THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2018-002185
Case No. 2016-CP-26-01706

Molly Morphew.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS
CARRIE BOYER AND WOODDY LAW FIRM

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STATEMENT OF THE CASE

Pro Se Appellant Molly Morphew commenced the instant action against Respondents Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, and Wooddy Law Firm on August 23, 2016. (Complaint). Respondents filed motions to dismiss pursuant to Rule 12(b)(6), SCRCP. (Boyer/Wooddy MTD & Memo in Support; Dudek/Cross MTD & Memo in Support; First Federal/Williams MTD & Memo in Support; Scarafile, at al. MTD). On November 7, 2016, a hearing was held before The Honorable Deadra Jefferson on Respondents' motions to dismiss. (Transcript). Judge Jefferson granted in part and denied in part Respondents' motions to dismiss. (Amended Order on Boyer/Wooddy's MTD; Order on Dudek/Cross MTD; Amended Order on First Federal/Williams MTD; Order on Scarafile, et al MTD).

Discovery proceeded on Appellant's remaining causes of action. Ultimately, Respondents filed motions for summary judgment on all the remaining claims in March 2018. (Boyer/Wooddy MSJ, Amended MSJ & Memo in Support; Dudek/Cross MSJ & Memo in Support; First Federal/William MSJ & Memo in Support; Dudek et al MSJ & Memo in Support). These motions, along with several other motions not pertinent to Respondents Boyer and Wooddy Law Firm and/or to this appeal, initially were scheduled to be heard by The Honorable Edgar Dickinson on May 29, 2018. (Transcript). Counsel for Respondents appeared for the motions hearing, but Appellant informed the court several hours before the hearing that she had a family medical emergency and could not attend. Although Judge Dickson was concerned about Plaintiff's non-appearance because she had previously sought and been denied a continuance of the motions hearings, he continued the motions pending receipt of verification of Plaintiff's medical emergency. (Transcript; Order filed May 31, 2018).

The summary judgment motions were scheduled again for hearing before The Honorable Maite Murphy on November 7, 2016. (Transcript). Appellant appeared at this hearing and presented extensive oral argument. Judge Murphy granted summary judgment in favor of all Respondents as to all causes of action. (Order Granting Boyer/Wooddy MSJ; Order Granting First Federal/Williams MSJ; Order Granting Dudek et al MSJ). This appeal follows.

STATEMENT OF THE FACTS

The present action arises out of *Pro Se* Appellant's failed purchase of residential property located on Butternut Road in Summerville, South Carolina (the "Subject Property") from Thomas and Lorraine Ferro ("Sellers"), who are not parties to this suit. The Subject Property was ultimately purchased by Respondents Stephen Dudek and Doreen Cross. At its core, this litigation arises out of Appellant's disagreement with a November 6, 2014 decision rendered by the Honorable James E. Chellis in a prior case, ruling Respondents Dudek and Cross were entitled to specific performance of their contract with Sellers and Appellant was not (the "Specific Performance Litigation"). (Ex. A to Boyer/Wooddy MSJ Memo, Order in 2013-CP-18-00074).

On August 23, 2016, dissatisfied with Judge Chellis' decision, Appellant commenced the instant suit, which the circuit court has already referred to as a "labyrinthine string of litigation," against the various individuals and entities involved in the underlying real estate transaction. (Ex. B to Boyer/Wooddy MSJ Memo, Order Granting Defendants' MTD in 2017-CP-18-00987). She named as Defendants: Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, and the Wooddy Law Firm. The 64-page Complaint purports to allege a total of (18) eighteen overlapping causes of action. (Complaint).

All the defendants named in the present action are in some way related to the underlying real estate transaction and/or ensuing Specific Performance Litigation. Respondent Wooddy Law Firm is a real estate law firm that acted as a closing attorney for Respondents Dudek and Cross with respect to their original, unconsummated closing on the Subject Property pursuant to their contract with Sellers.[1] Respondent Boyer was a paralegal employed by the Wooddy Law Firm at

[1] Respondents Dudek and Cross were unable to close on the property until the summer of 2017, after Judge Chellis entered an order setting a closing schedule and a subsequent order on June 14, 2017.

the time of the attempted closing. Respondent Carolina One Real Estate was the real estate agent for Respondents Dudek and Cross and Respondents Michael Scarafile and Susan Nicholson, as employees of Carolina One Real Estate, performed related activities. Respondents First Federal and Allison Williams, an employee of First Federal, acted as the lender for Respondents Dudek and Cross in the underlying real estate transaction. Respondent David Collins was Respondents Dudek and Cross' attorney during the underlying Specific Performance Litigation.

Below are the relevant, underlying facts with respect to Appellant's claims against Respondents Boyer and Wooddy Law Firm:

- On October 24, 2012, Respondents Dudek and Cross entered into a contract to purchase the Subject Property from Sellers (Ex. A to P's Resp to First Fed's MSJ; Contract);

- On November 27, 2012, Defendant Wooddy Law Firm sent a letter to Sellers, identifying themselves as the law firm handling the Dudek and Cross closing (Ex. F-1 to Boyer/Wooddy MSJ Memo);

- On November 27, 2012, Defendant Boyer sent an email to Defendants Williams and Nicholson with notification that the Wooddy Law Firm had been contacted to handle the purchase of the Subject Property and a title search had been ordered (Ex. F-2 to Boyer/Wooddy MSJ Memo);

- On December 5, 2012, Respondent Boyer sent an email to Respondent Nicholson, requesting proof of repairs to the damages identified in the CL-100 (Ex. F-3 to Boyer/Wooddy MSJ Memo);

- On December 12, 2012, Respondent Boyer sent an email to Respondent Nicholson, noting that she had not received anything on the repairs required in the CL-100 and requesting advisement on this matter (Ex. F-4 to Boyer/Wooddy MSJ Memo);

- Unbeknownst to Respondents Boyer and the Wooddy Law Firm, on December 16, 2012, Appellant and Sellers entered into a back-up contract whereby Appellant agreed to buy the Subject Property in the event the Dudek and Cross contract failed (Morphew contract);

- On January 11, 2013, Respondents Dudek and Cross filed a *lis pendens* on the Subject Property (Lis Pendens dated Jan. 11, 2013); and

- Subsequently, Respondents Dudek and Cross and Appellant filed separate complaints seeking specific performance on their respective contracts, which were consolidated and tried in June 2014 (Complaint in 2013-CP-18-000183; Complaint in 2013-CP-180074). Respondents Wooddy Law Firm and Carrie Boyer were not parties to these suits.

- By order of November 6, 2014, Judge Chellis ruled Respondents Dudek and Cross were entitled to specific performance of their contract with Sellers. Judge Chellis further held Appellant's contract with Sellers was conditional and could only be enforced if the Dudek/Cross contract was terminated, which it was not. (Ex. A to Boyer/Wooddy MSJ Memo, Chellis Order)[2]

Unsatisfied with this decision, Appellant filed the Summons and Complaint commencing the instant action in 2016. Appellant only references Respondents Wooddy Law Firm and Boyer in seven paragraphs throughout the entirety of the 64-page Complaint. First, Appellant asserts that on November 27, Respondents Dudek, Cross, or Nicholson requested that Wooddy Law Firm contact the Sellers. (Complaint, ¶ 170). Next, Appellant asserts that the Wooddy Law Firm mailed a letter to Sellers introducing themselves as the closing attorneys and requesting information. (Complaint, ¶ 171). Appellant then asserts that Respondent Boyer requested that the Sellers provide proof of repairs to minor damages stated in the CL-100.[3] (Complaint, ¶ 172).

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[2] Appellant and Sellers appealed, and the South Carolina Court of Appeals upheld Judge Chellis' Order. See Appellate Case No. 2014-002633. Dudek v. Ferro, 2014-UP-002633 (Ct. App. filed January 11, 2017).

Appellant petitioned for rehearing, but later voluntarily dismissed the petition. Following remittitur, Judge Chellis entered an Order on May 17, 2017 setting the terms of the Dudek and Cross closing. (Ex. C. to Boyer/Wooddy MSJ).

On June 14, 2017, Judge Chellis found Appellant in contempt for failing to vacate the Property. (Ex. D. to Byer/Wooddy MSJ Memo). Appellant subsequently appealed both the Order setting the closing and the contempt Order. See Appellate Case Nos. 2017-001393 and 2017-001528. This Court affirmed both decisions. Dudek v. Ferro, 2020-UP-151 (S.C. Ct. App. filed May 20, 2020).

Appellant subsequently sued Respondents Dudek and Cross under a constructive trust theory. This suit was dismissed. (Ex. B to Boyer/Wooddy MSJ Memo). Plaintiff also appealed this decision. See Appellate Case No. 2018-000507. This Court affirmed. Morphew v. Dudek, 2020-UP-150 (Ct. App. filed May 20, 2020).

[3] Plaintiff later references Respondent Wooddy Law Firm and asserts that Respondent Nicholson requested that the firm provide notice that they required proof of repairs to damages stated in the CL-100. (Complaint, ¶ 194).

Appellant then goes on to allege that these actions "created an unjustified expectation or belief as to the status of [Respondents] Dudek and Cross's financing status . . . and created a false sense of belief that a closing would take place [in the near future], and or which was materially misleading to the Plaintiff or the courts." (Complaint, ¶ 173). Appellant further generally allege that all Respondents' actions were dishonest and "she (and all parties involved) would never have gone to trial [in the underlying suit] or be in this position today if [Respondent] or its agent had conducted themselves with honesty . . . ." (Complaint, ¶ 174 and 177).

The Complaint purports to allege the following causes of action against "all Defendants"[4]:

- First Cause of Action, identified as "Fraud, Extrinsic Fraud – Fraud on the Court;"
- Second Cause of Action, identified as "Perjury;"
- Seventh Cause of Action, identified as, "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud;"
- Twelfth Cause of Action, identified as "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive;"
- Sixteenth Cause of Action, identified as "Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4(a), Rule 3.4(d);"
- Seventeenth Cause of Action, identified as "Intentional Infliction of Emotional Distress;" and
- Eighteenth Cause of Action, identified as "Tortious Interference with Existing Contractual Relations."

In addition, the Complaint purports to allege the following cause of action against Respondents Boyer and Wooddy Law Firm, specifically:

- Sixth Cause of Action, identified as "Violation ABA Rules of Professional Conduct."

[4] The allegations of these purported claims generically refer to "all defendants." However, the substance of these alleged claims contain no allegations against Defendants Wooddy Law Firm and Boyer and in fact do not reference these defendants aside from the statement that Respondent Nicolson requested the Wooddy Law Firm to ask for proof of repairs to the damages identified in the CL-100 (Complaint, ¶ 194).

Respondents Boyer and Wooddy Law Firm filed a Motion to Dismiss pursuant to Rule 12(b)6), SCRCP. (Boyer Wooddy MTD & Memo in Support). The Honorable Deadra Jefferson ruled Appellant failed to state a claim upon which relief could be granted with regard to the Second Cause of Action, identified as "Perjury;" Sixth Cause of Action, denominated as "Violation ABA Rules of Professional Conduct;" Twelfth Cause of Action, denominated as "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive;" and Sixteenth Cause of Action, denominated as "Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4(a), Rule 3.4(d)." (Amended Order on Boyer/Wooddy's MTD).

Plaintiff was deposed during the course of discovery. Plaintiff testified that she relies solely on the November 27, 2012 introductory letter sent by Wooddy Law Firm and three emails sent from Defendant Boyer to Defendant Susan Nicholson, the real estate agent for Defendants Dudek and Cross, to support her claims. (Morphew Depo. Tr. p. 227, ll. 1-20). In these three emails, Defendant Boyer: (1) introduces the Wooddy Law Firm as the closing attorney for Defendant Dudek's purchase of the subject property and requests title instructions from the lender; (2) informs Defendant Nicholson proof will be needed that the damages identified in the CL-100 had been repaired; and (3) notifies Defendant Nicholson that the firm had not received documentation of said repairs. (Boyer/Wooddy MSJ Memo Exhibits F-1, F-2, F-3 & F-4).

For her part, Respondent Boyer has attested each of these actions was taken as part of the usual scope of preparing for a closing. The November 27, 2012 letter was a standard form engagement letter that was sent to every seller in a residential real estate closing. (Boyer/Wooddy MSJ Memo Exhibit G, ¶ 7). As a paralegal, Defendant Boyer assisted in preparing for real estate closings by obtaining documents from the seller, lender, and realtors. (Boyer/Wooddy MSJ Memo Exhibit G, ¶ 4). Defendant Boyer also routinely communicated with the relevant parties regarding

repairs to damages identified in the CL-100 report. (Boyer/Wooddy MSJ Memo Exhibit G, ¶¶ 10-11).

After engaging in discovery, Respondents Boyer and Wooddy Law Firm subsequently filed a Motion for Summary Judgment on the claims that survived their Motion to Dismiss, namely:

- First Cause of Action, identified as "Fraud, Extrinsic Fraud, and Fraud on the Court;"
- Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud;"
- Seventeenth Cause of Action, identified as "Intentional Infliction of Emotional Distress;" and
- Eighteenth Cause of Action, identified as "Tortious Interference with Existing Contractual Relations."

(Boyer/Wooddy MSJ, Amended MSJ & Memo in Support).

The circuit court granted summary judgment in favor of Respondents Boyer and Wooddy Law Firm as to all remaining claims, ruling Appellant had not adduced evidence demonstrating the existence of a genuine issue of material fact regarding the elements of each cause of action. (All MSJ Orders). Appellant has appealed the grant of summary judgment, as well as the order dismissing certain claims pursuant to Rule 12(b)(6), SCRCP.

STANDARD OF REVIEW

I. Motion for Summary Judgment

In reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP. Nexsen v. Haddock, 353 S.C. 74, 576 S.E.2d 183 (Ct. App. 2002). Rule 56 of the South Carolina Rules of Civil Procedure provides that summary judgment is warranted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, SCRCP. See also Laurens Emergency Med. Specialists v. M.S. Bailey Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2005). When a motion for summary judgment is made and supported by proper affidavits, a plaintiff cannot simply rest on the allegations in his pleadings, but instead must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. See Rule 56(e), SCRCP; Doe v. Batson, 345 S.C. 316, 548 S.E.2d 854 (2001).

Pursuant to Rule 56(c), summary judgment is required when a party "fails to make a showing sufficient to establish the existence of an element essential to the party's case." Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-56 (1991) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548 (1986)). Moreover, summary judgment is appropriate when "plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

II. Motion to Dismiss Pursuant to Rule 12(b)(6)

Likewise, in reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court. Doe v. Marion, 373 S.C.

390, 645 S.E.2d 245 (2007). "On appeal from the grant of a Rule 12(b)(6) motion, we are concerned only with whether the allegations of the complaint, which we must accept as true, state a cause of action." Chestnut v. AVX Corp., 413 S.C. 227, 776 S.E.2d 82 (2015). Where it is demonstrated that the plaintiff has filed to state facts sufficient to constitute a cause of action, an appellate court will uphold the trial court's dismissal of a claim. Doe, 373 S.C. 390, 645 S.E.2d 245.

ARGUMENT

I. The Circuit Court's Dismissal of Several Claims Pursuant to Rule 12(b)(6) Was Proper.

Respondents Boyer and Wooddy Law Firm moved to dismiss all claims alleged in the Complaint pursuant to Rule 12(b)(6), SCRCP on the grounds that Appellant failed to state a claim upon which relief could be granted. (Boyer/Wooddy MTD & Memo in Support). The Circuit Court granted this motion in part, dismissing the Second Cause of Action, identified as "Perjury;" Sixth Cause of Action, denominated as "Violation ABA Rules of Professional Conduct;" Twelfth Cause of Action, denominated as "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive;" and Sixteenth Cause of Action, denominated as "Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4(a), Rule 3.4(d)." (Amended Order on Boyer/Wooddy's MTD).

On appeal, Appellant's Brief contains argument only on the Twelfth Cause of Action, denominated as "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive." (App. Brief p. 45). Accordingly, Appellant has abandoned her appeal with regard to the Second Cause of Action—"Perjury;" Sixth Cause of Action—"Violation ABA Rules of Professional Conduct;" and 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)." See Rule

208(b)(1)(B), SCACR (ordinarily no point will be considered on appeal which is not set forth in the statement of issues on appeal); Rule 211(b), SCACR (all issues must be presented and argued in the initial brief and new issues cannot be raised in the final briefs); Glasscock, Inc. v. U.S. Fidelity and Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998) (deeming abandoned a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule); Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (holding that failure to provide argument or supporting authority for an issue renders it abandoned).

The circuit court properly dismissed the claim with which Appellant takes issue on appeal—Twelfth Cause of Action, denominated as "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive;" Rule 8(a), SCRCP states that a complaint must contain a "short and plain statement of the facts showing the pleader is entitled to relief." See South Carolina Nat'l Bank v. Joyner, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) ("[T]he principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial."). "This requires a litigant to plead the ultimate facts which will be proved at trial...." Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973) ("The ultimate facts required to be stated in a pleading are those which the evidence upon the trial will prove...."); Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) ("Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions.").

In her Complaint, Appellant's Twelfth Cause of Action generally alleges all Respondents concealed and failed disclose or volunteer information during the pendency of the Specific Performance Litigation. (Compl. pp. 47-50). The circuit court construed this cause of action as alleging a claim for perjury rather than fraud. (Amd. Order on Boyer/Wooddy's MTD, p. 10). Because the circuit court had dismissed Appellant's separate perjury cause of action, it likewise dismissed the duplicative Twelfth Cause of Action. (Amd. Order on Boyer/Wooddy's MTD, pp. 6-7). In dismissing the perjury claim, the circuit court reasoned that in South Carolina, perjury may be a criminal offense, but it is not a civil cause of action. (Id.).

In her Brief, Appellant appears to contend the circuit court too narrowly construed the allegations of her Twelfth Cause of Action to encompass only alleged misrepresentations made by Respondents during the course of discovery and trial in the Specific Performance Litigation. She further contends that even when construed as a claim for perjury, perjury is synonymous with fraud. (App. Br. pp. 45-46).

As an initial matter, none of Appellant's arguments on this issue directly address Respondents Boyer and Wooddy Law Firm, but are instead directed at other Respondents. Accordingly, this ground has been abandoned on appeal as to Respondents Boyer and Wooddy Law Firm. See R & G Const., Inc. v. Lowcountry Regional Transp. Auth., 343 S.C. 424, 540 S.E.2d 113 (Ct. App. 2000) (declaring an issue is deemed abandoned if argument in appellate brief is only conclusory). Regardless, this argument fails on the merits. To the extent the Twelfth Cause of Action is construed as a claim for perjury, no such civil action exists. See S.C. Code Ann. § 16-9-10 (elements of crime of perjury); 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) (perjury is a criminal charge). Moreover, the Complaint makes it clear that Respondents Boyer and Wooddy Law Firm

were not involved in the Specific Performance Litigation. Accordingly, they could not have given false testimony or evidence at the deposition or trial.

To the extent the Twelfth Cause of Action is construed as a claim for fraud, dismissal was appropriate because the Complaint fails to alleged the element of fraud with particularity. To recover in an action for fraud, the plaintiff must establish the following elements by clear, cogent, and convincing evidence: "(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." M.B. Kahn. Const. Co., Inc. v. South Carolina Nat'l Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980). See also Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). Failure to establish any of these elements is fatal to recovery. Id. See also O'Shields v. Southern Fountain Mobile Homes, Inc., 262 S.C. 276, 204 S.E.2d 50 (1974). In reference to Respondent Wooddy Law Firm, Plaintiff simply asserts that it sent a letter to Sellers stating that it would be handling the closing. (Complaint, ¶ 171). Regarding Respondent Boyer, Plaintiff asserts that she "required proof [from the sellers] that the [minor] damages stated in the CL-100 have been repaired." (Complaint, ¶ 172). However, to the extent these allegations can be construed to constitute representations, Appellant fails to plead facts demonstrating she relied on these alleged representations and had a right to rely on them. It is undisputed that neither of these statements were directed to Appellant, as she was not a party to the real estate transaction between Respondents Dudek and Cross and the Sellers. Moreover, Appellant fails to demonstrate these alleged statements were false, material in any way, that Respondents Boyer or Wooddy Law Firm knew the statements were false or acted with reckless disregard, or that the hearer of these

statements was ignorant to their falsity. Finally, Appellant has failed to allege facts sufficient to establish she has suffered damages as a proximate cause of the alleged fraud. The facts alleged in the Complaint demonstrate Appellant's real estate transaction with the Sellers was thwarted not by any actions of Respondents Boyer and Wooddy Law Firm, but because of a dispute with Sellers and Respondents Dudek and Cross over the enforceability of the two contracts for the purchase of the property. Therefore, the circuit court properly dismissed the Twelfth Cause of Action on the grounds that it failed to state a claim upon which relief could be granted.

II. The Circuit Court Properly Granted Respondents' Motion for Summary Judgment.

After this case had been pending for almost two years, Respondents Boyer and Woody Law Firm moved for summary judgment on the claims that had not previously been dismissed. The remaining claims were the First Cause of Action—"Fraud, Extrinsic Fraud, and Fraud on the Court;" the Seventh Cause of Action—"Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud;" the Seventeenth Cause of Action—"Intentional Infliction of Emotional Distress;" and the Eighteenth Cause of Action—"Tortious Interference with Existing Contractual Relations." (Boyer/Wooddy MSJ, Amended MSJ & Memo in Support). The circuit court properly granted summary judgment in favor of Respondents Boyer and Woody Law Firm on each of these causes of action.

a. The prior denial of Respondents' motion to dismiss these claims did not preclude the subsequent grant of summary judgment.

Appellant contends the circuit court improperly granted summary judgment on claims that had previously been denied dismissal via Respondents' motions to dismiss pursuant to Rule 12(b)(6). (App. Brief pp. 22-23). This argument is without merit. Initially, a motion to dismiss and a motion for summary judgment are evaluated pursuant to different standards. A Rule 12(b)(6)

motion tests only the sufficiency of the pleadings. A summary judgment motion evaluates the existence of a genuine issue of material fact in the evidence adduced outside the pleadings. As a result, it is axiomatic that the denial of a motion to dismiss does not establish the law of the case and issues raised in the motion can be raised again at a later stage in the case. McLendon v. S.C. Dept. of Highways and Pub. Transp., 313 S.C. 525, 443 S.E.2d 539 (1994). Finally, this argument was not raised to or ruled upon by the circuit court and is therefore not preserved for appellate review. See Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-780 (2004) (holding that issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court).

b. The case was ripe for summary judgment.

Appellant asserts for the first time on appeal that summary judgment was premature because she had three pending motions to compel at the time of the summary judgment hearing. (App. Brief pp. 23-25). These motions were heard at the same time as Respondents' various motions for summary judgment. (Oct. 1, 2018 Transcript). Appellant did not argue to the circuit court that the discovery motions rendered summary judgment premature. Accordingly, this issue is not preserved for appellate review. Elam, 361 S.C. 9, 23, 602 S.E.2d 772.

Regardless, none of Appellants' pending discovery motions concerned Respondents Boyer and Wooddy Law Firm. At the October 2018 hearing, Appellant had a pending Motion to Compel against Respondent Cross and Motion to Deem Admissions Admitted against Respondents Cross and First Federal. (MTC; Mtns to Deem Admitted). Neither these motions or the discovery sought had a bearing on Appellant's allegations against Respondents Boyer and Wooddy Law Firm, nor does Appellant contend in her Brief that they did. Finally, a party claiming summary judgment is premature because she has not been provided a full and fair opportunity to complete discovery

must advance a good reason why the time was insufficient under the facts of the case and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009). Appellant only generally contends the discovery may "reveal any liability." (App. Brief. P. 24). Accordingly, Appellant failed to make the required showing regarding the need for additional discovery before the circuit court and on appeal. In short, the subject action was ripe for summary judgment when it was heard by Judge Murphy in October 2018.

c. No genuine issue of material fact exists with regard to the First Cause of Action—"Fraud, Extrinsic Fraud, and Fraud on the Court."

The circuit court held summary judgment was warranted on the First Cause of Action—"Fraud, Extrinsic Fraud, and Fraud on the Court" because the evidence adduced by Appellant failed to establish Respondents Boyer and Woody Law Firm had the requisite intent to commit fraud upon the court and the existence of any representations made to the court.[5] (Order on Boyer/Wooddy's MSJ, p. 4). Appellant's argument on this issue again consists primarily of an attack on Judge Chellis' order denying her specific performance. Appellant further contends that because Respondents Dudek and Cross did not have an enforceable contract, Respondents Boyer and Wooddy Law Firm were not justified in the actions taken in preparation for Respondents Dudek and Cross' anticipated closing and that these actions were instead take to create a façade that a closing was expected and to deceive the Sellers, Appellant, and the court. (App. Brief. pp. 30-34.).

[5] The allegations set forth in the Complaint concerning this cause of action generically mention "Defendant(s)" and specifically reference other parties to this action, but contain no specific allegations against Respondents Wooddy Law Firm or Boyer. (Compl., ¶¶74-91). The crux of these allegations appears to be Appellant's belief that some or all Respondents misrepresented matters to the court in the Specific Performance Litigation.

The South Carolina Supreme Court has described fraud upon the court as "the species of fraud which does, or attempts to subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1998)). Noting that intent is a necessary element of fraud upon the court, the Supreme Court quoted with approval the following explanation emanating from the Tenth Circuit:

> . . . "[F]raud upon the court," whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court. A proper balance between the interests of finality on the one hand and allowing relief due to inequitable conduct on the other makes it essential that there be a showing on conscious wrongdoing—what can properly be characterized as a deliberate scheme to defraud—before relief from final judgment is appropriate. . . Thus, when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for "fraud on the court."

Id. at 78-79, 579 S.E.2d at 608-09 (quoting United States v. Buck, 281 F.3d 1336, 1342 (10th Cir. 2002)). Moreover, "[g]enerally speaking, only the most egregious misconduct, such as bribery of a judge or members of the jury, or fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious conduct, 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." Id.

Furthermore, the fraud alleged must be extrinsic rather than intrinsic. Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." Hilton Head Ctr. of South Carolina v. Pub. Serv. Comm., 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. Hagy v. Pruitt, 39 S.C. 425, 529 S.E.2d 714 (2000). To set aside a judgment, extrinsic fraud must be proven by clear and convincing evidence. Id. at 432 n. 8, 529 S.E.2d at 718 n. 8.

As an initial matter, Respondents Boyer and Woody Law Firm were not parties to Specific Performance Litigation, were not called to provide and did not give any testimony in that suit, and were not asked and did not provide any documentary evidence. Given these Respondents complete and total lack of involvement in the underlying suit, there is no conceivable avenue for them to have mislead the court, much less to have done so intentionally. Appellant's First of Cause of Action fails for this reason alone.

As found by the circuit court, the only evidence presented by Appellant pertaining to Respondents Boyer and Woody Law Firm are the four communications between Boyer and either the Sellers or Respondent Nicholson. The only and uncontroverted evidence in the records is that each of these actions was taken as part of the usual scope of preparing for a closing and not with any intent to defraud the court (or anyone else for that matter). The November 27, 2012 letter was a standard form engagement letter that was sent to every seller in a residential real estate closing. (Boyer/Wooddy MSJ Memo Exhibit G, ¶ 7). As a paralegal, Defendant Boyer assisted in preparing for real estate closings by obtaining documents from the seller, lender, and realtors. (Boyer/Wooddy MSJ Memo Exhibit G, ¶ 4). Defendant Boyer also routinely communicated with the relevant parties regarding repairs to damages identified in the CL-100 report. (Boyer/Wooddy MSJ Memo Exhibit G, ¶¶ 10-11). Accordingly, the three emails were also sent in the ordinary course of a real estate closing. Because Appellant has wholly failed to adduce any evidence establishing that these actions were done for any purpose other than in the normal and ordinary course of preparing for a real estate closing, summary judgment was proper.

Regardless, Appellant's allegations solely constitute, at best, intrinsic fraud. None of Plaintiff's allegations rise to the level of extrinsic fraud and therefore, do not support a claim of fraud upon the court as a matter of law.

Moreover, even if Appellant's allegations can support a cause of action for fraud upon the court, Respondents Boyer and Wooddy Law Firm should not be parties to this lawsuit because they had no involvement in the underlying suit. An independent action for fraud upon the court allows a party to "set aside a judgment, order, or proceeding." Rule 60(b), SCRCP. See also Hagy v. Pruitt, 339 S.C. 425, 529 S.E.2d 714 (2000). It does not enable a party to recover tort damages. Accordingly, there is no relief that could be granted for Appellant against Respondents Boyer and the Wooddy Law firm under a theory of fraud upon the court.

d. No genuine issue of material fact exists with regarding to the Seventh Cause of Action—"Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud.

The circuit court granted summary judgment for Respondents Boyer and Woody Law Firm on Appellants Seventh Cause of Action, entitled "Bad Faith and Unfair Dealings and/or Accompanied by a Fraudulent Action; Conspiracy to Defraud." The circuit court commented the nature of this claim was unclear, but construed it as a cause of action for: 1) bad faith; 2) breach of duty of good faith and fair dealing; 3) breach of contract accompanied by a fraudulent act; and 4) civil conspiracy. (Order Granting Boyer/Wooddy MSJ, pp. 4-6). The circuit court held Appellant failed to create a genuine issue of material fact regarding the elements of all these claims. On appeal, it is again unclear what cause of action Appellant intends to assert. Her argument on this issue references collusion and conspiracy, but to the extent she intends a civil conspiracy claim, the circuit court's ruling must be affirmed.

Civil conspiracy is a combination of two or more persons joining for the purpose of injuring the plaintiff and causing special damages. McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006); see also Lasmasmotte v. Punchline of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988). Civil conspiracy is only actionable if overt acts in furtherance of the conspiracy proximately caused the plaintiff's damages. Pinion v. Pinion, 363 S.C. 564, 567-68, 611 S.E.2d 271, 272 (Ct. App. 2005); see Lee v. Chesterfield General Hospital, Inc., 289 S.C. 6, 344 S.E.2d 379, 382 (Ct. App. 1986) ("The gravamen of the tort is the damage resulting to the plaintiff from the overt act done pursuant to the combination, not the agreement or combination *per se.*"). The crux of a claim for civil conspiracy is whether the purpose of the combination is to injure the plaintiff. Pye v. Estate of Fox, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). A claim for civil conspiracy must allege additional acts in furtherance of the conspiracy and cannot merely re-allege other allegations within the complaint. Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115-16, 682 S.E.2d 871, 874 (Ct. App. 2005).

Moreover, to establish a civil conspiracy claim, special damages must be specifically alleged in the complaint. Sheek v. Lee, 289 S.C. 327, 329, 345 S.E.2d 496, 497 (1986). Accordingly, the damages proximately caused by the civil conspiracy must be special and cannot overlap with those resulting from other claims. Jenkins v. Few, 391 S.C. 209, 217, 705 S.E.2d 457, 461 (Ct. App. 2010).

To the extent Appellant's allegations can be broadly construed as a claim for civil conspiracy, summary judgment was appropriate. Appellant has produced no evidence establishing that these parties worked together in an effort to harm her. To the contrary, the uncontroverted evidence demonstrates none of Respondent Boyer's actions in connection with the attempted closing on the subject property were "done to create a façade that the closing was going to take

place" or "done for any other purpose than as part of the normal course of a real estate closing." (Boyer/Wooddy MSJ Memo Exhibit G, ¶ 13). Similarly, Defendant Boyer asserts that none of her actions were conducted in an effort to injure the Plaintiff or anyone else. (Boyer/Wooddy MSJ Memo Exhibit G, ¶ 11). In fact, Respondents Wooddy Law Firm and Boyer were never aware Plaintiff had a backup contract for the purchase of the property or any relationship with the Sellers or the Subject Property until the Wooddy Law Firm was served with the Summons & Complaint in this lawsuit.

Finally, Appellant admitted that she has no special damages dependent upon a civil conspiracy claim. In her deposition, Appellant explicitly stated her damages would be the same even if her civil conspiracy claim is dismissed. Ex. E, p. 290, lines 22-25. Therefore, summary judgment is warranted as to this claim.

To the extent the Seventh Cause of Action is construed as one for bad faith, breach of duty of good faith and fair dealing, or breach of contract accompanied by a fraudulent act, such claims fail as well. Bad faith in South Carolina is recognized only in the context of an insurer-insured relationship. Tyger River Pine Co. v. Maryland Cas. Co., 170 S.C. 286, 170 S.E.2d 346 (1933). To the extent Appellant attempts to assert a claim for breach of the implied covenant of good faith and fair dealings or breach of contract accompanied by a fraudulent act, such claims fail as a matter of law. South Carolina does not recognize an independent cause of action for breach of the implied covenant of good faith and fair dealing. RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). ("[T]he implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract."). To prove breach of contract accompanied by a fraudulent act, a plaintiff must establish a breach of contract, a fraudulent intent relating to the breach, and a fraudulent act accompanying the breach.

Harper v. Etheridge, 290 S.C. 112, 348 S.E.2d 374 (1986). Here, it is undisputed that there is no contractual relationship between Appellant and Respondents Wooddy Law Firm and Boyer. In fact, Respondents Wooddy Law Firm and Boyer had never heard of Plaintiff until this lawsuit was served. Accordingly, the circuit court properly granted summary judgment in favor of Respondents on the Seventh Cause of Action.

e. The circuit court properly granted summary judgment on the Seventeenth Cause of Action—"Intentional Infliction of Emotional Distress."

The circuit court held summary judgment was warranted on Appellant's claim for intentional infliction of emotional distress because she failed to present any evidence of extreme and outrageous conduct or in fact any conduct of Respondents Boyer and Wooddy Law Firm directed to Appellant. The circuit court further found Appellant had not presented evidence of sufficiently severe emotional distress. (Order Granting Boyer/Wooddy MSJ, pp. 6-7). Appellant contends the aforementioned correspondence and emails sent by Respondents Boyer and Wooddy Law Firm were "groundless, making them dishonest, improper or unlawful." (App. Brief. p. 36). In support of this contention, Appellant again bootstraps onto her argument that Judge Chellis' ruling that she was not entitled to the Subject Property was erroneous. Appellant's arguments fail as a matter of law.

To recover for a claim of intentional infliction of emotional distress, the plaintiff must establish that:

(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' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community;

(3) the actions of the defendant caused plaintiff's emotional distress; and

(4) the emotional distress suffered by the plaintiff was severe so that no reasonable man could be expected to endure it.

Gattison v. South Carolina State College, 318 S.C. 148, 151, 458 S.E.2d 414, 416 (Ct. App. 1995). The requisite conduct for intentional infliction of emotional distress must be "extreme and outrageous," exceeding "all bounds of decency," "atrocious," and "utterly intolerable." See Todd v. South Carolina Farm Bureau Mut. Ins. Co., 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), rev'd on other ground, 287 S.C. 190, 336 S.E.2d 472 (1985). In Todd, the Court of Appeals looked to the Comments to the Restatement (Second) of Torts for guidelines in determining what conduct is actionable outrageous conduct, and listed three factors for consideration:

> 1. A pre-existing legal relationship between the parties has existed, specifically a debt/debtor, insured/insurer, landlord/tenant, physician/patient, or employer/employee relationship.
>
> 2. The defendant's conduct has involved excessive self-help in asserting a legal right or avoiding legal obligation flowing out of the relationship, or coercive and oppressive abuse of an employee by the employer.
>
> 3. The evidence has clearly shown that the defendant calculatedly inflicted suffering or heedlessly and contemptuously disregarded the plaintiff's present emotional suffering either to force the plaintiff to accede to the defendant's wishes or to punish the plaintiff for prior failure to comply.

Id. at 169-70, 321 S.E.2d at 610-11.

The case law demonstrates that the type of conduct necessary to rise to this level is few and far between. See Swentek v. USAIR, Inc., 830 F.2d 552 (4th Cir. 1987) (defendant made repeated reference to plaintiff's private parts, sought her out in public to make obscene comments, fell to his knees in a sexually suggestive way, dropped his pants in her presence, and engaged his friends in sexually molesting behavior); McSwain v. Shei, 304 S.C. 25, 402 S.E.2d 890 (1991) (employer forced the plaintiff to perform exercises in public that exposed her incontinence problems to others

and delayed surgery necessary to repair her bladder condition); Turner v. ABC Jalousie Co. of N.C., 160 S.E.2d 528, 530 (S.C. 1968) (holding plaintiff stated a cause of action for intentional infliction of emotional distress where she alleged having suffered a nervous breakdown after defendant had used vile, profane, and abusive language);

There is a heightened burden of proof required in the second and fourth elements of this claim. Accordingly, in order to prevail in an action alleging damages based solely on mental anguish, a plaintiff must show that the defendant's conduct was "extreme and outrageous," and that the conduct caused distress of an "extreme and severe nature." Hannson v. Scalise Builders of S.C., 374 S.C. 352, 650 S.E.2d 68 (2007) (stating it is for the court to determine if evidence of severe emotional distress can be found and plaintiff's statement he suffered severe emotional distress is insufficient); Ford v. Hutson, 276 S.C. 157, 161, 276 S.E.2d 776, 778 (1981) ("[W]here physical harm is lacking, the courts should look initially for more in the way of extreme outrage as an assurance that the mental disturbance claimed is not fictitious.").

Whether Respondents' conduct may reasonably be regarded as so extreme and outrageous as to permit recovery is a question of law for the Court. Todd at 167, 321 S.E.2d at 609. Only where reasonable minds differ does the question become one for the jury. Id.

In support of this claim, Appellant alleges that Defendants "intentionally and/or recklessly subject, and/or is currently subjecting, Morphew to further unnecessary spending, time, effort, lost work hours, and extreme emotional stress." (Compl., ¶ 327; App. Br. p. 37). During her deposition, Plaintiff testified that she again relies on the three emails sent by Defendant Boyer and the introductory letter sent by the Wooddy Law Firm as the basis for her claim for intentional infliction of emotional distress. (Morphew Depo, p. 247, lines 14-25).

None of the factors set forth in Todd apply to the present scenario. In addition, the complained-of documents were sent as a part of the ordinary course of preparing for a real estate closing and were not sent in an effort to harm Plaintiff. (Boyer/Woody MSJ Memo Exhibit G, ¶¶ 7-10). Sending communications to gather information necessary to prepare for and conduct a real estate closing does not rise to the level of the type of conduct determined by our courts to be outrageous or exceeding all possible bounds of decency. In fact, such actions are not only tolerated but encouraged in a civil society. Moreover, Appellant conceded in her deposition that these actions were taken before she entered into a contract with the Sellers and therefore, were not taken to intentionally cause her emotional distress.[6] (Morphew Depo, p. 228, line 22-p. 229, line 4).

Finally, Appellant has provided no evidence that any Respondents' actions caused her emotional distress or that the distress she suffered was "so severe that no reasonable man could be expected to endure it." Appellant has not sought medical treatment and does not take medication for the alleged severe mental distress. (Morphew Depo, p. 229, line 13-p. 230, line 25; p. 231, lines 1-24). Appellant further testified that she is not prescribed any medication for mental health conditions. (Morphew Depo, p. 232, lines 17-19). Accordingly, the circuit court properly found Appellant's claim for intentional infliction of emotional distress fails as a matter of law.

f. The circuit court properly granted summary judgment on the Eighteenth Cause of Action—"Tortious Interference with Existing Contractual Relations."

The circuit court ruled Appellant failed to present evidence as to any of the elements of the cause of action for tortious interference with contract. According to the circuit court, Appellant's

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[6] Q. So my question, again, taking only the intentional infliction of emotional distress claim, how did documents that were sent out before you had a contract, how could they have been sent out with the intent to cause you, Molly Morphew, plaintiff in this case, emotional distress?

A. Not me personally.

(Morphew Depo, p. 228, line 22-p. 229, line 4).

back-up contract was not enforceable and this could not have been breached. In addition, the aforementioned communications from Respondent Woody Law Firm and Boyer took place before Appellant entered into her back-up contract. Appellant's arguments on this issue do not address Respondents Boyer and Woody Law Firm other than to state she "assumes" they were aware of her back-up contract. Appellant's arguments are manifestly without merit.

Interference with a contractual relationship is a cause of action separate from any claims arising from the contract itself. Chitwood v. McMillan, 189 S.C. 262, 1 S.E.2d 162, 163 (1939). The South Carolina Supreme Court has said:

> The theory of this doctrine is that the parties to a contract have a property right therein, which a third person has no more right maliciously to deprive them of, or injure them in, than he would have to injure their property. Such an injury without sufficient justification, amounts to a tort for which the injured party may seek compensation by an action in tort for damages.

The elements of a cause of action for tortious interference with an existing contract are: (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) damages. DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981); see also Camp v. Springs Mortgage Co., 310 S.C. 514, 426 S.E.2d 304 (1993).

Appellant testified that she relies on the emails from Defendant Boyer and the introductory letter sent from the Wooddy Law Firm to support her claim for tortious interference with a contract. However, the emails and letter were sent before Appellant entered into a contract with Sellers. Appellant entered into the back-up contract with Sellers on December 16, 2012. The letter was sent on November 27 and the emails were sent on November 27, December 5, and December 12, 2012. (Boyer/Wooddy MSJ Memo Exs. F-1, F-2, F-3, F-4). Furthermore, in her deposition Plaintiff conceded that the letter and all three emails were sent before she entered into a contract

with Sellers. (Morphew Depo, p. 222, lines 13-20; p. 223, lines 22-25; p. 224, lines 1-9). Appellant further conceded she had no evidence that these communications were sent for any other purpose but preparing for a real estate closing. (Morphew Depo p. 222, lines 8-12).

Therefore, Appellant has presented no evidence that Respondents Boyer and Wooddy Law Firm had no knowledge of Appellant's back-up contract with Sellers when the introductory letter and emails were sent. Moreover, not only was Respondent Boyer unaware of the backup contract to purchase the Subject Property until she was served with the Summons and Complaint in the present lawsuit, she had never heard of Appellant until this time. (Boyer/Wooddy MSJ Memo Ex. G, ¶ 12). Therefore, Appellant has adduced no evidence establishing a genuine issue of material fact regarding whether Respondents Boyer and Wooddy Law Firm intentionally procured the breach of Appellant's back-up contract. Accordingly, summary judgment was proper as to the tortious interference with contractual relations claim.

g. Judge Chellis' Order is the law of the case.

Appellant devotes much of her brief to arguing the November 2014 Order issued by Judge Chellis ruling that Respondents Dudek and Cross were entitled to specific performance of their contract with Sellers was erroneous and/or procured by fraud. She reiterates the same arguments as to why specific performance should have been granted in her favor rather than in favor of Respondents Dudek and Cross. See Amd. Initial Brief of App., pp. 5-10 filed in Appellate Case No. -1528.

When a party makes the same argument that it made in a former appeal, the decision in the former appeal is the law of the case. Robert E. Lee & Co. v. Comm'n of Pub. Works of the City of Greenville, 250 S.C. 394, 158 S.E.2d 185 (1967); Ackerman v. McMillian, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996) (holding matters decided by the appellate court cannot be reheard,

reconsidered, or relitigated, even under the guise of a different form). To that end, this Court has already held in its decision in the separate appeal of the contempt order issued by Judge Chellis that "[Appellant] is precluded from relitigating any matters relating to the master's November 2014 order granting [Respondent Dudek and Cross'] motion for specific performance, which this court has affirmed on appeal, under the law of the case doctrine." Dudek v. Ferro, Op. No. 2020-UP-151 (Ct. App. filed May 20, 2020). Accordingly, Appellant's arguments that the decision in the Specific Performance Litigation was procured by fraud or was otherwise erroneous are barred by the law of the case doctrine.

III. Additional Sustaining Grounds Exist to Affirm the Decision of the Circuit Court

A party who prevails in the lower court may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons were presented to or ruled on by the lower court. I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). Respondents Boyer and Wooddy Law Firm raised the grounds below to the circuit court at the summary judgment stage. (Boyer/Wooddy MSJ Memo).

a. Appellant's claims are barred by the statute of limitations.

All Appellant's claims are subject to the three year statute of limitations set forth in S.C. Code Ann 15-3-530(5). Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence that a cause of action exists for the wrongful conduct. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. Id. The statute of limitations begins

to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed. Id. In other words, "the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another." True v. Monteith, 327 S.C. 116, 118, 489 S.E.2d 615, 617 (1997).

Here, Appellant relies on the Wooddy Law Firm's introductory letter and three emails to support her claims against Respondents Boyer and Wooddy Law Firm. However, Appellant admittedly obtained copies of these emails in June 2013 during Respondent Cross's deposition in the Specific Performance Litigation:

> Q. So these three documents came from a file that Ms. Cross brought to her deposition in June of 2013?
>
> A. Little after. Little – not on that date, but afterwards.
>
> Q. Shortly afterwards?
>
> A. Yes.
>
> Q. At any rate, your attorney, Mr. Massalon, certainly would have received these at Ms. Cross' deposition, correct?
>
> A. He did.

(Morphew Depo, p. 235, line 7-p. 236, line 1). Furthermore, Appellant testified that she was present at this deposition and received the emails in June 2013. (Morphew Depo, p. 236, lines 2-22). With respect to the November 27, 2012 letter, Appellant testified that she received this document from the Sellers shortly after the underlying litigation began, which would be January of 2013. (Morphew Depo, p. 236, line 23-p. 237, line 2).[7]

[7] Plaintiff's discovery responses also reference these documents as being part of the file presented at the Cross deposition in June 2013. (Boyer/Wooddy MSJ Memo Ex., Discovery Response Excerpt).

Appellant testified several times throughout her deposition that she relies only on these four documents as evidence to support her various claims against these Respondents.[8] Upon receipt of these documents in June 2013, Appellant knew or should have known with the exercise of reasonable diligence that her potential causes of action existed against Respondents Boyer and Wooddy Law Firm. However, despite being in possession of these documents since at least June 2013, Appellant did not file her Summons and Complaint commencing this action until August 24, 2016, outside the three-year statute of limitations. Accordingly, Appellant's claims are barred by South Carolina Code Ann. § 15-3-530.

b. Appellant has not established proximate cause.

In proving causation, a plaintiff has the dual burden of demonstrating both causation in fact and legal cause. Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996). "Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence." 324 S.C. at 400, 477 S.E.2d at 721. Legal cause is proven by establishing foreseeability. If the injury is not the natural and probable consequence of Defendant's negligence, the injury is not reasonably foreseeable and no liability attaches. Id.

The particular facts and circumstances of each case determine whether the question of proximate cause should be decided by the court or the jury. Small v. Pioneer Mach., Inc., 329 S.C. 448, 464, 94 S.E.2d 835, 843 (Ct. App. 1997). "A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror." Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (2009). "However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." 329 S.C. at 461, 494 S.E.2d at 841.

[8] Co-Defendants have submitted Plaintiff's deposition transcript in its entirety for the Court's review. Defendants incorporate by reference and rely on that exhibit submission.

When the evidence as to proximate cause is "susceptible to one inference" it becomes a matter of law for the court. Id. See also Jackson, 383 S.C. 11, 677 S.E.2d 612 (affirming grant of summary judgment because evidence purporting to establish proximate cause was too speculative to be a jury issue); McKnight v. South Carolina Dep't of Corr., 385 S.C. 380, 684 S.E.2d 566 (2009) (affirming grant of summary judgment on basis of lack of proximate cause). When the cause of a plaintiff's injury may be reasonably attributed to an act for which the defendant is not liable as to one for which he is liable, the plaintiff has failed to carry the burden of establishing the defendant's conduct proximately caused his injuries. Mellen v. Lane, 377 S.C. 261, 280, 659 S.E.2d 236, 246 (Ct. App. 2008).

In the present matter, all of Appellant's alleged damages are based upon the theory that, but for Respondents' conduct, she would have won the Specific Performance Litigation. Specifically, Appellant alleges Respondents perpetrated fraud on the court in the underlying suit, which prevented her from winning. Appellant's damages theory is based on the contingency that she would have been successful in the underlying lawsuit and would have been granted possession of the subject property.

However, Appellant has produced no evidence establishing that she would have prevailed in the underlying lawsuit in the absence of the alleged fraud. This theory is speculative at best and only susceptible to one inference. Moreover, it is undisputed that Respondents Boyer and Wooddy Law Firm were not involved in the Specific Performance Litigation. They were not parties to the prior suit, were not called to provide deposition or trial testimony, and were not sent subpoenas *duces tecum*. Accordingly, there is no genuine issue of material fact as to causation and Respondents Boyer and Wooddy Law Firm are entitled to summary judgment as a matter of law.

CONCLUSION

Based on the foregoing, Respondents Carrie Boyer and Wooddy Law Firm respectfully request the Court affirm the decision of the circuit court dismissing certain claims pursuant to Rule 12(b)(6), SCRCP and granting summary judgment on all remaining claims. Respondents Boyer and Wooddy Law Firm further incorporate by reference as if set forth herein any applicable and pertinent arguments presented by their Co-Respondents.

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Murrells Inlet, South Carolina
June 25, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

RECEIVED
Jun 25 2020
SC Court of Appeals

Appellate Case No. 2018-002185
Case No. 2016-CP-26-01706

Molly Morphew.....Appellant,

v.

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

PROOF OF SERVICE

I certify that I have served Respondents Carrier Boyer and Wooddy Law Firm's Initial Brief and Designation of Matter by emailing a copy of same to all attorneys of record and to Pro se Appellant and Pro Se Respondent via email and United States mail, with sufficient postage affixed thereto on the date indicated below.

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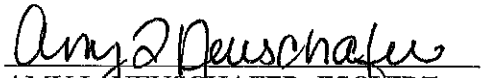
By: 

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LAW FIRM

PROOF OF SERVICE

Murrells Inlet, South Carolina
June 25, 2020