STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON**	**IN THE COURT OF COMMON PLEAS** **NINTH JUDICIAL CIRCUIT** **2020-CP-10-00209**
MAYBANK 2754, LLC, **Plaintiff,** **v.** **EUGENE J. ZURLO, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11, 1997; 1776, LLC; BEACH FENWICK, LLC; THE BEACH COMPANY; SEAMON, WHITESIDE & ASSOCIATES, INC.; PENNY CREEK ASSOCIATES, LLC; JOHN DOE AND MARY ROE,** **Defendants.**	**ORDER GRANTING ALL DEFENDANTS SUMMARY JUDGMENT**

This case was filed by the Plaintiff on January 13, 2020. The five Defendants all filed Responsive Pleadings in a timely fashion to include Motions to Dismiss, Answers and Motions for Summary Judgment

On June 30, 2020, I referred the entire case to the Master in Equity, who by Order Dated 17, 2020, referred the entire case back to me.

These pending dispositive Motions were heard by me at a Hearing on September 24, 2020.

- Beach Motion to Dismiss filed on February 17, 2020;
- Seamon Whiteside Motion to Dismiss filed on February 20, 2020;
- Zurlo Parties Motion for Summary Judgment filed on August 14, 2020;
- Beach Motion for Summary Judgment filed on August 19, 2020;
- Seamon Whiteside Supplemental Motion to Dismiss/Motion for Summary Judgment filed on August 26, 2020; and

- 1776 Motion for Summary Judgment filed on September 3, 2020.

Plaintiff filed a Motion to Amend its Original Complaint, which was filed after all the pending Motions, except for 1776's Motion for Summary Judgment, which merely incorporated by reference the legal arguments made by all the other Defendants in their filings. Seamon Whiteside also filed its Motion for Summary Judgment after Plaintiff filed its Motion to Amend its Complaint.

The Zurlo Parties requested that the Court hear the Motions to Dismiss and for Summary Judgment based on the original Complaint filed on January 13, 2020. That makes perfect sense.to hear the Motions in the order they were filed, and if the Court decides these should be denied, the Court may allow the Amendment to the original Complaint and refiling of Motions to Dismiss and Motions for Summary Judgment.

The Zurlo Parties also requested that the Court rule on the pending Motions in order of filing before the Motion to Amend, which ruling will not affect the currently pending appeal.

The Court takes judicial notice of the fact that the most significant addition to the proposed Amended Complaint is the addition of the City of Charleston as a named Defendant, but no relief is sought from the City. The Plaintiff just wants the City to be bound by whatever final judgment is rendered in this case.

1. FINDINGS OF FACT:

The factual history involving the Plaintiff's claim to a future easement is not in dispute. In summary, based on the Plaintiff's Complaint, the Responsive Pleadings of all Defendants, and the Exhibits attached to the various Motions , in 1999 Mitch Laplante ("Laplante") and the Eugene J. Zurlo Living Trust Dated December 11, 1997 ("Zurlo Trust"), created Penny Creek Associates, LLC ("PCA") to purchase and develop approximately 60 acres of property along Maybank

Highway on Johns Island, South Carolina. Laplante was a 50% voting member, he and his family were 50% members of PCA, and the Zurlo Trust was the other 50% member.

In December of 2013, Zurlo initiated an action, individually and derivatively, on behalf of PCA against Laplante and others seeking several remedies to include an accounting, appointment of a new manager, and judicial dissolution of PCA. That matter ultimately was resolved, with the terms of the settlement placed on the record before Judge Markley Dennis on February 29, 2016. PCA was to wind up its business, sell its real estate, and ultimately terminate its LLC status.

In 2014, Wells Fargo commenced a foreclosure action against PCA and its members based on two mortgages that it had placed on the property in 2000 and 2006. (See, Case No.: 2014-CP-10-04946, filed with the Charleston County Clerk of Court and Order of Foreclosure and Judgment filed in that case on June 23,2017.) Based upon various allegations and matters set forth in that action, which was referred to the Master-in-Equity for disposition, the Master-in-Equity issued its Order of Judgment of Foreclosure and Sale which was filed June 23,2017. The question of the 30-foot future easement never was raised in the PCA litigation nor the Foreclosure litigation.

The alleged future springing easement never was recorded, nor was it ever subordinated to the two Wells Fargo mortgages, which were recorded well before the date of the Resolution Plaintiff relies on to establish its easement in October 2013.

The Foreclosure Order notes that "all persons whosoever claiming under the defendants be forever barred and foreclosed of all right, title, interest, and equity of redemption in the Subject Property" and specifically retained jurisdiction "to do all necessary acts incident to this foreclosure and to hear any post-judgment matters."

Pursuant to this Order, certain properties of PCA were sold in August 2017 to 1776, LLC. In December of 2019, Beach Fenwick, LLC purchased a certain 22-acre tract of the referenced

property from 1776, LLC. Laplante, individually was a named party to the foreclosure action, and at the relevant time, was the managing partner of PCA. Laplante's knowledge and conduct is, therefore, imputed to Maybank. See *In re Infinity Bus. Grp., Inc.*, 497 B.R. 794, 813 (Bankr. D.S.C. 2013); S.C. Code § 33-44-120.

Maybank 2754 is a limited liability company organized pursuant to the laws of the State of South Carolina. Laplante is its managing member. Maybank relies upon a document entitled Resolution of the Sole Shareholder of Penny Creek Associates, LLC, dated October 7, 2013, for its claim of a future easement across the former PCA property purchased by Beach Fenwick, LLC from 1776, LLC ("Subject Property"). The referenced resolution provides, inter alia:

> ...the Company [PCA] has agreed to grant transfer, sell and convey to Purchasers [Laplante, John H. Laplante, Peter F. Laplante, Marianne Laplante-Scarlata], their successors and assigns, an access easement for pedestrian and vehicular ingress, egress and access to, from and over that portion of the lands of Seller [PCA] known as "Residual Tract B-2-2"...the location and condition of which shall be mutually agreed upon at the completion of that certain roadway known as Pitch Fork Road ("Pitch Fork Road"). Upon the completion of Pitch Fork Road, the Parties hereto shall execute and record an Easement Agreement to memorialize the 30' Private R/W. ("Future Easement")

Plaintiff avers in its Complaint that Pitch Fork Road has not been completed and admits the "Future Easement" never was recorded.

It is the claim of that future easement, and matters attendant thereto, that give rise to this action.

2. SUMMARY JUDGMENT STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as

a matter of law."[1] With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge his initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party's case.[2] After the moving party has met his initial burden, Rule 56(e) requires the opposing party to "do more than simply show that there is some metaphysical doubt as to the material facts."[3] In response to a properly supported motion for summary judgment, the opposing party "must come forward with specific facts showing there is a genuine issue of material fact."[4] In 2015, a unanimous South Carolina Supreme Court explained (in an opinion reversing the appellate court's reversal of summary judgment and reinstating the trial court's summary judgment ruling):

> "'In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.'" *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (emphasis added) (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citing Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct.App.2006)).[5]

Courts are reluctant to dismiss cases at the Summary Judgment stage, even if there is no legal or factual basis for the case to proceed. However, reviewing just the Plaintiff's Complaint and Responses to the Zurlo Parties' Request to Admit in this case, there is no genuine issue as to the very material fact that the Wells Fargo foreclosure action voided any recorded or unrecorded

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[1] Rule 56, *SCRCP*.
[2] Baughman v. American Tel & Tel. Co., 306 S.C. 101, 115,410 S.E.2d 537, 545 (1991).
[3] Id.
[4] Id.; see also Rule 56(e), *SCRCP*.
[5] Grimsley v. S.C. Law Enf't Div., 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015).

easement not subordinated to the Wells Fargo mortgages, and Plaintiff admits there is no written, recorded easement so all the parties are entitled to summary judgment as a matter of law.

With no facts to support a claim, and no law on Plaintiff's side, then the court should dismiss the case to avoid prolonged futile time and expenses to all the parties. See *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 150, 810 S.E.2d 41, 45 (Ct. App. 2018), *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citing *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct.App.2006)).

"Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper." *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006)

3. THE COURT HAS THE JURISDICTION AND DISCRETION TO HEAR THE DISPOSITIVE MOTIONS NOW

The Court has the discretion, jurisdiction and ability to address all dispositive Motions filed to date before addressing the Plaintiff's Motion to Amend its Complaint for the following reasons:

A. The Appeal does not stay matters not affected by the appeal and the lower Court retains jurisdiction over matters not affected by the appeal. SCACR 225 and SCACR 241 (a).

See also Judge Scarborough's bench rulings: Transcript of 8/10 Hearing, Pages13-14. "Filing an Appeal does not stay the Court's jurisdiction to hear Motions to Dismiss and Motions for Summary Judgment." TRANSCRIPT attached as Exhibit A to Zurlo parties supplemental Memorandum of Law

B. All parties except PCA have filed Motions to Dismiss or Motions for Summary Judgment. The issue of the existence of an easement or not is legal -also possibly a jury- matter. The court agrees with Judge Scarborough who says the threshold

issue of whether there is legally enough evidence for an easement to exist is a matter of law threshold question. See: Transcript of 8/10 Hearing, Page 14.

C. The court also takes judicial notice that the Plaintiff alleges that his former lawyer and law firm failed to legally prefect the easement by putting it in written form and failing to record the easement in the ROD office for Charleston County so as to provide actual and or constructive notice to the public and these Defendants of the alleged 30 foot private right of way easement. See Complaint: Maybank 2754, LLC v Buist, Byars & Taylor, LLC; Custis M. Byars (2020-CP-10-02180) and Affidavit of Lisa Brown averring the agreement to create an easement should have been recorded in October 2013 "...to put all future buyers and lenders on notice that Tract -B-2-2 is subject to an easement." See: Complaint and Affidavit attached as EXHIBIT B to the Zurlo parties Supplemental Memo.

D. The threshold legal issue is whether there is a legally enforceable easement. This legal issue will have to be heard by the Court before trial - so waiting for the Court of Appeals to decide to send the case back to Circuit Court for a jury trial only will prolong this question.

4. CONCLUSIONS OF LAW

The Court finds as a matter of law there is no legal right to an easement based on the pleadings, the Motions for Summary Judgment, the affidavits submitted and the able arguments of counsel at the September 24, 2020 hearing, for the following reason:

A. Assuming for the sake of argument the October 2013 Resolution created some form of an easement, it never was subordinated to the Wells Fargo Mortgage and was therefore foreclosed upon in 2017, rendering the easement void and of no effect.

See S.C. Code Ann. § 30-7-20 ("The recordation of any contract in the nature of a subordination, waiver or extension of any lien on real property, created by law or by agreement of the parties, shall be upon the record of the recorded mortgage or other written instrument..."). Even if there was an easement, it did not survive the recent foreclosure of first-in-time, prior-recorded, bank-owned mortgages arising in 2000 and 2006 that never were subordinated by the bank to the later-in-time, unrecorded purported easement, alleged by the Plaintiff to have arisen in 2013 by way of a Resolution referencing the grant of a future easement. See S.C. Code Ann. § 30-7-20 ("The recordation of any contract in the nature of a subordination, waiver or extension of any lien on real property, created by law or by agreement of the parties, shall be upon the record of the recorded mortgage or other written instrument...") (emphasis added).

These facts are all matters of record over which there can be no factual or legal dispute. See Complaint at ¶14; Wells Fargo v. Penny Creek Associates, et al., Civil Action No. 2014-CP-10-4946 (Charleston County, Filed May 26, 2014); Mortgage recorded in the Register of Deeds in Charleston County on August 8, 2000, in Book P-532, at Page 613; Mortgage recorded in the Register of Deeds in Charleston County on April 7, 2006, in Book G-579, at Page 249.

Further, the Plaintiff already had judicially admitted that its alleged easement was extinguished in the bank's foreclosure action.

While A above is reason enough to grant Summary Judgment to all Defendants, ending the case, the Court notes but does not rely on the following Additional Sustaining Grounds for granting Summary Judgment to all defendants.

B. The October 7, 2013, Resolution on which Plaintiff relies (The Resolution) never was recorded, nor was there any recording of the intention to place a future easement on the property PCA owned which is now owned by Beach Fenwick, LLC. This prevented actual or constructive Notice of the future easement's alleged existence.

If the instrument under which rights are claimed is not recorded within a specific time, a subsequent creditor, or purchaser for value without actual notice, will not be affected. Epps v. McCallum Realty Co. 139 S.C. 481, 138 S.E. 297, 302 (1927);

C. The Resolution fails to meet the essential elements required in order to create a property right.

The description of the alleged future springing easement lacks any identifiable location or condition, the duration of the easement or its scope. "A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) (citing 28A C.J.S. Easements §57, at 235 (1996));

D. Assuming for the sake of argument the Resolution created an easement, the easement is one in gross and therefore is not transferrable to the Plaintiff.

An easement is either appurtenant or in gross. *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). An appurtenant easement inheres in the land,

concerns the premises, has one terminus on the land of the party claiming it, *and* is essentially necessary to the enjoyment thereof. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997); *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578, (2009) (citations omitted) (emphasis added). It also passes with the dominant estate upon conveyance. *Id.* (citing *Carolina Land Co., Inc. v. Bland,* 265 S.C. 98, 217 S.E.2d 16 (1975)). Unless an easement has all the elements necessary to establish an appurtenant easement, it will be characterized as an easement in gross. *Id.* (citing 12 S.C. Juris. *Easements* § 3(c)). "An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer." *Id.* 381 S.C. at 201-02, 672 S.E.2d at 583. Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. *Hamilton v. CCM, Inc.,* 274 S.C. 152, 263 S.E.2d 378 (1980);

E. At best, the Resolution creates "an agreement to agree", which does not amount to a contract in South Carolina.

An "agreement to agree" does not amount to a contract under South Carolina law. *BCD LLC v. BMW Mfg. Co., LLC*, 360 F. App'x 428, 435 (4th Cir. 2010) (citing *Trident Constr. Co., Inc. v. Austin Co.*, 272 F.Supp.2d 566, 575 (D.S.C.2003)). "The parties merely agreed to enter into negotiations to reach an agreement, but subsequently failed to reach an actual agreement on essential terms pertaining to land allocations, divisions of parcels, and restrictive covenants for the property." *Id.* This is precisely what happened here, and Plaintiff admits as much. See June 25, 2020 Tr., 47:20 – 48:1 (Exhibit 1). The unrecorded Resolution, or more

precisely, the unrecorded contract referenced therein but not provided until after the filing of this action, purportedly is a contractual right for the Seller (PCA) and Buyer (Laplante Family) to agree in the future to create an easement. In South Carolina, this agreement to agree does not amount to a contract and cannot detrimentally impact future purchases of the property because the parties "subsequently failed to reach an actual agreement on essential terms pertaining to land allocations ... and restrictive covenants for the property." *BCD LLC*, at 435; *see also Burbach Broadcasting Co. of Delaware v. Elkins Radio Corp.*, 278 F.3d 401, 407 (4th Cir.2002) ;

F. The Court takes judicial Notice that in a separate legal malpractice action that the Plaintiff filed against its own former attorney, the Plaintiff alleged:

21. BBT and Byars were careless and negligent failing to record the Resolution, or failing to prepare and record a document, in the office of the Register of Deeds (formerly, Register of Mesne Conveyance) of Charleston County, South Carolina so as to provide constructive knowledge to the public of the existence of the thirty (30) foot private right of way easement.

22. As a direct and proximate result of the Defendants' breach of the above-described duty owed to Maybank, Maybank has suffered, and continues to suffer, damage.

23. Additionally, Maybank has suffered special damages in that its adjacent lot has lost the value of a (30) foot private right of way easement across the Property.

Maybank 2754, LLC v. Buist, Byars & Taylor, LLC et al., Civil Action No. 2020-CP 1001811 (Charleston County, Filed April 13, 2020).

The affidavit that the Plaintiff filed in support of its legal malpractice claim stated: "...the agreement should have been recorded at the time of closing to put all future buyers and lenders on notice that [the property] is subject to an easement." Id. (Affidavit of Lisa Brown, Filed May 14, 2020).

The Plaintiff cannot take a contrary position in this litigation, rendering its lengthy affidavit and numerous exhibits irrelevant. See Elrod v. All, 243 S.C. 425, 134 S.E.2d 410, 416 (1964) ("[A]llegations, statements or admissions contained in a pleading are conclusive as against the pleader."); Quinn v. Sharon Corp., 540 S.E.2d 474, 480, 343 S.C. 411, 423 (Ct. App. 2000) ("[T]he fact a litigant is using the court as a forum for his inconsistent statements injures the judicial system; therefore, such abuse must be avoided under all circumstances."); see also Schott Motorcycle Supply, Inc. v. Am. Honda Motor Co., Inc., 976 F.2d 58, 61 (1st Cir. 1992) ("plaintiff should not be allowed to contradict its express factual assertion in an attempt to avoid summary judgment").

To conclude, it is well established that "courts should be particularly jealous of the integrity of judicial sales" and should not "rewrite the terms of sale after the sale." Ex Parte Johnson, 640 S.E.2d 887 (Ct. App. 2006) (quoting In re Wilson, 141 S.C. 60, 63, 139 S.E. 171, 172 (1927));

G. Mitch Laplante, as the manager of PCA and controlling member, now manager, of Maybank 2754, is estopped from having Maybank 2754 raise the issue of an

easement because he failed to ever raise its existence in neither the PCA Judicial Dissolution lawsuit of the Wells Fargo foreclosure action.

Wells Fargo commenced a foreclosure action in 2014 against PCA and its members, pursuant to which it foreclosed its lien upon the Original Tract. (*See*, Case No.: 2014-CP-10-04946, filed with the Charleston County Clerk of Court). The Master-in-Equity's Foreclosure Order dated June 23, 2017, foreclosed and barred all future claims related to the property or any interest in the property in question.

Laplante was a named defendant in the foreclosure action; was Manager of PCA; was the controlling member of Maybank; was represented by counsel; filed cross claims in the foreclosure action; and was present at the June 19, 2017, hearing when testimony and exhibits concerning the foreclosure were presented to the Court. The June 23, 2017, Foreclosure Order made no exception or mention for an easement and there was no easement noted on any plat. Indeed, the Master-In-Equity further entered a Consent Order amending the property description of the Original Tract because the parties identified a mistake in the legal description. (Exhibit 2). Laplante, as the manager of PCA and controlling member of Maybank and a self-touted real estate developer, failed to mention the existence of the "easement" and now, years later, attempts to relitigate the issue. "Collateral estoppel will bar the relitigation of an issue which was actually litigated and necessary to the outcome of a prior lawsuit." *McNaughton–McKay Elec. Co. of N.C. v. Andrich*, 324 S.C. 275, 279, 482 S.E.2d 564, 566 (Ct. App. 1997).[6] Maybank's "absence from the

[6] "Laches is an equitable doctrine defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.'" *Strickland v. Strickland*, 375 S.C. 76, 83, 650 S.E.2d 465, 469

previous ... lawsuit does not insulate it from issue preclusion." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 555, 684 S.E.2d 779, 782 (Ct. App. 2009).

Here, Laplante's knowledge is imputed to Plaintiff. S.C. Code Ann. § 33-44-102. Maybank, through its manager, Laplante, had a "full and fair opportunity to previously litigate the issue" in the foreclosure action. *See Carolina Renewal, Inc.*, at 555, 684 S.E.2d at 782. Maybank was not a party to the foreclosure action because it did not possess a real property interest in the Original Tract, including the Subject Property. The record of the foreclosure action reveals that Laplante actively participated in that proceeding, making no mention in any of his pleadings or at the foreclosure hearing of any alleged property interest of Maybank.

This issue of a description of property rights and existing easements on the Original Tract, including the Subject Property, was actually litigated in the foreclosure; the Master-In-Equity fully determined the property rights to be sold, leaving no question what the buyer was acquiring. The breadth of the property rights was further solidified upon the revision of the original Order to amend the property description. Lastly, estopping Plaintiff is necessary to support the prior judgment/foreclosure order because the sale of the subject property could be revisited if the rights acquired/sold through the foreclosure subsequently changed. Moreover, "it is a well-established principle in South Carolina that estoppel by silence arises when one party observes another dealing with his property in a

(2007) (citation omitted). Plaintiff's unreasonable delay in asserting its rights has resulted and continues to result in prejudice to the Beach Entities and other defendants.

manner inconsistent with his rights and makes no objection while the other party changes his position based on the party's silence." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 358, 628 S.E.2d 902, 911 (Ct. App. 2006) (citing *Seabrook Island Property Owners Association v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct.App.1987)). Maybank's silence, through its controlling member and current manager, Laplante, constitutes estoppel by silence. Laplante maintained silence through the Dissolution Action as to any purported right of Maybank to an easement, and likewise maintained silence through the Foreclosure Action, thus constituting estoppel by silence, preventing Maybank from making claims at this point, in this action, as to an easement.

The June 23, 2017, Foreclosure Order is now the law of the case because it involves the same parties and the same property. By bringing this action, Maybank seeks to have a circuit court judge collaterally attack the Master's Foreclosure Order. It is a cardinal rule in South Carolina that one Circuit Court should not overrule another, especially when the other circuit court judge has retained jurisdiction. *See Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); *In re Morrison*, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); *Cooper Tire & Rubber Co. v. Perry et al.*, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case); *Watkins v. Hodge*, 232 S.C. 245, 247–48, 101 S.E.2d 657, 658 (1958) (refusing to

consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal). *Judy v. Martin*, 381 S.C. 455, 458–59, 674 S.E.2d 151, 153 (2009).

ORDER

No genuine issue of material fact exists to prolong this litigation; therefore, it is Ordered that the Defendants' Motions for Summary Judgment are hereby granted, and this matter is dismissed in its entirety.

AND IT IS SO ORDERED.

Bentley Price
Presiding Judge-Ninth Judicial Circuit

Charleston, S.C.

October _____, 2020

Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al

Case Number: 2020CP1000209

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766