RECEIVED
SEP 14 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2018-002185

Molly M. Morphew, Appellant,

v.

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

APPELLANT'S REPLY BRIEF—RESPONDENT COLLINS

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

Table of Contents

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

FACTS

Without restating all the facts and arguments which have been thoroughly set forth in its opening brief, Appellant Morphew (herein "Appellant") offers the following statements of the case and facts with arguments for clarification, *correction or defense in regards to this case and the Respondent David Collins's (herein "Respondent") Brief.

STATEMENTS AND FACTS OF THE CASE

Appellant served and filed its complaint and summons on August 24, 2016 (*[1]not September 8, 2016). Appellant's case is not frivolous nor is any of its filings, and Appellant did not lose the original case in November 2014 (*contrary to Respondent's statement). In fact, Appellant was also granted Specific Performance under the same South Carolina and Federal guidelines, rules, maxims, laws, statutes or precedents. On September 20, 2016 Respondent filed a skeleton 12(b) motion to dismiss (herein "MTD"). On January 31, 2017, the trial court dismissed several of the causes of actions, leaving several remaining, one of which was Fraud and/or Fraud on the Court (*not [just] 'extrinsic fraud'). Respondent failed to file an Answer to the complaint. Respondent did not appeal.

On November 27, 2017, after receiving the Scheduling Order, Appellant filed a combined motion for default and a motion for default judgment against Respondent. On December 19, 2017 Respondent signed and filed an Answer and Return to Motion, which the Clerk deemed invalid for lack of counsel signature.(A60);(RTM). Notice was given. The failure was never remedied. No valid Answer or motion to be relieved of default was ever filed (*contrary to Respondent's Statement).

On January 24, 2018, after Appellant refused to allow Respondent to personally question her and without his attorney present at her deposition, Respondent's counsel of record submitted a motion to be relieved of counsel. An order granting such relief was issued January 26, 2018.

On Feb 23, 2018 the trial court issued an Order denying only Appellant's motion for *Default Judgment*, leaving open its' motion for entry of default (*contrary to Respondents statement of fact, pg. 9 para. 2). On March 4, 2018, to err on the side of caution, Appellant filed a 2nd [combined] Motion for Entry of Default and Motion for Default Judgment.

After extensive discovery and many filings, all which the Respondent took *no* part in whatsoever (*contrary to Respondent's statement), a hearing was held on October 1, 2018 to hear

[1] *Errors appearing in Respondent's Statement of the Case or Statement of the Facts as outlined in his initial brief

the pending motions, including discovery motions. Some of which the judge did not hear, but would review de novo. At no time prior to this hearing did the judge give notice it was going to convert any motion to dismiss[2] to a motion for summary judgment ("SJ") (*contrary to Respondent's statement of the case) nor did she give notice she was going to consider any evidence outside the scope of the complaint. The first time Appellant heard of this is in the Order of November 15, 2018. *Respondent falsely presents to this court that the Appellant "*continuously threaten to criminally prosecute the Respondents unless they settle the dispute by paying her some sum of money*". This is not an issue raised on appeal nor is the document relevant to this appeal, therefore should be disregarded by this Court. The document is required to be removed from Respondent's Designation of Matter. Regardless, nowhere is there any threats --let alone *continuous* threats/attempts-- to collect money to settle any disputes with the Respondents. Such is perjury and misrepresentations in its filings with this court and should be noted. On November 13, 2018 (*not November 13, 2017 as stated by Respondent), the trial court denied Appellant's 2nd Motion for Default, specifically, because the "*Respondent filed a timely motion to dismiss,*" rendering moot its 1st motion for default and its 2nd motion for default judgment. No findings of fact, standard of review or law analysis was included in the Order to support its ruling. On November 15, 2018 the trial court issued an Order granting SJ to Respondent on its remaining causes of action by "converting a motion to dismiss to summary judgment "[3].

Overall, the trial court dismissed Appellant's entire case by granting SJ to all remaining causes of action as to all Respondents. No sanctions against any litigant was issued. Appellant appealed, including 10 orders equaling 100 pages, 10 Respondents and 43 rulings. No Respondent has appealed.

STATEMENT OF FACTS

Appellant discovered after trial and on appeal, that the Respondent's clients and co-respondents, the Stephen Dudek and Doreen Cross (herein "Dudeks"), had no legal claim or right

[2] Respondent presents untrue assertions to this court, 1) that he had a pending MTD before the court and, 2) *during the hearing* the judge converted his [alleged] MTD to a motion for SJ .

[3] In its Order of November 15, 2018 the trial court states it "converted a Joint Motion to Dismiss in regards to David Collins to SJ ". The record fails to show a MTD, let alone a joint motion, in which Respondent Collins is party to or that the trial court could convert. In fact, the only filings or valid filings the Respondent filed during the course of the case was a MTD in September 2016 [ruled on in Jan. 2017] and a motion to relieve counsel in January 2018.

to the property in question after November 30, 2012. In essence, the Dudeks lender refused their application for financing because their time is of the essence sales contract was not valid and negotiable...it had expired. Such failure was never remedied[4]. It was also discovered *all* Respondents had full and complete knowledge of the Dudeks' lack of legal claim or right to obtain the property prior to the filing of the unlawful and frivolous complaint for specific performance (**AD58**, Lender's10-day Adverse letter dated January 13, 2013);(**DL25**). These facts are undisputed. The discovery of the evidence after trial led to this compliant for fraud/fraud on the court and many other causes of action. These actions by the Respondents led to unlawfully obtained property and prevent Appellant from closing on her property. That discovery also revealed that during the course of the separate and prior case for Specific Performance, the Respondent, Dudeks or their witnesses gave only perjured or false testimony, suborned perjury, false promises or forged financial documents in its filings or at trial. Such actions were to hide the truth, cover up their critical failures and convince the court the equitable remedy of specific performance was available to the Dudeks, when in fact it was not. Due to this fact, the lower court had not the discretionary power to order specific performance in their favor, therefore lost jurisdiction to move forward an order the remedy and allow them to obtain the property.

Appellant also discovered during the appeal the Master had knowledge of this BEFORE his ruling. (FP6). Appellant not served (*see* certificate of service). The evidence contradicted all material evidence and testimony given by the Respondents, and that such critical and material evidence and facts would deny the Dudeks the legal ability to specific performance and remove the Court's jurisdiction or ability to order specific performance in their favor. The record shows the Master intentionally ignored a *pro se party's* (Defendants/sellers Ferro) closing statements and newly discovered evidence, taking only the statements of the attorneys. Ignoring the laws, guidelines and the rules which granted him its discretionary power to order the strict remedy of specific performance, he granted the Dudeks the equitable remedy-- despite their *critical* failures. **(EF44).**

[4] This Court should be aware that since this complaint was issued, the Dudeks have obtained the property with the assistance of co-respondent Williams and First Federal (now South State Bank) using the same expired sales contract that was refused in 2012. First Federal had complete knowledge of the Appellants claim against the property, this complaint, and the fact they themselves deemed the sales contract invalid and non-negotiable in December 2012 and closed the Dudek's file. To except a new application using the expired sales contract is continued fraud, as alleged in the complaint and in Appellant's motion to compel discovery of the financial documents.

The discovered facts and evidence was presented to this Court on appeal of the prior case. Based on South Carolina and Federal rules, laws, statutes, precedents and maxims of equity, the Record wholly supports the fact the trial court had no discretion or jurisdiction to order the strict remedy of specific performance *in their favor*, especially when they had no contract or legal right/claim to the property after November 30, 2012. Consequently, the Order of November 6, 2014 is in-part VOID and has no legal effect whatsoever. It should also be noted specifically the Dudeks fail 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. Further, the maxims of equity are based on 'Equal Equities', which it was discovered the Dudeks are unquestionably not equal as they intentionally, and at their own hand, failed to meet even the basic lawful requirements and maxims in order to compel specific performance, making their prior case not only frivolous but unlawful and unfair, causing a severe injustice to the Appellant[5], sellers, public policy, the judicial process and the courts.

Due to the extent of these failures and unlawful actions or non-actions, and despite that as soon as this was discovered it was raised to the Appellate court in the prior action, Appellant filed its subsequent complaint for Fraud and Fraud on the Court, among several other causes of action against Respondent and his clients (the Dudeks); their lender and loan officer; their' closing attorney representing their 'alleged[6] mortgage transaction and his paralegal; their Real Estate agency, sales agent and chief counsel (herein "Respondents") during the prior action appeal on August 24, 2016.

The following year, this Court affirmed the decision of the Master, but the affirmation was not based on the record or the valid evidence presented , instead it based its affirmation on a standard of review that does not require them to *disregard the findings at trial or to ignore the fact the master was in a better position to assess the credibility of the witnesses*", therefore this Court affirmed the lower court ruling without considering or reviewing the record or the evidence presented to them.

---

[5] The Respondents' unlawful actions (including fraud perjury, forgery, misrepresentations, or suborning of perjury) have unjustifiably prevented Appellant from her property. At all times material, the Dudeks did not have any legal right to the property and are not bona fide purchasers as they obtained the property by fraud.

[6] Since at all times material to the prior case and the filing of this instant case, the Dudeks had no valid and negotiable sales contract or no mortgage transaction was in effect, co-respondents Wooddy Law Firm and Carrie Boyer had no legal standing to demand actions from the sellers, including repairs, inspections or a closing.

The "litigious" debacle the Respondent claims is *not* because of the Appellant, but because of the Respondent and co-respondents. As argued here and in its initial brief, it all started at the Respondent's unlawful and frivolous complaint for specific performance. It continued with perjured and misrepresented filings, forged financial documents, lender's perjured response to the several subpoenas issued in discovery and its perjured testimony at trial; and Respondent's failure to disclose substantial material evidence[7] before or even during trial, including but not limited to, the critically material lending refusal/denial letters. If the denial letters and the reason for them had been disclosed or presented by the Respondent we wouldn't be here today in this domino effect litigation. The Respondent had a legal duty to disclose this information at trial... as the court's ability or *discretion* to order a contract specifically performed is *critically* based on a *valid legal claim* (valid and negotiable sales contract) AND their *ability to obtain financing* per their sales contract. At all times material, the Dudeks had neither. Now, because of the Respondent, the Order of Nov. 6, 2014 fails completely in law, equity and substance. It has no grounds for support. Further, the very guidelines in which it was allowed and constructed upon have been violated. The Order is VOID.

ARGUMENTS

1. DID THE TRIAL COURT ABUSE ITS DISCRETION IN RULING THAT THE RESPONDENT COLLINS WAS NOT IN DEFAULT?

First, Respondent fails to argue or provide any facts or justification why the lower court's ruling in the order of November 13 that "filing a timely motion to dismiss" could or did relieve him of any default. Instead he makes only a passing assertion he filed a motion to dismiss pursuant 12(b)(6), and then leads this court on a merry goose chase pointing to issues and defenses he failed to raise or was not litigated in the lower court, not preserved for appellate review, or to filings that

[7] In the Appellant's deposition, her testimony clearly states she has no idea what was presented to her attorney before trial, but the denial letters were absolutely not there for if they were she stated she was more than sure her attorney would have presented it for she would have most surely won based on the merits of the case. And if Appellant knew of the denial letters at trial, she *without a doubt* would have presented them. (**DEP59**, Appellant Deposition, pg. 124 lines 6-10; pg. 105 line11 through pg. 106 line 7);(**TRANS21**, Appellant testimony, Pg. 47 line 15 through Pg. 48 Line 5) Regardless, the Respondent had them in his possession the whole time, as his clients were issued them in January 2013.

are deemed invalid by the lower court[8] (A60)(RTM61), and to orders that have nothing to do with relieving Respondent of his default or the entry of (O12[9]).

Second, Respondent makes several false statements and at the same time fails in its brief to disclose material facts this court requires in order to properly review the issue at hand. Respondent neither filed an Answer or valid Answer nor properly sought relief of his default nor participated in discovery. Even IF relief was properly sought, the Respondent was required to meet the good cause standard for granting relief from an entry of default under Rule 55(c). More so, the lower court's abuse of discretion and violation of the rules of the court contribute considerably to failing of its Order(s), or that the Order(s) fail on their face or has no grounds in which to support.

Due to the above and arguments below and in its Initial Brief repeated here, Respondent Collins is in default or that default, or entry of, was relieved in error, as a violation of the rules or an abuse of discretion by the trial court, and the Order(s) relieving him of default should be considered void or reversed.

I. The Respondent failed to seek relief of his default. Though he filed a 'Return to Motion' after receiving Appellant's motion for entry of default and motion for default judgment, the clerk deemed the Return an invalid filing for failure to be signed by his attorney of record, and violates Rule 11 by failing to strike the filings from the record. (**EC10**). The failure was not remedied after notice, therefore required to be struck from the record and sanctions against Respondent allowed. Rule 11(a). Even *IF* the filing was deemed valid or had been remedied, which it wasn't, the Return was not a motion or pursuant Rule 55(c), it was never before the court as a motion for relief, nor litigated or ruled on by the lower court. Consequently, Respondent's arguments and reasons for its failure to Answer as presented in its brief are not preserved for appeal.

Regardless, the standard also *requires* a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry *would serve the interests of justice*. No reasons why vacation of the default entry would serve the interests of justice was given. The trial court is also required to consider three (3) specific

[8] Therefore cannot be considered by this court

[9] Order of Feb. 23, which only denied Appellants 1st motion for default judgment and did not specifically relieve Respondent of his default or the entry of.

factors. Once a party has put forth a satisfactory explanation for the default, the trial court *must* also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App. 1989). The trial court did not consider each factor because no motion for relief or the defense of 'timely filing a motion to dismiss was before the court (MTS11)(MDJ13). Consequently, the lower court abused its discretion and power by filing an order that lacks ground for support and totally fails on its face. Such Order is void. Finally, the trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). In turn, *a trial court must make specific findings of fact for each factor if good cause* is found. The order of November 13, 2018 was a one-sentence ruling, failing to substantially comply with Rule 52(a) and failing to adequately state the basis for the result it reaches. As such, the order fails and should be vacated by this Court. Under South Carolina Rule of Civil Procedure 52 (a), "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." This Court has previously determined this requirement to be directory and that noncompliance would not form the basis for invalidating a judgment. *May v. Cavender*, 29 S.C. 488, 7 S.E. 489 (1888) (interpreting Section 291 Code of Laws of South Carolina); *see also Borg Warner Acceptance Corp. v. Darby*, 296 S.C. 275, 372 S.E. (2d) 99 (Ct. App. 1988). Rather, where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding. *See Pawleys Island Civic Ass'n. v. Johnson*, 292 S.C. 208, 355 S.E. (2d) 541 (Ct. App. 1986) (interpreting Section 15-35-110 Code of Laws of South Carolina 1976).

A motion requesting relief from default or a motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalnaker,* 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994). But sound discretion is not a free pass, particularily when no such motion was before the court. The rules and processes of the court *must* be followed. As argued in its initial brief, and maybe most importantly, no responsive pleading has been filed and a motion to dismiss

is not a responsive pleading, especially in this case, therefore there are no grounds supporting its order. Based on the above, the order is void and must be set aside. At a minimum, the court abused its discretion relieving Respondent of his default, and such Order must be reversed.

II. Respondent claims improper Service of the Summons and Complaint: The defense was not raised, litigated or ruled on, therefore not preserved for appellate review. Even so, Respondent has waived this issue as he did not raise this defense in its first filing, its Rule 12 MTD dated September 20, 2016. Rule 12(h) SCRCP. (**MTD17**)

III. Respondent falsely states he engaged in extensive discovery. Respondent participated in no discovery whatsoever[10].

IV. Respondent admits in his brief he filed his Answer to the Complaint in December 2017. Notwithstanding that the Answer is invalid, the admission itself affirms a [timely] motion to dismiss[11]-- the *sole* grounds which the lower court chose to relieve him of his default -- is neither the responsive pleading nor grounds for relief. Further, Respondent's Answer was due in February 2017 after his motion to dismiss was denied in-part, not 10 months later and after receiving Appellants motion for default. (**MTS11**)(**MDJ13**).

Regardless, as argued in Appellant's brief, Respondent's Answer and its Return to Motion are not valid filings, therefore cannot be considered by the courts. And if an alleged 12(b)(6) motion to dismiss was contained in the Answer, it would also be invalid, untimely and improper. Regardless, it would not toll the time file his Answer that was due 10 months earlier, therefore would fail to support the trial court's order relieving him of default. Rule 7 and 12 SCRCP. Sadly, Respondent failed to inform this Court of this very critical and material fact. The trial court gave express notice via email to Respondent's attorney and all parties that his Answer and Return to Motion were not valid as they were not signed by his attorney of record. (**EC10**). This failure was never remedied; therefore, the filings are required to be struck from the record. SCRCP Rule 12(b). That the court

[10] The only discovery Respondent attempted was when he demanded Appellant answer his questions at her deposition without his counsel present, then threatened sanctions if she refused. Appellant refused and ended her deposition.

[11] The lower court in its Order of Nov. 13, 2018 fails to point to *any* motion to dismiss in the record which could or would support its ruling. Further, the *only* filing or valid filing by the Respondent is its blank Motion to Dismiss 12(b)(6) in September 2016 (MTD17), which Appellant responded (BIO20), and was ruled on in Jan. 2017. Respondent did not file its' Answer as required by Rule 7(a) & Rule 12 SCRCP, therefore to relieve Respondent of his default 21 months later severely prejudices Appellant and its right of due process. Resp. has not appealed any order.

has failed or intentionally failed to strike the filings violates Rule 11(a), and sanctions against the Respondent are applicable. Their presence neither renders them valid nor is of consequence as the striking from the record is a ministerial task to be performed by the clerk and does not require an order from the court. Rule 11(a) SCRCP. Consequently, no valid responsive pleading or request to be relieved from default has been served. Therefore, Respondent is in default and such default cannot be denied by this court, especially when the *sole* reason for relief from default was a general assertion, not supported by any facts or the record, that the Respondent *'filed a timely motion to dismiss'*.

Appellant would also like to make note that the Respondent was a seasoned attorney for 30+ years. Though suspended from practice in 2016 for admittingly committing fraud on a separate case, and charged so, he is *more than familiar* with the rules and processes of the courts, especially the very basic process of answering complaints and defaults. There is absolutely no good cause that would justify his blatant failures and critical violations of the court rules or his non-compliance. Moreover, his own past law partner, Mr. Steven Smith --who is counsel for co-respondents Dudek and Cross and has since taken over as counsel of record for 3 other co-defendants-- refused to represent the Respondent when Respondent's prior counsel of record was granted its' motion for relief of his representation. Obviously, Respondent's blatant fraud, dishonesty and disregard for the rules and processes of the South Carolina courts is well known.

Based on the above, Respondents is in default and no motion for relief is before the court. Consequently, any relief from default granted the Respondent has no grounds for support or is an error of law, or void, therefore improper and must be reversed or voided. Appellant would also petition this Court to direct the lower court to strike from the record the Respondent's invalid Answer and Return to Motion, and to find Respondent Collins in Default and to record such entry as applicable per Rule 55(a). If this Court finds the Chief Deputy Clerk failed to enter default as required, Appellant petitions this Court to Order entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Appellant, but instead an error of the court. Further, Appellant requests said Order to state Respondent Collins has been found in Default and is hereby entered on November 27, 2017 and that default Judgment is to be entered accordingly and damages

awarded as such. Further, Appellant asks this court for sanctions as allowed by Rule 11(a) and any other relief this court deems proper.

2. **DID THE TRIAL COURT ERR IN GRANTING RESPONDENT DAVID COLLINS, ET AL'S MOTION TO DISMISS IN-PART?**

As argued in regards to Respond Collins in Appellant's initial Brief but reiterated here.

For the sake of repetition, Appellent argues first and foremost to all issues in this Reply Brief, the Respondent is in default and therefore cannot defend in this action (#1 above repeated herein in each issue).

a) Appellant's Cause of Action for "Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive

The trial court order granted in-part Respondents David Collins' Motion to Dismiss in regards to Appellant's Cause of Action, Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive because "*Plaintiff pleads a claim of perjury rather than fraud.*" (**O52**). First, Respondent is in default and cannot defend here.

Even so, the Respondent basically repeats the trial court order, though he makes one additional comment, "*that there is no allegation contained in the complaint that this Respondent testified at all. In fact, this Respondent acted as trial attorney during the trial.*" Respondent neither raised this defense nor was it litigated or adjudicated in the trial court, therefore it's not preserved for appellate review. (**O52**). The lower court ruled the actions of perjury was intrinsic fraud, not extrinsic. Respondent has not challenged or appealed that order. Any unappealed ruling is law of the case. *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997)(It is a fundamental rule of law that an appellate court will affirm a ruling by a trial court if the offended party does not challenge that ruling. Failure to challenge the ruling "is an abandonment of the issue and precludes consideration on appeal." The unchallenged ruling, "right or wrong is the law of the case and requires affirmance." (internal citation omitted).

Regardless, and as argued in its Initial Brief, the allegations rise above 'just perjury of the intrinsic kind', and the Respondent's actions include an issue collateral to the prior issue and/or acts which would be considered extrinsic or rise to the level of such, and he had a duty to speak or a duty of care owed Appellant, Defendants Ferro and to the trial court and that those duties were breached resulting in a question of liability. Such presents a jury question(s). *Spence v.*

Wingate, 385 S.C. 316, 684 S.E.2d 188 (Ct.App.2009) (Spence III); Accord *Smiley v. Woodmen of the World Life Ins.*, 249 S.C. 461, 154 S.E.2d 834 (1967) (jury question as to whether life insurance applicant misrepresented his health with intent to deceive insurer notwithstanding insured's answering "no" to numerous questions regarding hospital treatment and medications, when insured had in fact been hospitalized for six days the year prior to his application). Even so its actions were unlawful and directly affected the lower courts ability to order the remedy in his client's favor. Respondent should be held liable for the unlawful or void order and the damages it has caused.

The record shows the Dudeks had no valid and negotiable sales contract after expiration, therefore no legal right or claim to the property at all times material. Consequently, they were refused financing and could not perform. A court cannot through its power make an expired sales contract valid nor validate a proceeding in which that court lacked discretionary or jurisdictional power to render the judgment. If the Respondent spoke or disclosed the truth in the first place, instead of committing perjury, suborning perjury, presenting forged financial documents and filing unlawful and frivolous lawsuits we wouldn't be here today with this court attempting to untangle the legal problems presented in the substantial litigation caused by the Respondent, and at *no* fault of the Appellant.

As argued in its initial brief and repeated here, *Perjury is fraud*, where "(the Supreme Court held that the charge of perjury or false swearing on the part of a party or his witnesses "is a species of... fraud," ...) *Corley v. Centennial Const. Co.*, 247 S.C. 179, 189, 146 S.E.2d 609, 614 (1966)(emphasis added). Perjury is fraud, especially when it is an act of deception carried out for the purpose of unfair, undeserved and/or unlawful gain, and such perjury was practiced in the very act of retaining the court's jurisdiction or discretionary power to move forward and award specific performance to the Dudeks. A judgment for specific performance was obtained when at all times material the Dudeks had no legal right or claim to the property. Further, their acts unjustifiably prevented Appellant her due process, the right to her property and her right for a *fair* and *lawful* judgment. Overall, the courts have unjustifiably stole Appellant's property and gave it to another who had no legal claim or right to obtain it AND who had committed acts criminal in nature to acquire the courts discretionary power or jurisdiction to award the equitable remedy. "A judgment obtained by fraud

may, however, be void under some circumstances, and subject to collateral attack, as where such *fraud appears on the face of the record* or *goes to the method of acquiring jurisdiction*. Likewise, the judgment may be attacked collaterally *where fraud had been practiced in the very act of obtaining the judgment*, or on the party against whom the judgment was rendered, so as to prevent him from having a *fair* opportunity to present his case, * * *." (Emphasis added.) 49 C.J.S. Judgments § 434 Fraud, Collusion, or Perjury, p. 859.

Even so its actions affirm far more than just perjury. In fact, it includes conspiracy, forgery of financial documents, false promise(s) by the lender at trial and unlawful acts of concealment, suborned perjury, misrepresentations, and the continuation of said actions, in their filings and depositions, all with knowledge of the *material* falsities. More important, the perjury and concealment was *critically material* to the case at hand. Meaning, without the unlawful actions or non-actions, the Dudeks' had no ability to compel specific performance. As a consequence, the trial court did not have the discretionary power to order specific performance in their favor.

Appellant did not know what testimony the Respondents would offer at said trial, but neither she nor the courts had reason to anticipate fraudulent testimony or the suborning of, especially from the Respondent, an officer of the court, who has taken an oath as an attorney to uphold the highest standards as such, including: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous"; A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false; In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client. Further, the circumstances of the case(s) in this instant called for 'perfect good faith and full disclosure' from his clients and the witnesses. It wasn't until after trial and on appeal that Appellant discovered these critical failures by the Respondent and the court's abuse of its discretion. Such material and critical evidence in the record renders practically all, if not all, of the material testimony

or evidence introduced before and at trial of the aforesaid case false, perjured, fabricated and fraudulent, while Respondent had complete knowledge of this fact during the whole litigation.

It's apparent that if the truth was told or the concealed facts and documents had been revealed during discovery and at trial, it would have produced a far different result. Either no trial or only Appellant would have succeeded on the merits of the case. Even so, an Order that fails on its face or was based on factual conclusions that are without evidentiary support is an abuse of discretion, improper or unlawful. "An Order that fails on its face or based solely on false evidence that is material and critical to the remedy, or based on factual conclusions that are without evidentiary support, is equal to an error of law, therefore is an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990) (An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support)."

There appears to be no valid or judicious reason why the Respondent would commit fraud (i.e., suborn perjury or conceal the material and critical facts of its clients' financial status or their ability to close escrow) over and over again, especially when full disclosure was critical to the trial court's discretionary power to order specific performance. Respondent had a fiduciary duty to the courts or duty of care to the sellers and to third parties,' notwithstanding he and his clients and witnesses were under oath in their filings, discovery and at trial; a valid and negotiable sales contract and the Dudeks' ability to tender payment for the property was the crux of the [specific performance] case(s). The Respondent was specifically required at the trial to fairly or properly present its clients' case, provide to the court facts specific to the Dudeks' performance of their time is of the essence sales contract and their ability to close escrow. Further, Respondent had a duty to speak and care under oath as an attorney, therefore the suborning of perjury and concealement or non-disclosure of the material facts or documents becomes fraudulent, especially where there is a duty to speak or care. (*See* Issue #3 herein Brief, pg. 22-25).

Specific Performance was awarded equally to both Appellant and Respondents[12]. The record confirms the court *equally* applied the same maxims, rules, statutes, guidelines and

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

precedence(s) to both Appellant and Respondents Dudek in their ability to compel specific performance *and* in its jurisdiction or ability to act or award the remedy of specific performance to the litigants. **(O1).** But when new evidence was discovered and presented the courts abused their discretion, violated their own rules and guidelines, failed to protect the Appellant-- and instead punished her, who had the only legal and rightful claim to the property, was 'ready, able and willing', and neither committed fraud nor violated the rules and processes of the court. At the same time in the very same case, the courts protect and *reward* Respondents Dudek, who at all times material, had *no legal right* or claim to the property, who critically breached their time is of the essence sales contract, was refused financing, was not 'ready, able and willing', have violated the rules and abused the processes of the court AND committed substantial *fraudulent* or unlawful actions to obtain, or steal in this case, property belonging to Appellant. Not only is this unlawful and an abuse of the Court's discretion, but to allow such an unlawful judgment and void in-part Order stand is a grave injustice and a violation of Appellant's constitutional rights of due process, *which includes the right of a fair and lawful judgment.* (USC Fourteenth Amendment). Further, Appellants property was taken by the courts without legal right or justification, and all this allowed "just to end" a case. This case undoubtedly represents a situation where the finality of the prior case is trivial compared to unlawfulness and the injustice served, especially considering the issues presented have never been litigated or adjudicated.

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 established principles, and the arguments and evidence presented, the Order of November 6, 2014 in-part granting specific performance to the Dudeks is VOID and must be set-aside; and the Respondent is substantially liable for this legal mess.

b) Appellant's Cause of Action for Declaratory Judgement That No Contract Exists

Respondent argues in its Brief, Appellant "*seeks a declaratory judgment that no legal contract ever existed between the original sellers and buyers of the properly in question. This issue was the subject matter of the original trial. The trial judge found that a contract did exist and ordered specific performance of that contract and that this Court upheld that ruling*", therefore dismissal of this cause of action is appropriate. First, Respondent is in default and has no defense.

Second, Appellant does not seek that a contract never existed, but specifically stresses, "*at all times material* no valid contract exists OR ever existed." Also, "*At all times material*, Defendants(s) or its agent(s) had actual knowledge that they did not have a valid sales contract." (**COMP43**, pg. 62 #338). This fact is uncontested. Appellant seeks a judgment the contract did not exist after its expiration or November 30, 2012.

Third, and as argued in its Intial Brief, Appellant asserts that false promises by the lender at trial is collateral therefore extrinsic, and the Respondent's suborning of perjury is extrinsic fraud. Extrinsic fraud exists, or that the *critically material* intrinsic fraud here rises the level of extrinsic fraud and is a question for the jury, therefore res judicata cannot bar its collateral attack on the original action's judgment granting specific performance to the Dudeks, or this question has to be remanded for the jury. "*Unless extrinsic fraud exists, res judicata can be asserted to bar a collateral attack on a judgment.*" *Aaron v. Mahl*, 381 S.C. 381,593,674 S.E.2d 482,486 (2009). When the application of res judicata involves factual disputes, the jury must be the judicial actor to resolve these discrepancies. The fact-law distinction, which gives questions of fact to the jury and questions of law to the judge, has guided American courts for hundreds of years. From the time of the adoption of the Seventh Amendment until the end of the nineteenth century, courts have viewed res judicata disputes as factual determinations within the province of the jury. Further, regardless of intrinsic or extrinsic fraud, the Respondents are liable for the damages due to their unlawful actions which led to a VOID judgment, and a void judgment is not barred by res judicata.

Third, both doctrines of res judicata and issue preclusion require the *same* parties and the same facts. Respondent was not a party to the original litigation and new evidence/new facts have been introduced that renders the judgment void, therefore res judicata fails as a defense.

Fourth, the cause of action 'Declaratory Judgement That No Contract Exists' was neither the same cause of action as in the former action nor was that an issue raised or specifically litigated and adjudicated in the former action. **(COMP43);(COMP24);(COMP42)**. The actual validity of the sales contract was never raised or litigated and any findings expressed that a valid and negotiable sales contract existed was based *solely* on lies, misrepresentations, false promises and forgery. Regardless, the undisputed evidence shows the Dudeks had no valid or negotiable sales contract after it expired. Without that, the Dudeks were not properly before the court and the court had no jurisdiction, legal power or discretion to enter specific performance in their favor.

This Court's review is controlled by the principle that factual findings by the master and trial judge will not be disturbed on appeal unless they are without evidentiary support or are against the clear preponderance of the evidence. *Eargle v. Moak*, 257 S.C. 359, 185 S.E. (2d) 894. The record

clearly demonstrates the prior ruling or findings is unsupported and against the clear preponderance of the evidence.

Fourth, as argued herein and in its Initial brief and repeated here, the Order of November 6, 2014 VOID in part. A void order has no legal effect, therefore res judicata cannot bar Appellant's claim. "A Party Affected by VOID Judicial Action Need Not APPEAL." *State ex rel. Latty*, 907 S.W.2d at 486. "It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J.,concurring). This cannot be ignored its fact recorded! Judgment is a void judgment if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 —*Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). 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. See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). *B & C Investments, INC. v. F & M Nat. Bank & Trust,* 903 P.2d 339 (Okla.App.Div 3, 1995). Void order may be attacked, either directly or collaterally, at any time. They are not "voidable", but simply "void"; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliot v. Piersol, supra*; Black's Law Dictionary, Sixth Edition, page 1574: Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092. 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. In this instance and under the circumstances, the lower court abused its discretion by awarding specific performance to the Dudeks, as it had no discretionary power to do so. Such order if Void.

c) Appellant's Cause of Action – Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct

Respondent makes a generalized statement that her "*ramblings and incoherent allegations do not state facts sufficient to create liability on this Respondent's part for any breach of fiduciary duty.*" Assuming this is his defense, it is improper. Respondent raises its argument for the first time on appeal, therefore is not preserved for this Court's review. Further, as argued in her Initial Brief and repeated here, its motion to dismiss was a skeleton motion[13] and failed the requirements of a 12(b) motion, therefore should have been denied. The Respondent failed to show that Appellant could prove no set of facts demonstrating that the conduct alleged in the complaint was insufficient to constitute a cause of action. SCRCP Rule 7(b). Respondent's motion lacks merit for grounds of dismissal of any cause of action.. Even under the motion's unsupported standards, Appellant's Complaint is so thoroughly particularized that it must survive, therefore its dismissal(s) were improper and must be reversed or vacated. (BIO20)

Even if the motion was proper, and though Appellant was not a direct party to the Dudek contract, she was not required to be a party to their sales contract for a duty of care or fiduciary duty to speak the truth or disclose critical and material facts or documents to the sellers, the courts or herself[14]. (As argued in its Initial Brief and above pg. 13-14 repeated herein). Regardless, the South Carolina court(s) also agree, a fiduciary relationship that has not yet been defined can arise from circumstances of the parties. "Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring." *Island Car Wash, Inc.*, 292 S.C. at 599, 358 S.E.2d at 152 (1987). A fiduciary relationship has been defined by the South Carolina Courts to be ["A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence"] *Island Car Wash, Inc. v. Norris*, 292 S.C. 595,599,358 S.E.2d 150,

[13] Was not particularized; contained no arguments or defenses. Only quoted Rule 12(b)6)

[14] The ability of Appellant to perform her sales contract was, at all times material, directly related to the ability of the Dudeks to tender payment/ perform their sales contract or compel specific performance, which in turn was directly related to the trial court's ability, inherent power or jurisdiction to order specific performance in favor of the Dudeks. Hence a fiduciary relationship clearly arose from the circumstances of the case or the parties.

152 (1987). No case example has been able to be located that is similar or even remotely similar to the extraordinary actions or circumstances of the original action in which this present action arose.

The Respondent was not a litigant in the case; he had a duty of care or a duty to speak as an attorney, under attorney rules, and **especially in a court proceeding under oath and at trial**. Both the sellers Ferro (*who were part of both the Dudek and Appellant contract*) and Appellant trusted and relied on the Respondent's disclosure all known facts or information that was significant and critically material in regards to the transaction which in turn that reliance directly affected a sellers' breach of Appellant's sales contract and the outcome of her complaint. At trial, the disclosure all known information significant and material is required, and in this instance especially critical to the court's discretionary power to order the equitable remedy of specific performance to both the Appellant and Dudeks. Under such circumstances, a fiduciary relationship arose and the Respondent's 'silence' or non-disclosure is fraud that went to the very jurisdiction or discretionary power of the court to order the equitable remedy. "Non-disclosure is fraudulent when there is a duty to speak." *Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct.App.1993). "Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens S. Natl. Bank of S.C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972). "We have held that nondisclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other. The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) *where one party expressly reposes a trust and confidence in the other* with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, *such a trust and confidence in the particular case is necessarily implied*; (3) *where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties. Warr v. Carolina Power & Light Co.*, 237 S.C. 121, 115 S.E. (2d) 799; (Emphasis added)

Respondent had a duty of care to his clients, opposing litigants *and* the courts to prevent any fraud, which includes material perjury. He also was in a superior position to know the facts of his clients' transaction and the Dudeks' financial status in regards to the case. (The duty of care is not

a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care a reasonable man would take in the circumstances.)" *AMA Management Corp. v. Strasburger, 309 S.C. 223, 420 S.E.2d 874 (1992).* In this circumstance, a reasonable person would agree that the Respondent had a duty of care to speak. All expressly reposed a trust and confidence in the Respondent to present the case and speak the truth, or persuade its clients and its witnesses, to the facts in their sworn testimony at trial. The position of trust and confidence in the Respondent, as an officer of the court was exploited. It was clear the opposing parties and the trial court relied on the testimony of Respondent's clients and would not consider he would suborn their perjury, or conceal or misrepresent under oath, therefore there was no question at the time that those statements would be anything but true, and reliance on such testimony was justified; And such trust and reliance on the representations by Respondent's witnesses (buyers' lender and sales agent) induced the sellers, Appellant and the court(s) to refrain from discovering the true facts which were discovered after trial. If the respondent had disclosed the truth, a trial would never had happened or a *full* and *fair* trial would have taken place, and most likely a fair and *lawful* ruling would now be in place. What is full and fair presentation when it is discovered that all opposing party evidence/testimony is false? What is lawful and fair about a judgment obtained only because of their substantial failure to disclose the truth, perjury, forgery, misrepresentations, and conspiracy?

"Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud." *Ellie v. Miccichi*, 358 S.C. 78, 100, 594 S.E.2d 485, 497 (quoting *Anthony v. Padmar, Inc.*, 320 S.C. 436, 449, 465 S.E.2d 745, 752 (Ct.App.1995)); Here, Respondent Collins had superior knowledge of its clients' lack of legal right or claim to the property or its lack of ability to tender payment in 2012, therefore knew he was litigating a frivolous and unlawful complaint filed against the sellers, and defending the separate complaint filed against his clients. Further, Collins, as an officer of the court, was under oath during the court proceeding and so 'accepted or induced the confidence place in him' by the judge *and* all parties, thus creating a fiduciary duty and a duty to speak in a legal proceeding --that included the Appellant as a plaintiff against his clients in the same transaction.

The Respondent's silence and suborning of perjury provoked an unfair and unlawful order in-part; an order that fails the judgment roll, fails on its face, and is totally unsupported by the valid evidence in the record. An order in which the trial judge had no ability to order. The judgment is VOID. Even so, the Dudeks' performance of their time is of the essence sales contract or transaction with the respondent(s), whether it failed or not, was specific and necessary and called for 'perfect good faith and full disclosure' from the Respondent. The Respondent and co-respondents' *absolute* disclosure went to the very core of the original case(s) and the trial court's jurisdiction or power to adjudicate. Their actions or non-actions committed with the intent to deceive and perpetuate a fraud upon the Court, goes beyond inexcusable, and is, or rises to the level of, extrinsic fraud, and such is a question for the jury.

If Respondent did not have a duty to speak or a duty of care to tell the truth or disclose material facts or documents critical to the trial courts ability to adjudicate specific performance in the civil action, and if Respondent cannot be held liable for such unlawful behavior and acts, then what purpose does the rules of professional conduct or his oath as an attorney and officer of the court in a court proceeding serve? And what level of fraudulent actions, such as perjury in its filings, suborning of perjury, concealment, misrepresentation and forgery, must be accomplished before a party can be held accountable for such blatant disregard for the court rules and judicial system and its processes? At what point does a court find proper to allow a litigant to repose a trust and confidence in an officer of the court that has a duty to provide the truth of the matter which they have ultimate knowledge of with reference to the particular transaction in question which critically affects the court's discretionary power to order a remedy? And why is Appellant being punished for an opposing party, its lawyer and its witnesses' unlawful acts when she is not at fault for their actions or non-actions and did everything in her power to discover the facts before trial, and then reposed a trust-- the very *same* trust the judge relied on when making his ruling-- in the testimony and evidence while under oath? Not only that, but Appellant discovered on appeal of the prior case evidence that the Master had knowledge before his ruling that he had no ability to order specific performance to the Dudeks, but did so anyways. Apparently, to just to end the case. Appellant immediately provided the evidence to this Court, but again, the evidence was ignored. And again

to the Master at the hearing for a closing order, and again on appeal of the closing order—still ignored

Just as important, why must a judgment that was obtained by such reprehensible conduct of many, that is a gross injustice and void, that that steals property away from an innocent contract holder and gives to those who at all times material had no legal claim or right to possess that property, who failed the critical maxims of equity[15] and performed criminal acts in a court proceeding to obtain jurisdiction to compel the equitable remedy, in good conscience be allowed to stand? This Court has the power to right this injustice, remove a void judgment, correct the violations of rules, guidelines and precedents, and address a repeated abuse of power and discretion. This is not just about winning or losing, but about the failure of the justice system and what it stands for and the faith the public is supposed to have in it and its protection of its rights. Though this case may be insignificant to the Courts, it's a vast example of the system's breakdown and a violation of public policy.

Additionally, the Respondent, was not a party to the case but had a pecuniary interest in the false statements and promises, and had superior knowledge its clients' transaction(s). "If the Defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful inquiry, the law places on him a duty of care with respect to representations made to plaintiff." *AMA Management Corp. v. Strasburger*, 309 S.C. 223, 420 S.E.2d 874. (The duty of care is not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care"). The Respondent took advantage of his superior position knowing the Master would repose its trust and confidence in that position, and if not for the extreme dishonesty, lack of respect for the rules and processes, and exploitation by Respondent we wouldn't be here today. Further, if not for the ruling obtained by the deceit, exploitation and dishonesty of the Respondent, the Dudeks would not have obtained the property in question in 2017, and there would not be three (3) *subsequent* actions resulting.

[15] "He who seeks equity must do equity" and "he who comes into equity must come with clean hands"

For the reasons above, Appellant contends a fiduciary relationship was formed, and Respondent owed a duty of care and a duty to disclose, at a minimum to the trial court and such silence is fraudulent. Appellant asks this court to reverse the trial court's order granting Respondent's MTD in-part to Tenth Cause of Action, and remand back to the trial court for further proceedings.

3. THE TRIAL COURT IMPROPERLY GRANTED SUMMARY JUDGMENT AS TO THE REMAINING CAUSES OF ACTION

Respondent only states but does not argue in his brief that he "*clearly demonstrated that he was entitled to summary judgment as matter of law and that there was no issue of material fact with regard to any of the claims of the Appellant.*"

a) Respondent is in default, therefore SJ is improper. A defaulting party admits liability therefore SJ is inappropriate. By defaulting, a defendant forfeits his "right to answer or otherwise plead to the complaint." *Morgan's Inc. v. Surinam Lumber Corp*, 251 S.C. 66, 160 S.E.2d 193. In essence, the defaulting defendant has conceded liability, therefore cannot be relieved of such.

b) The remaining causes of action were already heard and ruled on. (*see* argument thoroughly set forth in its opening brief repeated here). Respondent had provided no further action in this case[16] as did not move to reconsider, amend or appeal the prior Order, nor did he file an Answer to the complaint. It is contended that "a circuit judge cannot grant relief which has not been requested or has been previously sought from another circuit judge in the same case and denied by him". Rule 60, Rules of Practice for the Circuit Courts of South Carolina. (**MTD17**); (**O52**)[17]

c) Discovery was pending to develop Appellant's theories of recovery, therefore SJ is improper (*see* argument thoroughly set forth in its opening brief).

---

[16] After its initial MTD in Sept 2016, Collins has not participated further in this case. Meaning, he has not submitted a valid responsive pleading or Answer, no motions nor appeal, and he has not participated in any discovery.

[17] The cases applying Rule 60 are distinguishable, for they involve submission of the same issue based on the same facts to a second judge after the first judge had ruled. See, e.g., *Dukes & Dukes, Inc. v. Hygrade Food Products Corp.*, 236 S.C. 69, 113 S.E.2d 254 (1960); *Andrick Development Corp. v. Maccaro*, 280 S.C. 103, 311 S.E.2d 95 (1984). The general rule is that a trial judge cannot vacate an order by another judge in the same case; even if the change is based on a correct assessment that first judge erred. Otherwise, the second judge would be acting "in the role of a one-judge appellate court". It's true that one trial judge cannot overrule an order entered by another judge either on a legal question or, in the absence of substantial changed circumstances, on a discretionary matter. In other words, a party cannot effectively seek "appeal" of a ruling at the trial level. As our Supreme Court has put it: "[I]t is well established in our jurisprudence that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action." *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501 (1972). (The rule applies to district court as well).

d) Most importantly, the trial court unlawfully or improperly granted SJ as to all remaining causesof action by an improper Rule 12(b)(6) conversion to SJ, therefore must be reversed. In its Order of November 15, 2018 the trial court states it "*converted a Joint motion to dismiss in regards to David Collins to summary judgment*". In its Order was the first time Appellant was given notice by the court of such conversion. No findings of fact, standard of review or law analysis was included in the Order to support its ruling, nor did the judge point to any specific Joint MTD. Appellant was unable to locate in the record a valid 12(b)(6) MTD, let alone a *joint* motion, in which Respondent is party to that presented matters outside the scope of the complaint or that the trial court could convert. In fact, the only valid filings the Respondent filed during the course of the case was a MTD in September 2016 (ruled on in Jan. 2017). Indubitably, Respondent Collins made no claim for relief as to the remaining causes of action, therefore cannot be relieved of such. Additionally, the court completely failed to give notice prior to the hearing or any notice at all of any matters outside the scope of the complaint that were being considered or have been considered, therefore is a critical violation of this court's rules. SCRCP Rule 56 and Rule 12(b). *Baird v. Charleston County*, 333 S.C. 519, 511 SE 2d 69 (1999) (Where providing notice prior to the hearing is essential under Rule 56(c)). In fact, Appellant only received notice of the [emergency] hearing itself on a Saturday, leaving only 1 ½ days to prepare for 15 motions. Such time would not have even allowed Appellant the appropriate time to respond if notice had been given. Rule 56(c) SCRCP.

Also, the Order does not contain any argument or defense raised or litigated by the Respondent. Lastly, *specific* reasons for dismissal must be in the first document Collins filed with the court, otherwise that issue is considered waived. The first (*and only*) valid document Collins filed with the court was his blank MTD pursuant SCRCP Rule 12(b)(6) and 12(b)(8) on September 20, 2016. Collins' 2016 motion failed to specify any reasons or specify with particularity any reasons for dismissal, therefore has waived any issues. **(MTD17);(O52)**. Because his first document failed to provide any explanation as to the nature of the motion and the reasons therefor, it fails the rules and is not valid, and any issue in which the trial court now grants Collins is also waived, notwithstanding the fact Collins had no pending valid MTD presenting matters outside the scope of the complaint before the court to support a Rule 12(b)(6) conversion. **(O22)**. Such is an abuse of

discretion and a violation of court rules. "It is an error of law for a court to decide a case on a ground not before it." *Friedberg v. Goudeau,* 279 S.C. 561, 562, 309 S.E.2d 758, 759 (1983) (reversing the grant of summary judgment because the ground for summary judgment was not properly before the trial court). A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it. *Skinner v. Skinner*, 257 S.C. 544, 550, 186 S.E.2d 523, 526 (1972). A court cannot convert a MTD to SJ if there is no MTD to convert, and a court cannot create a defense when none was presented; and if the Respondent was not properly before the court, it was error of law or an abuse of discretion and SJ must be reversed.

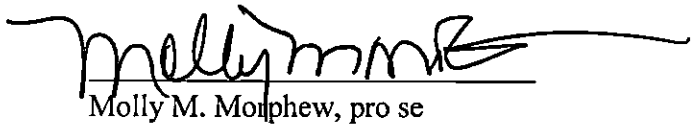
e) It appears and as argued here and in its Initial Brief, due but not limited to, the failure of the Order, a Void order, violation(s) of court rules and processes, abuse of discretion, the Respondent was not properly before the court, a skeleton motion to dismiss and/or that the Respondent is in default, Appellant need not argue here Respondent's defense for each cause of action under the trial court's Analysis for SJ.

Instead, Appellant argues the trial court erred or abused its discretion or process deciding a case on a ground not before it, when Collins was not properly before it, or because Collins was in default. Maybe more importantly, the Respondent is in pari delicto and is in no position to request relief when he caused or could have prevented the issues upon this court today, therefore due to the reasons above and argued in its Initial Brief, summary judgement as to the remaining causes of action must be reversed or set aside.

CONCLUSION

Due to the reasons above or argued in its Initial Brief, the Orders granting Respondent relief from Default, granting in part its motion to dismiss and granting SJ as to the remaining causes of action must be set aside or reversed. Further, the Respondent's filings of December 19, 2017 must be struck from the record and Respondent found in Default; Default entered as required by the rules and Default Judgement entered. Appellant further requests judicial notice or declaratory judgement that no Dudek contract existed after its expiration on November 30, 2012, and declare the November 6, 2014 order in part granting the Dudeks specific performance void, and sanctions as allowed by Rule 11(a) and any other relief this court deems proper.

Respectfully submitted,



Molly M. Morphew, pro se
121 Sterling Dr.
Rincon, GA 31326

September 6, 2020

RECEIVED
SEP 14 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2018-002185

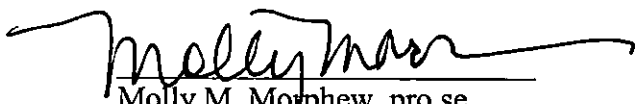
Molly M. Morphew, Appellant,

v.

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

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Appellant's Reply Brief—Respondent Collins complies with Rule 208(b).



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

September 6, 2020

RECEIVED
SEP 14 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2018-002185

Molly M. Morphew, Appellant,

v.

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

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served Respondent below with the Appellants REPLY BRIEF, CERTIFICATE OF COMPLIANCE pursuant Rule 208(b), and its DESIGNATION OF MATTER to be included in Record on Appeal, and this CERTIFICATE OF SERVICE for both the brief and Designation of Matter, by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to Respondent at the following address:

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417
Respondent, pro se

September 7, 2020

Molly M. Morphew, pro se
121 Sterling Dr.

Rincon, GA 31326

RECEIVED
SEP 14 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2018-002185

Molly M. Morphew, Appellant,

v.

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

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served Respondent below with the Appellants REPLY BRIEF, CERTIFICATE OF COMPLIANCE pursuant Rule 208(b), and its DESIGNATION OF MATTER to be included in Record on Appeal, and this CERTIFICATE OF SERVICE for both the brief and Designation of Matter, by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to Respondent at the following address:

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417
Respondent, pro se

September 7, 2020

Molly M. Morphew, pro se
121 Sterling Dr.

Rincon, GA 31326

September 6, 2020

RECEIVED
SEP 14 2020
SC Court of Appeals

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

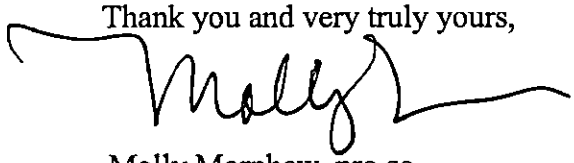
Re: Appellate Case No. 2018-002185
Molly M. Morphew v. Stephen Dudek, Doreen Cross, et al.

Dear Ms. Kitchings:

Please find enclosed APPELLANT'S REPLY BRIEF--RESPONDENT COLLINS, CERTIFICATE OF COMPLIANCE, and its DESIGNATION OF MATTER to be included in Record on Appeal, and the CERTIFICATE OF SERVICE for both the brief and designation of matter, 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: Amy L. Neuschafer, Esq.
Amy B. Hill, Esq.
Steven L. Smith, Esq.
David A. Collins, pro se

P

usps.com
$7.75
US POSTAGE
Flat Rate Env

9405 5036 9930 0018 1840 12 0077 5000 0032 92

09/07/2020 Mailed from 31326 062S0000000310

PRIORITY MAIL 2-DAY™

MOLLY MORPHEW
121 STERLING DR
RINCON GA 31326-9425

Expected Delivery Date: 09/11/20
Ref#: MOT- A DOM
0004

Carrier -- Leave if No Response

C076

SHIP TO: HON. JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
1015 SUMTER ST
COLUMBIA SC 29201-3726

USPS TRACKING

9405 5036 9930 0018 1840 12

Electronic Rate Approved #038555749