

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable Diane S. Goodstein, First Judicial Circuit

Opinion No. 2020-UP-150 (S.C. Ct. App. filed May 20, 2020)

Molly M. Morpew,

Appellant,

v.

Stephen Dudek and Doreen Cross,

Respondents

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Petitioner, Molly Morphey, pro se, certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 27, 2020.

QUESTIONS PRESENTED

1. Was it an abuse of discretion or improper for the Petitioner's complaint for constructive trust to be dismissed by the trial court and affirmed by the appellate court when no final judgment on the merits regarding the Respondents' fraud as alleged in this instant complaint is in the record?
2. Did the Appellate court abuse its discretion when it failed or refused to address the issue of jurisdiction and discretion as specific to the original or 1st case seeking the strict remedy of specific performance, and that the judgment is void ab initio, and in effect abused its discretion when it failed to address the issue of jurisdiction or discretion in this instant case seeking a constructive trust based on the respondents prior unlawful actions and its continuing fraud purchasing the property using an expired sales contract, rendering the respondents not bona fide purchasers?
3. Did the trial court have subject matter jurisdiction to enter its order dated October 3, 2017?
4. Should the appellate court not have applied the doctrine res judicata to this case but instead 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, that its void or fails on its face, or for its lack of being fair and lawful?

5. Was the Petitioner required to object to or argue in opposition to an affirmative defense not raised in Respondents motion to dismiss, therefore petitioner's argument in its brief "Stephen Dudek and Doreen Cross did not plead the doctrine of res judicata in their motions to dismiss" is improper on appeal though the trial court's order used an affirmative defense not raised in the motion to dismiss?

INTRODUCTON

This case is presented due to its unusual circumstances and the extreme and unlawful measures taken to achieve it, and the grave injustice caused in its blatantly unlawful result. There is no other constructive trust case to be found that is even remotely similar. What started out to be a simple case in equity has turned into a legal nightmare, the sole cause being the Respondents' unlawful or fraudulent actions or non-actions, and the trial and appellate court's refusal or intentional refusal to consider and adjudicate the new facts and evidence and the Respondents' fraud.

In this instant case, the Respondents obtained the subject property by committing fraud and unlawful actions *critically material* to the original remedy sought, specifically they, their attorney and their witnesses committed substantial misrepresentation, bad faith and unfair dealings, perjury, non-disclosure, suborning of perjury, forgery of financial documents, and conspiracy to obtain their award for specific performance. The Petitioner had discovered during the appeal, and since the trial, of the original or first action, the Respondents abandoned their time is of the essence sales contract (intentionally let it expire), therefore had no legal claim to the property at all times material and consequently were denied financing to tender the payment to purchase on or before they compelled or filed for specific performance. Meaning, not only is specific performance not legally available to them, but no remedy is available. At all times material, the Respondents had no valid and negotiable sales contract and no legal claim to or legal right to obtain the property. (*See also* Appellate Case No. 2018-002185).

When the Respondents became the owners of the subject property, Petitioner presents the Respondents purchased the property fraudulently, with an expired sales contract, and with actual notice of Petitioners claim to title of the property. Ultimately, the Respondents are not bona fide purchasers. **(R.pg.260-285)**

The trial court dismissed the case in its entirety under Rule 12(b)(6) and res judicata, *specifically* that 'the Petitioner could have brought the constructive trust claim against the Respondents in the original action'. **(R.pg.30-38)** Petitioner argued that was impossible for the Respondents were not owners at that time and had not purchased the property until June 2017, therefore it was improper to dismiss the case in its entirety. The Appellate court agreed with Petitioner, but applied res judicata based on the fact "the basis of the claim was predicated on the allegations of fraud that were previously adjudicated."

Regardless, and as presented below, the trial court's judgment awarding specific performance to the Respondents in the original action fails on its face and is so far outside its jurisdictional scope and the law and the principles of law and equity 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'.

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 first case. The trial court's 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 proceed this far, and surely the lower courts were assuming, or 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 and the issues she raises, even if they do so improperly. For who holds the trial court to order lawful and fair judgments, to protect the litigants, to protect the courts themselves against fraud, to obey those same rules, processes, laws, precedents or principles of law and equity in which it basis those judgments? Another court! Another court who is also supposed to protect litigants against unlawful or void judgments in which the trial court had no discretion or jurisdiction to award; to protect a litigant's right to property and prevent its property taken without legal justification; to punish litigants who acted in bad faith and unfair dealings and performed fraud to obtain an award

they had no ability to compel, who intentionally abandoned their sales contract then come to court presenting lies and false evidence to prevent a legal claimant from purchasing and obtaining the property themselves. Its obvious a litigant, especially a pro se, has no means to succeed if it's the fox that's being asked to guard the chicken coup.

The trial court and appellate court are presented with the issue of a VOID order or judgment. They have been presented with orders or judgments that completely fail on its face or completely fail the principles of law and equity in which they are based on. They are presented with jurisdictional issues. They have been presented with new facts and evidence and issues that have not yet been considered or adjudicated. In its petition for rehearing to the appellate court, Petitioner asked the appellate court to consider the new facts and evidence, address these issues raised and rule on them specifically by amending its Opinion to reflect. (Petition, June 3, 2020). It refused.

Based upon lack of jurisdiction or discretion to award an equitable remedy; unlawful orders or orders that fail on its face; issues, new facts and evidence critically material to the original case and the legal position of the litigants that has not been considered or adjudicated and which changes completely the outcome of the original case, Petitioner appeals to this Court to grant its' Petition for Writ of Certiorari. Further, granting it petition would prevent a grave injustice, prevent further unlawful or improper conduct in the lower courts, satisfy public policy, and the fair and equal administration of the law, without corruption, favor, greed, or prejudice.

STATEMENT OF THE CASE

On June 2, 2017, Respondents Stephen Dudek and Doreen Cross ("Respondents"), with actual notice of Petitioner Molly Morphew's ("Petitioner") claim to 788 E. Butternut Rd, Summerville, SC ("Property") and their unlawful and void award for specific performance obtained solely by 'frauding' the court in order to obtain its jurisdiction or discretion to award the equitable remedy in their favor (*See also*, Appellate case No. 2018-002185), purchased the property.

Immediately, Petitioner brought this action for constructive trust against the Respondents claiming they unlawfully or fraudulently obtained the Property; their award for specific performance was based solely on false evidence and cannot be supported or substantially supported by the [valid] facts and evidence in the record; they abandoned their *time is of the essence* sales contract by intentionally letting it expire and had no legal claim to the property after November 30, 2012

[therefore were denied or refused financing]; were required to sign the termination notice but had refused to do so and instead filed their lis pendens and complaint to prevent Petitioner from closing (R.pg. 400); had actual notice of Petitioner's claim to the Property before purchasing, and were not bona fide purchasers. Instead, Petitioner had the only legal claim to the property and its award for specific performance was the only judgment in the first action that does not fail on its face, is lawful, and is completely supported by the record (R.pg. 1-20) (R.pg. 260-285).

Respondents filed two (2) motions to dismiss, one based on Rule 12(b)(6) and the other based on Rule 12(b)(8). (R.pg. 286-288);(R.pg.289-291). Petitioner filed its response to the two (2) motions. (R.pg.367-375). A hearing took place on October 3, 2017 and an Order dismissing the case entirely. Petitioner appealed, and the Appellate court affirmed the trial court Order, specifically, (A) *“Although Morphew's claim for a constructive trust could not have been raised in the prior suit, because the basis of the claim was predicated on the allegations of fraud that were previously adjudicated, Morphew's constructive trust claim is barred by res judicata;”* (B) *“Although Morphew argues on appeal that Stephen Dudek and Doreen Cross did not plead the doctrine of res judicata in their motions to dismiss, this issue was not raised to or ruled on by the circuit court, and thus is not preserved for appellate review.”* Petitioner filed its Petition for Rehearing on June 3, 2020, providing arguments and asking the appellate court to, 1) deny and reverse the lower court's order due to lack of grounds or lack of grounds to which this Court affirmed, and amend its Opinion of (A) above to include clarification for its basis for its ruling to preserve this issue for appeal or any subsequent litigation, 2) include in its Opinion Appellant's claim Respondents are not bona fide purchasers; a void Order; violation of due process and denial of equal protection of the laws, 3) to reconsider its Opinion of (B) above and amend accordingly, and 4) reconsider its ruling as a whole as its ruling is unsupported by the record. It refused. Instead, it provided a one-sentence response denying its' petition, *“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 3, 2020)(Order denying Petition August 27, 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 that did not exist during the 1st trial, but was raised the moment it was discovered. (Pending cases, Appellate Case No. 2018-002185;

Appellate Case No. 2017-001393¹) Those facts and evidence critically changed the legal positions of the litigants, especially the Respondents, and the jurisdiction or discretion of the trial court in the 1st case to award the equitable remedy of specific performance in favor of the Respondents. In a nutshell, the circumstances of the 1st case changed so completely that it changed the outcome of the 1st case, specifically, the Order in-part granting the Respondents specific performance is VOID. Due to the abandonment of their sales contract and the unlawful, unfair and Void judgment, and their *continued fraud* using an expired *time is of the essence* sales contract to purchase the property, the Respondents in this instant case unlawfully purchased the Property and are not bona fide purchasers². Due to the lower courts' continued refusals or failures to consider and address the new facts and evidence and issues raised here, a grave injustice is allowed to stand; all Orders issued³ here, in the original case and any subsequent case are unfair and unlawful; a litigant is severely prejudiced and its due process violated; property unjustifiably taken (or stolen) and given to another who abandoned their claim to the property; discrimination towards the Petitioner and in the unequal application of equity law and principles is very apparent: where Petitioner performed its contract and had the trial court's jurisdiction or discretion to award specific performance in her favor but is denied that sole right to obtain the property while at the same time, the Respondents failed completely to perform their contract (actually abandoned it by intentionally letting it expire) and then committed fraud and/or fraud on the court to obtain the trial court's jurisdiction to award the same, and now has been unlawfully allowed to purchase the Property when they and the lower courts had full knowledge of the new facts and evidence and these issues which arose from it.

The Court of Appeals affirmed the judgment of the circuit court. Molly Morphey v. Stephen Dudek and Doreen Cross, Op. No. 2020-UP-150 (S.C. Ct. App. filed May 20, 2020).

Petitioner seeks a writ of certiorari to review that decision.

¹ The new facts, evidence and issues were raised in the trial court but again it refused to consider the facts and evidence, ruling those new issues raised by the sellers and Petitioner as having 'no merit'. The Appellate court affirmed based solely on the law of the case doctrine. They pointed to no issues, no adjudication of those issues, no place where the appellate court specifically rejected the new facts, evidence and issues, especially a void order or the trial courts lack of discretion and its exceedance of its jurisdiction to award the equitable remedy of specific performance. Petitioner contends the appellate court abused its discretion affirming an Order in which it has no grounds to affirm and in which the Order fails on its face or is VOID.

² Further, to be a bona fide purchaser it must not have notice (actual, express or constructive) of Petitioner's claim to the Property. Respondents had full knowledge of Petitioner's claim to the property (Appellate Case No. 2018-002185 & 2017-001393)

³ Except for the judgment awarding Petitioner specific performance (R.pg. 1-19)

REASONS FOR GRANTING THE WRIT

1. NO FINAL JUDGMENT REGARDING RESPONDENTS' FRAUD AS ALLEGED IN THIS INSTANT CASE IS IN THE RECORD, THEREFORE IT WAS AN ABUSE OF DISCRETION OR IMPROPER FOR THE PETITIONER'S COMPLAINT FOR CONSTRUCTIVE TRUST TO BE DISMISSED OR AFFIRMED

The Appellate court based its affirmation of the trial court order on the fact "*the basis of the [constructive trust] claim was predicated on the allegations of fraud that were previously adjudicated.*" Specifically, "*Morphew's complaint is barred under the doctrine of res judicata because the adjudication of those issues occurred in a prior suit involving the same parties and same subject matter.*" Opinion No. 2020-UP-150). First, nowhere and nowhere in the record does it show there has been any consideration or actual adjudication of the Respondents' fraud. Further, the new facts and evidence, the expired/invalid sales contract, the trial court's lack of discretion to award the equitable remedy, the void judgment in the original action, or the Respondents' actual notice of a claim to the property in question at the moment they purchased the property, was not raised or adjudicated especially not *in the first suit*. *Second*, neither the trial court or the appellate court has specifically addressed and ruled on whether or not the Respondents *purchased* the property fraudulently or by unlawfully obtaining the trial court's discretion or jurisdiction to award the equitable remedy solely with perjury, forgery, misrepresentations or false evidence. *Third*, the appellate court has not pointed to "the prior adjudication" of the specific allegations of fraud or the issues arising from as alleged in this instant complaint. Finally, actual fraud is not the only basis to a constructive trust claim, and was not the only basis for constructive trust in Appellant's claim. Constructive trust also results from bad faith, abuse of confidence, or violation of a fiduciary duty, or any circumstance under which the property was acquired making it inequitable being retained by the Respondents. Due the reasons above and herein Petition, Petitioner argues the appellate court's ruling has no grounds to support it, and thus cannot bar or completely bar Appellant's complaint for Constructive Trust. A judgment that has no grounds to support it is improper or void and must be reversed or vacated.

2. THE APPELLATE COURT FAILED TO ADDRESS THE ISSUE OF JURISDICTION AND DISCRETION AS SPECIFIC TO THE ORIGINAL OR 1ST CASE SEEKING THE STRICT REMEDY OF SPECIFIC PERFORMANCE, AND THAT THE JUDGMENT IS VOID AB INITIO, AND IN EFFECT FAILED TO ADDRESS THE ISSUE OF

JURISDICTION OR DISCRETION IN THIS INSTANT CASE SEEKING A
CONSTRUCTIVE TRUST BASED ON THE RESPONDENTS PRIOR UNLAWFUL
ACTIONS AND ITS CONTINUING FRAUD PURCHASING THE PROPERTY USING
AN EXPIRED SALES CONTRACT, RENDERING THE RESPONDENTS NOT BONA
FIDE PURCHASERS

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 the trial court's lack of jurisdiction or discretion to award the remedy of specific performance in the 1st action, and to amend its Opinion to reflect its review. It further asked the appellate court to address the issue of bona fide purchaser in its Opinion. (*See Petition*). The appellate court refused, and instead makes a general ruling, 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.*” (Order denying Petition for Rehearing, August 27, 2020). Petitioner asks this Court to address those issues or remand those issues back to the Appellate court for specific review and to amend its Opinion accordingly.

Regardless, based on the new facts and evidence in the record and the new circumstances of the case, 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. 260-285) (R.pg.1-20).**

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 performance⁴. 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 from the Respondents, therefore removes the jurisdictional power or discretion of the courts to award specific performance to the Respondents or the appellate court's jurisdiction to affirm the judgment. The Respondents rely on the courts judicial shield to protect them from their critical failures, but even the courts do not have the power to defend them in this case from the strict and guiding principles of law and equity. The courts have no choice but to vacate the judgment in favor of the Respondents in the 1st case, thus it has no choice but to vacate or reverse the judgment in this case.

⁴ Ingram must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future.

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 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 or waiving any legal claim to the property and their right to possess or obtain. (**R. pg. 6 #8**). They were also denied mortgage credit due to their lack of legal claim to the property. They hid that fact from the sellers though their contract specifically calls out full disclosure regarding the performance of. (**R.pg.6 #9**). In litigation, the law requires disclosure, especially when its material to the adjudicating ability of the court or the remedy it compels. The Respondents' critical breach, abandonment and non-compliance was *all at their own hand* and at no fault of the sellers or Petitioner. Petitioner had the only legal claim to the property and was ready, able and willing. 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 No. 2017-001393); (Appellate Case No. 2018-002185). They must now accept the fact that that the courts should and must vacate the judgment and transfer the deed⁵ 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 (Respondent in the pending fraud case) knew it, as they were the lender who had denied Respondents' application or refused financing in the 1st case because the Respondents lacked a legal claim to the property.

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 to 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.

The Appellate Court has totally disregarded the issue of the VOID judgment(s) and jurisdiction. 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 unlawful or erroneous. No

⁵ As the master stated to Petitioner in the original or 1st 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). There is no evidence in the record demonstrating Petitioner's contentions were misplaced, but where the record demonstrates its contentions are actually valid.

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 and constructive trusts 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 and under the circumstances of the case. (**R.pg.5-6**). 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 performance⁶. 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 the 1st case, it was discovered after trial, that 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. pg.400**); 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 they had no legal claim to possess the property⁷. Based on the

⁶ Ingram must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future.

⁷ Without a valid and negotiable sales contract, it is legally impossible to obtain a mortgage loan for the property, for one

Ingram test, they were not 'ready, 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 was available the Respondents, let alone the strict and equitable remedy of specific performance.

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 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, not the false facts and circumstances presented by the Respondents at trial.

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.pg.74-84); (R.pg.400)**. **(R.pg.249)** date 1/18/2013, where Respondents were declined financing for failure to have a valid and negotiable sales contract at initial application (resulting in an incomplete application) **(R.pg. 250-253)**. Their initial application is signed and dated Dec. 10, 2012, 10 days *after* their time is of the essence sales contract expired; and their application requirements required the Respondents provide a signed contract extension addendum within 48 hours or on Dec. 7, 2012;

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.

also see 10-day adverse notice (**R. p.257**), 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, by January 13, 2013). The Respondents never remedied their critical breach and failure.

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 and false promises, 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 res judicata doctrine in regards to the fraud committed. Regardless, 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.” 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 process⁸ and from a fair and lawful judgments.

The Respondents abandoned their sales contract; failed to inform the sellers as required (R.pg.6 #9), the Petitioner in its discovery and the Master at trial, of their financing failure⁹; and failed to disclose the truth regarding their inability to tender payment, the very crux of the two (2) specific performance cases. At the same time, it’s 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, all 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 inequity 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 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

⁸ Especially to issues not yet adjudicated

⁹ 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.

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* the Respondents, and in turn, relief in this instant case must be granted to the Petitioner.

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. On appeal, 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 case's appeal(s); and in this separate and subsequent appeal, the Appellate Court *must* vacate, and at a minimum reverse, the Order in-part of November 6, 2014, this Order dated October 3, 2017, 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 res judicata doctrine is not applicable to void orders or fraud on the court; res judicata cannot affirm legally erroneous rulings; or the Respondents fraud committed to purchase the property has not been adjudicated.

3. THE TRIAL COURT HAD NO SUBJECT MATTER JURISDICTION TO ENTER ITS ORDER DATED OCTOBER 3, 2017

The October 3, 2017 order is void due to lack of jurisdiction to enter it at the time. It was a subsequent order arising from the 1st case whose Order fails on its face and in which the trial court had no jurisdiction or discretion to award specific performance to the Respondents in the first place.

As argued in the petition for rehearing and this Writ of Certiorari and repeated herein, a court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. The Order in-part of November 6, 2014 is void due to lack of jurisdiction or discretion to order the equitable remedy under the true and confirmed circumstances of the case. Consequently, the April 3rd order dismissing Petitioner's constructive trust complaint pursuant res judicata was improper and had no grounds to support it at the time of its entry. Consequently, the appellate court must vacate the orders.

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

Res judicata 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 order specific performance in favor of the Respondents in the 1st case under the facts and circumstances has not been litigated nor decided in the 1st case, 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*.

As argued in #1 above and repeated here, 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 and constructive trusts are discretionary, so their availability depends on its appropriateness in the circumstances.

The Master did not have the discretion to enter specific performance in favor of the Respondents, and since it had not the power to so act, it did not have jurisdiction over the subject matter and is void (also *see* Petition for Rehearing). "Therefore, if it [any court] acts without authority, its judgments and orders are regarded as nullities." As presented in *Ross v. Richland County*, 270 S.C. 100, 240 S.E.2d 649 (1978). The law is well settled that when a court has no authority to act, its acts are void. *Russell v. Bea Staple Mfg. Co.*, 266 N.C. 531, 146 S.E. (2d) 459 (1966); *Davis v. Page*, 125 S.E. (2d) 60 (Ga. 1962); *Cruikshank v. Duffield*, 138 W. Va. 726, 77 S.E. (2d) 600 (1953). As such, the Appellate court must vacate the 1st case Order in-part of November 6, 2014 awarding specific performance to the Respondents, consequently it must reverse the Order of October 3, 2017 in this case and find a constructive trust resulted.

Also, actual fraud is not the only basis to a constructive trust claim, and was not so in Appellant's claim. Constructive trust also results from bad faith, abuse of confidence, or violation of a fiduciary duty, or any circumstance under which the property was acquired making it

inequitable being retained by the Respondents¹⁰. The case of *Bank of Williston v. Alderman*, 106 S.C. 386, 91 S.E. 296, 298 (1917) states: "Actual fraud is not necessary, but such trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who holds the legal title." See also *Dominick v. Rhodes*, 202 S.C. 139, 24 S.E. (2d) 168 (1943). Constructive trust "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Carolina Park Associates, LLC v. Marino*, 732 S.E.2d 876, 879 (2012). (quoting, *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 560 (1987)); *Searson v. Webb*, 208 S.C. 453, 38 S.E. (2d) 654 (1946).

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

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

Res judicata does not apply where the issue raised has not received final judgment. The appellate court has failed to point to where the final judgment on the merits regarding the Respondent's fraud exists. Petitioner requested clarification in its Petition for Rehearing but the appellate court refused. Petitioner contends no final judgment on the merits is in the record. As a result, res judicata does not apply in this case.

Regardless, res judicata 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). There was a material change in the evidence and facts presented here compared to the facts and evidence presented by the Respondents at trial in the 1st case. Those issues

¹⁰ Such as a Void or invalid time is of the essence sales contract or a Void court order.

arising from the new facts and evidence as presented here in this instant case changed the legal positions of the litigants, the jurisdictional authority of the trial court and its discretion to award equitable remedies, and the outcome of the original case, hence the applicability of a constructive trust. The question here is what a court may do under the circumstances.

Also, res judicata 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)). Nor does res judicata apply to VOID judgments or jurisdictional issues [especially in a court of equity where its discretion to award an equitable remedy is based on conditions essential to exercising its discretion], 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. 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, notwithstanding the fact it failed to address principles of equity as required in a case seeking an equitable remedy. The facts and evidence in the record demonstrate the Respondents purchased the property from not only fraud, but bad faith and unfair dealings, and a violation of a fiduciary duty, but used an expired sales contract to purchase the Property when they had no legal claim to the same. In addition to allegations of fraud, it provides facts of circumstance under which the property was obtained making the Respondents’ ownership contrary to the principles of equity.

5. THE PETITIONER WAS NOT REQUIRED TO OBJECT TO OR ARGUE IN OPPOSITION TO AN AFFIRMATIVE DEFENSE NOT RAISED IN RESPONDENTS MOTION TO DISMISS, THEREFORE PETITIONER’S ARGUMENT IN ITS BRIEF “STEPHEN DUDEK AND DOREEN CROSS DID NOT PLEAD THE DOCTRINE OF RES JUDICATA IN THEIR MOTIONS TO DISMISS” IS PROPER ON APPEAL WHEN THE TRIAL COURT’S ORDER USED AN AFFIRMATIVE DEFENSE NOT RAISED IN THE

MOTION TO DISMISS

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

As supported by the record, the Respondents had no legal claim to Property. No legal claim means no defense in regards to the Property is available. Period. Including the affirmative defense of 'res judicata', especially to completely bar Appellant's complaint for constructive trust based on res judicata solely on Respondents fraud that has no final judgment on the merits. Even so, a void order of the original action would render this issue moot, as this appeal must be dismissed as previously argued in Petitioner's Petition for Rehearing (repeated here).

Regardless, Appellant raised to the circuit court that the Respondents "*failed to state or plead even one ground for granting their motion*" (See R.pg. 367). The Respondents' motion only repeated SCRCF Rule 12(b)(6), and completely failed to plead at all, hence, nowhere was res judicata raised or pleaded [that would or could] completely bar Appellant's complaint for constructive trust. (See R.pg. 286). Appellant is not required to argue defenses not raised or plead in their motion, especially affirmative defenses such as re judicata, or if not plead in an Answer. The Respondents abandoned a plea, if any considered, of res judicata. An abandonment, regardless of intention or the lack of, waives any right the defense of res judicata, and neither the Appellant or the courts can present to 'un-waive' that right. The doctrine of *res judicata* is not usually raised by motion. Under the federal rules¹¹, it must be raised by affirmative defense. In most situations, if a defendant does not raise the defense of *res judicata*, it is waived." *Rotec Industries, Inc. v. Mitsubishi Corp.*, 348 F.3d 1116, 1119 (9th Cir. 2003). No defense was plead. Even if it was, it was not plead to support the ruling of this Court. Because it was not plead at all or as an affirmative defense, res judicata is not an available defense, and any judgment pursuant res judicata by the lower court or this court prior to, is improper.

¹¹ SCRCF rules are identical

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

SUMMARY

It is a great tangled mess the Respondents have caused in their unlawful actions, and the lower courts in their failure to follow principles that govern them. Now, hoping this will just end or go away, they solely rely on the doctrine of res judicata in regards to the Respondents fraud, therefore its constructive case fails. The Appellate court fails to point to specific final judgment on the merits in which res judicata can apply to *entirely* dismiss Petitioner's complaint. There is no final judgment on the merits in the record, therefore res judicata is not proper. Even if it was, the lower courts refuse to specifically address erroneous orders, fraud on the court, void judgments, jurisdictional or discretionary failures and due process. Dismissing Petitioner's complaint is improper. Further, even *if* the appellate court applied principles of law, principals of *equity* were not considered¹². Just on these principles, it has no choice but to vacate the judgment awarding specific performance in favor of the Respondents, therefore reversing the order on appeal dismissing this instant complaint. 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* Petition for Rehearing).

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 truly 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...and so on.

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 caused could have been mitigated by

¹² In denying Petitioner's Petition for Rehearing, it said it found no material facts or *principles of law*...but completely overlooked Principles of equity as required in the original case and this case seeking an equitable remedy.

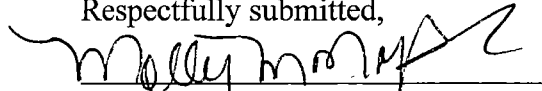
the Respondents by being honest and acting in good faith and fair dealings, or by the courts themselves if they had followed their rules and processes or properly addressed the new facts, evidence and issues, and as soon as it was presented to them.

CONCLUSION

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

September 22, 2020

Respectfully submitted,



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RECEIVED

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S.C. SUPREME COURT