THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

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

Appellate Case No. 2018-002185

Molly M. Morphew, Appellant,

v.

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

APPELLANT'S REPLY BRIEF—RESPONDENTS FIRST FEDERAL AND ALLISON WILLIAMS

Molly M. Morphew, pro se
121 Sterling Rd.
Rincon, GA

Table of Contents

Table of Authorities

CASES

OTHER AUTHORITIES

STATEMENTS OF THE CASE

Appellant Morphew incorporates its Statements of the Case which has been thoroughly set forth in its opening brief, repeated herein.

STATEMENT OF THE FACTS

Without restating all the facts and arguments which have been thoroughly set forth in its opening brief, but incorporated herein reply brief, Appellant Morphew ("Appellant") offers the following statement of the facts, correction or defense in regards to this case and the Respondents' First Federal and Allison Williams (herein "Bank Respondents") Brief.

This particular action is based upon the unlawful order in-part or the judgment for specific performance in favor of Respondents Stephen Dudek and Doreen Cross ("Dudeks") (Civil Action No. 2013-CP-18-00074) (herein "Original Action"). On appeal in the Original Action, Appellant discovered adverse and denial letters to the Dudeks, documents which were not disclosed in discovery or at trial, and which Appellant was not aware until the appeal had been taken and Appellant proceeded pro se (Morphew Depot. Pg. 52-56; pg. 124). The undisclosed documents prove the Dudeks abandoned their sales contract and that they had no legal claim to the property ("Property") after its expiration on November 30, 2012, thus were denied lending (10-day adverse letter Jan. 3, 2013; Statement of denial/FF review denying mortgage credit Jan. 23, 2013; denial letters January 31, 2013), facts Bank Respondents had superior knowledge of at all times material to the Original Action and this instant action. Contrary to Bank Respondents' statement of fact, Appellant contends the allegations in its' complaint are not incredible nor just allegations but instead materially critical, credible *facts supported by evidence in the record*, that changed the legal position of the Dudeks, all respondents, and the trial court's jurisdiction and/or discretion to award the Dudeks specific performance. Further, Bank Respondents had no legal standing in the Original Action to represent as "the lenders" in a mortgage transaction and testify the Dudeks were ready, able and willing to tender payment

when no legal mortgage transaction was ever in place. Bank Respondents had full knowledge they had refused them mortgage credit for failure to have a legal claim to the property in question. The Dudeks had no valid and negotiable sales contract after it had expired on November 30, 2012, it was never remedied, therefore a valid or legal mortgage transaction was never in place. Just an important, proceeding in-part in the Original Action and the judgment awarding the Dudeks specific performance, is invalid or void. Consequently, any order arising from the invalid or void judgment is also void.

The judgment in favor of the Dudeks in the Original Action is unlawful, fails on its face/fails the four corners, void, and/or was without the trial court's jurisdiction or discretion to award the equitable remedy in their favor. The judgment was obtained by fraud on the court, including but not limited to, suborning of perjury, Bank Respondents' false promises they were extending mortgage credit, their intentional non-disclosure, perjury, misrepresentation and conspiracy of critically material facts that went to the very core of the proceeding and the legal position or standing of the Dudeks and its witnesses. Meaning, the court's jurisdiction was retained and its discretion obtained *only* by their intentional fraud. With that being said, their fraudulent actions are extrinsic fraud or rises to the level of extrinsic fraud.

Regardless, how the judgment was obtained, when the evidence was discovered, or whether the trial court issues orders and this court affirms, the Original Action or proceeding is not valid. A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. *Old Wayne Mut. L. Assoc. V. Mcdonough*, 204 U. S. 8, 27 S. Ct. 236 (1907).

Finally, contrary to Respondents' statement of fact, Morphew did file motions to compel directed at Bank respondents. (Plaintiff Mtn Deem Admiss. Admit FF 2-16-18) (Plaintiff Mtn Compel Discovery Cross 1-30-18[1]) (Plaintiff Mtn Deem Admiss. Admit Cross 2-01-18). It is

[1] Morphew's request for all Dudek account/lending files, documents, communications, etc. was issued to *both* the Bank respondents and the Dudeks. To prevent undue costs to all and to prevent redundancy,

obvious there should no need for further discovery such as depositions, which would only expel more costs and time to all, as the discovery requested above should be enough, notwithstanding the facts and evidence already in the record, plus the *lack of documented evidence* from [any of] the respondents that would contradict Appellant's facts and allegations [which are supported by the validated evidence in the record] showing the Dudeks had abandoned their sales contract, had no legal claim to the property after November 30, 2012, were denied financing at their own hand, and were never "ready, able and willing" to tender payment as *required* under the principles and laws of equity.

ARGUMENT

I. Appellant's arguments contained in its initial brief in regards to Bank Respondents are referenced and repeated herein

II. Appellant was denied its right to be fully heard in its Initial Brief

Appellant contends it was denied its motions to exceed the 50-page limit of its initial brief, therefore denying its right to fully argue or defend fully and completely in its brief, the 100 pages of orders, 40+ rulings, 18 causes of action and 10 respondents with varying levels of legal position. There are many issues Appellant was unable to argue or fully argue, being restricted, and without reason, to 50 pages to defend 100 pages of orders/rulings, therefore any alleged 'abandonment' or less than appropriate presentation of issues is due its denial of due process to be fully heard. (*see* Appellant's Motion(s) to exceed page limit and Appellant's 59(e) motion).

III. The Appellant's allegations are not fundamentally flawed and their dismissal is inappropriate

---

Morphew made a motion to compel the documents against the Dudeks, for they would not only have all material lending/banking docs and communications the bank respondents have, they would have all docs/communications including all co-respondents.

Bank Respondents claim Appellant's complaint is "*just another attempt to re-litigate the issue decided by Judge Chellis in the Original Litigation – namely, were Buyer Respondents entitled to specific performance? Judge Chellis ruled that yes, they were, and on appeal of that matter to this Court, this Court said yes. (Appellate Case No. 2014-002633).*"

First, the Bank Respondents argument, "the courts(s) say so... so it is so," fails. Just because a judge or this court says, yes, the Dudeks were entitled to specific performance, it doesn't mean they were. Changes in the evidence after the trial in the Original Action clearly demonstrate that by the principles of law and equity, the Dudeks were not entitled to specific performance. In fact, the Dudeks' "entitlement to specific performance" was based *solely* on false facts and evidence (specifically, all critical and material testimony and evidence provided or presented by any of the respondents to this case was a lie or misrepresented). Both the master and this court relied on the 'credibility' of the witnesses (here, the loan officer/bank/sales agent/sales agency) and any testimony or evidence they presented. Both the master and this court have refused to consider the lawful facts and evidence. Regardless, no court order or affirmation can make an expired sales contract or legal proceeding valid nor change the fact the Dudeks were denied lending and had no ability to compel the remedy of specific performance in 2012, or confer any court's jurisdiction or discretion to award or affirm the equitable remedy.

The validated evidence in the record, whether disclosed previously or not, changes the facts and legal positions of the respondents and the validity of the Order in-part: 1) the Dudeks had abandoned their sales contract and had no legal claim to the property at its *time is of the essence* sales contract expiration on November 30, 2012; 2) The Dudeks were refused/denied lending because they had no legal claim to the property (i.e., lack of a valid and negotiable sales contract); 3) The Dudeks and all respondents had no legal standing in the original action to demand a closing, repairs to the property or any action from the sellers, especially when there

was no mortgage application completed or accepted (i.e., no mortgage transaction in affect), and had no legal standing to prevent Morphew from performing her time is of the essence sales contract; 4) The Dudeks had no ability to compel specific performance; 5) the Dudeks had no ability to compel *any* remedy; 5) The Dudeks complaint is frivolous and/or unlawful; 6) Morphew has the only legal claim to the property; 7) the Order in-part awarding Specific performance to the Dudeks in the original action is void or void ab initio; 8) the Order in-part awarding Specific performance to Appellant is valid and legal; 9) the Dudeks are not bona fide purchasers.

Appellant does not believe the court was just misled by the Bank Respondents' testimony, but that that testimony is substantially liable for, if not all, to the unlawful retainer of the court's discretion to award specific performance in its clients' favor. In other words, without the bank respondents' false promises, conspiracy, perjury, forgery and misrepresentations, and non-disclosure of the Dudeks true financial status and why they were refused/denied lending, the Dudeks would not have been found 'entitled' to *any remedy,* especially to specific performance, where the master may not order the remedy unless the movants were 'ready, able and willing' to tender payment. These are facts in which the Bank Respondents had full and superior knowledge of and were required to disclose to the courts the Dudeks' legal claim to the property [or valid contract] and its' financial status in regards to obtaining mortgage credit as such disclosure was the *crux* of the original action. Contrary to the Bank Respondents argument, the fraud committed and non-disclosure is egregious on part of the Respondents when its' very actions *goes to the method of acquiring jurisdiction, the fraud appears on the face of the record or where fraud had been practiced in the very act of obtaining the judgment.* The master clearly relied substantially if not solely on the bank respondents' testimony to establish a valid and negotiable sales contract existed, and that the Dudeks' status to tender payment was 'ready, able and willing' as required before the master had any discretion to award the equitable remedy.

(Order, Nov. 6, 2014). Without it, Appellant's property would not have been taken from her [Morphew was also awarded specific performance], her due process would not have been violated, an unlawful judgment would not be awarded, public policy would not be violated, a grave injustice would not be required to be reversed, most likely fraud would not be upon the court(s), the Dudeks would not have ultimately and unlawfully obtained the property, and Appellant would not have lost her neighboring home she owned for more than 3 years previous to the Dudeks purchase of the property in question (*See* Trespass Upon Easement, Civil Action Case No. 2018-CP-18-1661) (where due their assault and destruction of the only waterline to Appellant's property, thus trespassing upon easement as contained in their sales contract, they left Appellant in a position where she was forced to sell her home at a loss in order to avoid the foreclosure process in affect in 2019). Further, the mass undue costs and stress on all parties would not have incurred. Ultimately, if even one respondent chose to tell the truth or disclose the Dudeks' denial of mortgage credit and why they were denied to the master in the original action, we wouldn't be in this position today and with several subsequent actions.

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. *Bishop v. Tolbert,* 249 S.C. 289, 299, 153 S.E.2d 912 (1967). In order for justice to be done between parties, a party is *required* to do equity when asking the court to invoke the aid of equity. *See Ingram v. Kasey's Assocs.,* 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (declining to grant a plaintiff's request for specific performance where the plaintiff misled the defendants)and (where Ingram failed to demonstrate that he was ready and willing to perform his part of the contract (i.e. willing to tender the purchase price) on February 28, 1994, the date the lease expired,

or on March 14, 1994, the date he brought the action for specific performance[2]. The record indicates that Ingram was not in a position to pay Kasey's the purchase price for Remy's on either date). As in *Ingram*, the record also indicates the Dudeks here were not in a position to pay the Ferros on either the date their contract expired, November 30, 2012, or on the date they brought their action for specific performance, January 15, 2013. In this instance and under the facts and circumstances, the master had no discretionary power to do so. Such order is Void in-part and the trial court can only deny the Dudeks specific performance, and vacate its judgment in their favor and any subsequent order arising, while this court may only vacate same and award damages and/or any other relief to Appellant in which this court finds appropriate. Appellant points out and argues this issue in her Reply Brief_Respondents Dudek, et.al, which is adopted by reference and repeated here. (Reply Brief_Dudek, et al, pg. p. 18-19).

Finally, the Bank Respondents claim even if Appellant's allegations could support a cause of action for fraud on the court, Appellant cannot recover damages caused by Bank Respondents' alleged fraud until the prior settlement is vacated, and because this court cannot disturb that settlement, Appellant cannot seek a remedy in the form of monetary damages. In its support Bank Respondents quote *George v. McClure*, 245 F.Supp. 2d 735, 740-41 (M.D.N.C. 2003) ("plaintiff cannot recover damages for fraud unless and until the judgment denying him the right to recover is vacated. ... Only if the prior settlement is vacated can Plaintiff recover damages caused by Defendant's alleged fraud. Because this court cannot disturb that settlement, Plaintiff cannot seek a remedy in the form of monetary damages."). First, Bank Respondents did not raise this issue nor was it litigated in the prior action. Therefore, not preserved for appeal.

If this courts finds their argument preserved or proper, *George* is substantially different

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

than the issue here. In *George,* the appellant entered into a settlement agreement at mediation and chose to forego discovery. While mediation was mandatory, settlement was not. By agreeing to a settlement and foregoing discovery, appellant chose his own award. There, appellant had full opportunity to discover any false statements concerning the financial assets of the partnership and the nonexistence of the Brown & Williamson project or to present his case at trial but chose a settlement instead. Unlike *George,* the original action was not a settlement agreement, Appellant went above and beyond its due diligence in the discovery process, and the issues presented here go beyond mere perjury or an agreement for an award [amount] based on a company's financial assets. Here, the Bank Respondents not only committed perjury at trial and in subpoenas, but misrepresented, forged financial documents and committed conspiracy, all unlawful actions that went to the very jurisdiction or discretion of the trial court and its lawful ability to award the remedy of specific performance. The discovered Bank Respondents' adverse and denial letters to the Dudeks, letters that were not disclosed prior to the trial, show a critical change in the legal position or standing of all respondents, that the Bank Respondents made false promises at trial and committed critical perjury and misrepresentation as to the financial position of the Dudeks, that the Dudeks abandoned their time is of the essence sales contract, the Dudeks' lack of legal claim to the property, the Dudeks' inability to legally compel specific performance, a void Order in-part, the lack of the master's jurisdiction or discretion to award specific performance in the Dudeks' favor, and the original action in-part was an invalid proceeding.

Based on these facts and the evidence in the record supporting these issues, this Court does indeed have the power to disturb the judgment in the original action awarding specific performance to the Dudeks. In fact, it may only vacate said judgment for a court cannot confer jurisdiction or discretion where none existed and cannot make a void proceeding valid. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties

or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. SCRCP Rule 60. *See Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or *lacking the inherent power to enter the particular order or judgment*, or *where the order was procured by fraud*, In re *Adoption of E.L.*, 733 N.E.2d 846, (Ill.App. 1 Dist. 2000). Void order may be attacked, either directly or collaterally, at any time. They are not "voidable", but simply "void"; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliot v. Piersol, 26 U.S. 328 (1828)*; Black's Law Dictionary, Sixth Edition, page 1574: Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092.

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

So, yes, the Bank Respondents, who had superior knowledge of the Dudeks' critical failures and breaches, including their lack of legal claim to the property in question, before and at trial but intentionally chose non-disclosure and instead to commit fraud and fraud on the court, are substantially liable for the undue damages, extensive costs, and stress to Appellant, including the loss of *both* the property in question and her neighboring home.

As a result, Appellant's allegations in its complaint are not fundamentally flawed as to the Bank Respondents therefore do not fail as a matter of law. Consequently, the trial court's rulings should be reversed.

IV. The Trial Court's dismissal of Appellant's Twelfth causes of action for Fraud was improper and should be reversed

Here, the Bank Respondents claim because the trial court ruled "Plaintiff pleads a claim of perjury rather than fraud" and that perjury is not an action for damages in a civil suit, therefore its cause of action does not exist.

As argued above and in its initial brief and repeated here, the false testimony or perjury is not the sole moving factor in the cause of action. Bank Respondents made assertions and false promises with an intent to deceive[3], including the Dudeks were ready, able and willing to tender payment, and they were extending mortgage credit to the Dudeks, which is extrinsic fraud in itself, notwithstanding their intentional non-disclosure of critically material facts, conspiracy, misrepresentations, and concoctions of unreal loan approvals or forgery, all which rise to the level of extrinsic fraud or fraud on the court as those actions went to the very core of the court's jurisdiction or discretion to award specific performance. Consequently, Appellant pleads fraud. (Complaint, para. 263, 93(a)-(k), 93(n), 93(w), 151-153, 204, 206, 230, 231, 234, 238, 265(a)-(b), 266(2), 266(7)-(8), 280, 281[4], 297, 299(all), 301(g)(i)(j), 302, 315). Second, their perjury was only part of the carrying out of a scheme to defraud Morphew out of her right to the property in which she was solely entitled and to commit fraud on the court to retain jurisdiction or obtain its discretion to award its clients specific performance, an award the Bank Respondents had a pecuniary interest in.

Just as important, the Respondents fail to present any case law which supports their argument, therefore it fails. In fact, the case they quote, *Frist v. Gallant*, 240 F.Supp. 827, 828 (D.S.C. 1965),

---

[3] "Assertion made with knowledge of falsity and intent to deceive" which is included in the twelfth cause of action.

[4] Where the Dudeks' October 22, 2012 approval letter from Bank Respondents presented at the original trial is a forgery and used to obtain the property in 2017.

supports Appellant. In *Frist*, "...*generally* a person who is damaged by perjured testimony in a civil suit does not have a cause of action for damages arising out of such perjured testimony. Regardless of the general rule as to perjured testimony, if, under the alleged circumstances of this case, plaintiff is able to establish all the necessary elements of fraud and deceit, the court feels strongly that she should have her day in court to seek redress for such alleged wrongful conduct, as her cause of action is based on more than the mere giving of perjured testimony." *Frist v. Gallant*, 240 F.Supp. 827, 828 (D.S.C. 1965) (quoting 41 Am.Jur. § 81 at page 45, "....it is apparently well settled that where the giving of false testimony is only a part of the carrying out of a scheme to defraud the plaintiff by means of the combination, fraud, and deceit of the defendants, an action will lie for damages.).

In this case, as in *Frist,* Appellant establishes fraud and deceit. Additionally, its complaint also accuses the Bank Respondents of "allegedly conspiring to give, and of giving, false and fraudulent testimony in that judicial proceeding, with a purposeful and preconceived intent to defraud plaintiff [of its entitlement to her property and a fair and lawful Order]. Under the circumstances here it would appear that the public policy considerations, which form the basis for denying causes of action based upon perjured testimony, are overshadowed by the public interest behind the right to civil redress of this [Appellant], who allegedly has been wronged by the successful execution of a conspiracy, even though the success of such alleged scheme was based primarily upon the use of false testimony." *Frist, supra.*

Based on the arguments in its initial brief and above, dismissal of this cause of action was improper and should be reversed.

V. The Trial Court's dismissal of Appellant's Tenth cause of action for Breach of Fiduciary Duty was improper and should be reversed

Dismissal of Appellant's Tenth cause of action should be reversed as argued in its initial brief, which is adopted by reference here. (Brief, pg. 46-47).

Bank Respondents contend Appellant failed in its initial brief to counter the trial court's assertions 'that because Morphew was not a party to the loan or the mortgage transaction there

could be no duty owed to her and no fiduciary relationship created between First Federal, its agents or employees and Morphew'. First, Appellant's brief did not only include itself as a duty owed but argued Bank Respondents also had a duty to disclose or a fiduciary duty to the courts to speak the truth and disclose the financial status of the Dudeks, as the financial status or ability to tender payment was the crux of the cases and directly affected the Dudeks' legal position and/or their ability to compel specific performance, the jurisdiction and discretion of the court to order the equitable remedy of specific performance in the Dudeks' favor, appellant's rights, due process, and public policy.

Due to the facts and circumstances, and that South Carolina does not particularly define instances of fiduciary relationships, as other or new cases might be excluded, Appellant contends a duty to disclose or a fiduciary relationship is applicable here as the courts, the Defendants/sellers Ferro and Appellant reposed a trust in the Bank Respondents to disclose the truth, as all litigants' legal positions and the trial court's discretion and jurisdiction was effected. As a result of the Bank Respondents' failure to disclose, combined with their misrepresentations, false statements and promises, forgery of financial documents and conspiracy, an unlawful judgment (i.e., void) was issued and the Dudeks eventually obtained the property unlawfully or fraudulently. In turn, Appellant, who has sole legal right to the property, was denied her property and that property was taken from her unlawfully. Notwithstanding the undue costs, time, effort and stress to defend her rights and property. As professionals and lender, and in the best position to know the Duedeks' financial position or Dudeks' ability to tender payment, puts the Bank Respondents in a superior position to the courts and litigants and such position allowed them to exercise substantial and critical influence over the trial judge and/or all litigants. It is obvious the Bank Respondents were not acting in the best interest of the courts, Appellant or Defendants Ferro, but instead for themselves. They had a pecuniary interest in the transaction, therefore a ruling in their clients' favor was in their best interest. It's also obvious they thought they'd never get caught or called out

in a legal proceeding, for why else would a federally insured bank, and not litigants, lie in multiple subpoenas (subpoenas/ responses R.____) which they had a duty to disclose, and then commit perjury, forgery, misrepresentations, non-disclosure and conspiracy in a court of equity proceeding just so their clients would appear to have the ability to compel specific performance in order to obtain the court's discretion and jurisdiction to order the equitable remedy in its clients' favor. Once that order was retained, they obviously felt justified to ignore the fact that they themselves denied the same clients mortgage credit due the very same invalid and expired sales contract and proceed with a closing, feeling secure once its clients' closed it would be all over, therefore "no harm, no foul."

Further, Bank Respondents fail to present a case even remotely similar to this instant case that supports its argument, or that would expressly exclude a fiduciary relationship or prevent a new creation of one, or a duty to disclose.

Due to the above and arguments in Appellant's Initial Brief, dismissal of Appellant's Tenth cause of action should be reversed.

VI. The Trial Court's dismissal of Appellant's Thirteenth cause of action for Declaratory Judgment was improper and should be reversed

Bank Respondents argue because they are not parties to the sales contract therefore are not a party necessary to the determination or declaration "*that all times material, no sales contract existed or exists between the Dudeks and Defendants Ferro (sellers)*", therefore dismissal of this cause of action should be upheld.

Bank Respondents did not raise nor did the trial court adjudicate this defense, therefore it is not preserved for appeal. Even so, again Bank Respondents fail to present a case to support or an argument that would make any sense why they should not be included, for in this case the Bank Respondents *specifically* refused them mortgage credit for the property in question *due to their*

failure to have a valid and negotiable sales contract at initial application, a failure that was never remedied. (10-day adverse ltr./Denial letters R. ___). Since the Bank Respondents refused them lending for this very reason, they are in fact *the* party necessary to such a determination or declaration.

Bank Respondents also claim that res judicata and claim preclusion dismisses this action, and that the legitimacy of the sales contract has been litigated on numerous occasions. First, the legitimacy of the sales contract has not been litigated AND adjudicated at any time. Though the Respondents call out several cases, they point to no ruling or *valid* ruling by the trial court or this court that specifically considered the true facts and evidence in the record and specifically ruled on the legitimacy of the Dudek sales contract. More important, the Dudeks *were denied financing because they had no valid and negotiable sales contract* (R.___). Based on this reason alone, the invalidity of the sales contract at all times material cannot be denied.

Finally, as argued in Appellant's initial brief and repeated herein, even if this issue was litigated, and regardless of party identity, both res judicata and claim preclusion are not binding and preclusive to a judgment based on fraud or on fraud on the court, an abandoned/expired sales contract, a court's lack of discretion or jurisdiction, or void orders; and res judicata cannot affirm unlawful or void rulings.

Based on the above and the arguments in Appellant's initial brief, dismissal of Appellant's Thirteenth cause of action should be reversed.

VII. The Trial Court's grant of summary judgment as to the Appellant's first cause of action for Fraud and Fraud on the court was improper and should be reversed

As argued in its initial brief and repeated herein, Appellant raises a void order in-part and the very legitimacy of the judgment granting specific performance to the Dudeks, which is fraud on the court. (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)). (*See* Appellant Brief, pg. 10-17).

Even so, that Morphew alleges attorney of suborning of perjury and concealing documents is enough for a claim for extrinsic fraud and the trial court's dismissal was improper and should be reversed. *Raby Const., LLP v. Orr*, 358 S.C.10, 594 S.E.2d 478 (2004): (We recognize that *Chewning* was not a Rule 60 matter, but instead was an independent action for fraud upon the court. In that case, we found that where the attorney allegedly suborned perjury and concealed documents, a claim for extrinsic fraud had been sufficiently stated).

Even so, without restating the arguments which have been thoroughly set forth in its initial brief, Appellant incorporates pages 25-29 herein, but also adds for clarification that neither Appellant nor its attorney was provided the critically material concealed documents prior to trial in the original action. In fact, he material facts and evidence the Dudeks were *denied mortgage credit for failure to have a legal claim to the property* was not provided to Appellant or co-appellants in the original action before trial or disclosed at trial. (Morphew Deposition pg. 52, -56; pg. 124); (10-day adverse letter Jan. 3, 2013; Statement of denial/FF review denying mortgage credit Jan. 23, 2013; denial letters January 31, 2013). Further, Appellant has shown its failure to discover these facts and evidence before trial was not due to lack of due diligence on her 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).

The Respondents also contend its false and/or misleading information in response to the subpoenas, and its false testimony and or misrepresentations is not egregarious. In this statement it admits it intentionally provided false and/or misleading information in response to the

subpoenas, and false testimony and/or misrepresentations [at trial], but also fail to include forged financial documents, false promises and conspiracy. Regardless, as argued above and repeated herein (pg. 4-11), their fraud, unlawful actions and/or non-disclosure is particularly and substantially egregarious and constitutes fraud on the court.

Based on the above and Appellant's initial brief, the Trial Court's grant of summary judgment as to Fraud and Fraud on the court should be reversed.

VIII. The Trial Court's grant of summary judgment as to the Appellant's claim of conspiracy was improper and should be reversed

Bank Respondents only argument is that Appellant failed to show special damages, therefore the trial court's judgment was proper. As argued in its initial brief pages 37-38 and repeated herein, all respondents' conspiracy to commit fraud has *further led* to the Dudeks unlawfully obtaining and possessing the property, trespassing, trespassing upon an easement contained within their sales contract used to purchase the property[5], and assault upon Appellant's neighboring property and home she purchased years before the Dudeks' purchase, and the loss of same, all with substantial costs, time and stress involved. These damages above are beyond the damages alleged in its complaint (Civil Case #2018-CP-1661 Morphew v. Dudeks). Contrary to Bank Respondents' argument, these are not "a recital of the damages claimed in Appellant's complaint,"[6] but are special damages occurred as 'continuing fraud.'

Regardless, even where a plaintiff seeking recovery in an action for conspiracy fails to prove a conspiracy or concerted design, he may still recover damages against a defendant proven to be guilty of a tort alleged to be the object of the conspiracy; the allegations of the conspiracy

[5] Proving Trespass, *See* S.C. District Court Case No.: 2:19-cv-03237-DCN Stephen Dudek, et al v. Commonwealth Land Title Insurance Co.

[6] The complaint is dated August 24, 2016 while the new damages occurred from April 2018-March 2020.

are considered as mere surplusage. *Goble v. American Ry. Express Co.*, 124 S.C. 19, 115 S.E. 900 (1923). Based on the above, this court should reverse the granting of summary judgment as to the conspiracy claim.

IX. The Trial Court's grant of summary judgment as to the Appellant's claim of Intentional Infliction of Emotional distress was improper and should be reversed

The Bank Respondents claim their conduct occurred within the four walls of the courtroom, therefore Appellant cannot make a claim for intentional infliction of emotional distress, basing their support on litigation privilege. Their argument fails as litigation privilege generally only extends to defamatory communications involving litigants or other participants in a trial authorized by law. 53 C.J.S Libel & Slander §72 at 132 (1987). The defamatory communications must be made during or prior to a judicial proceeding and have some connection or logical relation to that proceeding. Id. Litigation privilege extends to out-of-court communications between opposing counsel, between attorneys and their clients, and between attorneys representing different plaintiffs in lawsuits against the same defendant. In its brief, the respondents present two (2) cases, *Peterson v. Ballard* and *Pond Place Partners, Inc. v. Poole*, both which have no bearing to this case, as those cases are violation of LAD[7] and its alleged intentional infliction of emotional distress; and defamation and its alleged intentional infliction of emotional distress, respectively. In this instant case, litigation privilege does not apply as the Bank Respondents committed fraud, unlawful acts and failed to disclose critically material facts and documents regarding the financial/lending status of an opposing litigant compelling specific performance, thus resulting in an unlawful order in-part. Their actions resulted in inflicting emotional distress on Appellant due her efforts to protect her property and right the injustice. Also,

[7] New Jersey Law that prohibits unlawful discrimination in employment, housing, places of public accommodation, credit and business contracts.

see damages outlined above, pg. 16, which to any normal layperson leads to substantial emotional distress. Such is a question for the jury.

Contrary to Bank Respondents argument, and as presented above, Appellant has never suggested 'the Bank Respondents intentionally inflicted emotional distress *during* a court proceeding', therefore their argument fails.

Bank Respondents also attempt to diminish their fraudulent and unlawful actions and non-actions to be less than outrageous by arguing Appellant failed to allege or provide any evidence indicating outrageous conduct or emotional distress. Deciding whether their fraudulent conduct is outrageous, especially considering they were just a witness and not a litigant in the original action, or whether 7 years of litigation, most pro se, including appeals, loss of both her homes, and *substantial* undue costs, time and effort substantiates as emotional distress to the layman is for a jury to decide. As argued in Appellant's initial brief and repeated here, the unlawful procurement of the Order has subsequently caused Appellant, including but not limited to, the loss of both her homes, an unlawful ejectment, and *substantial* undue costs, time and effort to defend or right an injustice, including the sheer frustration with the courts' clear bias against Appellant (R.___) in their attempts to skirt the lawful facts and evidence and just 'end the case(s)'. Its' apparent it would be much easier to do so then to unravel the mess the Bank Respondents and co-respondents are completely responsible for. Such raises a genuine issue of material fact of liability for the jury to decide, plus as to whether its "emotional distress" is "sufficiently severe". Regardless, there are many material questions in fact that remain, and the Respondents are in pari delicto and are in no position to request relief when they caused or clearly could have prevented the issues upon this court today, therefore Summary Judgment is improper and must be reversed or vacated.

X. The Trial Court's grant of summary judgment as to the Appellant's claim of Tortious Interference with Contractual Relations was improper and should be reversed

For fact, and as argued in its initial brief pg. 34-35 and repeated herein, at all times material, Appellant had then, and has now, the *sole* legal claim to the property in question. The Dudeks sales contract had expired on November 30, 2012, consequently at all times material, they had no legal claim to the property. The Dudeks were denied/refused lending because they had no legal claim to the property (i.e., no valid and negotiable sales contract) and could not complete their application (10-day adverse letters; denial letters). These facts are uncontested.

Whether or not Appellant's contract was a "backup contract" is moot. Due the Dudeks' abandonment/expiration of their *time is of the essence* sales contract, their lack of legal standing to compel specific performance (or any remedy), lack of 'ready, able and willing', that no legal mortgage transaction was in existence, and the master's lack of discretion or jurisdiction to order the equitable remedy in favor of the Dudeks (hence a void order in-part), the Dudeks proceeding in the original action is void/invalid, and no court or court order can confer jurisdiction where none existed and cannot make a void proceeding valid. Appellant points out this issue in its reply brief (Respondent Collins), which is adopted by reference (Appellant Reply Brief Collins, pg. 17).

The Bank Respondents, and its co-respondents, had full and complete knowledge of these facts, as evidenced in the record. The Bank Respondents intentional fraud, perjury, misrepresentations, non-disclosure, false promises, forgery and conspiracy prevented Appellant and the Defendant/sellers Ferro from performing the Morphew sales contract, therefore its breach.

The Bank Respondents, with a surprising amount of gall, attempt to convince this court that their actions or non-actions during a court proceeding (i.e., false statements, perjury, false promises, misrepresentations, forgery, conspiracy, non-disclosure of critically material facts in regards to the legal position of themselves, their client and Appellant, notwithstanding the jurisdiction or discretion of the trial court) "*did not extend beyond ordinary business practices*".

Just the fact the Bank Respondents denied them mortgage credit for the very reason no valid sales contract existed, then came to court and testified to the contrary and presenting forged financial documents defeats their argument. Let alone the fact there was no contractual rights to pursue. Even so, that is a question for the jury, whether such fraud and deceit would be considered 'ordinary business practices.' Appellant, who was a bank employee for over 15 years, including account services and loan packaging, knows for a fact any type of fraud or deceit, especially during a court proceeding, is not ordinary banking practices.

The Bank Respondents had a duty to disclose and speak the truth and nothing but the truth in its testimony, as all witnesses are required to do. Anything less is perjury. These Bank Respondents should be held accountable, as their perjury and non-disclosure was critically material and went to the very core of the case and to the legal position of all litigants and the court(s), resulting in an order in-part being clearly erroneous and unlawful. Consequently, the unlawful judgment they took part in obtaining with their fraud unjustifiably took property away from the sole legal claimant and *knowingly* gave it those who had *no legal claim* or remedy available to obtain the property. The unlawful or void judgment violates Appellant's constitutional rights and due process of law (which includes a lawful order). The Bank Respondents intentionally and tortuously interfered with the Morphew/Ferro sales contract.

Appellant's contract is the only and primary contract. It's award of specific performance in 2014 is valid and is the *only* valid judgment in the Order of November 6, 2014. Consequently, all subsequent orders or judgments that arise from the void or unlawful judgment awarding specific performance to the Dudeks is also void and must be reversed.

For all these reasons, the trial court's award of summary judgment as to the cause of action for Tortious Interference with Contractual Relations should or must be reversed.

XI. The Trial Court's grant of summary judgment while discovery was pending, and declaring Appellant's motions to compel discovery as moot, was improper and should be reversed

Overall, Respondents present that any additional discovery, as in Appellant's many motions to compel discovery, would be moot or would not develop her case any further; therefore, the court standard to deny summary judgment until discovery is completed is irrelevant.

> Rule 56(c) of the Federal Rules of Civil Procedure provides that 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 a judgment as a matter of law."

Appellant has raised many disputed and material questions, several critical to this action and the original action, but the trial court ignored its arguments. (Plaintiff Response to Defendants First Federal and Allison Williams Mtn. SJ, Sept. 27, 2018).

One critical material question of fact raised in its response[8] and in the requests for discovery that is clearly disputed and that affects the outcome of the original action and this action, is the question of the validity of the Dudek time is of the essence sales contract or if at all times material the same contract was invalid and non-negotiable therefore rendering the original action in part to the Dudek proceeding invalid or void. Further, that material question of fact changes the validity of the order in-part of November 6, 2012 and the validity of the proceeding in-part in which that order was rendered, the legal position: 1) of the courts, including this court, and what it may do under the circumstances; 2) the Appellant and its sales contract [rendering Appellant the sole legal claimant to the property and its sales contract primary]; 3) the legal position of all respondents, a)

[8] Plaintiff Response to Resp. Mtn. SJ, Sept. 27, 2018 pg. 7, para. 2

Dudeks, (no legal claim to property and are not bona fide purchaser but trespassers[9], mortgage fraud, criminal actions for perjury, misrepresentation, conspiracy and forgery b) Bank Respondents (legal standing, mortgage fraud, criminal actions for perjury, misrepresentation, conspiracy and forgery), c) Wooddy-Boyer (legal standing, actions to the ABA [Disciplinary Enforcement] Rule 10, criminal action for conspiracy), d) David Collins (Lawyer Disciplinary Enforcement, fraud on the court, criminal actions for perjury, misrepresentation, conspiracy and forgery), e) Carolina One-Nicholson-Scarafile (legal standing, mortgage fraud, criminal actions for perjury, misrepresentation, and conspiracy).

Another question, but a question for the jury, is whether the prior ruling of the trial court that the perjury committed by the Respondents is only intrinsic, or if it rises to the level of extrinsic fraud, especially considering forgery of mortgage/financial documents, non-disclosure of *critically* material facts and documents, the suborning of perjury and non-disclosure of *critically* material facts and documents. (Plaintiff's Response to Resp. Mtn. SJ, Sept. 27, 2018 pg. 10, para. 4) (Complaint, para. 263, 93(a)-(k), 93(n), 93(w), 151-153, 204, 206, 230, 231, 234, 238, 265(a)-(b), 266(2), 266(7)-(8), 280, 281[10], 297, 299(all), 301(g)(i)(j), 302, 315).

Respondents attempt to present that a clip from Appellant's deposition in an attempt to show Appellant admitted she had the material evidence of the fraud before trial. Morphew clearly testifies she does not know what or if any financial documents were delivered before trial, but that the denial letters making clear the Respondent's sales contract was not valid and negotiable when

[9] Which adds additional torts or actions to Morphew's subsequent action for Trespass Upon Easement (Civil Case No. 2018-CP-1661 Morphew v. Dudeks), additional remedies in this case and/or a subsequent action or criminal action.

[10] Where the Dudeks' October 22, 2012 approval letter from Respondents Bank presented at the original trial is a forgery and used to obtain the property in 2017.

it expired on November 30, 2012 was not provided. (Plaintiff's Response to Resp. Mtn. SJ, Sept. 27, 2018 pg. 34, para. 4)(Morphew depo. (Depot. Pg. 52-56; pg. 124).

Regardless, due the evidence in the record, the fact a void order in –part was issued and that the courts(s)' lacked jurisdiction or discretion to render or affirm the order of specific performance in favor of the Dudeks, renders the granting of summary judgment improper.

Additionally, and as argued in its initial brief and reply brief referenced herein, the trial Court in this case, in error, decided a few of the motions presented were dispositive for summary judgment, therefore all other pending motions, including Appellant's three (3) motions to compel discovery [issued before discovery ended pursuant scheduling order] were moot. Due pending requests for admissions, combined with the Bank Respondents failure to present admissible evidence in support of *each undisputed material fact* necessary to entity them to judgment (or adjudication of the issue) in their favor, Appellant was denied its right to set issues to rest of things that cannot reasonably be controverted, thus denying its due process. Second, neither the trial court nor the Bank Respondents can determine if the discovery compelled would be irrelevant or moot, especially when the discovery would substantiate extrinsic fraud and continuing fraud, such as mortgage fraud, or reveal the identity of expert witnesses the opposing party expects to call at trial. By declaring the discovery motions moot, and not compelling the pending discovery first, the trial court failed to give Appellant its full opportunity to pursue or complete merits discovery. Additionally, the court's refusal to allow discovery as compelled only violates Appellant's due process to present her case fully and prevents her from developing potential remedies for recovery pending discovery may reveal.

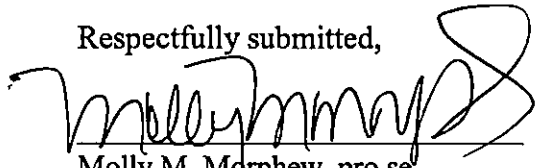
Given that, (1) the trial court erred when it assumed that pending merits discovery was 'moot', (2) Morphew was not at fault in the respondents failure to provide discovery on the merits;

and (3) the outstanding admissions and document requests were sufficient to inform the trial court that further discovery was needed, and in the absence of a waiver, summary judgment is appropriate only after Appellant has had a full opportunity to conduct discovery, it was premature for the trial court to dismiss the case against the Appellant without first permitting discovery on the merits.

CONCLUSION

Based on the above, and arguments in Appellant's initial brief and other Appellant reply briefs in this appeal, the trial court can only deny the Dudeks specific performance and vacate its judgment in their favor and any subsequent order arising from. In turn, 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 the 2nd appeal in the original action, and now the Appellate Court may only vacate the Order in-part 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 Appellant in which this court finds appropriate. Further, for all the reasons set forth herein, the grant of Bank Respondents' motions to dismiss, and the granting of summary judgment as a matter of law in this case to the Respondents, is improper and should be reversed.

Respectfully submitted,



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

November 5, 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, Wooddy Law Firm, Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Appellant's Reply Brief - Respondents First Federal and Allison Williams complies with Rule 208(b).

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

November 5, 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, Wooddy Law Firm, Respondents.

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served 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:

Amy Hill, Esq.
P.O. Box 7368
Columbia, SC 29202

November 6, 2020

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

November 5, 2020

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

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

Dear Ms. Kitchings:

Please find enclosed APPELLANT'S REPLY BRIEF- RESPONDENTS FIRST FEDERAL AND ALLISON WILLIAMS, 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.
Steven L. Smith, Esq.
David A. Collins, pro se

P

usps.com
$7.75
US POSTAGE
Flat Rate Env

9405 5036 9930 0117 9162 17 0077 5000 0032 9201

11/06/2020 Mailed from 31326 062S0000001307

PRIORITY MAIL 2-DAY™

MOLLY MORPHEW
121 STERLING DR
RINCON GA 31326-9425

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

Carrier -- Leave if No Response

C076

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

USPS TRACKING

9405 5036 9930 0117 9162 17

Electronic Rate Approved #038555749