. 827, 828 (D.S.C. 1965).

More specifically, Appellant's allegations of fraud on the court cannot be supported by her allegations of false and/or misleading testimony or discovery abuses and thus fail as a matter of law.

> Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court.

Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Appellant has not alleged and cannot prove such egregious conduct on the part of the Bank Respondents and as such, cannot as a matter of law support her cause of action for fraud on the court.

Even if Appellant's allegations could support a cause of action for fraud on the court (which it cannot, see above and below), the Bank Respondents still would have no business being involved in this litigation. Fraud on the court does not support tort damages but rather supports an exception to the general rule prohibiting re-litigation of decided issues. *Kuehn v. Kuehn*, 85 Cal. App. 4th 824, 834-35 (Cal. Ct.App. 2000) (Finding that a Plaintiff is incapable of stating a cause of action in tort for the alleged extrinsic fraud) (See also, *George v. McClure*, 245 F.Supp. 2d 735, 740-41 (M.D.N.C. 2003) ("plaintiff cannot recover damages for fraud unless and until the judgment denying him the right to recover is vacated. … Only if the prior settlement is vacated can Plaintiff recover damages caused by Defendant's alleged fraud. Because this court cannot disturb that settlement, Plaintiff cannot seek a remedy in the form of monetary damages.").

Therefore, however Appellant dresses up her allegations, they are fundamentally flawed as to the Bank Respondents and fail as a matter of law. The Trial Court correctly determined so and that holding should be upheld as a result.

II. The Trial Court properly granted the Bank Defendants' Motion to Dismiss in Part

The Trial Court granted in part and denied in part the Bank Respondents' Motion to Dismiss.[2] This holding should be affirmed. As to the Bank Respondents, Appellant argues that

[2] Appellant identifies twenty issues on appeal in her wide-ranging Initial Brief. However, as to the Bank Respondents, Appellant's initial brief really boils down to certain issues with the Trial Court's partial grant of the Bank Respondents' Motion to Dismiss and eventual award of Summary Judgment. Appellant's issues on appeal numbers fourteen, seventeen, and eighteen

the dismissal of her causes of action for Declaratory Judgment (Appellant's Initial Brief, p. 40-42), "Fraud – Untrue assertion of fact (or equivalent); Assertion made with knowledge of falsity and intent to deceive" (Appellant's Initial Brief, p. 45-46), and for Breach of Fiduciary Duty (Appellant's Initial Brief, p. 46-47) were in error and should be overturned. The remaining causes of action dismissed by the Court pursuant to the Bank Respondent's Motion to Dismiss are unchallenged and, thus, have been abandoned on appeal. *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997) ("It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling. Failure to challenge the ruling "is an abandonment of the issue and precludes consideration on appeal." The unchallenged ruling, "right or wrong, is the law of the case and requires affirmance." (internal citations omitted)).

A. Standard of Review

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Brouwer v. Sisters of Charity Providence Hospital*, 409 S.C. 514, 519, 763 S.E.2d 200, 202 (2014) (citing, *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id*. "The Court may sustain the dismissal when the facts alleged in the complaint do not support any relief under any theory of law." *Id*. (citing *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003)).

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raise issues related to the partial grant of the Bank Respondents' Motion to Dismiss. Appellant's issues on appeal numbers five, six, seven, nine, ten, and eleven target the Court's award of Summary Judgment in favor of the Bank Respondents. The remainder are unrelated to the Bank Defendants and thus are unaddressed here.

B. The Trial Court's dismissal of Appellant's Twelfth causes of action for Fraud was proper and should be upheld.

The Trial Court dismissed Appellant's Twelfth Cause of Action captioned "Fraud – Untrue assertions of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive" on the basis that "Plaintiff pleads a claim of perjury rather than fraud." (Amended Order granting in part and denying in part Bank Respondents Motion to Dismiss). Because perjury – even if plead and proven – does not constitute a private cause of action in South Carolina, the Court properly dismissed the cause of action.

The Trial Court accurately describes the substance of this cause of action. As noted above and admitted by Appellant, the entirety of Appellant's allegations against the Bank Respondents constitutes an accusation of perjury. However, more specifically, the only actions or inactions of the Bank Respondents identified to support this cause of action are, explicitly, testifying. (Compl. ¶266(2), (7), and (8) ("Allison Williams testified…")). Consistent with Appellant's deposition testimony, the allegations underlying this cause of action would, at best, constitute perjury.

There is no civil cause of action for perjury, regardless of the manner in which it is captioned. "As a general rule, no civil action lies for damages resulting from false statements under oath constituting perjury or from subornation of false testimony. Thus, no action for damages lies for false testimony in a civil suit whereby the litigant fails to recover a judgment, or a judgment is rendered against him or her." 60A Am Jur 2d Perjury § 7. "Authorities are unanimous in holding that generally a person who is damaged by perjured testimony in a civil suit does not have a cause of action for damages arising out of such perjured testimony." *Frist v. Gallant*, 240 F.Supp. 827, 828 (D.S.C. 1965). Because no such cause of action exists, Appellant

cannot support any claim for relief based on perjury. As such, the dismissal of this cause of action was proper and should be upheld.

C. The Trial Court's dismissal of Appellant's Tenth Cause of Action for Breach of Fiduciary Duty was proper and should be upheld.

The Trial Court dismissed Appellant's Tenth Cause of Action captioned "Breach of Fiduciary Duty; Duty of Care; Duty of Full disclosure; Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct" finding:

> In the present case, the Plaintiff was not a party to the loan concerning Defendant First Federal, the contingent financing institution for the Buyers Dudek and Cross, and Defendant Williams, the loan officer for the First Federal. As the Plaintiff was not a party to that transaction, there could be no duty owed to her and no fiduciary relationship created between First Federal, its agents or employees and the Plaintiff.

(Amended Order granting in part and denying in part Bank Respondents' Motion to Dismiss, R. ___). To reiterate, the Bank Respondents were the lender and loan officer to the Buyer Respondents and had no relationship whatsoever with Appellant.

In South Carolina, "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). "As a general rule, mere respect for another's judgment or trust in his character is usually not sufficient to establish a [fiduciary] relationship. The facts and circumstances must indicate that one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf but in the interests of the other party." *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986).

By contrast, Appellant's Complaint attempts to set forth a fiduciary relationship between the Bank Respondents and Appellant by stating, "Defendant Allison Williams, lending officer at First Federal, had a fiduciary duty and/or assumed duty to disclose to the courts true facts and/or sole representations as to the status or conditions of the Dudek/Cross loan or file." (Compl. ¶230). Appellant fails to counter the Trial Court's assertions in her initial brief and, instead, doubles down on this erroneous theory. "Here, the Respondent(s), as professionals and best to know the financial or "contractual" position of its clients, were under oath during the court proceeding, and so 'accepted or induced the confidence place [sic] in them by the judge and all parties, thus creating a fiduciary duty and a duty to speak in the prior action and/or in this current action." (Appellant's Initial Brief p. 47). A fiduciary relationship cannot and does not exist on such specious grounds.

The Trial Court's dismissal of this Cause of Action was proper and should be upheld.

D. The Trial Court's dismissal of Appellant's Thirteenth Cause of Action for Declaratory Judgment was proper and should be upheld.

Appellant's Thirteenth Cause of Action, facially directed at the Bank Respondents, seeks a declaratory judgment that "at all times material, no sales contract existed or exists between Defendants Dudek and Cross and the sellers." (Compl. ¶ 50). To be clear, the Bank Respondents are not, and are not alleged to be, a party to the sales contract between the Buyer Respondents and Sellers. It is entirely unclear why this cause of action is directed at the Bank Respondents as they are not a party necessary to such a determination or declaration. For this simple reason alone, the dismissal of this cause of action as to the Bank Respondents should be upheld. *S.C. Lottery Comm'n v. Glassmeyer*, 428 S.C. 423, 433, 835 S.E.2d 524, 528 (Ct. App. 2019), reh'g denied (Dec. 16, 2019) ("[w]here a concrete issue is present, and there is a definite assertion of

legal rights and a positive legal duty with respect thereto, which are denied by the adverse party, there is a justiciable controversy calling for the invocation of declaratory judgment action.").

However, even addressing the merits directly, the claim's dismissal was appropriate and should be upheld. The Trial Court dismissed the cause of action under the theories of issue preclusion and *res judicata*. (Amended Order granting in part and denying in part Bank Respondents' Motion to Dismiss, p. 11). *Res judicata* is a rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and, as to them, constitutes an absolute bar to a subsequent action. *In re Crews*, 389 S.C. 322, 339, 698 S.E.2d 785, 794 (2010). "Claim preclusion bars plaintiffs from pursuing successive suits where the claim was litigated or could have been litigated." *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (1997).

In addition to this action, Appellant has litigated the legitimacy of the contract between the Buyer Respondents and Sellers on numerous occasions – losing all of them. See, e.g. *Molly M. Morphew v. Stephen Dudek, et al.* (Case No. 2017-CP-18-987 and Appellate Case No. 2018-000507); *Molly M. Morphew v. Stephen Dudek, et al.*, (Case No. 2016-CP-18-1706); *Molly M. Morphew v. Thomas Ferro, et al.*, (Case No. 2013-CP-18-00183 and Appellate Case No. 2014-002633).

As the Trial Court found, the elements of these principals apply in this case. Appellant argues that there is no longer an identity of parties because she has added additional defendants and thus, *res judicata* and claim preclusion cannot apply. (Appellant's Initial Brief, p. 41). However, Appellant cannot destroy identity of parties merely by adding parties who are completely collateral and unnecessary to the adjudication of this cause of action. *Bedrock Servs. v. Int'l Bhd. of Elec. Workers Local Union Nos*. 238, 342, 495, 285 F. Supp. 2d 693, 700

(W.D.N.C. 2003) (citing *United States ex rel., Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 249 (9th Cir.1992) ("[T]he naming of additional parties does not eliminate the res judicata effect of a prior judgment 'so long as the judgment was rendered on the merits, the cause of action was the same and the party against whom the doctrine is asserted was a party to the former litigation.'")

Because the Bank Respondents have no stake in the Declaratory Judgment action and because the doctrines of claim preclusion and *res judicata* are binding and preclusive, the Trial Court properly dismissed the cause of action as to the Bank Respondents.

Based on the above, the Trial Court's Amended Order granting in part and denying in Part the Bank Respondents Motion to Dismiss was proper and should be affirmed.

III. The Trial Court correctly granted summary judgment as to the remaining causes of action.

The Circuit Court correctly determined that the Appellants' four remaining causes of action, identified more particularly as (1) Fraud, Extrinsic fraud, and Fraud on the Court, (2) Bad faith and unfair dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud, (3) Intentional Infliction of Emotional Distress, and (4) Tortious Interference with Existing Contractual Relations, fail as a matter of law. Here, the Bank Respondents demonstrated that they were entitled to judgment as a matter of law, and Appellant failed to present any law or evidence demonstrating the existence of a genuine issue of material fact that would defeat a grant of summary judgment on Respondents' behalf. This holding should be affirmed.

A. Standard of Review

"Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 213, 609 S.E.2d 565, 568 (Ct. App. 2005). "In reviewing the grant of a summary judgment motion, the Court applies the same standard as the trial court under Rule 56(c), SCRCP: "summary judgment is proper when 'there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438–39 (2003).

"The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder." *Id.* at 69, 580 S.E.2d at 438. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003).

B. The Trial Court's grant of summary judgment as to Appellant's cause of action for Fraud on the Court or extrinsic fraud was proper and should be upheld.

The Trial Court correctly granted the Bank Respondents summary judgment on Appellant's cause of action for Fraud on the Court. As the Trial Court found:

> Plaintiff both in her pleadings and her deposition, claims that [the Bank Respondents] committed fraud on the court by falsely testifying and failing to disclose pertinent documents in a previous trial. As explained above, the Supreme Court held that nondisclosure of material facts, and even perjury, amount only to intrinsic, not extrinsic, fraud. This is especially true considering that the documents Plaintiff alleges were concealed were, in fact, provided to her attorney shortly before a previous trial.

(Order Granting Bank Respondents Motion for Summary Judgment, p. 4). The Trial Court's determination was proper and, as such, should be upheld.

As the Trial Court determined, Appellant's allegations of fraud on the court cannot be supported by her allegations of false and/or misleading testimony or unsatisfactory third-party discovery and thus fail as a matter of law.

> Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court.

Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Appellant has not alleged and cannot prove such egregious conduct on the part of the Bank Respondents and as such, cannot as a matter of law support her cause of action for fraud on the court.

Further, Appellant alleges intrinsic fraud, not extrinsic fraud. Intrinsic fraud cannot support the relief sought by Appellant.

> Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action. Intrinsic fraud on the other hand, is fraud that misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.

Hilton Head Center, Inc. v. Public Service Com., 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). Appellant has repeatedly alleged that the Bank Respondents mislead the court and induced "the court to find for the party perpetrating the fraud." This is by definition intrinsic fraud. *Id*. The fraud alleged by Appellant is intrinsic and relief from the prior judgment is not permitted. Again, the Bank Respondents have no stake in or liability for whether or not a new trial is granted on the underlying Original Litigation.

C. The Trial Court's grant of summary judgment as to Appellant's claim of conspiracy was proper and should be upheld

The Trial Court correctly granted the Bank Respondents summary judgment on Appellant's cause of action for "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud."[3] The Trial Court found,

> Assuming arguendo that these mere allegations were sufficient to satisfy the first two elements of civil conspiracy, Plaintiff has not made a showing, or even alleged, special damages, which is an essential element for a cause of action for civil conspiracy. In fact, Plaintiff in her deposition, admitted that all of the causes of action, together, support her claim for damages and that if the civil conspiracy claim were dismissed, the damages sought would not change.

(Order granting Bank Respondents Motion for Summary Judgment, p. 5). The Trial Court's grant of summary judgment was correct and should be upheld.

As an initial matter, while purporting to be appealing this decision, Appellant offers no analysis or argument as to special damages. As a result, Appellant has abandoned this issue and the grant of summary judgment should stand on this ground alone. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.,* 348 S.C. 76, 81, 557 S.E. 2d 689, 691 (Ct. App. 2001) ("Short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

However, addressing the merits, any allegation of conspiracy, notably Appellant's seventh cause of action, fails as a matter of law because Appellant cannot show special damages. "The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Jenkins v. Few*, 391 S.C. 209, 217, 705 S.E.2d 457, 461 (Ct. App. 2010). "Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the

[3] Appellant refers to this cause of action simply as "conspiracy to defraud" in her Initial Brief (See, p. 37).

damages alleged in other causes of action." *Id*. Appellant has testified that she has no special damages that rise or fall with the merits of the conspiracy claim:

> Q: If your conspiracy claim is dismissed, do your damages hold up?
> A: Yes.

(Deposition of Molly Morphew, pg. 290, ll.22-25, R. ___).

Q. Okay. Have you alleged any conspiracy against First Federal?
A. Yes.
Q. And are the damages resulting -- just so we don't have to go over it again, are the damages resulting from that conspiracy the same damages that have resulted from all your other causes of action?
A. Can you repeat -- can you rephrase that?
Q. Yeah. The damages you're alleging that were caused by a conspiracy, are they the same damages that you allege were caused by the other causes of action in this case?
A. They contributed to it.
Q. What does that mean?
A. The complaint as a whole is the damages. Any cause of action as a whole together supports that total.

(Deposition of Molly Morphew, pg. 288, l. 19 – pg. 289, l. 11, R. ___).

Appellant's failure to allege or have evidence of any special damages is fatal to her allegations of conspiracy. Of course, the conspiracy allegations should also fail because there is not and cannot be any evidence in support thereof.

D. The Trial Court's grant of summary judgment as to Appellant's cause of action for Intentional Infliction of Emotional Distress was proper and should be upheld.

The Trial Court granted Bank Respondents' summary judgment as to Appellant's cause of action for Intentional Infliction of Emotional Distress. Among other things, the Trial Court

correctly found that Appellant cannot and has not alleged any outrageous conduct and certainly has not raised a material factual question of whether her "emotional distress is sufficiently severe." (Order Granting Bank Respondent's Motion for Summary Judgment, R. ___). This finding is proper and should be upheld.

> In order to recover for intentional infliction of emotional distress, a plaintiff must establish: 1. The defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct; 2. The conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community;" 3. The action of the defendant caused plaintiff's emotional distress; and 4. The emotional distress suffered by the plaintiff was "severe" such that "no reasonable man could be expected to endure it."

Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols., 388 S.C. 394, 401–02, 697 S.E.2d 551, 555 (2010).

Appellant's cause of action for intentional infliction of emotional distress, as with all of Appellant's allegations against arises out of the Bank Respondents conduct occurring within the four walls of the courtroom. (Deposition of Molly Morphew, p. 283, R. ___). Appellant confirms this in her initial brief stating, "The communications between the Respondents and its co-respondents AND presented as evidence in a court proceeding were groundless, making them dishonest, improper or unlawful." (Appellant's Initial Brief, p. 36 (emphasis in original)). Appellant cannot base a claim of intentional infliction of emotional distress on statements made in court proceedings. The litigation privilege bars this. "An absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relationship to it." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 25, 567 S.E.2d 881, 893 (Ct. App. 2002). The litigation privilege extends to prohibit other causes of action

including intentional infliction of emotional distress. *Peterson v. Ballard*, 292 N.J.Super. 575, 582-83 (1996) ("a privilege against defamation would be of little value if plaintiff could state a claim based upon the intentional infliction of emotional distress using the same facts."). Because Appellant posits that the Bank Respondents intentionally inflicted emotional distress during a court proceeding and, primarily, from the witness chair, Appellant's claims of intentional infliction of emotional distress fail as a matter of law and this Court should uphold the Trial Court's determination.

Finally, as determined by the Trial Court, Appellant failed to allege or provide any evidence indicating outrageous conduct or supporting the mere assertion of emotional distress. While purporting to be appealing this decision, Appellant offers no analysis or argument countering these holdings. Rather, Appellant merely recites her damages claims stating,

> Further, as argued herein Brief and repeated here, the unlawful procurement of the Order has subsequently caused Appellant, including but not limited to, the loss of her home, an unlawful ejectment, and substantial undue costs, time and effort to defend or right an injustice, including the sheer frustration with the lower court's clear bias against Appellant. Such raises a genuine issue of material fact of liability for the jury to decide, plus as to whether its 'emotional distress' is 'sufficiently severe.'

(Appellant's Initial Brief p. 37). As a result, Appellant has abandoned this issue and the grant of summary judgment should stand on this ground alone. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.,* 348 S.C. 76, 81, 557 S.E. 2d 689, 691 (Ct. App. 2001) ("Short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

Because (1) the conduct of which Appellant complains is protected by the litigation privilege, (2) it cannot be described as extreme or outrageous conduct, (3) Appellant has not

offered any evidence of emotional distress, and (4) Appellant has abandoned this issue, the Trial Court's order should be affirmed.

E. The Trial Court's award of summary judgment as to Appellant's cause of action for Tortious Interference with Contractual Relations was proper and should be upheld.

The Trial Court granted Bank Respondents summary judgment as to Appellant's cause of action for Tortious Interference with Contractual Relations. The elements of a cause of action for tortious interference with a contract are: "(1) existence of a valid contract, (2) the wrongdoer's knowledge thereof, (3) his intentional procurement of its breach, (4) the absence of justification, and (5) resulting damages." *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). Where there is no breach of the contract, there can be no recovery. *Eldeco, Inc. v. Charleston Cty. Sch. Dist*., 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007).

To be clear, the contract alleged to have been interfered with is the alleged contract between Appellant and the Sellers. (Compl. ¶ 337, R. ___). Appellant has not alleged and cannot show a breach of that contract. Appellant readily admits that her contract with the Sellers was a "backup contract." (Appellant's Initial Brief, p. 34). Without alleging or proving a breach of that contract, the Appellant's allegations fail as a matter of law and the Trial Court's ruling should be affirmed.

Further, Appellant's cause of action for Tortious Interference with Contractual Relations is premised on the same allegations underlying all of her other causes of action.

Q. So they interfered with your contract through their conduct at the litigation of this action?
A. And prior -- yes. The litigation, yes. With the subpoenas and everything. The whole thing, yes.
Q. That's the basis for this cause of action against my clients?

A. Yes. They also supported in the trial the -- as I probably stated in there, the facade that -- and supported -- made false testimony to support Dudek and Cross' statement that they had secured lending and were ready to close. They --

(Deposition of Molly Morphew, pg. 292 l. 18 – pg. 293 l. 5, R. ___). As with intentional infliction of emotional distress, Appellant cannot base these claims on statements made in court proceedings. The litigation privilege bars this. "An absolute privilege exists as to any utterance arising out of the judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial action of any official nature provided those steps bear reasonable relationship to it. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 25, 567 S.E.2d 881, 893 (Ct. App. 2002).

Finally, as found by the Trial Court, "Plaintiff has failed to show any conduct on behalf of Defendants Allison Williams and First Federal which improperly extended beyond ordinary business practices" which is fatal to Appellant's cause of action. "Generally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purposes or motive by the defendant other than the proper pursuit of its own contractual rights with a third party." *Edelco, Inc. v. Charleston County School Dist.*, 372 S.C. 470, 482, 642 S.E.2d 726, 732 (2007). At all times, the Bank Respondents were merely acting as lender and loan officer to the Buyer Respondents. They were subpoenaed into court to provide testimony and documents and did so. At no time did the Bank Respondents go outside of or act in any manner outside the pursuit its contractual rights with the Buyer Respondents.

For all these reasons, the Trial Court's award of summary judgment as to Appellant's cause of action for Tortious Interference with Contractual Relations

IV. The grant of Summary Judgment was based on Appellant's admissions and pleadings and additional discovery cannot and will not create a question of fact.

Appellant argues, without support, that summary judgment was premature and additional discovery was necessary. (Appellant Initial Brief, p. 23). However, Appellant fails to identify any specific discovery which would undermine the Trial Court's order granting summary judgment. Rather, Appellant merely proffers a hope that additional discovery "**could** reveal any liability or additional liability alleged or the extent of Respondents' liability in the subsequent actions." (Appellant Initial Brief, p. 23). Such a hope cannot support overturning the Trial Court.

While summary judgment should not be granted until the opposing party has had a full and fair opportunity to complete discovery, "[n]onetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a fishing expedition.'" *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003).

In granting summary judgment, the Trial Court did not rely on a lack of material evidence, but rather relied on the pleadings and Appellant's deposition transcript. (Order granting Bank Respondents Motion for Summary Judgment) (As to Appellant's Cause of Action for Fraud, Extrinsic Fraud, and Fraud on the Court ("Plaintiff, both in her pleadings and her deposition, claims that Defendants Allison Williams and First Federal committed fraud on the court by falsely testifying and failing to disclose pertinent documents in a previous trial. As explained above, the Supreme Court held that nondisclosure of material facts, and even perjury, amounts only to intrinsic, not extrinsic fraud. This is especially true considering that the documents Plaintiff alleges were concealed were, in fact, provided to her attorney shortly before a previous trial."); As to Appellant's Cause of Action identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud." ("In South

Carolina, the tort action for bad faith has only been recognized in the context of an insured-insurer relationship, which is not present **or even alleged**. … Similarly, causes of action for both breach of duty of good faith and fair dealing and breach of contract accompanied by a contract require, at the very least, the showing of a contractual relationship, which is also not present here **or even alleged**. … Assuming arguendo that these mere allegations were sufficient to satisfy the first two elements of civil conspiracy, Plaintiff has not made a showing, **or even alleged**, special damages, which is an essential element for a cause of action for civil conspiracy. In fact, Plaintiff in her deposition, admitted that all of the causes of action, together, support her claim for damages and if her civil conspiracy claim were dismissed, the damages sought would not change."); As to Appellant's Cause of Action for Intentional Infliction of Emotional Distress ("In particular, Plaintiff attempts to establish emotional distress on her testimony that she discussed stress-related symptoms with both a gynecologist and an eye doctor, and that she was prescribed medication for ulcers roughly twelve years ago, well before the conduct complained of in this litigation. For these reasons, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Intentional Infliction of Emotional Distress is granted."); As to Plaintiff's Cause of Action for Tortious Interference with Existing Contractual Relations ("Plaintiff has failed to set forth evidence to make a showing to establish any of these elements, which are essential to Plaintiff's case.")). Additional discovery cannot cure what the Appellant has already admitted.

Further, Appellant has been in constant litigation over this matter since 2012. Appellant makes no attempt to explain why 8 years is insufficient time to develop her case. Such is further support for upholding the Trial Court. *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995) (holding that being

party to other suits involving the same subject matter supports affirming the decision of the trial court).

V. This Court should affirm the circuit court's decision on the grounds appearing in the Record of Appeal.

For the reasons outlined above and pursuant to SCACR Rule 220(c), the Trial Court's orders were proper and should be affirmed.

CONCLUSION

For all the reasons set forth herein, the reasons set forth by the Trial Court, and for any grounds appearing in the record, this Court should affirm the Orders of the Trial Court.

/s/ Amy L. B. Hill

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Columbia, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Deadra L. Jefferson, Circuit Court Judge
Edgar W. Dickson, Circuit Court Judge
Maite Murphy, Circuit Court Judge

Case No.: 2016-CP-18-01706
Appellate Case No.: 2018-002185

Molly M. Morphew, ... Appellant

v.

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

PROOF OF SERVICE

I certify that on June 25, 2020, I served copies of Respondents Allison Williams and First Federal's Initial Brief and Designation of Matter by electronic mail at the email address as stated in the Attorney Information System, and also by depositing a true and correct copy of same in the United States mail, postage prepaid, addressed to:

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June 25, 2020

VIA ELECTRONIC MAIL
The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
ctappfilings@sccourts.org

Re: *Molly Morphew v. Stephen Dudek, et al.*
Appellate Case No.: 2018-002185

Dear Ms. Kitchings:

Enclosed herewith for filing, please find Respondents Allison Williams and First Federal's Initial Brief and Respondents Allison Williams' and First Federal's Designation of Matter for the Record on Appeal.

By copy of this letter and attached Proof of Service, we are hereby serving all parties via email and US Mail and enclose a Proof of Service to that effect. Please do not hesitate to contact me if you have any questions or concerns.

Thank you for your assistance with this matter.

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

Jordan M. Crapps

JMC/ljj
cc: Molly M. Morphew
Steven L. Smith, Esquire
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