THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Opinion No. 2020-UP-151 (S.C. Ct. App. filed May 20, 2020)

Stephen Dudek, Doreen Cross — Respondents

v.

Thomas Ferro, Lorraine Ferro — Respondents,

And

Molly M. Morphew, — Appellant,

v.

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

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PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Petitioner, Molly Morphew, pro se, certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 24, 2020.

QUESTIONS PRESENTED

1. Did the trial court have subject matter jurisdiction to enter its order of April 3, 2017, or its orders of May 17, 2017 and June 12, 2017, or any subsequent order arising from it?

2. Did the Appellate Court err strictly applying the law of case doctrine to this case instead of vacating the of November 6, 2014, Order, in-part awarding Respondents the equitable remedy of specific performance, as required by law and the guiding principles of law and equity or for its lack of being fair and lawful or its failure on its face?

3. Did the Appellate Court erred or abused its discretion by failing to properly address the issue of jurisdiction and discretion as specific to this case seeking the strict remedy of specific performance, and that the judgment is void ab initio?

4. Was the Appellate Court required to follow state guidelines, the guiding principles of law and equity, law and rules of decisions of courts of the State of South Carolina when considering the facts and evidence presented?

5. Did the Appellate Court err not vacating or reversing the orders for contempt and ejectment?

INTRODUCTON

This case is presented here due to its extreme and unusual circumstances and the grave injustice caused in its blatantly unlawful result. There is no other case to be found that is remotely similar. What started out to be a simple case in equity has turned into a legal circus.

From there, the snowball effect is appalling. The Respondents' fraud, bad faith and unfair dealings, frivolous filings, perjury, forgery of financial documents, non-disclosure, misrepresentations, false promises, obvious conspiracy with their witnesses, loan officer and sales agent, and attorney, who suborned perjury and intentional withheld facts *critically material* to the judicial discretion or jurisdiction of the trial court to award the remedy sought. Such unlawful actions are a clear showing of the lack of respect for the judicial system, contracts, and others in general.

The lower courts have condoned it, if not endorsed it, in their failure or refusal to address the issues when presented to them, even *before* the original judgment was filed.

As presented below, the trial court's decision is so far outside the norm of judicial decision making or so far departed from the accepted and usual course of judicial proceedings that it requires further review by this Court as its resolution will control the outcome of the case in which the petition is filed, and if not just for the possible need to exercise its 'supervisory authority'.

It should be noted that the position we are in was not the failure of the Petitioner to raise the issues or present the new facts and evidence, or to do so in a timely manner, for she has attempted time and time again, even during the first appeal, petitioning the court to consider the new facts and evidence and apply them to those same principles of law and equity as in the Order itself. Each time, it's refused, ignored or set aside the issues, using its judicial power to do so.

Petitioner also discovered the master had knowledge of the jurisdictional issues when, 3 months after trial, he asked for the closing statements. Defendants Ferro, pro se, submitted its closing statement and supported it with a Petition they filed in their separate case Petitioner was not a party to. It contained facts and documentation proving the Respondents had no right or ability to compel specific performance. **(R. pg. 128-193)**. The trial court, in what should be considered a severe violation of its rules and processes and an abuse of discretion, blatantly refused to consider a pro se's closing statement, and declared he was only taking *attorney's* closing statements **(R.pg. 438)**. The master deprived a Defendant pro se party's right to be heard, ignored its duty to consider the new facts and evidence, and failed to schedule a subsequent hearing after the trial to give all parties which

it affected due process as to the issues raised. The issues raised critically affected the legal rights of all litigants, the court and the outcome of the case. Its unlawful actions and abuse of its power is a clear indication of discrimination and partiality towards pro se parties, and leads one to believe the trial court may feel above the law or its own rules and processes, and has no respect or care of the grave injustice and severe prejudice resulting. Most cases don't get this far, and surely the lower courts were hoping it wouldn't. It appears Petitioner pro se has been a victim of similar discrimination and abuse of power for no matter where, when, or how she presents the critical failures and unlawful actions, the courts use their judicial power to find some way to dismiss her, even improperly.

Petitioner appeals to the Court to grant its' Petition for Writ of Certiorari to prevent a grave injustice, prevent further unlawful or improper conduct in the lower courts, and satisfy public policy and what the judicial system should stand for, the fair and equal administration of the law, without corruption, favor, greed, or prejudice.

STATEMENT OF THE CASE

On January 31, 2013, Molly M Morphew, Petitioner, brought this action for breach of contract compelling the remedy of specific performance to purchase 788 E Butternut Rd., Summerville SC (herein "Property") from Defendants and sellers, Thomas and Lorraine Ferro (herein 'Sellers') **(R. 114-127)**. At which time, Morphew was ready, able and willing to tender payment and had a closing scheduled.

Six weeks prior, on December 16, 2012, Stephen Dudek and Doreen Cross, Respondents and previous buyers, were sent a termination notice for failing to schedule a closing, present proof of buyer approval for mortgage credit or tender payment as per their TIME IS OF THE ESSENCE sales contract. **(R. 105-112)**. They refused to sign. Instead, on January 11, 2013, after discovering the Sellers had secured another buyer, they filed a lis pendens against the Property to prevent that sale **(R.pg.151)**, then filed their action for breach of contract compelling specific performance to purchase the Property **(R. pg. 86-97)**.

After Petitioner's extensive discovery, including verification by an Attorney and Sellers' sales agent that the Respondents' sales contract, being time is of the essence, is null and void and on its expiration **(R.pg.157)**. Interrogatories, request for documents, subpoenas and phone calls to their lender, depositions of both Respondents, and several communications between the attorneys led

Petitioner to the same place as when it first started. Except was more confusing, as the bank said they had no records, loan or people [Respondents]. **(R. pg.153, 176 & 177)** and when confronted with this conundrum, the Respondents' attorney insisted they had secured financing and were ready to close. He produced a financial document [approval letter] to support their position, which was discovered to be fake.**(R.pg.152)**[1]. Petitioner's attorney called the bank directly with this loan number. Again they said they had no loan for file for Respondents **(R. pg 153)**. Petitioner submitted another subpoena to the lender, this time with the loan number given by the Respondents. No records, no file and still only the Respondents and its attorney saying they had performed their sales contract, were ready able and willing to tender payment but was unable to schedule a closing due the Sellers' failure to produce the CL-100 report. The record shows the report had to be *obtained* on or before November 30, 2012. It was. **(R.pg.158-159)** Nowhere did the contract state the sellers had to provide a *cleared* CL-100 or that the report had to be provided to anyone. **(R.pg. 92)**. Regardless, the CL-100 was delivered to the Respondents' sales agent drop box on November 30, 2012.

A trial ensued on June 11-12, 2014. During the trial, the master heard testimony from all litigants, but the main focus here in this case is the testimony and evidence from the Respondents and their witnesses, specifically the lender and sales agent. It's uncontested that Petitioner was properly awarded specific performance. Petitioner's position at trial was based on the fact they had not applied or secured financing per their TIME IS OF THE ESSENCE sales contract, therefore breached and were legally required to sign the termination notice so Petitioner could perform its contract. It further actioned, due their refusal to sign the termination notice, they were preventing petitioner and sellers from performing as required. That action was withdrawn before being heard due the testimony from the lender.

Their lender, First Federal represented by their loan officer, Allison Williams, testified the Respondents had complied with their requirements for financing and were approved, as she approved them herself, and were ready to close, except for a document required from the Sellers. The Respondents and their sales agent also testified they and their lender were ready to close, but not until December 14th. Regardless, none presented documentation at trial to support their

[1] At trial, lender verified it was not her document, even though her name was on it as the sender and Respondent Cross's name as the receiver, especially since the email was sent approx.. 1am in the morning on a Sunday, and the financial documents were dated for the following year, 3 months after the email date. Plus the alleged "approval" was dated almost 2 months before the Respondents even made initial application! How can one have approval for something they've not even applied for yet...??..

testimony, and all have refused to provide that documentation to date. The lower court also refused to demand such proof, instead relying on testimony alone.

On November 6, 2014, the trial court issued its Order, and in it stressed equity demands fairness. It granted specific performance to both the Petitioner and the Respondents, but giving Respondents first bite, and only since they contracted first. Petitioner and Sellers appealed.

On appeal, Petitioner went pro se due to lack of funds, and during that time discovered the facts and evidence which gave rise to the issues presented in this 2nd appeal of the case.

Immediately upon discovery, Petitioner presented the new facts and evidence to the Appellate court but they refused to review it, instead affirming the master's ruling on their standard of review "that they are not required to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses." **(R. pg.28)**.

In the meantime and during the appeal, Petitioner filed its action for fraud/fraud on the court for damages, again presenting the facts and evidence, asserting fraud, fraud on the court, non-disclosure, forgery of financial documents, false promises from the lender, abuse of discretion, jurisdictional failures, etc. against the Respondents; their attorney, David Collins, who was suspended from practice in 2016 for committing fraud in a separate case, admitted and charged in the federal court in Charleston SC; their sales agent, Susan Nicholson and its agency, Carolina Real Estate; the agency's lead counsel and owner's son, Michael Scarafile; the lender, First Federal; and the loan officer, Allison Williams; and Wooddy Law Firm and its paralegal, Carrie Boyer. Again, the trial court refused to consider the facts and evidence, relying on res judicata and that their perjury is intrinsic fraud not extrinsic, that perjury and forgery are criminal actions and not a cause for action, or that there's no material question of fact so granting summary judgment. Petitioner has appealed. (App. Case No. 2018-002185)

On February 11, 2017, the appellate court sent its remitter in this case to the trial court. During that time, the Respondents failed to perform their time is of the essence sales contract per the November 6, 2014 order, even directly questioned from the Sellers.

It wasn't until March 16th, the Respondents and court took action to perform. Not out of procedural requirement, but because their lender refused to accept their application for mortgage credit until they had a "closing" order, the Respondents filed a motion for attorney's fees against the Sellers and for a closing schedule.**(R. pg.309-312)** Due Respondents' failure to raise the issues and

specific attorney's fees in its motion it now raised at the hearing, and the objections by Petitioner or Sellers, the master requested the pro se litigants file an answer to the Respondents motion and demands presented.**(R. pg.341-364)**

Three days after the hearing, and 3 days before the Answer was received by the court, the master filed its Order. In its order the court altered the contract's purchase price and awarded all attorney's fees/damages demanded from Respondents and before Sellers had been heard. On objection by the Sellers and Petitioner, the trial court then converted their answer to a 59(e) motion to correct its unlawful entry of the Order. Petitioner objected to its conversion as improper, but was overruled and a hearing was scheduled to hear the 'converted' 59e motion for May 12, 2017. At the hearing, again Petitioner objected to the improper conversion. It again presented the fraud and unlawful award of specific performance **(R. pg.341-364)**. It also asked the court to compel the proof of financing as agreed in the previous hearing. The master denied, overruled, and declared its issues and new evidence to consider as no merit. It also withdrew its prior agreement to her 'plan' to vacate, in its request to receive the GFE from 2012 before vacating, just because 'he changed his mind." **(R.pg.464,** *ref pg. 100 line 1-6- trans.)* An order was issued on May 17, withdrawing the change in purchase price; reducing the attorney's fees for the portion he had no jurisdiction to award under the circumstance; finding the new issues, facts and evidence having no merit and relating the order back to its improperly filed April 3rd order. Petitioner appealed.

On May 31, 2017, a closing was *scheduled*, and in 2 days, Friday, June 2nd. This was the first time Respondents informed Petitioner a closing was scheduled. The next day, Petitioner received an email stating the *if* a closing takes place, the Respondents would be getting with me regarding the rent. If a closing does not take place, the my agent, Rick Willis, would be getting with Petitioner [to close].**(R.pg.439)**. On Monday evening, Petitioner received the Respondents' motion for contempt/ejectment, thus the first notification the closing had taken place, and it was not to discuss rent as directed days before. The next evening, Petitioner discovered via the online public database that an emergency hearing was scheduled for the next morning. Petitioner in good faith and afraid if she didn't show up to defend herself the court would find she was intentionally disobeying an order, she drove back home (Petitioner was working in Georgia at the time and was not home but on the weekends) and had to stay up all night to prepare for the hearing and an answer to be filed. Unfortunately, due to the lack of time Petitioner did not have knowledge she didn't have to show up

if not served the Rule. The Rule was never served on Petitioner[2].

On Wednesday, June 7th, at commencement of the hearing, the master dissolved the Rule to Show cause on objection that the critical affidavit was not included, and rescheduled a hearing for the motion of ejectment on Monday morning, June 12th. An Order was issued dissolving the Rule to Show Cause and ordering "upon presentation of an affidavit establishing grounds for the Court's issuance of a Rule to Show Cause, this Court will reconsider the issuance of a Rule to Show Cause." **(R. pg. 57-58)**

At the hearing for ejectment, the master stated he did not believe anything the Petitioner was saying in its defense [even though Petitioner presented the court with documented evidence] or its total confusion what was going on **(R.pg.484-486,** *ref pg.74 line 21-pg.82 line 25).* The master turned the ejectment hearing into Rule to Show Cause hearing, even though its previous order dissolving the Rule stated no rule to show cause would be issued without the Respondents' affidavit. **(R. pg.55)**. Petitioner, pro se was so confused and unprepared for this sudden turn of events that she did not know what was going on or to object, being nervous and so focused on not being arrested for she had a terminally ill mother and was the sole caregiver for her young daughter. **(R. pg. 466-489).** Two days later and leaving only 1 day to vacate or be arrested, the Order was filed. **(R.pg.62).** Petitioner vacated and appealed.

The Appellate court affirmed the June 14th Order, and also the May 17th Judgment based solely on law of the case. **(Opinion, May 20, 2020)**. Petitioner filed a Petition for Rehearing and was denied based on a one sentence ruling, "*the court was unable to discover that any material fact or principle of law has been either overlooked or disregarded, so there is no basis for granting a rehearing.*" **(Petition, June 4, 2020)(Order denying Petition August 24, 2020)**.

Many times during this and subsequent litigation, the trial court and the appellate court have refused to address the new facts and evidence presented to them, finding improper reasons or relying on laches or doctrines to prevent its' review, for if the facts and evidence discovered were considered and applied to the guiding principles of law and equity as in the original order itself, it would expose the fraud on the court, the deceit, violations, critical breaches and failures, and unlawful judments.

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[2] Respondents produced a letter of service, but the service could not have been accomplished, let alone on Petitioner: First, the service date was the day before the Rule was even issued by the court; it was served on an extremely tall, over-weight, elderly gray haired woman [Petitioner is 5'6", long auburn hair and 125 lbs.]; served on a day Petitioner was out of state working, and there was nobody home at her house. The appearance shows pre-planning by the Respondent to set Petitioner up for failure, as was the ejectment hearing turn Rule hearing for contempt.

The Court of Appeals affirmed the judgment of the circuit court. Stephen Dudek v. Thomas Ferro And Molly Morphew v. Dudek, et al, Op. No. 2020-UP-151 (S.C. Ct. App. filed May 20, 2020). Petitioner seeks a writ of certiorari to review that decision.

REASONS FOR GRANTING THE WRIT

1. THE TRIAL COURT HAD NO SUBJECT MATTER JURISDICTION TO ENTER ITS ORDER OF APRIL 3, 2017, OR ITS ORDERS OF MAY 17, 2017 AND JUNE 12, 2017, OR ANY SUBSEQUENT ORDER ARISING FROM IT

The April 3rd order is void due to lack of jurisdiction to enter it at the time. 1) It was entered before the pro se parties' Answer was received, failing to give the litigants a chance to be fully heard before making its rulings; 2) the order was unlawful as it changed the purchase price in the sales contract, and awarded attorney fees (damages) before a hearing on those damages, 3) and there were jurisdictional issues raised that hadn't yet been litigated or ruled on. The trial court had no jurisdiction or discretion to enter the order, therefore its entry of is unlawful and a violation of the courts jurisdictional power. Consequently, the Order is void.

The trial court knew its critical error but attempted to right his lack of jurisdiction to enter the order by converting the Petitioners and Sellers' response to a 59e motion to alter or amend the unlawful April 3rd Order. Petitioner and Seller objected. The master made the error, not the Petitioner and Seller. To convert the Answer without a request from the movants and on their objection solely to correct his *own* judicial violation, is not proper and an abuse of its power.

Further, the trial court had no subject matter jurisdiction to enter the May 17th order. The trial court improperly converted the Petitioner's Answer to a 59e motion to alter or amend the April 3rd Order, and order it had no jurisdiction or discretion to enter. A Rule 59e motion is a motion to Alter or Amend a Judgment. "A motion to alter or amend the judgment shall be served not later than 10 days *after receipt of written notice of the entry of the order*." Rule 59(e) SCRCP. Based on the rule, a 59e motion to alter or amend a judgment *cannot come before* the receipt of written notice of the entry of the order. As pro se parties are *served* only through the mail system, 5 days would be added to the 'receipt' date, making its receipt date, at a minimum, April 8th. Rule 6(e) SCRCP. The Answer was filed on the 6th. It would be impossible to decide a motion that is based on an order not yet received, therefore improper conversion, and the trial court had no jurisdiction or discretion to do

so.

Because the hearing was based, and the Order was grounded, on the improper 59e motion to amend the unlawful April 3rd order (that is void for lack of jurisdiction), the Order of May 17th is also void for lack of jurisdiction. Notwithstanding the fact, the May 17th order was related back to the void April 3rd order.

At a minimum, the trial court had no subject matter jurisdiction to award 'damages' before a hearing was held on those damages, or before the court has given the litigants a full opportunity to be heard. Such is a violation of the rules and court processes and the litigants due process, therefore its Order of April 3rd is void.

The trial court is attempting to waive its jurisdictional failure by its conversion. As argued herein and repeated here, A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. The April 3rd order and its filing of was improper and had no grounds to support it at the time of its entry. It appears the only choice the trial court had was to vacate its order. Consequently, the appellate court must vacate the orders.

2. THE COURT OF APPEALS SHOULD NOT HAVE APPLIED THE LAW OF CASE DOCTRINE TO THIS CASE BUT INSTEAD SHOULD HAVE VACATED THE OF NOVEMBER 6, 2014, ORDER, IN-PART AWARDING RESPONDENTS THE EQUITABLE REMEDY OF SPECIFIC PERFORMANCE, AS REQUIRED BY LAW AND THE GUIDING PRINCIPLES OF LAW AND EQUITY OR FOR ITS LACK OF BEING FAIR AND LAWFUL OR ITS FAILURE ON ITS FACE

Law of the case does not preclude subject matter jurisdiction and cannot prevent this Court from its review. This lack of the trial court's discretion or jurisdictional power to enter the equitable judgment in favor of the Respondents under the circumstances has not been litigated nor decided in the 1st appeal or this 2nd one, and deserves full consideration. The jurisdiction of a court over the subject matter of a proceeding is fundamental. *Anderson v. Anderson,* 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." *Id.* It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this Court. *Carter v. State,* 329 S.C. 355, 495 S.E.2d 773 (1998); *State v. Funderburk,* 259 S.C. 256, 191 S.E.2d 520 (1972). Furthermore, "[t]he acts of a court with respect to a matter as to which it has no jurisdiction are void." *Funderburk,* 259 S.C. at 261, 191 S.E.2d at 522. Since subject matter

jurisdiction is an issue which is fundamental and may be raised at any time, we decline to find that our review of this issue is precluded on procedural grounds. *Carter v. State, supra; Anderson v. Anderson, supra.*

"The law-of-the-case doctrine "merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power." *Messenger* v. *Anderson,* 225 U. S. 436, 444 (1912) (Holmes, J.) (citations omitted). A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was "clearly erroneous and would work a manifest injustice." *Arizona* v. *California, supra,* at 618, n. 8 (citation omitted). Most importantly, law of the case cannot bind this Court in reviewing decisions below. A petition for writ of certiorari can expose the entire case to review. *Panama R. Co.* v. *Napier Shipping Co.,* 166 U. S. 280, 283-284 (1897). Just as a district court's adherence to law of the case cannot insulate an issue from appellate review, a court of appeals' adherence to the law of the case cannot insulate an issue from this Court's review." See *Messenger, supra,* at 444; *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.,* 240 U. S. 251, 257-259 (1916).

In its Opinion, the Appellate Court finds law of the case precludes Petitioner from relitigating matters relating to the master's November 2014 order, which is affirmed on appeal. It sited and quoted, "Under the law of the case doctrine, "a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009) (citing *Bakala v. Bakala*, 352 S.C. 612, 632, 576 S.E.2d 156, 170*170 166 (2003)). "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Nelson v. Charleston & Western Carolina Railway Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957). The cases sited have no bearing on the facts and circumstances of this case, as in those cases the litigants raised issues not even remotely similar and they were decided in the lower court and not appealed to the appellate court. In this case, fraud on the court, abuse of discretion, jurisdictional issues and unlawful orders have not been explicitly decided or necessarily decided, or expressly rejected by the appellate court. The Appellate court fails to provide case law even similar to this case that supports its ruling. Its application of the doctrine fails.

Even so, in the first appeal Petitioner was not able to raise its issues at trial or in the trial court

because it only discovered the facts and evidence after trial and during the appeal process. Though Petitioner immediately submitted the facts and evidence discovered to the appellate court in the 1st appeal, the appellate court ruled the lower court was in a better position to hear the credibility of the witnesses and such was dispositive to any other issues presented. Nowhere did it make its own findings.

"The South Carolina Supreme Court has also recognized that the doctrine does not apply when the evidence is substantially different on a second appeal." In *Nelson v. Charleston & Western Carolina Railway Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957), the court stated that the doctrine has no application where the facts relating to the question decided are *substantially different* on a second appeal. In order to escape the application of the doctrine, however, there must be a material change in the evidence. Additional evidence cumulative in nature will not take the case out of the rule and constitute a material change where *evidence of the same class and character* was considered on the former appeal. 3 Am. Jur., Appeal and Error, Section 1000. The key words, 'considered on the former appeal'.

There is a material change in the evidence and the facts considered here but was not considered in the first appeal. Those facts and evidence substantially changed the issues, questions of fact or questions of law, the legal positions of the Respondents, the outcome of the original litigation and what a court may do under the circumstance. In the first appeal, the trial court and Appellate court based its ruling on the testimony presented *at trial,* (where the appellate court it affirmed the trial court's ruling based on trial court's assessment of the 'credibility' of the witnesses [at the trial]). **(R. pg. 27-30)**. Now, those issues, facts and evidence were presented to the master in a subsequent hearing in the same case, and it ruled those issues have no merit. Petitioner has appealed. This second appeal is proper where the new facts and evidence was not considered and the issues were not decided in the first appeal. **(R.pg. 43-55)**.

Also, law of the case does not preclude fraud on the court, in this case, "calling into question the very legitimacy of the judgment." (Where the fraud perpetrated called into question the very legitimacy of the judgment) *Calderon v. Thompson, 523* U.S. 538, 118 S.Ct. 1489 (1998) (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238 (1944)).

The Appellate Court relies solely on the law of case doctrine, indicating that law of case is an inexorable command or rule of law to be strictly adhered by the courts. This is not so, and is

recognized not just in the South Carolina courts but also in all states and the US Supreme Court. Petitioner first presents, ("Law of the case . . . operates as a discretionary rule of practice and not one of law." (quotation marks omitted)); 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 4478 (2d ed. 2002) ("So long as the same case remains alive, there is power to alter or revoke earlier rulings.") *Slowinski v. Valley Nat'l Bank*, 264 N.J.Super. 172, 624 A.2d 85, 89 (App.Div.1993). Further, law of case does not apply to VOID judgments or jurisdictional issues, both of which can be raised anytime in any court even for the first time on appeal; clearly erroneous judgments or holdings that would work a manifest injustice; a later stage of litigation that presents different parties, issues or facts; and evidence that was not considered in the first appeal even if considered in the second appeal. *White v. Murtha*, 377 F.2d 428, 431-32 (5th Cir.1967). The application of the doctrine is within the court's discretion, and even in cases that meet the standards for law of the case, Appellate courts have discretion to depart from the doctrine in exceptional circumstances.

Hill v. BASF Wyandotte Corp., 696 F.2d 287, 290 n.3 (4th Cir. 1982) (stating that court should not, in review, affirm a legally erroneous ruling because it was "compelled" by law of the case); American Standard, 603 F.2d at 248 (where a U.S. Supreme Court decision demonstrates that a ruling on which a judgment would depend is in error, no principle of law of the case warrants a failure to correct the ruling). Further, unlike just about every other remedy or claim existing under the rules of civil procedure or common law, there is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration of the matter.(See *CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4234 (2d ed. 1988)* note 151). The logic is clear: "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits."(*Lockwood v. Bowles*, 46 F.R.D. 625, 634 (D.D.C. 1969).

For the Appellate Court to say it did not see any material facts or principles of law it overlooked is puzzling considering there was a material change in the evidence that was not considered in the 1st appeal, and the evidence presented here 1) substantially changed the issues, questions of fact or questions of law, 2) changed the legal positions of the Respondents and 3) changed the jurisdiction or removed any discretion the trial court had to order the equitable remedy. Just as important, the evidence and new facts change the outcome of the original litigation and what a

court may do under the circumstance.

3. THE APPELLATE COURT FAILED TO PROPERLY ADDRESS THE ISSUE OF JURISDICTION AND DISCRETION AS SPECIFIC TO THIS CASE SEEKING THE STRICT REMEDY OF SPECIFIC PERFORMANCE, AND THAT THE JUDGMENT IS VOID AB INITIO

The issue of subject matter jurisdiction may be raised at any time including when raised for the first time to an appellate court. See *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002). In an action in equity, tried by the judge alone, without a reference, on appeal the Supreme Court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. *Crowder v. Crowder*, 246 S.C. 299, 143 S.E. (2d) 580 (1965). An action for specific performance is one in equity. *Campbell v. Carr*, 361 S.C. 258, 262-63, 603 S.E.2d 625, 627 (Ct.App.2004)."An action to construe a contract is an action at law." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). "A legal question in an equity case receives review as in law." *Sloan v. Greenville County*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct.App.2003). "Questions of law may be decided with no particular deference to the trial court." *S.C. Dept. of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 654, 667 S.E.2d 7, 12 (Ct.App.2008). "This court may correct errors of law in both legal and equity actions." Id. In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which *reasonably supports the judge's findings*. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action. *Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 211 S.E. (2d) 876 (1974).

This action is both in equity and law.

In its Petition for rehearing, Petitioner explicitly requests the Appellate court to address the issue of the Void order and lack of jurisdiction or discretion of the trial court to award the remedy and to amend its Opinion to reflect its review. It refused, and instead makes a general statement in regards to Petitioner's Petition, they "*found no material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing.*" (*See* **Petition**). The Appellate court failed to apply the *principles of equity* and justice, which are universal in the common-law courts of the world, but especially dire in this case affirmatively seeking equitable relief, and in which the judgment was specifically and substantially based on. ***(R.pg.5-6).***

In order for justice to be done between parties, a party is *required* to do equity when asking the court to invoke the aid of equity. *See Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (declining to grant a plaintiff's request for specific performance where the plaintiff

misled the defendants)and (where Ingram failed to demonstrate that he was ready and willing to perform his part of the contract (i.e. willing to tender the purchase price) on February 28, 1994, the date the lease expired, or on March 14, 1994, the date he brought the action for specific performance[3]. The record indicates that Ingram was not in a position to pay Kasey's the purchase price for Remy's on either date).

In this instant case, the Respondents let their sales contract expire before making initial application, therefore abandoning their contract. Consequently, they had *no legal claim to the property*, thus were directly refused mortgage credit and had no other means to tender payment. The record demonstrates the Respondents were not in a position nor had the ability to pay the sellers for the property at question on either the date their time is of the essence sales contract expired or on the date they filed their action. The Respondents prevented their own ability to tender payment, the crux of specific performance, therefore any breach by the Respondents cannot be forgiven. The fact they were in no position to tender the purchase price, regardless of fault, removes the availability of the equitable remedy therefore the jurisdictional power of the courts to award specific performance to the Respondents or affirm the judgment. The Respondents rely on the courts judicial shield to protect them from what the principles of law and equity cannot. The courts have no choice but to vacate the judgment.

The appellate court overlooked the fact, due the critical breaches or failures of the Respondents, and the trial court's lack of discretion to order the equitable remedy in their favor, the Order in-part is VOID, fails on its face and is contrary to the rulings and precedents of the courts of South Carolina, and all other states for that matter.

The appellate court overlooked the material fact that Petitioner was awarded the same remedy in the same Order and was in complete compliance, and the Respondents, in that same Order, are in complete NON-COMPLIANCE. The Order applies the strict guiding principles of law and equity, or legal standards to both the Petitioner and Respondents equally. It would now be against those principles of law and equity, and an imbalance of equities, to affirm the Respondents' award for specific performance and at the same time *dismiss* Petitioner's same award for specific performance when equally applying those same guiding principles of law and equity or legal standards to the new

[3] Ingram must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future.

facts and evidence considered. The circumstances of the case have changed as well as the legal positions of the Respondents *and* discretionary power of the trial court from its consideration in the first appeal.

Further, the record fails to support the November 6, 2014 Order in part granting specific performance to the Respondents, but fully supports Petitioner's award in that same Order granting her specific performance. The record clearly demonstrates the Respondents abandoned their time is of the essence sales contract, forfeiting any legal claim to the property and their right to possess or obtain.**(R. pg. 6** #8) They hid that fact from the sellers thought their contract specifically calls out full disclosure regarding the performance of. In litigation, the law requires disclosure, especially when its material to the adjudicating ability of the court or the remedy it compels. Their critical breach, abandonment and non-compliance was *all* at their own hand and at no fault of the sellers or Petitioner. There is no *fairness* and *justice* in equity or the balance of equities when a litigant is denied its proven legal right to her property in a proceeding for specific performance while the opposing litigant *in the same combined case* is *awarded* that property it abandoned its right to, then committed fraud to obtain. Such judgment is unlawful, a grave injustice, and cannot be barred by law of case. The unlawful or clearly erroneous judgment *must* be vacated and not affirmed.

This is not an irreversible error. The Respondents are not bona fide purchasers as they had express knowledge of Petitioner's claims and to the property when they obtained it. They took the risk of obtaining the property with knowledge of another's claim to title, and while litigation raising issue to the trial court's lack of discretion to award them specific performance and their fraud committed to obtain the property was pending (Appellate Case 2018-002185). They must now accept the fact that that the courts should and must vacate the judgment and transfer the deed[4] in this instance, as the transfer of the deed is a proper remedy when, 1) the Petitioner had the sole legal claim to the property at all times material and was awarded specific performance in the same order and 2) when the purchasers are not bona fide. The Respondents purchased the property with an expired sales contract, and their lender who is a defendant in the pending fraud case, knew it, as they were the lender who had denied in the first place because of the expired sales contract.

[4] As the master stated to Petitioner in this very same case, "She took the risk of moving into the property during pending litigation, she must now accept the risk that her contentions were misplaced." (when Petitioner was forced to vacate the property in question in June 2017).(Transcript June 12, 2017 hearing, pg. 30 l. 18 – pg. 31 line 4).(where trial court again has no evidence in the record Petitioner's contentions were misplaced, but where the record demonstrates its contentions are valid)

A re-trial would be moot as the Petitioner was awarded specific performance, and the Respondents have provided no evidence in the record to either support they were ready and able to tender payment per specific performance, or dispute Petitioner's claims. Further, the Order clearly stipulates if the Respondents could not perform a condition, it was their duty to make it known to the other party to the contract (**R.pg.6,** #9). The Respondents had full knowledge of their failure to obtain the purchase price and their lack of legal standing to compel the remedy but failed to inform the sellers, which affected their ability to perform the valid and negotiable contract with Petitioner.

Additionally, in its' Opinion, the Appellate Court applied only the general definition of 'subject matter jurisdiction' but failed to address exceedance of its jurisdiction or the lack of discretion of the trial court in regards to granting the strict remedy of "Specific Performance" as to the facts and circumstances *of this case*. The Appellate Court has totally disregarded the issue of the VOID judgment(s), and their refusal to address these issues and amend its Opinion applicably as asked in its Petition is a blatant violation of due process, which includes Petitioner's right to be fully heard, not just on the issues and evidence it chooses; especially considering the evidence it refuses to consider changes the legal position of the Respondents, the outcome of the case, and the jurisdiction and discretionary powers of the trial court, and possibly the Appellate court. Additionally, Petitioner has been unjustifiably deprived of its property as the Order in part is clearly erroneous. No person shall be deprived of life, liberty, or property without due process of law. S.C. Const. art. I, § 3. Due process includes a right to a fair and *lawful* judgment.

Generally speaking, jurisdiction is invoked as long as the court has the right to hear and determine cases of the general class. But as with all equitable remedies, orders of specific performance are *discretionary*, so their availability depends on its appropriateness in the circumstances.

The equity courts of South Carolina, and any other state for that matter, including this Court have [the same] specific guiding principles that have to be met before it acquires discretion or to award specific performance. (**R.pg.3-20**). To order a remedy in which it has lacks discretion exceeds the jurisdiction of the trial court, and is an abuse of discretion. An abuse of discretion occurs when the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support. *BB & T v. Taylor*, 369 S.C. at 551, 633 S.E.2d at 503 (2006). "The discretion to grant or refuse specific performance is not an arbitrary or capricious one, but a

judicial discretion, to be exercised in accordance with the special rules and practices of equity, and with regard to the facts and circumstances of the particular case." *Adams v. Willis,* 225 S.C. 518, 83 S.E.2d 171 (1954). The trial court does not have subject matter jurisdiction to award the equitable remedy of specific performance unless the movant passes the basic test as outlined in *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105-06, 531 S.E.2d 287, 291 (2000), where the Ingram court states:

> In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a *valid* agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. (At a minimum, Ingram must demonstrate that he was ready and willing to perform his part of the contract (i.e. willing to tender the purchase price) on February 28, 1994, the date the lease expired, or on March 14, 1994, the date he brought the action for specific performance[5]. The record indicates that Ingram was not in a position to pay Kasey's the purchase price for Remy's on either date) *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105-06, 531 S.E.2d 287, 291 (2000);*See* also *Shirey v. Bishop*, SC Court of Appeals, Opinion No. 5718, April 22, 2020.

In this instant case, at all times material, 1) there was no valid contract: the Respondents' critically breached their time is of the essence sales contract by abandoning it or letting it expire before making initial application for mortgage credit and that critical breach was never remedied; Further, since the closing did not occur within the time period (Time being of the Essence), the contract is null and void (**R. 157**); 2) the equities of the transaction did not favor specific performance, or any remedy for that matter; and 3) the Respondents were incapable of performing the contract at the expiration of their sales contract or at time of filing. They were refused mortgage credit because <u>they had no legal claim to possess the property</u>[6]. Based on the Ingram test, they were not 'able and willing' to perform their contract or tender payment. Even if the Respondents substantially complied with their contract, which they did not, their sales contract and its terms were 'time is of the essence' therefore strict compliance was essential and required. *Coastal Seafood Co., v. Alcoa South Carolina, Inc.*, 298 S.C. at 468, 381 S.E.2d at 503 ("Where a contract, by its express provisions, makes strict compliance essential, substantial performance is not sufficient."). The Respondents abandoned their contract, resulting in a complete failure to comply. In fact, no remedy

[5] Ingram must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future.

[6] Without a valid and negotiable sales contract, it is legally impossible to obtain a mortgage loan for the property, for one has no legal right to the property or legal right to obtain it. This further negates the trial court's power to order the Respondents' contract specifically performed.

was available the Respondents, let alone the strict and equitable remedy of specific performance.

The issue here raised by the foregoing contentions is whether the Respondents were entitled or had any legal standing to specific performance under the facts and circumstances existing at the time of the commencement of their action on January 15, 2013.

The Respondents abandoned their sales contract, then from the very beginning violated the rules and the processes of the court, having full knowledge they had no valid or negotiable sales contract, no legal right to the property nor could obtain financing to tender the payment for the property when filing their frivolous and unlawful complaint on Jan. 15, 2013. **(R.148)(R.pg.157),** where Respondents were refused financing for failure to have a valid and negotiable sales contract at initial application or to remedy the critical failure; also see initial application signed and dated Dec. 10, 2012, 10 days *after* their time is of the essence sales contract expired; and application requirements **(R. pg. 144),** where the Respondents were required to provide a signed contract extension addendum within 48 hours or on Dec. 7, 2012; also see 10-day adverse notice **(R. p.146),** where lender gave Respondents another chance [10 days] to remedy their expired sales contract by furnishing them with a signed contract extension addendum initially due Dec. 8, 2012). Without a valid and negotiable sales contract or the ability to tender payment, the Respondents, its lawyer and witnesses committed substantial unlawful acts including perjury, suborning of perjury, forgery, misrepresentation and conspiracy in its filings, discovery and subpoenas, at depositions, and at trial, in other words, frauded the court to retain jurisdiction to compel and award. The record clearly shows the court's discretion to order the remedy was based *solely* on false and forged testimony or evidence, therefore the judgment was obtained fraudulently.

Simply put, a judgment exceeding its jurisdiction or the court's discretion to order the judgment, is Void, cannot be remedied by a court or the litigants, and *must* be vacated. "If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120c.) "A void judgment is no judgment at all and is without legal effect." (*Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974) "a court must vacate any judgment entered in excess of its jurisdiction." (*Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972).

Instead, the trial and Appellate court are attempting to confer jurisdiction or to make a void proceeding valid by ignoring the facts and evidence or relying solely on the law of the case doctrine. A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or *lacks inherent power to enter the particular judgment*, or an *order procured*

by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. SCRCP Rule 60. See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or lacking the inherent power to enter the particular order or judgment, or where the order was procured by fraud, In *re Adoption of E.L.*, 733 N.E.2d 846, (Ill.App. 1 Dist. 2000). Void order may be attacked, either directly or collaterally, at any time. They are not "voidable", but simply "void"; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliot v. Piersol, supra*; Black's Law Dictionary, Sixth Edition, page 1574: Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092.

Such actions are unlawful and unconstitutional and are to prevent Petitioner from her entitlement to specific performance of her contract, the right to her property and to prevent her due process and from a fair and lawful judgment.[7]

The Respondents abandoned their sales contract; failed to inform the sellers (**R.pg.6** #9), the Petitioner in its discovery and the Master at trial, of their financing failure[8]; and failed to disclose the truth regarding their inability to tender payment. At the same time, its uncontested the Respondents perjured and misrepresented those critically material facts, introduced forged financial documents at trial and suborned perjury and false promises from the witness/lender they were extending credit to the Respondents in order to retain the trial court's discretion to award specific performance in their favor.

This is a clear example of 'unclean hands' or the failure of the maxims of equity, "He Who Seeks Equity Must Do Equity," and "He Who Comes Into Equity Must Come With Clean Hands," in which the former is not a moral persuasion but an enforceable RULE OF LAW. ("He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief."); *Wilson v. Landstrom*, 281 S.C. 260, 315 S.E.2d 130 (Ct. App. 1984) ("The doctrine of unclean hands precludes a plaintiff from recovering in equity if he

[7] Issues not yet adjudicated

[8] Respondents were refused or denied mortgage credit because they had no valid or negotiable sales contract after November 30, 2012, therefore no legal right or claim to the property.

acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.") (quotations and citations omitted). (We think no party has the right thus to create problems by its devious and deceitful conduct and then approach a court of equity with a plea that the pretended status which it has foisted on the public be ignored and its rights be declared as if it had acted in good faith throughout) (Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor.) *New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc.*, 291 F.2d 471 [5th Cir. 1961].

It is recognized by this Court that if a movant for specific performance is before the court and it comes to the court with unclean hands or fails to do equity in the first place, then relief *must be denied.*

As stated in *Bishop v. Tolbert,* "The rule is well settled that the granting of specific performance is not a matter of absolute right, but rests in the sound or judicial discretion of the Court, guided by established principles, and exercised on a consideration of all the circumstances of each particular case. Mobley v. Quattlebaum, 101 S.C. 221, 85 S.E. 585; Mitchum v. Mitchum, 183 S.C. 75, 190 S.E. 104; Flowers v. Roberts, 220 S.C. 110, 66 S.E. (2d) 612. It has been said that "there is no branch of equity jurisdiction in which the Court is allowed the greater exercise of a sound and reasonable discretion, 'which governs itself, as far as it maybe, by general rules and principles,' than that which relates to the specific performance of agreements. 'The question is not what the Court must do, but what it may do, under the circumstances'". Lesesne v. White, 5 S.C. 450. Among the established principles by which the court is guided and governed in the exercise of the sound discretion is that laid down in the early case of Cureton v. Gilmore, 3 S.C. 46: "He, therefore, who demands the execution of an agreement, ought to show that there has been no default in him in performing all that was to be done on his part; for, if either he will not, or through his own negligence cannot perform the whole on his side, he has no title in equity to the performance of the other party, since such performance could not be mutual. And, upon this reasoning, it is that where a man has trifled or shown a backwardness in performing his part of the contract, equity will not decree a specific performance in his favor." And, as is said in Thompson v. Dulles, 5 Rich. Eq. 370, "The principle is sound and just, and demanded alike by morals and by policy, that he who has neglected to perform a duty which he might have performed, and ought to have performed, has no claim upon the

court to compel the other party to perform his engagements. Whenever such negligent party comes into this Court, he must be told that he has neglected to do Equity, and has, therefore, deprived himself of the equity he claims." *Bishop v. Tolbert*, 249 S.C. 289, 299, 153 S.E.2d 912 (1967)(Emphasis added).

Based on the above, the trial court is required to deny the Respondents specific performance, and vacate its judgment in their favor, and vacate any subsequent order arising. The Appellate Court was required to vacate or reverse in-part the trial court's order of November 6, 2014 granting specific performance to the Respondents in the 1st appeal; and in this 2nd appeal, the Appellate Court *must* vacate, and at a minimum reverse, the Order in-part of November 6, 2014 and any subsequent order in this case or that arises from this case.

Petitioner asks the Court to grant the petition for a writ of certiorari, at a minimum, to review, these issues or matters, as they have not been explicitly decided or even necessarily decided by the Appellate court; and on the fact the law of the case doctrine cannot affirm legally erroneous rulings.

4. THE APPELLATE COURT WAS REQUIRED TO FOLLOW STATE GUIDELINES, THE GUIDING PRINCIPLES OF LAW AND EQUITY, LAW AND RULES OF DECISIONS OF COURTS OF THE STATE OF SOUTH CAROLINA WHEN CONSIDERING THE ISSUES PRESENTED WITH THE FACTS AND EVIDENCE IN THE RECORD

The Court of Appeals erred in that it failed and refused to follow state law and rules of decisions of courts of the State of South Carolina; it being undisputed that the sales contract involved in this controversy is a South Carolina contract governed and solvable by the laws of South Carolina, as is to compel the specific performance of. Further, the remedy of specific performance is not only governed and solvable by the laws of South Carolina, Federal laws and the Supreme Court of the United States, but as argued above and repeated herein, the remedy of specific performance is an *equitable* remedy and can *only* be invoked or ordered IF the movant meets *all* the guidelines that gives the court its ability or inherent power to grant it. As with all equitable remedies, orders of specific performance are discretionary, so their availability depends on its appropriateness in the circumstances.

The judgment awarding specific performance to the Respondents based on the guidelines in which it granted its discretion to award the remedy fails on its face, the judgment roll, or cannot be evidenced by the record. It is a judgment in which the trial court had no discretion to award under the facts and circumstances of the case. "A judgment which is void upon its face, and which requires

only an inspection of the judgment roll to demonstrate its wants of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do so exists." *People v. Greene*, 71 Cal. 100 [16 Pac. 197, 5 Am. St. Rep. 448]. "If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1Freeman on Judgments, 120c.) An illegal order is forever void.

"Judicial records are not only necessary but indispensable, to the vitality of a court. The court hears arguments upon its records; it decides upon its records; it acts by its records; its openings and sessions and adjournments can be proved only by its records; its judgments can only be evidenced by its records — in other words, without its records it has no vitality. The acts of a court of record are known by its records alone and cannot be established by *parol testimony*. The court speaks only through its records, and this rule applies in case of a judge. Furthermore, the records of a court cannot be impugned upon matters within its jurisdiction, when offered in evidence, by counter evidence." *Long v. McMillan* et al, 226 S.C. 598, 86 S.E.2d 477 (1955)(quoting14 Am. Jur. 350).

In this instant case, the Respondents have not offered any valid or documented evidence or proof that disputes Petitioners' claims or the new evidence and facts in the record. Instead, they make only verbal statements, relying on the trial court and Appellate court's attempt to "cover up" or avoid the fact there is *no evidence in the record* that disputes Petitioner's claims by refusing to address the issue and, instead, solely and improperly rely on the law of case doctrine.

As argued above herein, the record demonstrates the equitable remedy of specific performance was not available to the Respondents, therefore the court of equity exceeded its jurisdiction as it had no discretion to order the strict equitable remedy their favor. *Ingram v. Kasey's Assocs.*, supra. Any findings of fact or evidence which the trial court relied on to obtain its discretion to *order* the Respondents contract to be specifically performed is not valid or is perjury, forgery and misrepresentation, and consequently cannot be relied on by any court or support any judgment or ruling. The 10-day adverse notice and denial letters alone refute ALL the evidence presented by the Respondents and their witnesses that they fully complied with their sales contract and were ready and able to tender payment as required. Any reliance on the false evidence would be a contradiction to the validated evidence in the record, an abuse of discretion, unlawful and violates due process and the processes of the courts. By affirming the lower court's order(s) or applying the law of the case doctrine here, the Appellate court has failed or refused to follow state guidelines, law and rules of

decisions of courts of the state of South Carolina, and such failure is resulting in a grave injustice, fraud on the court, severe prejudice to the Petitioner, violation of public policy and unlawful orders.

5. THE APPELLATE COURT ERRED NOT VACATING OR REVERSING THE ORDER FOR CONTEMPT AND EJECTMENT

As argued and repeated herein, an order or judgment based on a VOID order is also void, as it has no legal affect. One cannot be ejected nor be held in contempt of a void order, as the contempt and ejectment sentence was improperly based on an order for which no jurisdiction or discretion existed. Specifically, the Order granting the equitable remedy of specific performance to the Respondents is Void, therefore the closing order and subsequently the ejectment and contempt judgments are also void. "A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid." 30A Am Jur Judgments " 44, 45.

Even so, to uphold the constructive contempt and at the same time affirm the specific performance award to the Respondents would appear to be a serious imbalance or unequal applications of the principles of law and equity, at least a severe discrimination. Contempt is defined as "Disobedience of a Court's lawful or valid Order, Judgment, or Decree that is such interference with the administration of justice." The judgment for specific performance was obtained by fraud, and at a minimum the trial court had no discretion to award the equitable remedy, therefore is void. The void order in this case critically interferes with, or prevents, the due administration of justice, or causes a manifest injustice. Under the same scrutiny or consideration, holding Petitioner accountable for disobeying a [void] court order [Petitioner denies and the record shows there was no intentional disobedience or obstruction of justice[9]] but failing to hold the Respondents accountable for their failing to obey the November 6, 2014 court order when the remitter was received by the trial court

[9] The trial court and Respondents made false testimony and statements at the hearing alleging a previous closing date was canceled due Petitioner, rendering her behavior as an obstructionist. Petitioner objected, testified and presented documented evidence to proving the "alleged closing" was cancelled due to the Respondents. First they said they had to get a new closing attorney due a title search failing, then they couldn't close until the damages against the sellers was ruled on, which directly affected the closing papers. This had nothing to do with the Petitioner or finding her an obstructionist. **(R.pg. 480-481** *ref. Transcript pg. 60, l. 8 – pg. 62 l. 24)*

but neither the court nor the Respondents acted on it for over a month later; or for their intentional unlawful or fraudulent actions that results in unlawful and frivolous filings, violation of the principles of law and equity, a judgments that fail on its face, a manifest injustice and/or a violation of public policy, is a double standard, contradictory to prior judgments, and fails the judicial process and what it is intended for.

In layman's terms, it appears the Courts find it acceptable, though contrary to rules, laws or principles of equity, for a represented persons to intentionally let a sales contract expire, have no ability to tender payment for that sale, then come to court and lie, cheat or present false evidence to retain the court's jurisdiction in order to be awarded an equitable remedy, and in which the record shows the trial court had no discretion to award under the facts and circumstances of the case, and had knowledge of at the time of its award; thus causing property that belonged to the Petitioner (through its valid and negotiable sales contract and award for specific performance) to be unjustifiably taken from her, and without considering the evidence and facts discovered that changed the legal position of the Respondents, the jurisdiction/discretionary powers of the courts and the outcome of the judgment.

As Petitioner argued in is briefs and herein, the Petitioner presented a fair, well laid out, simple plan that did justice for all parties under the circumstance for vacating the property. It did not have to be ejected. First, she asked for simple and easily accessible documentation proving they were ready, able and willing to tender payment or perform their sales contract as contended before it sought alternate living arrangements. Such proof would have contradicted the Petitioner's claims and most likey ended this case and prevented the subsequent litigation now pending, such as the fraud and fraud on the court and the constructive trust/not bona fide purchaser's complaint. It would have allowed the Petitioner relief to seek alternate living arrangements knowing the great amount of time, money and stress would most likely not be undue, and that it could sign another contract without intentionally risking a breach of either the current contract for the property or the contract for alternate living arrangements if a closing did not take place. Second, Petitioner asked for 45 days *from the moment she received the proof of financing* to vacate-- 15 days to find somewhere to live and 30 days to move. Third, she provided *if* for some reason making it impossible to vacate in the 45 days, Petitioner would pay the current monthly rental amount of $1600 to the Respondents until vacating, but promising it would not be intentional. It was very reasonable, easy to accomplish, and

since the hearing was in March and given that it should have only taken no more than a couple days to deliver the proof they were and are ready, able and willing to tender payment, Petitioner would have vacated well before the 60-day to close contract. All parties including the judge agreed.

At the next hearing in May he withdrew that request and the "plan" with no legal justification or request to deny from the respondents. Petitioner argues providing proof of financing was required or at least applicable under the her contract as their legal duty to sign the termination notice directly affected the Petitioner's and Sellers' ability to perform her contract. Further, there appears to be no justifiable reason not to allow it, as it's in the court's discretion to do so and does not prejudice the Respondents.The only reason to deny its request is because the trial court *knew* it was an impossible feat by the Respondents and their failure to deliver would put the court in a position where it must reverse or vacate its prior decision. Instead, 'changing his mind' was good enough for the master to avoid this issue and would allow him to just 'end the case' and be done with it.

The fact is Petitioner and the sellers have been asking for such proof from the respondents for years, in motions, discovery, conferences with attorneys, hearings, in subsequent cases-- so it could end the current, and any subsequent, litigation. The Respondents and the courts have refused with no justifiable reason to deny. Petitioner is sure if that simple documentation existed then at this point the Respondents would have produced and recorded it in the record to end these cases, if not just to attempt sanctions, which they are known to do at a drop of a hat. Moreover, *if* that simple documentation existed, the trial court or the Respondents could have prevented the position the litigants are in today, so they have no standing to complain about damages they could have mitigated years ago. Maybe the most important fact is the record contains no valid evidence that would support the prior Order in-part, and in turn contains *substantially critical and material evidence* that, clearly and without question, supports Petitioners contentions raised herein. It should take no further argument to understand the prejudice to Petitioner in the courts failure to compel proof of financing.

Summary

It is a great tangled mess the Respondents and the lower courts have caused in their failure to follow the processes, rules and principles that govern them. Now, hoping this will just end or go away, they solely rely on the law of the case doctrine. The courts refuse to specifically address erroneous orders, fraud on the court[10], void judgments, jurisdictional or discretionary failures and due

[10] Example, the lender/witness at trial made a promise to the lower court it had approved their application and extending

process. Further, even *if* the appellate court applied principles of law, principals *of equity* were not considered[11]. Just on these principles, it would have had no choice but to vacate the judgment awarding specific performance in favor of the Respondents, therefore vacating the closing order and judgement for ejectment and contempt. Such a failure or intentional failure cannot be overlooked.

In addition, it should be noted by this Court, the Respondents obtained the property with an expired and non-negotiable time is of the essence sales contract, on a void order, fraudulently and with express knowledge of Petitioner's claim to the property, therefore are not bona fide purchasers (*see* Appellate Case No. 2017-0507).

Perhaps the court is taking advantage of a pro se's disadvantaged position, hoping she will just tire and give up, or make a wrong move critical to her position in this game of "legal" chess. Though, it is clear why they refuse to address it, especially this late in the game. It's daunting the issues that would be exposed...fraud on their court, unlawful orders, violation of the rules and processes, abuse of discretion or lack of jurisdiction or discretion, undue and *substantial* costs to the litigants and the courts, unjustified deprivation of property....

This is a legal nightmare to say the least, but at no fault of the Petitioner, especially since the substantial litigation of multiple cases and the severe damages could have been mitigated by the Respondents or by the courts themselves if they had followed their rules and processes or addressed the new facts and evidence as soon as it was presented to them.

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari.

September 20, 2020

Respectfully submitted,

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credit to the Respondents, but in fact the validated/documented evidence in the record shows the same lender/witness REFUSED to extend the Respondents mortgage credit *due to their lack of a valid and negotiable sales contract*...or in layman's terms, lack of legal right to possess or obtain the property, and such failure was never remedied It takes no legal expert to know one cannot obtain a mortgage loan without a valid and negotiable sales contract for the property. That is unconstitutional.

[11] In denying Petitioner's Petition for Rehearing, it said it found no material facts or *principles of law*....

September 20, 2020

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

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

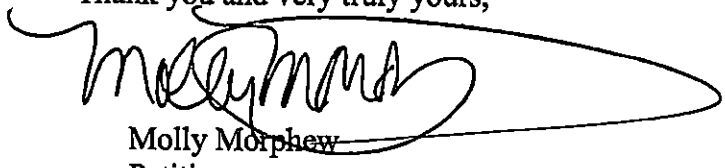
Dear Mr. Shearouse:

Please find enclosed Appellant's Petition for Writ of Certiorari and the Certificate of Service(s) to be recorded and filed.

I understand the requirement to submit two (2) copies of the Appendix has been suspended until further notice. Enclosed is a copy of the Order directing the suspension. Please let me know if this has changed.

Also enclosed is a copy of above to be kindly recorded and returned in the self-addressed, stamped envelope.

Thank you and very truly yours,



Molly Morphew
Petitioner, pro se

Cc: Steven L. Smith, Esq.
South Carolina Court of Appeals

Court News ...

2020-03-20-01

The Supreme Court of South Carolina

RE: Operation of the Appellate Courts During the Coronavirus Emergency

Appellate Case No. 2020-000447

ORDER

(a) Purpose. The purpose of this order is to provide guidance on the continued operation of the Supreme Court of South Carolina (Supreme Court) and the South Carolina Court of Appeals (Court of Appeals) during the current coronavirus (COVID-19) emergency. As used in this order, the phrase "Appellate Court" shall refer to both the Supreme Court and the Court of Appeals. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants, lawyers and court employees.

In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months

In light of the extraordinary challenges presented by the current emergency, this Court finds it necessary to supplement and, in some situations, to alter significantly, the current practices regarding the operation of the Appellate Courts. In the event of a conflict between this order and the South Carolina Appellate Court Rules (SCACR), this order shall control.

(b) Oral Arguments and Hearings Before the Appellate Courts. All oral arguments currently scheduled before the Appellate Courts are cancelled. If it becomes appropriate to schedule oral arguments in a case or to hold a hearing on a matter while this emergency continues, the Supreme Court or the Court of Appeals will consider alternate methods of conducting the arguments or hearing, such as video conferencing or telephone conferencing, to minimize the risk to the participants.

(c) Filing Methods. During this emergency, filings may be made with the Appellate Courts using the methods listed below. This includes filings made with the Office of Bar Admissions.

(1) Delivering Documents to the Supreme Court. Pursuant to Rule 262(a)(1), SCACR, the Supreme Court intends to continue to accept the delivery of documents for filing at the Supreme Court Building. Currently, persons desiring to hand deliver documents are being allowed to enter the Lobby of the Supreme Court Building to make the delivery. If it becomes necessary to curtail public access to the Lobby, it is anticipated a drop box will be placed at the rear doors of the Supreme Court Building so that filings may continue to be made. If the Supreme Court Building is closed as a result of this emergency (see discussion in (i) below), documents will not be accepted for delivery at the Supreme Court Building until the building is reopened. Since the use of a private carrier such as FedEx or United Parcel Service is not defined as mailing under Rule 262, SCACR 1 parties are warned that deliveries sent by private carriers may not occur if the Supreme Court Building is closed. Documents delivered to the Court will be subject to the quarantine period specified in (h) below.

(2) Delivering Documents to the Court of Appeals. In an order supplementing this order (see (m) below), the Court of Appeals may issue guidance regarding the delivery of documents to the Court of Appeals at the Calhoun Building under Rule 262(a)(1), SCACR.

(3) Mailing Documents by United States Mail. This is provided for by Rule 262(a)(2), SCACR. Once received by the Appellate Court, documents mailed to the Appellate Court will be subject to the quarantine period specified in (h) below.

(4) Faxing Documents. Rule 262(a)(2), SCACR, allows for a document to be filed by electronically transmitted facsimile copy so long as a copy is immediately sent by U.S. Mail. While this order remains in effect, the requirement for a copy to be sent by U.S. Mail is suspended. In the event, the facsimile copy is not sufficiently legible, the clerk of the Appellate Court may require the party to provide a copy by mail. The fax number for the Supreme Court is 803-734-1499, and the fax number for the Office of Bar Admissions is 803-734-0394. The fax number of the Court of Appeals is 803-734-1839. While this method is well suited for relatively small documents or when the filer believes that expedited consideration is necessary, depending primarily upon the limitations of the sending fax machine, it may not be possible to send large documents, such as a record on appeal, in a single transmission. If it becomes necessary to split a document into multiple parts to make the fax transmission, a separate cover sheet should be used on each part to identify the document (i.e., Brief of Appellant, Part 1 of 4). In the event the document requires a filing fee, a check or money order for the fee must be mailed to the Appellate Court within five (5) days of the filing; the case name and the Appellate Case Number, if known, should be listed on the check or money order. A document transmitted and received by the facsimile on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day.

(5) Electronic Filing. While an upgrade to the Appellate Court Case Management System is under way which will ultimately include electronic filing (e-filing), e-filing is not currently available in the Appellate Courts. The South Carolina Judicial Branch is actively working on several options which will allow large PDFs to be filed electronically with an Appellate Court during this emergency. If this becomes available, this order will be amended to reflect this additional filing method.

(d) Reduction of Copies to Be Filed. Effective immediately, a document filed with the Supreme Court or Court of Appeals need not be accompanied by any additional copies. If submitted in paper, the document shall be submitted unbound and unstapled. In the event the Appellate Court determines that additional copies are needed, they will be requested from the lawyer or party submitting the document.

(e) Filing of the Appendix under Rule 242, SCACR. In cases seeking review of a decision of the Court of Appeals, Rule 242, SCACR, requires the petitioner to file two copies of an Appendix. This requirement is suspended. Instead, the necessary documents to comprise the Appendix will be obtained from the electronic records of the case before the Court of Appeals.

(f) Signatures of Lawyers on Documents. While this order remains in effect, a lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 267(b), SCACR, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(g) Service of Documents. The methods of service listed below may be used to serve documents on opposing counsel or a party.

(1) Service by Delivery. While this method is permitted under Rule 262(b), SCACR, this method of service is discouraged during this emergency since it increases the potential for exposure to the virus.

(2) Service by Mail. This is provided for by Rule 262(b), SCACR.

(3) Service Using AIS E-mail Address. During this emergency, this Court authorizes a lawyer admitted to practice law in this state to serve a document on another lawyer admitted to practice law in this state using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(4) Service in Actions under Rule 245, SCACR. The requirement under Rule 245(c) that the summons and complaint be served in the manner specified by Rule 4 of the South Carolina Rules of Civil Procedure is suspended. In the event a respondent fails to file a return or other response to the petition and the Supreme Court agrees to entertain the action in its original jurisdiction, the Court may require the summons and complaint to be served in the manner specified by Rule 4.

(h) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the Appellate Courts, incoming paper documents, whether delivered or mailed to the Court, will be subject to a 48-hour quarantine period once they are physically received by the Court.2 Once the quarantine period has ended, these documents will be date stamped with the date on which they were received, and court staff will then process the documents. In light of this delay, remittiturs under Rule 221, SCACR, will not be sent until it is determined that no petition for rehearing or motion for reinstatement was actually received in the quarantined documents received on the last day of the period provided by Rule 221.

(i) Outgoing Correspondence. The Appellate Courts have greatly reduced the number of employees working in the Supreme Court Building and the Calhoun Building to lessen the potential for exposure to the virus. As a result, the Appellate Courts will not have sufficient staffing to continue the current practice of sending all outgoing correspondence (including letters, orders and opinions) by U.S. Mail. Therefore, while the Appellate Courts will continue to send paper correspondence by U.S. Mail to persons who are self-represented, correspondence to a lawyer admitted to practice in this state will only be sent to that lawyer's primary e-mail address in AIS. Correspondence will not be sent to attorneys admitted pro hac vice; instead, it will be the responsibility of the associated South Carolina lawyer to pass any correspondence on to the pro hac vice attorney.

(j) Public Access Appellate Court Buildings.

(1) Supreme Court Building. Until further order of this Court, the public will not be allowed to enter the Supreme Court Building. This restriction does not apply to persons entering the building to make filings in the Lobby under (c)(1) above. If appropriate, the Chief Justice or the Clerk of the Supreme Court may authorize entry.

(2) Calhoun Building. In an order supplementing this order (see (m) below), the Court of Appeals, in coordination with the Office of Court Administration, may issue guidance regarding public access to the Calhoun Building.

(k) Closure of the Supreme Court and Court of Appeals Buildings. In the event a directive is received to close the Supreme Court and Calhoun Buildings, it is anticipated that this will result in the closure days being treated as "holidays" in the computation of time under Rule 263(a), SCACR. This is consistent with prior practice when a hurricane or other disaster has resulted in the closure of the Appellate Court Buildings. The restriction on public access in (j) above is not a closure of either building, and does not affect the computation of time under Rule 263(a), SCACR.

(l) Extensions of Time and Forgiveness of Procedural Defaults.

(1) Extensions of Time. Both the Supreme Court and Court of Appeals are aware that this crisis will increase the need for extensions to be granted. While this order remains in effect, no filing fee will be required for a motion for an extension. Further, since it is important for lawyers and self-represented litigants appearing before the Appellate Courts to have time to take actions to protect themselves and their families, the due dates for all Appellate Court filings due on or after the effective date of this order are hereby extended for twenty (20) days. Lawyers and litigants are warned that this extension does not extend the time to serve a notice of appeal under Rules 203, 243, and 247, SCACR.

(2) Forgiveness of Procedural Defaults Since March 13, 2020. In the event a party to a case or other matter pending before an Appellate Court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default is hereby forgiven, and the required action shall be taken within twenty (20) days of the date of this order. If a dismissal order has been issued based on this default, the clerk of the Appellate Court shall rescind that dismissal order. This forgiveness does not apply to the failure of a party to timely serve the notice of appeal under Rules 203, 243, and 247, SCACR.

(m) Supplemental Order by the Court of Appeals. The Court of Appeals may issue an order supplementing this order. This order is not effective until approved by the Chief Justice.

(n) Effective Date. This order is effective immediately. It shall remain in effect until modified or rescinded by this Court.

[1] *Cf. South Bridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d. 535 (1987) (delivery to a third party mailing service is not mailing).

[2] One scientific study has reported that the coronavirus can live for up to 24 hours on cardboard. https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf

s/Donald W. Beatty C.J.
s/John W. Kittredge J.
s/Kaye G. Hearn J.
s/John Cannon Few J.
s/George C. James, Jr. J.

Columbia, South Carolina
March 20, 2020

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Opinion No. 2020-UP-151 (S.C. Ct. App. filed May 20, 2020)

Stephen Dudek, Doreen Cross — Respondents

v.

Thomas Ferro, Lorraine Ferro — Respondents,

And

Molly M. Morphew, — Appellant,

v.

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

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CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with Appellant's Petition for Writ of Certiorari to the South Carolina Supreme Court by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents

Molly M. Morphew, pro se

September 21, 2020

September 20, 2020

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

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

Dear Ms. Kitchings:

Please find enclosed Appellant's Petition for Writ of Certiorari and the Certificate of Service(s) to be recorded and filed.

Also enclosed is a copy of above to be kindly recorded and returned in the self-addressed, stamped envelope.

Thank you and very truly yours,

Molly Morphew, pro se

Cc: Steven L. Smith, Esq.
Supreme Court of South Carolina

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