

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 Scarafale, Susan Nicholson, Carolina One Real Estate,
Carrie Boyer, Woody Law Firm, Respondents.

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SC Court of Appeals

APPELLANT'S REPLY BRIEF—RESPONDENTS STEPHEN DUDEK,
DOREEN CROSS, MICHAEL SCARAFILE, SUSAN NICHOLSON AND CAROLINA ONE

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Statement of Issues on Appeal

1. Whether the lower court erred in granting the respondents' motions to dismiss and for summary judgment, because the fraud that forms the basis of the appellant's underlying complaint is extrinsic and their fraud has not been ruled on by this court or ruled on in multiple appeals.
2. Whether this court should consider all arguments in its brief, as those arguments are not barred or explicitly barred by this court.
3. Whether the lower court's decisions are not harmless and routine and amount to reversible error.
4. Whether this court should affirm the orders of the lower court for any reason found in the other respondents' briefs and any additional grounds appearing in the record, especially the allegation appellant has taken two (2) separate positions in regards to the dudeks' validity of their sales contract.

Statements and Facts of the Case

Without restating all the facts and arguments which have been thoroughly set forth in its opening brief, Appellant Morphew offers the following statements of the case and facts with arguments for clarification and to correct the errors in the Respondents' statements, which will be listed separately following the statement of the case.

On October 24, 2012, Respondents Stephen Dudek and Doreen Cross (buyers and plaintiff in original action)("Dudeks") ratified their TIME IS OF THE ESSENCE¹ sales contract. On December 16, 2012, the Dudeks were sent a termination notice for failing to schedule a closing, present proof of buyer approval for mortgage credit or tender payment as per their time is of the essence sales contract. (Termination Notice). Afterwards, Morphew entered into a sales contract for the same property.

On January 11, 2013, after discovering the Sellers had secured another buyer (Morphew sales contract, Dec. 16, 2012), they filed a lis pendens against the Property to prevent that sale

¹ All buyer conditions, including initial application and obtaining of buyer financing approval, and giving said notice to sellers, were "time is of the essence" and expressly stated so.

(Email-- Attorney Qualey to Ferros), then filed their action for breach of contract compelling specific performance to purchase the Property (Dudek complaint for Breach of contract).

After Morpew's extensive due diligence, including verification by an Attorney and Sellers' sales agent that the Respondents' sales contract, being time is of the essence, is null and void on its expiration (**Letter Qualey to Dudeks, January 11, 2013**), Morpew filed its claim for specific performance (Morpew Complaint, Jan. 31, 2013). Interrogatories, request for documents, subpoenas and phone calls to Respondents' lender, depositions of both Respondents, and several communications between the attorneys only led to more confusion, as the lender's subpoena responses said they had no records, loan or people [Respondents]. (**Subpoenas to First Federal, March 3, 2013/Aug. 13, 2013 and responses, March 13, 2013 and August 30, 2013**). When confronted with this conundrum, the Dudeks' attorney, co-respondent David Collins, insisted his clients had secured financing and were ready to close. Collins produced an alleged financial document [email/approval letter] to support their position, which was discovered months after trial to be forged by the Dudeks and their attorney. Morpew submitted another subpoena months later to the lender, this time with the loan number given by the Respondents. Again, the response to the subpoena stated they had no records, or loan. Morpew's attorney called the bank directly with the alleged loan number. They could would not or could not provide any information. Morpew's attorney contacted Dudeks' attorney, but he stated his clients had performed their sales contract, were ready able and willing to tender payment but were unable to schedule a closing due the Sellers' failure to obtain the CL-100 [report]. In *their* sales contract (and note the *time is of the essence* sales contract was the Dudeks – not the sellers' or produced by the sellers), the Dudeks requested the report to be *obtained* on or before November 30, 2012. It report was obtained. (**CL-100 report, front page, dated November 30, 2012**). The sellers complied with the terms of the Dudeks' contract but also delivered the report on November 30, 2012 to the Respondents' via their alleged closing attorney even when no closing date was offered or set².

² At no time material to the original action and this action, did the Dudeks offer a closing date or set a closing date. This failure was due to their lack of legal claim to the property after November 30, 2012.

A trial ensued on June 11-12, 2014. During the trial, the master heard testimony from all litigants, but the main focus here in this case is the testimony and evidence from the Dudeks and their witnesses. It is uncontested that Morphew was properly awarded specific performance (Order, Nov. 6, 2014). Morphew's position at the original trial was based on the fact the Dudeks had not applied or secured financing per their TIME IS OF THE ESSENCE sales contract, therefore breached and were legally required to sign the termination notice so Morphew could perform its contract.

It further actioned, due their refusal to sign the termination notice, they were preventing Morphew and sellers from performing as required. That action was withdrawn before being heard due the testimony from the lender, testifying the Dudeks had been approved and mortgage credit was being extended.

Loan officer and co-respondent, Allison Williams, representing co-respondent First Federal, testified at trial the Dudek had complied with their requirements for financing and were approved, as she approved them herself, and were ready to close. The Dudeks and their sales agent and co-respondent, Susan Nicholson, representing co-respondent, Carolina One, also testified they and the bank were ready to close on December 14, 2012.³ At the conclusion of the trial, the master stressed he had to resolve the case and do what is *fair* to both parties (**Trial Trans. Pg. 308 1.1-3**).

On November 6, 2014, the trial court issued its Order, and in it stressed equity demands fairness, and emphasized the principles of law and equity which grants it its discretion to award specific performance (Order, pg. 5-6). It granted specific performance to *both* Morphew and the Dudeks, but giving the Dudeks first bite, and *only* because they contracted first. Morphew and Sellers appealed.

On appeal, Morphew went 'pro se' due to lack of funds, and during that time discovered the facts and evidence which gave rise to the issues presented in the 2nd appeal of the original case (currently with the Supreme Court of South Carolina), and in this case for fraud and/or fraud on

³ There is nothing in the record supporting their testimony, and all have refused to provide any documentation in Morphew's discovery requests or in its motions to compel that the Dudeks were ready, able and willing. It is clear today the lower court relied on testimony alone.

the court, including several other causes of action.

Immediately upon discovery, Morpew presented the new facts and evidence to the Appellate court in the original action and 1st appeal but they refused to review it, instead affirming the master's ruling on their standard of review "that they are not required to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses," therefore rendering any other issues raised as moot because its standard of review was dispositive of those issues. (Opinion No. 2017-UP- 019, Filed January 11, 2017 Appellate Case No. 2014-002633).

In the meantime, during the appeal and months prior to the Appellate court decision, Morpew filed this instant and independent action for fraud and for fraud on the court, again presenting the facts and evidence, asserting fraud, fraud on the court, a void order, an invalid and non-negotiable sales contract, non-disclosure, forgery of financial documents, false promises from the lender, abuse of discretion, jurisdictional failures, etc. against the Respondents; their attorney, David Collins, who was suspended from practice in 2016 for *committing fraud* in a separate case, admitted and charged in the federal court in Charleston SC, and is still under suspension; their sales agent, Susan Nicholson and its agency, Carolina Real Estate; the agency's lead counsel and owner's son, Michael Scarafale; lender, First Federal; and loan officer, Allison Williams; and Woody Law Firm and its paralegal, Carrie Boyer. Again, the trial court refused to consider the facts and evidence, relying on res judicata and that their perjury is intrinsic fraud not extrinsic, that perjury and forgery are criminal actions and not a cause for action in a civil proceeding, or that there's no material question of fact. Morpew appealed this case. (App. Case No. 2018-002185).

Corrections/Clarification of Respondents' statement of the case:

1. The Respondents state, "*Despite receiving the First Federal file immediately before trial, continuance was not requested by either party, and trial in the Original Action went forward as scheduled. And at no point after the issuance of the Specific Performance Order did either the Ferros or Morpew file a motion under Rule 60, SCRPC, to set aside the Specific Performance Order based on the First Federal file.*"

“Continuance” was not raised or adjudicated in the trial court, therefore cannot be considered by this court.

Even so, as argued in its initial brief and repeated here, Morpew was not sure what was contained in the “June 10 financial documents” or when they were actually provided or received by her attorney, but regardless, the alleged ‘file’ did not contain very critical and material documents, specifically the denial letters [proving the Respondents were denied lending for their failure to have a legal claim to the property in question (i.e., not having a valid and negotiable sales contract at initial application, therefore failed to complete their application, a *critical* failure which was never remedied by Respondents). Meaning, the Respondents abandoned their *time is of the essence* sales contract by intentionally allowing it to expire before making initial application. Their critical breach was not remedied and consequently the Dudeks could not obtain mortgage credit for the property they had no legal claim to. Under the principles of law and equity (i.e. they, therefore waived their right to any remedy, *especially* the equitable remedy of specific performance. (Depot. Pg. 52 l.5-1.24);(Depot pg. 55 l.11-18)(Depot pg. 56 l. 2-5)(Depot. pg. 52, l.15 through pg. 56 l.6) (Depot pg. 124 l. 6-10). Due to the missing documents, Morpew was neither aware of fraud or fraud on the court being committed nor aware of any information at the time of trial that may require a continuance. Moreover, if the denial letters were revealed prior to or at trial, there is *no doubt* Morpew would have presented it, as those documents were the “winning hand.”

Second, the Defendants Ferros, pro se, who also appealed the original action, did not receive nor could have received any lending documents or file before trial. The Ferros lived in Colorado. The date any of the Dudeks financial documents were allegedly sent, assuming here the date on the cover letter, June 10, 2014, the Ferros were traveling to South Carolina or were in South Carolina on that day. Further, if any documents were sent that day they were in response to a subpoena from [plaintiff] Morpew⁴. First Federal would not have sent the Defendants Ferro the documents. Even if they did, the Ferros were not in Colorado to receive anything so this

⁴ The June 10, 2014 cover referenced a subpoena from almost a year and a half prior, March 4, 2013, a subpoena First Federal had already previously responded to on March 13, 2013, stating there was no loan or customers. (March FF Sub._Response)

information could not have been discovered by them prior to or at trial. As a consequence, the Ferros could not have asked for a continuance based on an alleged file they had no idea existed.

Regardless, once the Ferros discovered the new facts and evidence, they immediately presented the information to the master in a petition filed in the trial court, and as their closing statement.⁵ The master in the original action, in what should be considered here as a severe violation of its rules and processes, discrimination and an abuse of discretion, blatantly refused to consider a pro se's closing statement and filed petition, and declared he was only taking *attorney's* closing statements (Email- Ferro, September 10, 2014). The master deprived a Defendant pro se party's right to be heard, ignored its duty to consider the new facts and evidence, and failed to schedule a subsequent hearing after the trial to give all parties which it affected due process as to the issues raised. *The issues raised critically affected the legal rights of all litigants, the court and the outcome of the case.* Its unlawful actions and abuse of its power is a clear indication of partiality, discrimination 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 care of the grave injustice and severe prejudice resulting.

Finally, based on the statements above, and the fact the master, two (2) months *before* issuing its Order, had full knowledge of the Dudeks' lack of legal claim to the property, their inability to compel specific performance and the court's own lack of discretion or jurisdiction to award specific performance in their favor, it's apparent it would have been moot to bring a motion under Rule 60 to the master's attention, as this information had already been brought to his attention in the Ferro petition in Dudek v. Ferro, Civil Case No. 2013-CP-18-74. Instead, the Ferros chose to appeal. A Rule 60 motion was not required.

Even so, *immediately* upon discovery of the facts and evidence by Morphew, she presented the new facts and evidence to the Appellate court in its briefing, confident they would take notice and consider. (*See* Appellate Case No. 2014-002633). Regardless, Morphew filed this independent action during the pendency of the appeal. Rule 60 SCRCP.

⁵ 3 months after trial, the master asked for the parties' closing statements. Morphew was unaware of their petition as the petition was to their separate case and was not served on Morphew.

2. In their brief, Respondents state, “*In her deposition, Morphew admitted that she simply wants proof warranting the award of specific performance in the Original Action and, if provided, she would “back off and [be] done (i.e., she filed this action without proof of any fraud actually committed in the Original Action).”*

Though Morphew agrees if any of the Respondents had provided proof the Dudeks were ‘ready, able and willing’ to tender payment on or before their sales contract expired or at the time they filed its complaint for specific performance⁶ then she would drop all actions against them. The statement was offered to the Respondents to end the litigation(s), as such evidence would disprove their lender’s *denial letters refusing them mortgage credit because they had no legal claim to the property*. Neither Morphew has received nor is it in the record any documented proof the Dudeks were ‘ready, able and willing’ to tender payment as required before they would have the ability to compel specific performance. Without that ability the lower courts could not, under any circumstances award the equitable remedy.

Currently, the record shows clearly that all the Dudeks and its witnesses’ material testimony and any financial approval documents was false, proving they, and maybe the master himself, had committed fraud and fraud on the court in the original action. The Dudeks had no legal claim to the property when they made initial application, had been denied lending at their own hand, were not ready or able to tender payment as *required* to compel specific performance and had filed unlawful and frivolous filings, therefore committed intentional perjury (fraud) (*see* Order granting in part Motion to Dismiss-- Scarafile, et al., January 31, 2017), forgery of financial documents, misrepresentations and conspiracy to obtain the jurisdiction or discretion of the trial court (extrinsic fraud). Meaning, without the fraud or unlawful actions the master would not retain jurisdiction or have the discretion to order the equitable remedy.⁷

Morphew filed its complaint with validated and documented evidence that the Respondents obtained the trial court’s discretion or jurisdiction to order specific performance in their favor by committing fraud, and such fraud is fraud upon the court, therefore extrinsic.

⁶ *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105-06, 531 S.E.2d 287, 291 (2000)

⁷*Id*

The evidence proving their fraud was provided to Respondents in this case, though it's obvious they already had the same information even prior to the original litigation, but intentionally hid or refused to disclose the critically material facts and evidence.

Morphew would like this court to take notice that the Dudeks had abandoned their *time is of the essence* sales contract, the Dudeks' *time is of the essence* sales contract had expired on November 30, 2012, the Dudeks were denied mortgage credit at their own hand, the Dudeks were not at all times material, ready, able and willing to tender payment as required and recognized by this Court⁸ to compel specific performance, had no legal claim to the property after November 30, 2012 therefore were refused/denied mortgage credit. She would also like this court to take notice that the Dudeks' attorney in the original action, co-respondent David Collins, knew and instituted and action knowing that there was complete defense to action might be fraud upon the court; had full knowledge of its clients' critical failures and lack of legal standing to compel or maintain an action for specific performance, but suborned perjury and conspired with a witness, respondent Susan Nicholson, to present perjured testimony. It further intentionally concealed material documents, and fabricated or assisted in the fabrication of financial documents, all constituting fraud upon the court. See *Kupferman v. Consol. Research & Mfg. Corp.*, 459 F.2d 1072 (2d Cir.1972) (institution of action by attorney who knew that there was complete defense to action might be fraud upon the court); *Great Coastal Express, Inc., v. Int'l Brotherhood of Teamsters*, 675 F.2d 1349, 1357 (4th Cir.1982) ("[I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court."); *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir.1987) ("A verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony."); *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5th Cir.1978) (fabrication of evidence where attorney is implicated is fraud upon the court); *H.K. Porter Co. v. Goodyear Tire & Rubber*, 536 F.2d 1115, 1119 (6th Cir.1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."); *Synanon Found., Inc., v. Bernstein*, 503 A.2d 1254 (D.C.1986) (attorney subornation of perjury and false statements to trial court constitute

⁸ *Id*

fraud upon the court); *Porcelli v. Joseph Schlitz Brewing Co.*, 78 F.R.D. 499 (E.D.Wis.1978) (noting distinction between perjury involving officers of the court and witness or party); see 12 James Wm. Moore et al., *Moore's Federal Practice* ¶ 60-21[4][b] (3d ed.2002).

Standard of Review

In an action at law, the trial court's factual findings will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial court's findings. *Townes*, 266 S.C. at 86, 221 S.E.2d at 775. In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence. *See Wilder Corp. v. Wilke*, 324 S.C. 570, 577, 479 S.E.2d 510, 513 (Ct.App.1996) (citing *Townes*, 266 S.C. at 86, 221 S.E.2d at 775) (holding that because the master-in-equity heard the action, which was equitable in nature, without appeal to the circuit court, the appellate court could find the facts on appeal in accordance with its own view of the preponderance of the evidence).

Arguments

All facts and arguments as stated above are repeated here. No issue is predicated on alleged fraud that was known to Morphew before trial in the Original Action as the material and critical documentation, specifically the denial letters, were not provided before trial to Morphew or the Defendants/sellers Ferro, therefor could not have been raised at trial. Further the fraudulent actions have not been "*ruled on this Court*". The record shows the appellate court has not specifically addressed and made a final ruling on any of the *specific allegations of fraud*, and the Respondents here do not point to any prior adjudication of the *specific allegations of fraud*.

Morphew's attorney did not, at the time of the original action's trial, have information proving fraud the day before trial. In fact, the denial letters, the ultimate proof of the fraud on the court, was not provided or disclosed before or at trial, for if they had been the master would have had no choice but to dismiss the Dudeks' complaint for they were not properly before the court (i.e., had no legal claim to the property) nor did the master have jurisdiction or discretion to adjudicate their frivolous complaint or award the equitable remedy.

I. THE LOWER COURT ERRED IN GRANTING THE RESPONDENTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT, BECAUSE THE FRAUD THAT FORMS THE BASIS OF THE APPELLANT'S UNDERLYING COMPLAINT IS EXTRINSIC AND THEIR FRAUD HAS NOT BEEN RULED ON BY THIS COURT OR RULED ON IN MULTIPLE APPEALS

Ultimately, the Respondents argue “without extrinsic fraud, Morphew’s case and this appeal fail.” It further argues only intrinsic fraud⁹ exists, which they allege was discoverable in the original action, but in the same breath deny they committed the perjury, misrepresentations, forgery (fraud). They present the fraud is only intrinsic and does not rise above intrinsic, and that fraud has been ruled on by this court in multiple appeals, therefore this court should uphold the decision by the lower court.

As already argued in Morphew’s initial brief and herein brief, and repeated here, the Respondents fraud went to the very core of the trial court’s jurisdiction or its discretion to award the equitable remedy. This is not a situation of a ruling that is just “right” or “wrong,” but a ruling that is unlawful. The Dudeks had no legal claim to the property after November 30, 2012. Period. That is an undisputed fact. Consequently, led to their inability to obtain financing. Based on lack of legal claim to the property at all times material, their denial of mortgage credit, and their lack of ability to compel specific performance, the Dudeks were not properly before the court, the master and court lacked jurisdiction or discretion to award the equitable remedy, and the judgment in their favor is unlawful and VOID. Combined with the lies, forgery, misrepresentations and conspiracy from all Respondents to convince the master otherwise and obtain an unlawful and void judgment, extrinsic fraud exists or their fraud rises above intrinsic. Regardless, the original proceeding is invalid, and no court can make it valid or use laches or doctrines to bar this complaint.

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*

⁹ The Respondents “Perjury” was ruled as intrinsic fraud. That ruling is here on appeal, where Morphew has argued in its briefs the perjury is extrinsic or rises to the level of such as it went to the very jurisdiction or discretion of the trial court and master.

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.

Jurisdiction is a matter that can be raised at any time, including for the first time on appeal. Because the trial court's jurisdiction or discretion to award specific performance is based on the statutes and the principles of law and equity and/or the movant's ability to compel specific performance, and all evidence presented here proves the Order in-part awarding the Respondents Dudek specific performance fails on its face, such order in-part is VOID and must be set aside. Void order or judgment is an issue which can be raised at any time in any court, even on appeal. Morpew points out these issues in its reply brief (Respondent Collins), which is adopted by reference (Appellant Reply Brief Collins, pgs. 11-17).

The material facts and evidence the Respondents were *denied mortgage credit for failure to have a legal claim to the property* was not provided to Morpew or co-appellants in the original action before or disclosed at trial. (Morpew Deposition pg. 52, l.15 through pg. 56 l.5; pg. 124 l. 6-10); (10-day adverse letter Jan. 3, 2013; Statement of denial/FF review denying mortgage credit Jan. 23, 2013; denial letters January 31, 2013). Further, Morpew has shown its failure to discover these facts and evidence before trial was not due to lack of due diligence on its part, as she went above and beyond due diligence in the discovery process, especially in its two (2) separate subpoenas and phone calls to the Dudeks' lender, and co-respondent, First Federal. In both subpoenas and the phone calls, they perjured and misrepresented. (FF Subpoenas and responses **R.pg.282-290**). Though questioned several times before and during trial as to their financial status or ability to tender payment pursuant specific performance, the Dudeks and/or its co-respondents in this case lied, perjured, forged financial documents, presented evidence in which its maker had no legal standing, or made false or misleading statements. Even so, the Dudeks were required to disclose their financial status to the sellers and perform their contract in good faith and fair dealings (Order, Nov. 6, 2014, pg. 4, para. 9).

Morpew's prior attorney in the original action, John Massalon, is a well-respected and very knowledgeable attorney. The 10-day adverse and denial letters were not delivered to him

before trial. If they had then there is no question he would have brought them up for they were *the* home-run hit for Morpew. Despite the Dudeks and their witness' testimony at the original trial that the Dudeks had secured lending and were ready, able and willing to tender payment, the letters show the Dudeks had no legal claim to the property after November 30, 2012 thus were denied lending AND *at their own hand*.

The fact is, after November 30, 2012, the Respondent had no legal claim to the property. They made initial application after their contract expired. In fact, they didn't *sign* or return the application and disclosures until December 10th, 2012 – 10 days AFTER their time is of the essence sales contract expired. (Dudek initial mortgage credit application, December 10, 2012). As a consequence, there was never a mortgage transaction or legal mortgage transaction in place in the original action, as their application was never completed or accepted due their failure to have a legal claim to the property. The Dudeks and all co-respondents to this case had full knowledge of these facts and the fact they had no legal standing to demand *anything* from the sellers, Morpew or courts¹⁰. All co-respondents had full knowledge they had no legal standing to represent the Dudeks in the capacity in which they presented themselves¹¹, and should be considered fraud in itself.

As this court knows, one can, and usually does, make several applications at separate banks (“shopping”), but until an application is complete, initial application as required in their sales contract has not been complied with. In this case, Respondents never completed their initial application by failing to submit a valid and negotiable sales contract. Due these facts, 1) the Dudeks' sales contract was no longer valid or negotiable after November 30, 2012; 2) the Dudeks had no legal standing to demand anything from the sellers or the seller's property, especially specific performance or any remedy; 2) Susan Nicholson, Carolina One and Michael Scarafile had

¹⁰ Such as a closing or the deed to the property, or for a judgment ordering the sellers to specifically perform a time is of the essence sales contract in which the Dudeks abandoned in the first place.

¹¹ Such as the sales agency [Nicholson, Carolina One and Scarafile] demanding a closing and repairs, making false claims its clients are ready to close, and attempting to blackmail the sellers by making threats of long litigation if they don't transfer the deed to its clients, when it had full knowledge the contract had expired and was no longer in affect, and that its clients had no legal claim to the property. Such representation is fraudulent when they had no legal standing in regards to the specific contract or the specific property. The sales agent and company were representing outside their scope of normal business practices, with their scope being confined to representation of a legal and valid sales contract.

no legal standing in the original action, including but not limited to, representing as the sales agent/agency in a court proceeding when there was no sales contract and its clients had no legal claim to the property in question, demanding the sellers transfer the deed to their clients, or threaten legal action; 3) the trial court in the original action had no ability, jurisdiction or discretion to order the equitable remedy of specific performance to the Dudeks; in fact, based on the legal position of the Dudeks, it has no choice but to dismiss the Dudeks' complaint; 4) the Order of November 6, 2014 is VOID or fails on its face; 5) all Respondents to this case committed conspiracy, fraud and/or fraud on the court; 6) the Dudeks' prior action is void and cannot be made valid by the litigants or by any court; and 7) their current counsel, Stephen Smith, who use to be a prior partner with Respondent David Collins before Collins himself was convicted of committing fraud in 2016 against his own clients in a separate case, has had full knowledge of the Dudeks' fraud and critical failures and now of their continuing fraud, they are not bona fide purchasers, their trespass upon easement and assault upon Morphew's own neighboring property in 2018. Morphew points out many of these issues in its reply brief (Respondent Collins), which is adopted by reference (Appellant Reply Brief Collins).

The unlawful or fraudulent actions or non-actions in the original action are critically material to the legal positions of the Dudeks and all co-respondents, *and* to the court's *ability* to award the equitable remedy, therefore the legal effect of the Order. If such fraud is not considered extrinsic, or at least rises to the level of, then such actions just encourage lawyers and their clients to file frivolous and unlawful complaints; lie, suborn perjury, misrepresent, conspire, fail to disclose critically material facts and evidence effecting their own legal position and the court's jurisdiction, and to take another's property if they so choose and with no legal claim to it. It also would appear the South Carolina courts support VOID judgments, and the Respondents' substantial unlawful actions, bad faith and unfair dealings, failures of the maxims of equity, violations of court rules, failure to honor a contract, specifically a *time is of the essence* sales contract, and their lack of respect for the courts and their processes.

Just as important, why must a judgment obtained by such reprehensible conduct of many, that is a gross injustice and void, at that by enforcing it steals property (i.e., enforces a criminal act¹²) from an innocent and *valid* contract holder who had the *only* legal claim to the property, and gives that property those who had abandoned their contract or waived their legal right to the property¹³ (Order, Nov. 6, 2014, pg.6 para. 8), who failed the critical maxims of equity¹⁴ and performed criminal acts to obtain jurisdiction to compel the equitable remedy (and ultimately unlawfully obtained the property), in good conscience be allowed to stand? This Court has the power to right this injustice, remove a void judgment, correct violations of the principles of law and equity, punish criminal actions in a court proceeding, punish violations of rules and guidelines, and address a repeated abuse of power and discretion. The courts have refused to address the Dudeks and/or co-respondents' critical failures and/or critical change in their legal position in the original action, positions that no court can excuse or reverse. This is not about winning or losing, but about what is lawful or what the courts may do under the circumstances, and about the failure of the justice system, what it stands for, the faith the public is supposed to have in it and its protection of its rights. Though this Court may find these cases insignificant, it shouldn't. This is a vast example of the system's breakdown, severe prejudice, unlawful judgments, violation of public policy and a grave injustice.

Even so, law of the case does not make any ruling absolute, as this court has the power to revisit prior decisions of its own or of a coordinate court in *any* circumstance. Law of the case is not an inexorable command or rule of law to be strictly adhered by the courts, and this is not just recognized in the South Carolina courts but also in all states and the US Supreme Court. ("Law of the case . . . operates as a discretionary rule of practice and not one of law." (quotation marks omitted)); 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 4478 (2d ed. 2002) ("So long as the same case remains alive, there is power to alter

¹² *Ward v. W. Oil Co.*, 387 S.C. 268, 274, 692 S.E.2d 516, 519 (2010). (...we "will not 'lend [our] assistance' to carry out the terms of a contract that violates statutory law or public policy.")

¹³ *South Carolina Dept. of Transportation v Hood*, SC Supreme Court, Opinion 4486 (2009), quoting *City of Des Peres v. Persels P'ship*, 831 S.W.2d 778, 781 (Mo. Ct. App. 1992) (...stating "[a]n expired contract is effectively an unaccepted offer").

¹⁴ "He who seeks equity must do equity" and "He who comes into equity must come with clean hands"

or revoke earlier rulings.") *Slowinski v. Valley Nat'l Bank*, 264 N.J.Super. 172, 624 A.2d 85, 89 (App.Div.1993). The application of the doctrine is within the court's discretion, and even in cases that meet the standards for law of the case, Appellate courts have discretion to depart from the doctrine. *Hill v. BASF Wyandotte Corp.*, 696 F.2d 287, 290 n.3 (4th Cir. 1982) (stating that court should not, in review, affirm a legally erroneous ruling because it was "compelled" by law of the case); *Barth v. Barth*, 293 S.C. 305, 308, 360 S.E.2d 309, 310 (1987) ("[t]he rule of the 'law of the case' means that what was decided on former appeal is, if evidence is the same on another trial, controlling on the trial court and an appellate court on another appeal, *unless on re-examination the appellate court is convinced that the first decision was wrong.*") *American Standard*, 603 F.2d at 248 (where a U.S. Supreme Court decision demonstrates that a ruling on which a judgment would depend is in error, no principle of law of the case warrants a failure to correct the ruling). Further, unlike just about every other remedy or claim existing under the rules of civil procedure or common law, there is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration of the matter.(See *CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE: JURISDICTION* § 4234 (2d ed. 1988) note 151). The logic is clear: "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits."(*Lockwood v. Bowles*, 46 F.R.D. 625, 634 (D.D.C. 1969). "The law-of-the-case doctrine "merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power." *Messenger v. Anderson*, 225 U. S. 436, 444 (1912) (Holmes, J.) (citations omitted). A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loath to do so in the absence of extraordinary circumstances such as where the initial decision was "clearly erroneous and would work a manifest injustice." *Arizona v. California*, supra, at 618, n. 8 (citation omitted). Most importantly, law of the case cannot bind this Court in reviewing decisions herein. Just as a district court's adherence to law of the case cannot insulate an issue from appellate review, a court of appeals' adherence to the law of the case cannot insulate an issue from this Court's review." See *Messenger*, supra, at 444; *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U. S. 251, 257-

259 (1916). 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).

Also, law of the case does not preclude fraud on the court, in this case, “calling into question the very legitimacy of the judgment.” (Where the fraud perpetrated called into question the very legitimacy of the judgment) *Calderon v. Thompson*, 523 U.S. 538, 118 S.Ct. 1489 (1998) (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238 (1944)). Morhew’s instant case here was specifically framed to include this issue during the pendency of the original action, thus reviving the issue of re-examination in the case.

Regardless, and assuming any Appellant failures of the legal process exists, which is denied, they have no effect on an invalid proceeding, lack of jurisdiction, lack of discretionary powers based on principles of law and equity to order an equitable remedy, or judgments that are unlawful, fail on its face, fails the judgment roll, or are VOID. Notwithstanding the Dudeks’ and co-respondents’ own substantial legal failures and/or unlawful/fraudulent actions, such as lack of legal claim at all times material to the property at question, lack of legal standing, frivolous complaint for breach of contract, abuse of the court’s processes, violations of Rule 11 SCRCPP and/or committing criminal actions (such as critical and material perjury), all which started almost 2 years prior to the original trial and are still occurring.

The Respondents’ argue “*even if extrinsic fraud existed, then Morhew’s relief would be a set-aside of the Specific Performance Order and a retrial of the Original Action, not independent damages against the Respondents. Rule 60, SCRCPP.*” (*Respondents Dudek, et al. Initial Brief, pg. 10*). They did not raise nor was this argument ruled on in the trial court, therefore cannot be considered by this court. Even so, *only part of the order*, specifically the award of specific performance in favor of the Dudeks, must be set aside, leaving Morhew’s award of specific performance solely in effect, as such has been adjudicated and not appealed. Further, there can be no re-trial and/or it would be moot. Based on the facts and circumstances, and the [valid] evidence in the record, the Dudeks *time is of the essence*¹⁵ sales contract had expired, they had no legal

¹⁵ *Bishop v. Tolbert*, 249 S.C. 289, 153 S.E.2d 912 (1967)(Emphasis added) (...*time was of the essence of the contract* and because of the appellants failure to consummate the contract and tender the purchase price within the time specified, they were not entitled to specific performance of the contract.)

claim to the property¹⁶ and they were *denied* mortgage credit [and at their own hand], therefore cannot compel specific performance. Meaning, the Dudeks have no ability to compel specific performance *or any remedy*, therefore the lower court may only dismiss their complaint, as it's clear it and this court have no jurisdiction or discretion to hear their case or award specific performance in their favor. Finally, Morpew's complaint is an independent action not a Rule 60 motion, therefore independent damages are appropriate.

The Respondents argue "*Morpew's case, and the above-referenced arguments, also fail under the law-of-the-case doctrine, precluding a party 'from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.'*" Respondents did not raise this argument in the trial court, therefore cannot be considered by this court. Even so, the issues here are not precluded by law of the case as the new facts and evidence was raised on appeal in the original action but not expressly rejected by the appellate court. Further, as argued above and repeated herein, law of the case is discretionary and not a rule of law, and where this court has the power to reopen its own or lower court decisions, especially if that decision fails by law, on its face, or results from an invalid proceeding. Further, law of the case does not preclude subject matter jurisdiction and cannot prevent this Court from its review. The lack of the trial court's discretion or jurisdictional power to enter the equitable judgment in favor of the Respondents under the facts and circumstances, the Dudeks abandonment of their sales contract/denial of mortgage credit and its legal effect on their sales contract and/or effect on Respondents legal positions, and a VOID order has not been litigated nor decided in the 1st appeal or this 2nd one, or in any subsequent 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,

¹⁶ Specifically, at initial application on December 5, 2012, they were required to present a signed contract extension addendum to make their expired time is of the essence sales contract valid.

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). (The issue of subject matter jurisdiction may be raised at any time including when raised for the first time to an appellate court.) *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002). 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*.

Morphew has also raised a VOID order to this Court (Order, Nov. 6, 2014). 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." *Elliott v. Lessee of Piersol*, 26 U.S. 1 Pet. 328 328 (1828); Black's Law Dictionary, Sixth Edition, page 1574: Void judgment.

First and foremost, 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 under the circumstances. In this instance and under the facts and 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 is Void.

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 can *only* deny the Respondents specific performance, and vacate its judgment in their favor and any subsequent order arising. The Appellate Court was required to vacate or reverse in-part the trial court's order of November 6, 2014 granting specific performance to the Respondents in the 1st appeal; and in this 2nd appeal, the Appellate Court *must* vacate in-part, and at a minimum reverse in-part, the Order of November 6, 2014 and any subsequent order in the Respondents' favor that arise from the original case, and award damages and/or any other relief to Morpew in which this court finds appropriate.

The courts concentrate on the alleged Appellant failures, but refuse to address the actual validated failures and unlawful actions of the Respondents that rendered a judgment void, unlawful or completely against the principles of law and equity. Though the record clearly demonstrates those unlawful actions and judgment, it appears more evidence is necessary for this court and the lower courts to take notice it has only the power to vacate the judgment for specific performance in favor of the Dudeks and any subsequent judgment in their or their co-respondents favor in this case.

II. THIS COURT SHOULD CONSIDER ALL ARGUMENTS IN ITS BRIEF AS THOSE ARGUMENTS ARE NOT BARRED OR EXPLICITLY BARRED BY THIS COURT

Morphew stands by this statement, and her arguments in this brief and in its initial brief, as repeated herein.

III. THE LOWER COURT'S DECISIONS ARE NOT HARMLESS AND ROUTINE AND AMOUNT TO REVERSIBLE ERROR

The Respondents state summary judgment and motions to dismiss are different standards of review, therefore Morphew's issue with the fact one judge partially denied the Respondents' motions to dismiss, then another judge granted the Respondents' motion for summary judgment on the same causes is without merit. Respondents provide no argument nor point to no law or case that definitively supports this issue is without merit, or is a final (rule of law). Even so, Respondents did not appeal the prior judge's order denying them dismissal of the several causes of action (Order January 31, 2017), as Morphew argued in its initial brief and repeated herein. As Respondents themselves argue, an unappealed order/judgment is law of the case. Moreover, the facts and circumstances had not changed from the motion to dismiss to the motion for summary judgment. Meaning, there was no change in circumstances, and that the presentation of additional affidavits was pertinent only if they concerned new and different facts which were not before the first judge. As argued in its initial brief but not defended by

Respondents, summary judgment is inappropriate as there are genuine disputes as to material facts and the moving party is not entitled to judgment as a matter of law. In this case, a reasonable jury viewing the evidence could only find in favor of Morphew.

Even so, the court of appeals should hold that although the motions to dismiss and for summary judgment involved different legal standards, the dispositive legal issue for both was the same and, therefore, that the second judge improperly overruled the first. To reach this result Morphew asks this court to look beyond the fact that the motions came under different rules with different legal tests and instead parse the complaint, motions, and orders to determine whether there was a common legal ruling. It might appear that a motion for summary judgment always involves a different legal ruling from that in a motion to dismiss, but this case says it is necessary to look beyond the titles of the motions and ascertain the actual dispositive legal ruling for each.

Morphew is not sure exactly the Respondents' defense regarding its' argument that summary judgment was inappropriate because discovery was pending. They present weak issues at best and statements unsupported by the record. The Respondents specifically argue only that Morphew had not taken a single deposition, a point irrelevant as depositions are not required, but intentionally fail to present to this court that the Morphew's motions to compel discovery/admissions were pending months prior to the summary judgment motions and the granting of. Morphew had pending motions to compel documents and motions for admissions to be admitted in which it presented at the same hearing 12 other various motions were also heard. **(Plaintiff Mtn Deem Admiss. Admit FF 2-16-18)** **(Plaintiff Mtn Deem Admiss. Admit Cross 2-01-18)** **(Plaintiff Mtn Compel Discovery Cross 1-30-18)**. Morphew's argument in its initial brief is repeated herein.

Further, Morphew's discovery was not needed to substantiate its case, but would confirm its case and prove the allegation(s) of their *continuing* fraud, and make clear without a doubt to the courts the severity of the case, a fact the lower courts and this court appear to take lightly. As already argued above, Morphew's offer to drop all cases (minus the trespass upon easement) if shown proof the Dudeks were entitled to the property or to maintain a specific performance action to give the Respondents opportunity to mitigate the damages and end the vast litigation -- they

blame solely on Morpew and so continually complaint about -- once and for all. Instead, their intentional refusal and failure to provide such proof shows this court that no such proof exists, their complaints have no merit, and that again, without a doubt, the Dudeks had no legal claim to the property after the expiration of their sales contract, and all the testimony, false promises and evidence provided to and/or presented by any Respondent at the original trial were lies, that all Respondents knew it, and had conspired in order to preserve the court's jurisdiction to hear the equitable remedy and obtain the master's jurisdiction or discretion to order the contract specifically performed (i.e., fraud on the court). Consequently, the reference to Morpew's deposition is not an admission by Morpew that "*no amount of discovery would have save Morpew's case,*" or that she "*has no "cards" to win the hand.*" On the contrary, Morpew has *all* the cards to win the hand. The court's refusal to allow discovery as compelled only violates Morpew's due process to present her case fully and prevents her from developing potential remedies for recovery.

Respondents Carolina One, Scarafile and Nicholson contend Morpew's issue "their motion to dismiss was unsupported by arguments, thus it did not comply with the rules, was a harmless error because Morpew wrote a 10-page response and the lower court held extensive oral arguments on their motion 12(b)(6) and 12(b)(8)." These Respondents do not present any case law, and do not point to any arguments in the transcript or in Morpew's response, that would support their brief. Further, Morpew's 10-pg. response is substantially standards of review/cases but, as argued in its initial brief and repeated herein, also explicitly states their motion 12(b)(6) lacks any argument, its motion is totally unsupported, and its motion to dismiss lacks merit for grounds of dismissal. As to their 12(b)(8), Morpew argues the Respondents are not the same parties for the same claim, and the action was not pending, therefore its 12(b)(8) motion fails. (Carolina One, et al. MTD) (Appellant's response, pg. 3, para. 4-pg. 4 para 2; pg. 5 para. 2; pg. 6 para. 2; pg. 6-10). It is clear the motion(s) are skeleton motions, where Morpew could only present defenses made clear on its face, for it had no specific arguments from these Respondents to defend. Though Morpew raised these issues, the trial court granted and denied as it saw fit. Morpew appealed the orders. Respondents did not appeal.

IV. THIS COURT SHOULD NOT AFFIRM THE ORDERS OF THE LOWER COURT FOR ANY REASON FOUND IN THE OTHER RESPONDENTS' BRIEFS AND ANY ADDITIONAL GROUNDS APPEARING IN THE RECORD, ESPECIALLY THE ALLEGATION APPELLANT HAS TAKEN TWO (2) SEPARATE POSITIONS IN REGARDS TO THE DUDEKS' VALIDITY OF THEIR SALES CONTRACT

Respondents raise issue that Morphew has taken two (2) separate positions in regards to the Dudeks' validity of their sales contract. This issue was not raised or adjudicated in the trial court therefore cannot be considered by this court. Even so, in order to apply judicial estoppel in this instance there are five (5) elements that must be proven. Respondents have proved none, therefore their argument fails or is without merit.

Five elements are required for the application of judicial estoppel:

- (1) two inconsistent positions must be taken by the same party or parties in privity with each other;
- (2) the two inconsistent positions were both made pursuant to sworn statements;
- (3) the positions must be taken in the same or related proceedings involving the same parties in privity with each other;
- (4) the inconsistency must be part of an intentional effort to mislead the court; and
- (5) the two positions must be totally inconsistent-that is, the truth of one position must necessarily preclude the veracity of the other position.

Quinn v. Sharon Corp., 343 S.C. 411, 422, 540 S.E.2d 474, 480 (Ct.App.2000)

In fact, Morphew has neither formally asserted or made a sworn statement at any time that the Dudeks' sales contract was valid, and has only asserted in all instances, even in its pending Trespass upon Easement complaint¹⁷, that their sales contract was expired or invalid. (Case No. 2018-CP-18-1661, Amended Compl., ¶ 43(b)(i)). As the Respondents point out, punishment

¹⁷ Morphew was forced to sell her home in 2020 to prevent the foreclosure action, all due the Dudeks' intentional assault upon her property, where they dug up her water line to her home and physically chopped it up so she did not have water, hence the Trespass upon Easement complaint. As a consequence, Morphew was forced to immediately leave her home and obtain alternate living arrangements but was unable to maintain two households pending the action.

should be to those who take the truth seeking function of the system lightly. In this case, all Respondents in this instant action should be punished for their perjury, misrepresentation and non-disclosure of the *truth* in the original action, notwithstanding their duty to disclose or the extensive discovery or effort to seek the truth prior to (and even after) trial. It is the respondents' actions that undermine the truth-seeking function of the judicial process. The courts have failed to protect Morphew, an innocent litigant, to her sole legal rights to her property and to a lawful judgment. Instead, the courts *choose* to disregard the truth. Doing so not only punishes an innocent litigant and rewards an unlawful litigant, but supports a judgment contradictory of the principles of law and equity and that is void. It is not the fault of Morphew that we are now here with this horrible mess to unwind, but instead the Respondents with their lies and deceit and then the courts turning a blind eye to the abuse of discretion and to the fraud upon their courts¹⁸.

This court has the power and discretion to right the grave injustices, but they *choose* to allow unlawful and VOID judgments to stand, for what reason? For the "finality of a judgment?" There is no finality to a judgment that is unlawful or void ab initio, for that judgment has no legal affect or legal affect from the beginning. Instead, they *choose* to allow fraud on the court. They *choose* to allow critically material perjury, misrepresentation and forgery of financial documents in a court proceeding. They *choose* to allow the Dudeks to retain stolen property, property which at all times material they had no legal claim to. They *choose* to prevent Morphew her legal right to the property. Maybe most importantly, they choose to abuse its discretion. Meaning, its failure to use its discretion and power to right the unlawful wrongs or grave injustices, is also an abuse of discretion. Due the Respondents' unlawful obtaining of the property, Morphew has now lost two homes (*See also* Tres. Upon Ease., where the Dudeks destruction of Morphew's neighboring property has caused her loss of).

Regardless, it is irrelevant whether the sales contract was valid or not in the Trespass complaint, as it has no bearing to the fact the Dudeks breached the agreed upon water easement.

¹⁸ In the original action, both the trial court and this court were presented several times with the newly discovered facts and evidence, but chose to ignore it.

In other words, the Defendants “purchased the subject property subject to the terms of the purchase contract. In so doing, Plaintiffs agreed via the contract to grant a “water and sewer easement.” (Dudek sales contract, Addendum B), (Defendants’ Answer to Complaint, Paragraph #45, *Stephen Dudek and Doreen Cross v. Commonwealth Title Company, LLC et al*, District Court Case No: 2:19-cv-03237-DCN). (Order, June 12, 2020, *Stephen Dudek and Doreen Cross v. Commonwealth Title Company, LLC et al*, District Court Case No: 2:19-cv-03237-DCN). Therefore, their argument has no merit or fails.

Conclusion

For all of the above reasons, and reasons set forth in its brief(s), Morpew respectfully asks this Court to vacate or reverse the Order in-part of November 6, 2014 and any subsequent orders arising from it, and the orders of the lower court in this instant case; and any other relief this court deems proper.

Respectfully submitted,



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October 12, 2020

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,

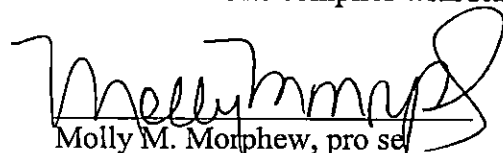
v.

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

RECEIVED
OCT 26 2020
SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Appellant's Reply Brief - Respondents Stephen Dudek, Doreen Cross, Michael Scarafile, Susan Nicholson and Carolina One complies with Rule 208(b).



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

October 19, 2020

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. Morpew, Appellant,

v.

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

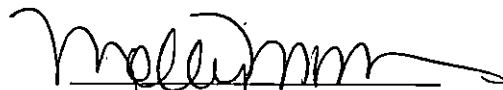
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SC Court of Appeals

CERTIFICATE OF SERVICE

I, Molly M. Morpew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served Respondents below with the Appellant's 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 Respondents at the following address:

Steven Smith, Esq.
P.O. Box 30052
Charleston, SC 29417

October 20, 2020


Molly M. Morpew, pro se
121 Sterling Dr.

Rincon, GA 31326

October 19, 2020

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

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OCT 26 2020
SC Court of Appeals

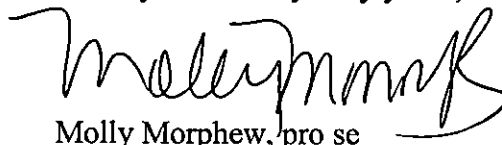
Re: Appellate Case No. 2018-002185
Molly M. Morphew v. Stephen Dudek, Doreen Cross, et al.

Dear Ms. Kitchings:

Please find enclosed APPELLANT'S REPLY BRIEF- Respondents Stephen Dudek, Doreen Cross, Michael Scarafie, Susan Nicholson and Carolina One, CERTIFICATE OF COMPLIANCE, and its DESIGNATION OF MATTER to be included in the 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.
David A. Collins, pro se

October 23, 2020

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

RECEIVED
OCT 26 2020
SC Court of Appeals

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

Dear Ms. Kitchings:

Please find enclosed a copy of the letter sent to Ms. Amy Hill, Esquire, counsel for Respondents Allison Williams and First Federal Bank on October 9, 2020 in the above referenced case regarding the service of their Initial Brief.

I am informing this Court that I have not yet received their Brief. Until such time, I am unable to respond.

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 Morpew, pro se

October 9, 2020

Ms. Amy L.B. Hill, Esquire
P.O. Box 7368
Columbia, SC 29202

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OCT 26 2020
SC Court of Appeals

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

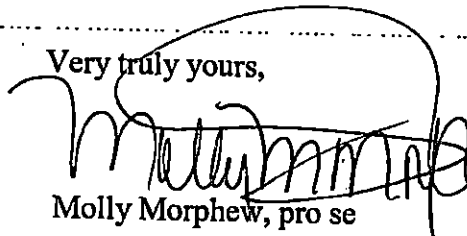
Dear Ms. Hill:

As you may recall, on June 29, 2020 I received an envelope, dated June 26, 2020, that only contained Respondents Allison Williams and First Federal Bank's Designation of Matter and Certificate of Service but no brief(s). At that time, I sent a letter informing you of the error.

After several inquiries, I have still not yet received Respondents Allison Williams and First Federal Bank's Initial Brief. If you would be so kind to send the brief(s) and an updated certificate of service, I thank you in advance.

Thank you in advance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Molly Morpew', written over a horizontal line. The signature is stylized and somewhat cursive.

Molly Morpew, pro se

P

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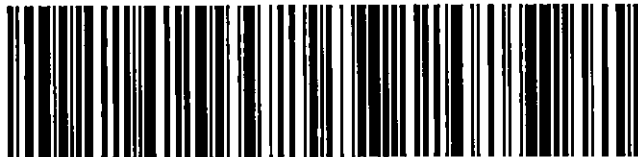
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TO: HON. JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
1015 SUMTER ST
COLUMBIA SC 29201-3726

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