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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2018-000507

Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross Respondents.

RECORD ON APPEAL

Samuel Melvil Wheeler, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents

Molly M Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

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001

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew

2014 NOV -6 PM 12:58

CLERK OF COURT
DORCHESTER COUNTY

Thomas Ferro
Stephen Dudek

Lorraine Ferro
Doreen Craig

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Jerry E. Lucas — 3078 — 11/6/2014

Master in Equity — Judge Code — Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

002

For Clerk of Court Office Use Only

This judgment was entered on **November 6, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **November 6, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

John A. Massalon PO Box 859 Charleston, SC 29402

David A. Collins PO Box 40578 Charleston, SC 29423
Thomas Ferro 788 East Butternut Road Summerville, SC 29483
Lorraine Ferro 788 East Butternut Road Summerville, SC 29483

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl J. Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
EQUITY DIVISION

Civil Action No.: 2013CP1800074
consolidated with Civil Action No. 2013CP1800183

Stephen Dudek, Doreen Cross,
Plaintiffs

Versus

Thomas M Ferro, and Lorraine B Ferro,
Defendants

AND

Molly M Morphew,
Plaintiff

Versus

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro,
Defendants

ORDER

FILED
2014 NOV -5 PM 12:57
DORCHESTER COUNTY

Presiding Judge: James E. Chellis
Master in Equity

June 11, 2014 and Thursday, June 12, 2014

Appearances:

For Plaintiff Morphew:
Wills Massalon & Allen, LLC
John A. Massalon, Esquire
97 Broad Street
P. O. Box 859
Charleston, South Carolina 29402

For Defendants :Dudek & Cross
Law Firm of David A. Collins, LLC
David A. Collins, Esquire
P. O. Box 40578
Charleston, South Carolina 29423

Defendants:
Thomas M Ferro and Lorraine B Ferro,
Defendants,
Pro Se

Emily R. Mirek, Court Reporter and Notary Public

PREFACE

This is a breach of contract action. Plaintiff Morphew seeks enforcement of a contract for the purchase of real estate she entered into with Defendants Ferro on December 16, 2012 (the Morphew Contract). Defendants Dudek and Cross seek enforcement of a contract for the purchase of real estate they entered into with Defendants Ferro on October 23, 2012 (the Dudek/Cross Contract). The real property described in each contract is the same. It consists of a residential property on 6.006 acres near Summerville (the Real Property) Plaintiff's Exhibit 23, cf. endnote 10). All parties agree the residential real property is unique. All Parties agree both contracts are unambiguous.

Plaintiff Morphew and Defendants Ferro assert the latter contract, the first contract, is not enforceable. Plaintiff Morphew and Defendants Ferro assert Defendants Dudek and Cross failed to meet conditions of their contract in a timely manner. Plaintiff Morphew alternatively seeks damages against Defendants Ferro on breach of the Morphew Contract should the Court direct the specific performance of Dudek/Cross Contract. Hence, Defendants Ferro champion the Morphew Contract. As such, Plaintiff Morphew and Defendants Ferro have consistent positions on the Dudek/Cross Contract. The latter consistent positions diverge on the issue of Defendants Ferro's breach of the Morphew Contract.

This Court finds Plaintiff Morphew and Defendants Ferro consistent position untenable. The Dudek/Cross Contract is enforceable. This Court will order specific performance of that contract. The Morphew Contract is contingent on termination of the Dudek/Cross Contract. Hence, this Court will declare that contract enforceable only if Defendants Dudek and Cross fail to complete the performance of the Dudek/Cross Contract as ordered by this Court. Since the Dudek/Cross Contract is enforceable subject to conditions, this Court will fashion the remedy of specific performance giving due regard to the conditions. the time for completion of which will need to be reset, since the conditions are reasonably designed to protect all parties to the Contract. Plaintiff Morphew has a conditional contract that is not enforceable unless Defendants Dudek and Cross elect to terminate the contract as directed to be specifically performed. The Court's analysis follows.

GUIDING PRINCIPALS OF LAW & EQUITY

This Court is guided by many principals of law and equity. These guides include the following:

1. It is not the province of the courts to construe contracts broader than the parties have elected to make them or to award benefits where none was [sic] intended. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 151, 533 S.E.2d 597, 601 (2000).
2. The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous. *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 503, 503 (2003).
3. The law by which a contract is to be governed, is resolved into the terms whereby it is entered into; provided that the contract be consistent with morality and not repugnant to law or the principles of public policy. *Satterwhite's Adm'rs v. McKie*, 16 S.C.L. 397, 398 (S.C. Const. App. 1824).
4. Where a contract's language is plain and unambiguous, the language used by the parties "determines the instrument's force and effect." *Jordan v. Sec. Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).
5. A court reviewing a written contract must discern:
   [T]he intention of the parties and the meaning[, which] are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945); *see also ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct.App.2011) ("It is not the function of the court to rewrite contracts for parties."). "Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012).
6. If a promisor prevents or hinders the occurrence of a condition, or the performance of a return promise, and the condition would have occurred or the performance of the return promise been rendered except for such prevention or hindrance, the condition is excused, and the actual or threatened nonperformance of the return promise does not discharge the promisor's duty, unless (a) the prevention or hindrance by the promisor is caused or justified by the conduct or pecuniary circumstances of the other party; or (b) the terms of

the contract are such that the risk of such prevention or hindrance as occurs is assumed by the other party. Restatement (First) of Contracts § 295 (1932)

7. Impracticability excuses the non-occurrence of a condition if the occurrence of the condition is not a material part of the agreed exchange and forfeiture would otherwise result. Restatement (Second) of Contracts § 271 (1981).
8. Waiver is the voluntary and intentional relinquishment of a known right. *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387. It may be implied from circumstances indicating an intent to waive. *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981); *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Ct.App.1987). Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver. *Bonnette*, 282 S.E.2d 597. *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928-29 (Ct. App. 1994).
9. In the construction of a contract, the intention of the parties to be collected from the instrument, (if in writing,) should be constantly in view, and in their performance, good faith and fair dealing is always required. And from hence, [the Court] deduce[s] the rule that when a contract stipulates for the performance of a condition on the event of a contingency, the occurrence of which must be known to one of the parties, but not necessarily known to the other, it is the duty of him to whom it is known to give notice of it to the other. . . . *Birdseye v. Davis*, 13 S.C.L. 296, 298, 297-98 (S.C. Const. App. 1822).
10. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. *Restatement (Second) of Contracts § 205 (1981).*
11. The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case." *Guignard v. Atkins*, 282 S.C. 61, 64, 317 S.E.2d 137, 140 (Ct.App.1984); *accord Bishop v. Tolbert*, 249 S.C. 289, 298, 153 S.E.2d 912, 917 (1967) ("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."). "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct.App.1985). "[S]pecific performance ... is only available to enforce a contract that is fair, just, and equitable." *Hodge v. Shea*, 252 S.C. 601, 612, 168 S.E.2d 82, 87 (1969). "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291. *Campbell v. Carr*, 361 S.C. 258, 263-64, 603 S.E.2d 625, 627-28 (Ct. App. 2004).

FINDINGS OF FACT

1. The Dudek/Cross Contract is a conditional contract. Four conditions[1] are in the "printed matter" of the Contract. The parties agree these conditions require that "TIME IS OF THE ESSENCE." These conditions are found in Paragraph 3[2]; Paragraph 8;[3] Paragraph 12;[4] and Paragraph 19: Condition of Property (B. Inspection[5]) and (D. Wood Infestation[6]).

2. Ten conditions are set out in the Paragraph 29 Contingencies[7]. Notably, these ten conditions do not provide that time is of the essence. Moreover, these stipulations preempt the printed matter. These ten conditions are stated in three separate addenda, entitled Addendum A[8], Addendum B[9] and Addendum C[10].

3. The intention of the parties and the meaning of the Dudek/Cross Contract can be gathered primarily from the contents of the writing itself. In other words, this Court finds that the Dudek/Cross Contract is clear and unequivocal from the four corners of the instrument. This Court finds that the intent of the parties is the sale and purchase of the Real Property. Even though the conditions, in the stipulated contingencies, do not expressly require that time is of the essence, these stipulations do not materially discharge the time of the essence provisions. The parties intended that this transaction would occur on or before a date certain, specifically, November 30, 2012. The Dudek/Cross Contract's meaning is determined by the Contract's contents alone. This meaning is express. This Court finds the Dudek/Cross Contract is clear and capable of legal interpretation. Thus, this Court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. See, *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012).

4. The meaning[11] of the Dudek and Cross Contract is to give effect to the sale and purchase of the Real Property, a unique residential real property. This objective, i.e., to give effect to the intentions of the parties, culminates at that point in time when Defendants Ferro deliver a deed of conveyance[12] to Defendants Dudek and Cross in exchange for the purchase price. The purchase price is Three Hundred Three Thousand Dollars ($303,000.00). Defendants Ferro agree to pay Five Thousand Dollars ($5,000.00) of Defendants Dudek and Cross' closing costs.

5. Paragraph 6 of the Contract provides: "Purchase price shall be paid as follows: ■ Subject to financing. Financing to be obtained by ■ Conventional." Cross testified she and Dudek were

prepared to pay 20% of the purchase price in cash, financing 80% with a conventional residential loan.

6. Paragraph 3's closing date condition is dependent on successful completion of all of the conditions. This condition cannot be enforced until Defendants Dudek and Cross can deliver to Defendants Ferro the purchase price, discussed *infra*. Additionally, Defendants Dudek and Cross are not obligated to deliver the purchase price until Defendants Ferro perform the conditions for which they are responsible[13].

7. Defendants Ferro rely heavily on the failure of Defendants Dudek and Cross to have performed under Paragraph 8. A review of the condition reveals that the obligation to provide written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in the contract, is impossible. No other provision in the Dudek/Cross Contract alters the obligation to provide written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions.

8. Defendants Dudek and Cross's loan officer testified that the conventional residential loan is subject to rules and regulation. Her testimony indicates her financial institution has loan criteria that change. This testimony infers these rules and regulations are also banking regulations. She stated the regulations change from time to time. She testified that her financial institution provides pre-authorized loan approvals upon a potential borrower's successful application for an approval of residential financing. She testified pre-approval loan letters contain conditions that cannot be changed. She testified pre-approved loans evolve into loan applications. Her testimony established that pre-approved loan applications become loan applications when a specific property is identified. Her testimony also established that a signed application is not necessary for a loan officer to begin initiating the lender's processing. She testified that loan applications, if the potential borrower meets the loan processing conditions, thereafter evolve into loan commitments. She testified loan commitments contain conditions. Further, her testimony that a loan commitment for a conventional residential loan will always be subject to conditions; such as, the borrower's assets and liabilities remain substantially the same as they were at the time of the loan's application[14], continued verification of employment, mortgagee title insurance, free of liens and encumbrances, except those acceptable to the lender, *et. cet.*, (Plaintiff Exhibit 16, generally, and specifically, Residential Loan Commitment,

12/12/12). This testimony and documentary evidence is consistent with this Court taking judicial notice of the fact that conventional residential loan approvals without conditions are impossible to achieve.

9. Plaintiff Morphew and Defendants Ferro assert Defendants Dudek and Cross failed to perform this condition. This Court finds that an unconditional loan approval as described in Paragraph 8 is impossible[15] to achieve. In fact, an unconditional commitment for a conventional residential loan is impossible. A conventional residential loan commitment is subject to conditions. The legal effect of this impossibility is to excuse the condition. Hence, the culmination of the transaction on or before November 30, 2012 is excused.

10. The Court however finds that the temporal condition that TIME IS OF THE ESSENCE cannot be ignored altogether because the intent of the Dudek/Cross Contract was to complete the transaction with TIME IS OF THE ESSENCE. Notably, this Court finds the term is a mutual condition that conversely infers mutual benefits. The Contract created conditions for both parties to observe the resounding term, TIME IS OF THE ESSENCE[16]. In fact, Defendant Cross testified she immediately ordered a home inspection upon completion of the executed contract. (Transcript page 35, line 20). This act demonstrates Defendants Dudek and Cross understood the intent and meaning of the Dudek/Cross Contract.

11. The evidence reveals that Dudek and Cross had a completed home inspection by November 3, 2012. On that date, the evidence reveals Dudek and Cross provided Defendants Ferro a detailed list of critical concerns. The first of which embodies four points concerning the structural integrity[17] of the residence[18]. Additional critical concerns include plumbing water damage (6 points), moisture control (4 points), electrical issues (6 points), safety (4 points), utility maintenance (2 points), and four miscellaneous points. (Plaintiff's Exhibit 5; Transcript page 36, lines 5-8).

12. The Court finds Defendants Dudek and Cross detail of problems they wanted addressed consistent with their rights under the contract (Plaintiff's Exhibit 3, Dudek/Cross Contract Addendum A, Item 1) and infers they acted on the condition time is of the essence to achieve the November 30, 2012 closing date. Moreover, development of the critical concerns list and notifying Defendants Ferro within 10 days of the execution date of the contract supports this Court finding Defendants Dudek and Cross acted with good faith were dealing fairly with

Defendants Ferro. The detail of critical concerns establishes the importance of clear communication to avoid delays that poor communication invariably creates. The Defendant Cross testified Mr. Ferro's reply was a "few simple lines" indicating that he would take care of the structural problems, the electrical problems, would make sure that the bath leak in his bathroom was repaired, the floor would be repaired if needed and a few and other things like that (Transcript page 36, lines 12 – 20). This evidence is not controverted (Plaintiff's Exhibit 17, see Thomas Ferro email, dated November 11, 2012 @ 2:51 P.M.). Also, the uncontroverted evidence reveals a copy of the approved subdivision plat, dated October 20, 2012, was received by Defendants Dudek and Cross the Friday after Thanksgiving. The effective utility of which is Defendants Dudek and Cross were delayed until at least November 26, 2012 to further pursue the purchase price through the conventional residential financing. Moreover, the evidence reveals a wood infestation report (CL 100) was not provided until November 30, 2012. That report revealed a number of problems.

13. The Court finds that Defendants Ferro failure to address each item of critical concern in the manner in which it was presented violates Defendants Ferro's obligation to deal in good faith and fairly with Defendants Dudek and Cross. The Court finds Defendants Ferro's failure to immediately respond to Defendants Dudek and Cross in writing to the critical concerns to eliminate, or at least lessen, misunderstandings for Defendants Dudek and Cross to evaluate facts regarding their due diligence, together with Defendants Ferro's failure to provide an approved subdivision plat until effectively four (4) days prior to the Paragraph 3 date, and the utter failure to provide a timely "clear" CL 100, demonstrate that Defendants Ferro did not perform their obligations under the contract. These failures prevented or hindered the ability of Defendants Dudek and Cross to complete their evaluation of the property as the Contract provides (Plaintiff's Exhibit 17, see Susan Nicolson email dated, November 27, 2012 @12:44 P.M.). Thus, this Court finds Defendants Ferro's failures excuse the obligation of Defendants Dudek and Cross to deliver the purchase price on or before November 30, 2012 by the method of payment to which the parties agreed. Restatement (First) of Contracts § 295 (1932).

14. This Court finds the actions of Defendants Ferro establish they failed to observe TIME IS OF THE ESSENCE, a mutual obligation that the contract required. The contract expresses this refrain five (5) times in the printed matter. The Court finds that Defendants Ferro's failure to

respond with dispatch, and with clear intentions, effectively waives their right to assert Defendants Dudek and Cross did not comply with their obligation to observe that TIME IS OF THE ESSENCE.

15. The Court finds Defendants Dudek and Cross are willing, able and ready purchasers of the Real Property.

16. The Court finds the Dudek/Ferro Contract is enforceable.

17. The Court finds Defendants Ferro shall complete the sale of the property to Defendants Dudek and Cross.

18. The Court finds the Defendants Dudek and Cross' Paragraph 8 conditions are impossible. Nonetheless, Defendants Dudek and Cross are bound by the obligation of good faith and fair dealing which, when considered with the intent and meaning of the Contract, requires them to pursue conventional residential loan financing without delay. Since, the payment method to consummate the sale is a conventional residential loan, the date of the closing shall occur as soon as practicable once Defendants Dudek and Cross procure the loan commitment. Defendants Dudek and Cross shall enlist the services of a closing attorney to assure the conditions of the conventional residential loan commitment shall proceed with the urgency of time is of the essence. Thus, the intent and meaning of the Contract is reset to the date this Order becomes the law of the case.

19. The obligation to observe time of the essence applies to both Defendants Dudek and Cross and to Defendants Ferro. Since both parties are obligated to observe that time is of the essence both parties enjoy a reciprocal benefit by this provision. The Court finds the mutual obligation that the parties must deal with one another in good faith and with fairness must be addressed. The obligation for good faith and fair dealing, implied in every contract, is essential in the Dudek/Cross contract relationship with Defendants Ferro.

20. In this case, had the Defendant Ferro reciprocated this mutual contractual obligation, the sale and purchase of the Real Property would have occurred nearly two years ago, and would have saved all parties tremendous time, effort, expense and perhaps, as importantly, emotional equity. Regrettably, Defendants Ferro allowed an innocent third party, Plaintiff Morphew, in this consolidated case, to become entangled in an existing contractual relationship. In this Court's view, Defendants Ferro's acts demonstrate they failed to exercise a simple rule of common

decency that is, "do unto others as you would have them do unto you"[19]. A corollary to the noble principal is "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Restatement (Second) of Contracts § 205 (1981). See, *Birdseye v. Davis*, 13 S.C.L. 296, 297-98 (S.C. Const. App. 1822) (In the construction of a contract, ***the intention of the parties*** to be collected from the instrument, (if in writing,) should be constantly in view, and ***in their performance, good faith and fair dealing is always required.***) (This Court's emphasis).

21. The Court finds Defendants Ferro are in default of the Dudek/Cross Contract for the reasons stated in this Order. Pursuant to Paragraph 16, the Court finds Defendants Dudek and Cross are entitled to recover reasonable costs, including a reasonable attorney fee. To this end, Defendants are at leave to apply, on or before ten (10) days of the date of this Order, for costs and attorneys fees due from Defendants Ferro. This Court will schedule a factual hearing on or after 10 days from the date of filing the application to ascertain a reasonable attorney fee and what costs should be recovered. If Defendants Dudek and Cross fail to apply for costs and attorneys fees within ten (10) days of the entry of this Order, Defendants Dudek and Cross shall be deemed to have waived their rights under Paragraph 16.

22. Defendants Dudek and Cross seek specific performance of the Dudek/Cross Contract. Defendants Dudek and Cross claim against Defendants Ferro allege a breach of contract; however, they maintain the property is unique and no adequate remedy at law is available. This Court agrees. The property is six and six-one thousandth (6.006) acres on the outskirts of Summerville, South Carolina between the developing communities of Knightsville and Jedburg. In the last decade and one-half this area has enjoyed significant growth in commercial development in a rural setting. The Real Property is close to new public elementary and middle schools, and Summerville's private school, Pinewood Preparatory School. It presents easy access to the Town of Summerville, and U. S. Highway 78, which is the predominant route between the Summerville and the County Seat, St. George. In contrast, it is a far cry from a condominium and significantly different than a home in a tract builder's residential subdivision. This Court finds the property unique. Specific performance should be granted because there is no adequate remedy at law. Specific enforcement of the contract is equitable between the parties. See, *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000).

23. The Court finds the Dudek/Cross Contract is fair, just, and equitable. See, *Anthony v. Eve*, 109 S.C. 255, 263, 95 S.E. 513, 515 (1918); *McChesney v. Smith*, 105 S.C. 171, 176, 89 S.E. 639, 641 (1916).

24. Giving due regard to the terms of the contract and the facts and circumstances concerning the intent and meaning of the Dudek/Cross Contract, this Court finds it should order that done which ought to be done. Hence, compelling performance of the Dudek/Cross Contract is an equitable result. Moreover, giving effect to the intent and meaning of the contract by compelling Defendants Ferro to sell the property to Defendants Dudek and Cross promotes a just result.

25. The Court finds Defendants Dudek and Cross worked in good faith to consummate the sale. The evidence supports a finding Defendants Ferro acts and omissions demonstrated unfair dealing. Defendants Ferro fail to point to meaningful communication with Defendants Dudek and Cross whereas the acts of Defendants Dudek and Cross infer they acted with care, kept Defendants Ferro advised of the concerns they had. This Court finds Plaintiff's Exhibit 3 emails demonstrate Defendants Ferro obfuscated the intent and meaning of the contract in the performance of conditions incumbent upon them to fulfill. The Court finds Defendants Ferro acted without intent to fulfill the contract according to its plain terms. The circumstances imply Defendants Ferro attempted to use the contract's time of the essence provisions as an exemption, and tried to use it as a tool to avoid their having to deal with critical concerns raised by Defendants Dudek and Cross, who were acting at all times within their rights under the contract.

CONCLUSIONS OF LAW

1. The Findings of Fact shall be deemed Conclusions of Law. The Conclusions of Law shall be deemed Findings of Fact. Additional Conclusions of Law are as follows:

2. The Dudek/Cross Contract is valid.

3. The Dudek/Cross Contract is a conditional contract.

4. The Dudek/Cross Contract is fair, just, and equitable.

5. Paragraph 12 of the Dudek/Cross Contract is impossible to perform. Defendants Dudek and Cross's failure to comply with Paragraph 12 is excused. However, Defendants Dudek and Cross did all they could have done to achieve a conventional residential loan to complete the method of payment. Moreover, they carried into execution of the terms of the Contract with the approbation of Defendants Ferro.

6. Defendants Ferro frustrated the rights of Defendants Dudek and Cross to perform their due diligence. Thus, Defendants Ferro excused the intent and meaning of the contract to culminate on or before November 30, 2012 with TIME IS OF THE ESSENCE.

7. Defendants Ferro's acts and omissions waived their right to require this Court to give effect to the intent and meaning of the contract to culminate on or before November 30, 2012 with TIME IS OF THE ESSENCE.

8. Defendants Ferro are in default of the Dudek/Cross Contract. Defendants Dudek and Cross have a contractual right to pursue recovery of a reasonable attorney fee and costs of this action. In order to assert this right, Defendants Dudek and Cross shall apply to recover these costs and fees on or before ten (10) days of the entry of this order.

9. Defendants Dudek and Cross have demonstrated they are willing, able and ready to purchase the Real Property, however, since approximately two (2) years have passed since the agreement was originally made, in order to give effect to the intent and meaning of the contract, they are granted the right to update their due diligence requirements while they renew their loan application.

10. Defendants Dudek and Cross shall be entitled to an updated Residential Home Inspection in accord with Paragraph 19 (B) that is satisfactory to them.

11. Defendants Ferro shall procure a CL 100 in accord with Paragraph 19 (D) that is satisfactory to Defendants Dudek and Cross.

12. The Dudek/Cross Contract intends and means that Defendants Dudek and Cross are to purchase the Real Property for Three Hundred Three Thousand Dollars ($303,000.00) and the method of payment shall be a conventional residential loan. The closing costs shall be paid as set forth in the Dudek/Cross Contract.

13. Defendants Ferro shall observe the obligation of good faith and fair dealing in performance of the Dudek/Cross Contract.

14. Defendants Ferro shall perform those conditions of the contract they are responsible for without delay. They shall inform in writing with specificity the Defendants Cross and Dudek what, if any, repairs they intend to complete to meet the satisfaction of Defendants Dudek and Cross. Although the finding of this Court established the Defendants right to personal satisfaction, the standard of satisfaction must meet the test of a reasonable person (*supra*,

endnote 13). In assessing what is reasonable the obligation of good faith and fair dealing prevails.

15. Defendants Ferro shall deliver a deed upon payment of the purchase price that complies with the provisions of Paragraph 3. and Addendum A and Addendum B of the Special Stipulations.

16. This Order shall be construed to terminate the Morphew Contract upon the exchange of the purchase price by Defendants Dudek and Cross for delivery of the deed by Defendants Ferro. Hence. at that point in time, Defendants Dudek and Cross grant of mortgage lien to their conventional residential loan lender shall be free of the encumbrance of the Morphew Contract.

17. The Morphew Contract cannot be specifically performed unless the Dudek/Cross Contract is terminated because a condition of the contract cannot be performed.

18. If the Dudek/Cross Contract is terminated, Defendants Dudek and Cross shall notify this Court and Plaintiff Morphew immediately, and file with this Court the written termination of Contract specifying the condition of the contract that could not be performed.

19. The Morphew Contract is a valid contract.

20. The Morphew Contract is a conditional contract.

21. The Morphew Contract is fair, just and equitable.

22. Thus, if the Dudek/Cross Contract is terminated, Defendants Ferro specifically perform Plaintiff Morphew Contract according to its terms.

23. Since the Morphew Contract is an enforceable contract conditioned on the termination of Defendants Dudek and Cross Contract, Defendants Ferro are not in default of the Morphew Contract. Absent a default, Plaintiff Morphew is not entitled to recover her costs and attorney's fee. NOW THEREFORE, IT IS

ORDERED, ADJUDGED, AND DECREED that Defendants Ferro shall deliver a deed of conveyance to the Real Property to Defendants Dudek and Cross in exchange for the purchase price in accord with the terms of sale and purchase contained in the Dudek/Cross Contract as directed to be given effect by the Findings of Fact and Conclusions of Law set forth in this Order. AND, IT IS

SO ORDERED, ADJUDGED, AND DECREED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
November 6, 2014

[1] Paragraph 11. is not contested, however, this accounts for a fifth condition with Time is of the Essence. The Court considers it in construing the intent and meaning of the Dudek/Cross Contract.

[2] 3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before [1] 30 ~~December 01~~ , 2012 , not later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

[3] 8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 90.000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. **Time is of the essence.** Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐will ☐will not be added to the mortgage. VA funding fee ☐will ☐will not be added to the mortgage.

[4] 12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

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(B) **Inspection**: Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. **Time is of the essence.** If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

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(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before November 30, 2012. **Time is of the essence.** If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

8

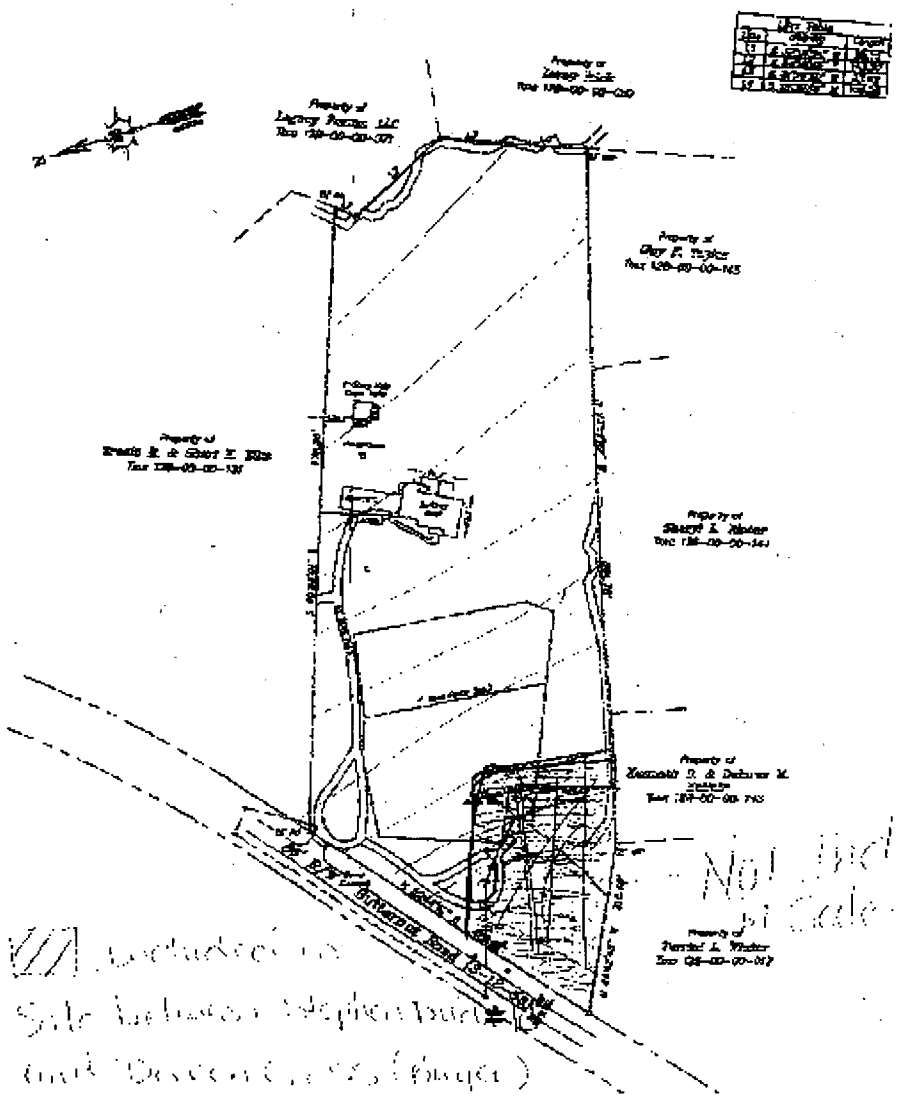
29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein; (attach and reference addendum if necessary) See attached addendum (A)(3)-(C)

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The undersigned Parties hereby agree as follows.
1. Buyer total satisfaction of home inspection and CL100. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septice tank hasn't been service in the past yr. then Seller agrees to have it serviced.5. Seller agrees to have the property subdivided to include in this sale the 3340 sf house, storage bldg and 6 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to include copies of the survey. Cont. next to. (B) + C

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SC Sellers Disclosure due to not legible of what is currently on the MLS. 9. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc.

Addendum "C"



Not included in Sale

Included in Sale between Stephen Dudek (and Deborah Dudek)

[11] The meaning of the contract and the intent of the parties to it is one and the same thing. To interpret the lawful meaning is to discover the intention of the parties as found within the agreement. Our Court acknowledges contractual language coupling the terms "intent and meaning." Cf., *Mordecai v. Stutts*, 16 S.C. 622, 622 (1882) (interpreting a power of sale in a mortgage, the Court acknowledges language of the mortgage, "the conditions and recitals thereof, according to the true intent and meaning); *Hext v. Jarrell*, 34 S.C.L. 11, 14 (S.C. App. L. 1848) (the intent and meaning of a deed); *Edwards v. Sartor*, 69 S.C. 540, 48 S.E. 537, 537 (1904) (the Court acknowledges language of "true intent and meaning of note and condition thereunder written" in a mortgage, see, also, *Kaphan v. Ryan*, 16 S.C. 352, 353 (1882) (true intent and meaning of said bond, secured by a mortgage); *Crawford v. Owens*, 79 S.C. 59, 60 S.E. 236, 237 (1908) (the Court acknowledges language of "the terms of the contract according to its true intent and meaning" addressing a bond surety for the faithful performance of a contract); *Sutterwhite's Adm'rs v McKie*, 16 S.C.L. 397, 398 (S.C. Const. App. 1824) ("the obvious meaning and intent of the parties to the contract.").

[12] Paragraph 3 describes the particulars of the conveyance; this provision is modified by conditions set out in condition of the Special Stipulations.

[13] Addendum A requires the Paragraph 19 (B) and Paragraph (D) conditions to meet a standard totally acceptable to the Buyer. See, *Restatement (First) of Contracts § 265 (1932)*: A promise in terms conditional on the promisor's satisfaction with an agreed exchange, gives rise to no duty of immediate performance until such satisfaction; but where it is doubtful whether words mean that a promise is conditional on the promisor's personal satisfaction with an agreed exchange, or on the sufficiency of that exchange to satisfy a reasonable man in the promisor's position, the latter interpretation is adopted. The Court finds the term "total satisfaction" means Dudek and Cross are not required to pay the purchase price until Dudek and Cross are personally satisfied with the Paragraph 19 (B) & (D) conditions. In any event, Cross testified despite Defendants Ferros' failure to answer in kind the questions concerning the home inspection and after she procured a structural engineer's report acceptable to her (she had a relative, who is an engineer, review the calculations) she was satisfied that the residence was structurally sound a reservation contained in her home inspection report. Dudek testified he never received a satisfactory CL 100 (Transcript page. 104, line 23). Hence, she did not have an opportunity to determine if it was satisfactory.

[14] The Court takes Judicial Notice that at a conventional residential loan closing borrowers are required to sign a Uniform Residential Loan application. The application is made under oath. This fact further supports the impossibility of the Paragraph 8 condition.

[15] Impossibility that would discharge the duty to perform a promise excuses a condition if (a). . ., or (b) existence or occurrence of the condition is no material part of the exchange for the promisor's performance and the discharge of the promisor will operate as a forfeiture. Restatement (First) of Contracts § 301 (1932). This Court applies this rule to the facts of this case as follows:

> Dudek and Cross had a duty (promise to perform) to procure unconditional financing within 20 days of signing the contract. The Contract calls for a conventional residential loan. Unconditional residential loan financing is impossible. The occurrence of the condition to procure unconditional financing in 20 days is not a material part of the exchange because delivery of the deed depends on delivery of the purchase price not procurement of the loan within twenty days of the signing of the contract and the discharge of Dudek and Cross's duty to procure unconditional loan approval would operate as a forfeiture of the contract.

[16] It is well established in this state that time is not of the essence of a contract to convey land unless made so by its terms expressly or by implication. Bishop v. Tolbert, 249 S.C. 289, 153 S.E.2d 912 (1967). When the contract does not include a provision that "time is of the essence," the law implies that it is to be done within a reasonable time. Hobgood v. Pennington, 300 S.C. 309, 387 S.E.2d 690 (Ct.App.1989). In equity, strict compliance with time limits contained in a contract will not ordinarily be enforced, except with regard to option contracts. Dargan v. Page, 222 S.C. 520, 73 S.E.2d 705 (1952). Faulkner v. Millar, 319 S.C. 216, 219-20, 460 S.E.2d 378, 380 (1995).

[17] Defendant Cross testified:
"the piers were not supporting anything, they were jus there. I didn't understand why all these piers were there, they were not touching the house (Transcript page 38, lines 1-3) Dudek corroborates and elaborates: "We were concerned about the extra piers under the crawl space because they were just there, they weren't at supporting anything, that surprised me. And yes, we were concerned about the crack tile in the front foyer and in the master bathroom. The back porch where the concrete was sinking, I thought it was just an add on so I wasn't sure, if it was an add on it was just settling, that didn't worry me that much. But the biggest thing was the structure of the house, the extra piers there for the supports because they were there and they weren't doing anything (Transcript page 98, l. 24 – page 99, l. 9).

[18] The house is a fairly heavy house. it is made of steel and it has installed CompCore on the outside of it with rebar in it, so I was concerned about the structure (Transcript page 38, lines 6 – 9).

[19] The moral principle, that men in their intercourse with each other should act with perfect fairness, is as broad as the foundation on which society is erected, and, in some form or other, we find it incorporated into the laws of every well regulated society. "Do unto others as you would have them do unto you," is the substratum of every civilized code: and the well known rule that no one shall profit by his own wrong, or profit by his own fraud, is built upon it- and wherever it is apparent that one man has profited by fraud and circumvention, to the loss or injury of another, he must respond. Minter v. Dent, 37 S.C.L. 205, 207 (S.C. App. L. & Eq. 1832)

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Stephen Dudek and Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Appellants.

And

Molly M. Morphew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro, and Lorraine Ferro, Defendants,

Of whom Stephen Dudek and Doreen Cross are Respondents.

Appellate Case No. 2014-002633

Appeal From Dorchester County
James E. Chellis, Master-in-Equity

Unpublished Opinion No. 2017-UP-019
Submitted October 1, 2016 – Filed January 11, 2017

AFFIRMED

Thomas M. Ferro and Lorraine B. Ferro, both of Denver, Colorado, and Molly M. Morphew, of Summerville, all pro se.

Steven L. Smith and Samuel Melvil Wheeler, both of Smith Closser, of Charleston, for Respondents.

PER CURIAM: Thomas Ferro and Lorraine Ferro (collectively, the Ferros) and Molly Morphew (collectively, Appellants) appeal the master-in-equity's ordering specific performance of a contract between Stephen Dudek and Doreen Cross (collectively, Respondents) and the Ferros for the sale of residential real estate (the Contract). Appellants argue the master erred by ruling the Contract was enforceable, making findings unsupported by the record, and ordering specific performance. Appellants also argue the master erred by finding Morphew sought damages against the Ferros for breach of contract and the Ferros championed a contract between them and Morphew. Respondents argue Appellants' brief to this court should not be considered because Morphew was the only party to sign it and she did not have standing to raise any arguments on the Ferros' behalf. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the validity of Appellants' brief: Rule 208(b)(6), SCACR ("In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief . . . .").[1]

2. As to whether the master properly ordered specific performance of the Contract: *Campbell v. Carr*, 361 S.C. 258, 262, 603 S.E.2d 625, 627 (Ct. App. 2004) ("An action for specific performance is one in equity."); *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009) ("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."); *id.* ("However, this broad scope of review does not require this [c]ourt 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."); *id.* at 302, 683 S.E.2d at 807 ("This [c]ourt reviews all questions of law de novo."); *Campbell*, 361 S.C. at 263, 603 S.E.2d at 627 ("Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the

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[1] We note the Ferros signed all briefs filed with this court.

contract is equitable between the parties." (quoting *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000))); *id.* ("Equity will not decree specific performance unless the contract is fair, just, and equitable."); *Lowcountry Open Land Tr. v. Charleston S. Univ.*, 376 S.C. 399, 408, 656 S.E.2d 775, 780 (Ct. App. 2008) ("In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract."); *id.* ("The party seeking to compel specific performance 'must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future.'" (quoting *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106 n.1, 531 S.E.2d 287, 291 n.1 (2000))); 61 Am. Jur. 3d *Proof of Facts* § 325 (2001) ("Ordinarily, a contract for the sale of land containing a clause that 'time is of the essence' must be performed by the date fixed in the contract or the contract is no longer viable."); *id.* ("This general rule is, however, subject to the limitation that such a contract may nevertheless be specifically enforced if the failure to perform within the designated time results from the act or fault of the party against whom specific performance is demanded."); *id.* ("Accordingly, where a contract expressly states that time is of the essence—such that performance by the purchaser within a specified time is a condition precedent to the seller's duty to perform his part—and the purchaser has been caused to delay his performance beyond the specified time by the request or agreement or other conduct of the seller, the purchaser can enforce the contract in spite of the seller's delay."); *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 367, 147 S.E.2d 481, 484 (1966) ("[T]here exists in every contract an implied covenant of good faith and fair dealing."); *id.* ("In the absence of an express provision therefor, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made." (quoting 17A C.J.S. *Contracts* § 328 at 282-84)); *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008) ("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." (quoting *Willms Trucking Co. v. JW Constr. Co.*, 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct. App. 1994))); *Champion v. Whaley*, 280 S.C. 116, 120, 311 S.E.2d 404, 406 (Ct. App. 1984) ("[O]ne who prevents a condition of a contract cannot rely on the other party's resulting nonperformance in an action on the contract."); *id.* at 122, 311 S.E.2d at 407 ("It is sufficient for the plaintiff to present evidence that the defendant's prevention 'substantially contributed' to the nonoccurrence of the condition."); *id.* at 121, 311 S.E.2d at 407 ("[A]lmost all cases in which prevention is alleged will

involve speculation as to what would have happened had the defendant's conduct not taken place"); *id.* at 121-22, 311 S.E.2d at 407 ("The defendant cannot take advantage of the uncertainty created by his own wrongdoing. If it were otherwise, then it would be virtually impossible for a plaintiff to prove a case of prevention.").

3. As to all other issues: *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

AFFIRMED.[2]

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 15, 2017

The Honorable Cheryl L. Graham
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

Re: Stephen Dudek v. Thomas Ferro (Morphew)
Lower Court Case No. 2013CP1800074, 2013CP1800183
Appellate Case No. 2014-002633

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,
V. Claire Allen, Deputy

CLERK

Enclosure

cc: Molly M. Morphew
Thomas Ferro
Lorraine Ferro
Samuel Melvil Wheeler, Esquire
Steven L. Smith, Esquire

The South Carolina Court of Appeals

Stephen Dudek, Doreen Cross, Respondents,

v.

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And

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v.

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Of whom Stephen Dudek and Doreen Cross are Respondents.

Appellate Case No. 2014-002633

The Honorable James E. Chellis
Dorchester County
Trial Court Case No. 2013CP1800074, 2013CP1800183

ORDER

Appellant Molly Morphew filed a petition for rehearing that was received January 24, 2017. Ms. Morphew now files a motion to dismiss her petition. The appellant's motion to dismiss the petition is granted.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED
February 15, 2017

cc:
Molly M. Morphew
Thomas Ferro
Lorraine Ferro
Samuel Melvil Wheeler, Esquire
Steven L. Smith, Esquire

The South Carolina Court of Appeals

Stephen Dudek, Doreen Cross, Respondents,

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Appellate Case No. 2014-002633

The Honorable James E. Chellis
Dorchester County
Trial Court Case No. 2013CP1800074, 2013CP1800183

ORDER

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FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED
February 15, 2017

cc:
Molly M. Morphew
Thomas Ferro
Lorraine Ferro
Samuel Melvil Wheeler, Esquire
Steven L. Smith, Esquire

030

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP1800987

Molly M Morphew		**Stephen Dudek**	**Doreen Cross**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED-RECORDED 2-21-2018 Cheryl Graham Clerk of Court Dorchester County

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Diane S. Goodstein	2112	2/21/2018
Circuit Court Judge	**Judge Code**	**Date**

031

For Clerk of Court Office Use Only

This judgment was entered on 2/21/2018, and a copy mailed first class or placed in the appropriate attorney's box on 2/21/2018, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 786 E. Butternut Road Summerville, SC 29483

Steven L. Smith Smith Closser, PA PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2017-CP-18-987
Molly M. Morphew,	)	
Plaintiff,	)	
vs.	)	**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**
Stephen Dudek and Doreen Cross,	)	
Defendants,	)	

FILED-RECORDED
2-21-2018
Cheryl Graham
Clerk of Court
Dorchester County

On November 13, 2017, the above-captioned case came before this Court on the Defendants' Motion to Dismiss, pursuant to Rules 12(b)(6) and 12(b)(8), SCRCP. Present at the hearing were Samuel M. Wheeler, counsel for the Defendants, and the Plaintiff, Molly M. Morphew, *pro se* ("Plaintiff" or "Morphew"). For the reasons stated below, the Defendants' Motion is GRANTED.

FACTS AND PROCEDURAL HISTORY

Morphew, proceeding *pro se*, filed the above-captioned action against Stephen Dudek and Doreen Cross (collectively, "Dudeks") on or about August 24, 2016, alleging claims for constructive trust, abuse of process and fraud.

The same parties have been and are involved in a ~~tortured~~ labyrinthine string of litigation. Specifically, Morphew has two other cases, as well as an appeal, pending against the Dudeks, all of which arise out of (1) Morphew's alleged legal or equitable ownership of real property, located at 788 E. Butternut Road, Summerville, SC 29483 ("Property"); and (2) alleged fraud perpetrated by the Dudeks on the court in other actions pending between the parties. (see, generally, Compl.; *Molly M. Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183; *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706; Court of Appeals

Appeal No. 2017-001393).

According to Morphew's complaint, in 2012, the Dudeks had a contract to purchase the Property from the previous owners, Thomas and Lorraine Ferro (collectively, "Ferros"). (Compl. ¶ 29(e)). Morphew had a contingency contract on the Property, which she alleges remains valid (Id. at ¶ 19). Morphew claims that the Dudeks contract expired on or about November 30, 2012, at which time Morphew should have been able to purchase the Property. (Id.; and Id at ¶ 29(e)). Morphew goes on to allege that the Dudeks filed a *lis pendens* and specific performance action without a valid contract, and the judge in that action was "fooled" when he awarded the Dudeks specific performance. (Id. at ¶¶ 10, 29). Morphew further asserts that, during the course of discovery and at trial in the previous action, the Dudeks committed fraud on the court regarding their ability to purchase the Property. (see Compl.). Based on the actions of the Dudeks, Morphew alleges that she is the equitable owner of the Property (constructive trust) and that she is entitled to damages for fraud and abuse of process. (Id.).

The case Morphew references is *Stephen Dudek, et al. v. Thomas M. Ferro, et al.*, Case No. 2013-CP-18-00074, which was consolidated with *Molly M. Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183. Both Morphew and filed suit seeking specific performance, each alleging that their contract with the previous owners, the Ferros, was valid. On June 11, 2014, and June 12, 2014, the cases were tried in front of the Honorable James E. Chellis, Master-In-Equity for Dorchester County. Following trial but prior to a decision by Judge Chellis, the Ferros filed a "pleading statement" in which they raised instances of alleged fraud by the Dudeks. (see Case No. 2013-CP-18-00183, Pleading Statement, September 10, 2014). On November 6, 2014, Judge Chellis issued an order awarding the Dudeks specific performance. (see Case No. 2013-CP-18-00183, Nov. 6, 2014 Order). Both Morphew and the Ferros appealed that order. (see *Stephen Dudek v. Ferro*, Appellate Case No. 2014-002633). On January 11, 2017, the Court

of Appeals upheld Judge's Chellis' award of specific performance in an unpublished opinion, numbered 2017-UP-019. (Id.). Morphew initially petitioned for a rehearing, but she voluntarily dismissed the petition on February 9, 2017. (Id.). The Court of Appeals granted the dismissal and issued remittitur on February 15, 2017. (Id.). Following remittitur, Judge Chellis issued several orders setting a schedule for the Dudeks to close on the Property and, ultimately, for contempt, as Morphew refused to vacate the Property after closing. (see Case No. 2013-CP-18-00183). Morphew has appealed this contempt order. (see Court of Appeals Appeal No. 2017-001393).

While Morphew's original appeal was pending, she filed her second action against the Dudeks, as well as against virtually every person or entity that had any involvement in the Dudeks sales contract or in the trial in Case No. 2013-CP-18-00183. (see *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706). In that action, Morphew has pleaded fraud, or some variation thereof, arising out of the alleged facts that form the basis of Morphew's complaint in this action. By way of an order issued on or about January 31, 2017, the Honorable Deadra Jefferson dismissed all of Morphew's fraud-based claims against the Dudeks, leaving only an intentional infliction of emotional distress cause of action. (see January 31, 2017, Order, Case No.2016-CP-18-1706).

In total, Morphew has lost an appeal, she has three actions pending, and she has an appeal pending. All of her past and present actions arise out of her alleged ownership in the Property or out of the fraud that the Dudeks perpetrated on the court in the original action, Case No. 2013-CP-18-00183.

STANDARD OF REVIEW

The ruling on a Rule 12(b)(6), SCRCP motion to dismiss must be based solely upon the allegations set forth in the complaint. *State Bd. of Med. Examiners v. Fenwick Hall, Inc.*, 300

S.C. 274, 387 S.E.2d 458 (1990). The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)*; *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987). The question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Rule 12(b)(8) states that a complaint should be dismissed when "another action is pending between the same parties for the same claim." Rule 12(b)(8), SCRCP. In *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (2009), the South Carolina Court of Appeals explained dismissal under this rule as follows:

> In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Rule 12(b)(8), SCRCP. The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of action and relief. *S.C. Public Serv. Comm'n v. City of Rock Hill*, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977); see also James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed.1996). We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). See, *e.g., Beatty v. Liberty Mut. Ins. Group*, 893 N.E.2d 1079, 1084 (Ind.App.Ct.2008) (applying 12(b)(8) dismissal " where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same."). Accordingly, we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).

DISCUSSION

I. Morphew's complaint is dismissed pursuant to Rule 12(b)(6) and the doctrine of *res judicata*.

In order for res judicata to operate as a bar to a lawsuit, the following elements need to be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the

issue in the former suit. *Riedman Corp. v. Greenville Steel Structures*, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992).

"*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011). "Under the doctrine of *res judicata*, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.*

In the original action between these parties, Case No. 2013-CP-18-00183, Morphew could have brought her constructive trust or equitable ownership claim against the Dudeks. After losing at the trial court level, Morphew appealed, and the Court of Appeals affirmed the order awarding the Dudeks specific performance. Not happy with the Court of Appeals decision, Morphew filed her second action, Case No.2016-CP-18-1706, as well as this action. Morphew has more than had her day in court on the issue of ownership of the Property. Furthermore, Morphew's constructive trust claim is fundamentally flawed, and she cannot plead a set of facts, against the Dudeks, that would entitle her to relief on her constructive trust cause of action. Constructive trust "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Carolina Park Associates, LLC v. Marino*, 732 S.E.2d 876, 879 (2012). (quoting, *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 560 (1987)). At all times, the Dudeks had a contract with the previous owners, the Ferros. At no point did the Dudeks have a contract or relationship, fiduciary or otherwise, with Morphew. If anyone could conceivable be entitled to "restitution," it would be the Ferros; however, the issue of ownership has firmly been established by the trial court and Court of Appeals. For these reasons, Morphew's constructive trust claims is dismissed and barred by *res judicata*.

As to Morphew's fraud and abuse of process claims, Morphew had legal mechanisms to bring the alleged fraud and abuse of process to the court's attention. Rule 60, SCRCP, addresses the exact situation. Rule 60(b), SCRCP, allows for a party to move to set aside an order which was based on fraud or after the discovery of new evidence. Rule 60(b), SCRCP. The rule even allows for a party to request leave from the appellate court. The supposed fraud was known to Morphew and the Ferros after trial but before the lower court issued the order awarding the Dudeks specific performance. The Ferros filed a "pleading statement" in September, 2014, months prior to the court awarding specific performance. In this "pleading statement," the Ferros outline all the alleged fraud surrounding the case. Yet, at no point, either after issuance of the order awarding specific performance, or the filing of their first appeal, did Morphew or the Ferros file a motion pursuant to Rule 60, SCRCP, seeking to have the order set aside for fraud. (see Case No. 2013-CP-18-00183). Despite knowing of the alleged fraud by the Dudeks, Morphew never filed a Rule 60 motion. Moreover, Morphew brought the same claims in the second case she filed against the Dudeks, Case No. Case No.2016-CP-18-1706. By way of an order issued on January 31, 2017, the court dismissed Morphew's fraud-based claims against the Dudeks. For these reasons, her fraud and abuse of process causes of action are dismissed and barred by *res judicata.*

II. Morphew's complaint is dismissed by Rule 12(b)(8).

As discussed above, Morphew filed a second case against the Dudeks and almost all persons or entities that had any involvement with the Dudeks' contract with the Ferros, or with the trial in Morphew's original case. Dismissal under Rule 12(b)(8) is appropriate when another action is pending between the same parties for the same or substantially the same claim. Rule 12(b)(8), SCRCP; *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (2009). The second action filed by Morphew, Case No.2016-CP-18-1706, is pending. It is between

Morphew and the Dudeks. And it is for the same or substantially the same claim. For these reasons, Morphew's complaint is dismissed pursuant to Rule 12(b)(8).

CONCLUSION

For all of the above stated reasons, the Defendants' motion to dismiss is GRANTED.

IT IS SO ORDERED.

The Honorable Diane S. Goodstein
First Judicial Circuit

St. George, South Carolina
2-20, 2018

039

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	2017 APR -3 PM 4:33 CLERK OF COURT DORCHESTER COUNTY	**Thomas Ferro** **Stephen Dudek**	**Lorraine Ferro** **Doreen Cross**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☑ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. Order / Judgment Post Remittitur

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

James E Lewis — 3078 — 4/3/2017

Master in Equity **Judge Code** **Date**

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

040

This judgment was entered on 4/3/17 , and a copy mailed first class or placed in the appropriate attorney's box on 4/3/17 , to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 East Butternut Road Summerville, SC 29483-8407

Thomas Ferro 5501 Carson St Denver, CO 80239
Lorraine Ferro 5501 Carson St Denver, CO 80239
Steven L. Smith PO Box 40578 Charleston, SC 29423-0578
Zachary James Closser PO Box 40578 Charleston, SC 29423-0578
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

NOT RECORDED

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER 2017 APR -3 PM 3:54

Stephen Dudek and Doreen Cross
(x) Plaintiff
v.
Thomas M. Ferro, et al.,
( ) Defendant
check box above indicating submitting party

CHERYL D. MANN
CLERK OF COURT
DORCHESTER COUNTY

Case No. 2013-CP-18-183

MOTION INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Samuel M. Wheeler - 101008	Thomas and Lorraine Ferro
Smith | Closser, PA	5501 Carson Street
P.O. Box 40578	Denver, CO 80239
Charleston, SC 29423	
telephone: 843-760-0220 fax: 843-552-2678	telephone: fax:
e-mail: swheeler@scnlaw.com	e-mail: lbferro3200@gmail.com

( ) MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
( ) FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
(x) PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: minutes Court Reporter Needed: YES / NO

SECTION II: Motion Type

( ) Written motion attached
(x) Form Motion –
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant — Date submitted: 3-29-17

SECTION III: Motion Fee

( ) PAID - AMOUNT: $25.00
(x) EXEMPT: (check reason)
( ) Rule to Show Cause in Child or Spousal Support
( ) Domestic Abuse or Abuse and Neglect
( ) Indigent Status ( ) State Agency v. Indigent Party
( ) Sexually Violent Predator Act ( ) Post-Conviction Relief
( ) Motion for Stay in Bankruptcy
( ) Motion for Publication ( ) Motion for Execution (Rule 69, SCRCP)
(x) Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
( ) Other:

JUDGE'S SECTION

( ) Motion Fee to be paid upon filing of the attached order.
( ) Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____ _____(print name)
( ) MOTION FEE COLLECTION:_____
( ) CONTESTED - AMOUNT DUE:_____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

AND

Molly M. Morphew

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro

Defendants.

ORDER SETTING CLOSING SCHEDULE AND AWARDING ATTORNEY'S FEES AND COSTS

RECORDED
2017 APR -3 PM 3:54
CLERK OF COURT
DORCHESTER COUNTY

On March 27, 2017, the above captioned actions came before this Court on Stephen Dudek and Doreen Cross' ("Dudeks") motion to set a schedule for the Dudeks to close on the home and real property located at 788 E. Butternut Road, Summerville, SC, TMS # 128-00-00-090 ("Property"), and for attorney's fees and costs. Present at the hearing was Steven L. Smith, on behalf of the Dudeks, Molly M. Morphew, *pro se*, and Thomas and Lorraine Ferro, *pro se*, who attended via telephone.

Brief Facts and Procedural History

These actions arose out of separate sales contracts to purchase the Property, one contract between the Dudeks and the Ferros ("Prevailing Contract"), and the other contract between

Morphew and the Ferros. Both the Dudeks and Morphew sought specific performance in separate suits, which were consolidated under the above case number. Following a trial, this Court issued an order ("Order") awarding the Dudeks specific performance and the right to apply for attorney's fees and costs against the Ferros. (See Final Order, November 6, 2014). Both Morphew and the Ferros appealed the Order. By way of a *per curiam* order, filed January 11, 2017, the South Carolina Court of Appeals affirmed the Order and this Court's ruling that the Dudeks were entitled specific performance under the Prevailing Contract. Morphew initially filed a petition for rehearing, but she voluntarily withdrew it, causing the Court of Appeals to dismiss the appeal and remit the case back to this Court on or about February 15, 2017. The Dudeks thereafter moved to have this Court set a schedule for closing on the Property. In addition, also pursuant to the Prevailing Contract and the Order, they sought attorney's fees and costs.

Finding and Rulings

After hearing arguments from all parties, this Court finds that the Dudeks are prepared to proceed with closing on the Property, pursuant to the Prevailing Contract and the Order. The Dudeks and Ferros entered into the Prevailing Contract on October 20, 2012, and closing was originally set for November 30, 2012, a period of forty (40) days. At the time the Order was issued, two years had passed since the parties entered into the Prevailing Contract, resulting in the need for certain steps to be taken or re-taken, including, but not limited to, inspection of the Property and securing an updated CL 100. (Order, p. 12). This Court finds that these steps are still required, and it further finds that the Prevailing Contract's 40-day closing window should be lengthened, due to the passage of nearly four years since the Dudeks and the Ferros entered into the Prevailing Contract.

IT IS THEREFORE ORDERED:

1. The Dudeks are entitled to purchase and close on the Property for a total sales price of $303,000, which was the sales price contained in the Prevailing Contract.
2. The Dudeks are further entitled to attorney's fees and costs in the amount of $21,268.82, which the Ferros are required to pay pursuant to the Prevailing Contract and the Order; (see Aff. of Attorney's Fees).
3. The purchase price will be offset by these attorney's fees and costs; thus, the adjusted purchase price is $281,731.18.
4. The parties will work in good faith to close on the Property within sixty (60) days of the issuance of this order. This Court recognizes that reasonable delays are inherent to loan applications, property inspections, and CL 100 reports. The parties shall cooperate, when necessary, to adjust time frames within this closing period or this closing period as a whole. Each party shall operate in good faith, and each shall not take actions that either unduly delay closing or that are meant to prevent closing in light of reasonable delays.
5. The Dudeks will apply for a loan and secure lending as soon as is feasible.
6. Prior to closing, the Dudeks will inspect or have inspected the home, and the parties will secure a CL 100 letter.
7. Except as to the times extended above, and any Contractual provision effected by these extensions, all other terms of the Prevailing Contract shall be binding on the parties.
8. Morphew, as the current tenant of the Property, is ordered to vacate the Property on or before the closing date, which will be provided to her by the parties or their counsel.
9. Morphew is further ordered not to change or damage the Property in any manner. Any

violation of this order will be considered contempt, punishable by fine, arrest, attorney's fees, and costs.

IT IS SO ORDERED.

The Honorable James E. Chellis

April 3, 2017
St. George, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-074, consolidated with 2013-CP-18-183
Stephen Dudek and Doreen Cross,	)	
Plaintiffs,	)	
vs.	)	AFFIDAVIT OF ATTORNEY'S FEES AND COSTS
Thomas M. Ferro and Lorraine B. Ferro,	)	
Defendants.	)	
AND	)	
Molly M. Morphew	)	
Plaintiff,	)	
vs.	)	
Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro	)	
Defendants.	)	

RECEIVED
2017 APR -3 PM 3:54
CLERK OF COURT
DORCHESTER COUNTY

Personally appeared before me, the below signed attorney, who, after being duly sworn, hereby states as follows:

1. I am the attorney for the Plaintiffs Stephen Dudek and Doreen Cross in this action.

2. These Plaintiffs have incurred attorney's fees of Three Thousand One Hundred Seven and 50/100 ($3,107.50) Dollars, and costs in the amount of Thirty-Five and NO/100 ($35.00) Dollars.

3. These Plaintiffs have also incurred from their previous attorney (David A. Collins) attorney's fees of Sixteen Thousand Five Hundred Ninety-Two and 60/100 ($16,592.60) Dollars, and costs in the amount of One Thousand Five Hundred Thirty-Three and 72/100 ($1,533.72)

Dollars.

3. Upon information and belief, the attorney's fees charged herein are reasonable based upon the nature, extent, and difficulty of the services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the beneficial results obtained; and the fee customarily charged in the locality for similar legal services. See Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 259 (S.C. 1993).

FURTHER YOUR AFFIANT SAYETH NOT.

SWORN to before me this 28th
day of March, 2016

Peggy M. Rochay
Notary Public for South Carolina
My Commission expires: March 28, 2024
16-232

Steven L. Smith

048

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED - RECORDED
2017 MAY 17 PM 2:06
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	Thomas Ferro Stephen Dudek	Lorraine Ferro Doreen Cross
PLAINTIFF(S)	**DEFENDANT(S)**	

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: Cancel all Lis Pendens; see ¶4, page 9 & 10 & Waive cancellation fees

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stephen Dudek and Doreen Cross	Thomas M. Ferro a/k/a Thomas Ferro and Lorraine B. Ferro a/k/a Lorraine Ferro	$13,186.32

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

James E Lewis — 3078 — 5/17/2017

Master in Equity — **Judge Code** — **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

48

5/17/17 **For Clerk of Court Office Use Only** 5/17/17

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E Butternut Rd Summerville, SC 29483

~~**David A. Collins** PO Box 40578 Charleston, SC 29423~~
Thomas Ferro 5501 Carson St Denver, CO 80239
Lorraine Ferro 5501 Carson St. Denver, CO 80239
Steven L. Smith PO Box 40578 Charleston, SC 29423-0578
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA **COUNTY OF DORCHESTER**	**IN THE COURT OF COMMON PLEAS** **FIRST JUDICIAL CIRCUIT** **EQUITY DIVISION** **Civil Action No.: 2013CP1800074** **consolidated with Civil Action No. 2013CP1800183**
Stephen Dudek, Doreen Cross, **Plaintiffs** **Versus** **Thomas M Ferro, and Lorraine B Ferro,** **Defendants** **AND** **Molly M Morphew,** **Plaintiff** **Versus** **Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro,** **Defendants**	**ORDER**

FILED - RECORDED
2017 MAY 17 PM 2:06
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

This matter is before me pursuant to the Remittitur from the Court Of Appeals filed on February 17, 2017, affirming this Court's decision entered November 6, 2014. At question is this Court's Order Setting Closing Schedule & Awarding Attorneys Fees entered April 3, 2017 (the April 3, 2017 order) on the Dudek/Cross Motion for the same.

On April 6, 2017, Morphew/Ferros[1] filed a joint Answer to Dudek & Cross Notice of Motion and Motion to Set Closing Schedule and Award Attorneys Fee. The joint Answer is construed as a Rule 59(e) Motion to alter or Amend the April 3, 2017 order. The joint Answer has 13 points of contention. Paragraph 5 of the joint Answer, addressing the award of attorneys' fees, has merit. Paragraph 6, addressing the issue of the purchase price, has merit. Additionally, at the close of

[1] Morphew as used herein refers to Molly M. Morphew; Ferros as used herein refers to Thomas M. Ferro, a/k/a Thomas Ferro and Lorraine B. Ferro a/k/a Lorraine Ferro, jointly and severally. Dudek/Cross as used herein refers to Stephen Dudek and Doreen Cross, jointly and severally.

the hearing, Mr. Smith requested the Court order cancellation of the Lis Pendens filed in this action. This too has merit. All remaining issues raised in the joint Answer have no merit.

Morphew and Ferros are *pro se*. Hence, this Court has given broad latitude to them, particularly, in matters of procedure. The Answer follows entry of an Order on a Motion heard in open court and on the record. Morphew appeared in person. Ferros attended by telephone with consent of all parties inasmuch as they live in Colorado. As to the present matter the hearing conducted May 12, 2017 at 10:00 A.M. the same appearances were made, Ms. Morphew *pro se* and in person and the Ferros via telephone[2]. All parties presented arguments. The Ferros were placed under oath as was Ms. Morphew.

Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339, 1991 WL 113654 (1991) This Court liberally construes pleadings to conform them to the rules of civil procedure in such a manner that promotes substantial justice between the parties. The primary aim being to give, especially with pro se litigants, is to assure them notice of proceedings and an opportunity to be heard, the fundamental of procedural due process[3].

Striking this balance is often at the detriment of represented parties by competent counsel. Nonetheless in this case, since a hearing on the record pursuant to adequate notice to all parties on the Dudek/Cross Notice of Motion and Motion to Set The Scheduling For Closing And Award Attorneys' Fees, and all parties were given liberal opportunity to speak to the motion, this Court deems the joint Answer as a Motion pursuant to Rule 59 (e) SCRCP to alter or amend the April 3, 2017 order. At the hearing on the Dudek/Cross Motion, Ferros asserted that the requests

[2] Since the Ferros attended this hearing by telephone, the Court will enter an order dismissing their motion to attend by telephone filed May 3, 2017 as moot.

[3] Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350, 2007 WL 4698492 (2008)

for attorneys' fees had been waived because no motion for fees and costs had been timely filed, and they asserted the attorney's fees were too high.

The affirmed Order, dated January 17, 2017, remittitur entered February 17, 2017, provided the following finding of fact:

> "The Court finds Defendants Ferro are in default of the Dudek/Cross Contract for the reasons stated in this Order. Pursuant to Paragraph 16, the Court finds Defendants Dudek and Cross are entitled to recover reasonable costs, including a reasonable attorney fee. To this end, Defendants are at leave to apply, on or before ten (10) days of the date of this Order, for costs and attorneys fees due from Defendants Ferro. This Court will schedule a factual hearing on or after 10 days from the date of filing the application to ascertain a reasonable attorney fee and what costs should be recovered. If Defendants Dudek and Cross fail to apply for costs and attorneys fees within ten (10) days of the entry of this Order, Defendants Dudek and Cross shall be deemed to have waived their rights under Paragraph 16." Page 10, paragraph 21.

As a conclusion of law, this Court stated:

> "Defendants Ferro are in default of the Dudek/Cross Contract. Defendants Dudek and Cross have a contractual right to pursue recovery of a reasonable attorney fee and costs of this action. In order to assert this right, Defendants Dudek and Cross shall apply to recover these costs and fees on or before ten (10) days of the entry of this order." Page 12, paragraph 8.

Dudek/Cross did not file an application for attorneys' fees within ten (10) days of the original trial order. Instead on November 19, 2014, counsel for Dudek/Cross sent the Court an email to which he attached an itemization of fees and costs[4]. In reply, the Court instructed Dudek/Cross' attorney to file a motion and affidavit in support of their attorney's fees so as to allow the Ferros an opportunity to be heard on the motion. No motion was filed. Thereafter, on December 5, 2014, Morphew's then counsel[5] served her Notice of Appeal, which was clocked time-stamped by the Clerk of Court and entered in CMS on December 8, 2014, followed by Ferros' Notice of

[4] All parties had a copy of the itemization. During the hearing the Court reviewed the itemization. See also footnote 8 *infra.*

[5] Mr. Massalon served and filed Notice of Withdrawal as Counsel on December 15, 2014 with the Court of Appeals.

Appeal, dated December 12, served December 11, 2014 (emphasis added) and time stamped by the Clerk of Court on December 15, 2014 but entered in CMS on December 16, 2014.[6]

In any event, the Dudek/Cross failure to timely file the appropriate motion supported by an affidavit of attorney's fees only affects the attorneys' fees through the trial of the case. The failure to file a motion supported by an affidavit of attorneys' fees does not preclude the award of attorneys' fees once the case was appealed and following the appeal. In this regard, as to attorneys fees incurred in responding to the appeal, and matters post remittitur, attorneys fees have not been waived and are appropriately before the Court. To this end, the Court turns its attention first.

Dudek/Cross affidavit of attorneys' fees requests $16,592.60 attorneys' fees for David A. Collins[7]. As stated above, he had previously submitted an itemization of his fees of $10,150.00 and costs of $2,683.79, totaling $12,833.79[8]. Thus, from the affidavit of attorneys' fees, Mr. Collin's fees for representing Dudek/Cross on appeal are $6,442.60. He incurred $1,533.72 in costs. The total fees and costs are $7,976.32.

After Mr. Collins' suspension, Steven L. Smith, Esquire, has appeared on behalf of Dudek/Cross. He claims on behalf of Dudek/Cross a right to recover attorney's fees of $3,107.05 and costs of 35.00 through the motion hearing resulting in the April 3, 2017 order. In addition he claims attorney's fees of $2,067.50 through the Rule 59 (e) motion hearing on the Ferros' joint Answer.

In *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238–39, 616 S.E.2d 431, 434, 2005 WL 1620266 (Ct. App. 2005), the Court of Appeals affirmed Charleston County's Master in Equity who awarded the prevailing party in a contract dispute, in which the contract allowed

[6] The Court of Appeals did not address the timeliness of the Ferro Notice of Appeal. " Pursuant to Rule 203(b)(1), SCACR, a party wishing to appeal an order from the court of common pleas must serve the notice of appeal on the respondents "within thirty ... days after receipt of written notice of entry of the order." *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 413 S.C. 642, 644, 776 S.E.2d 575, 576, 2015 WL 5028852 (Ct. App. 2015). See, also, SCRCP 69 (e) providing an additional five (5) days when served by mail.

[7] In the Matter of David A. Collins, Respondent, *Matter of Collins*, 417 S.C. 72, 789 S.E.2d 577,

[8] Provided to the Court in the May 12, 2017 hearing by Morphew.

for recovery of attorneys fee, attorneys fees and costs, including fees and costs incurred by the prevailing party during the proceedings on appeal (emphasis added). The Court of Appeals cites a plethora of cases to the following: "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees." Citations omitted. In addition, *Berger* sets out the factors a trial judge must consider, utilizing its sound discretion, in a determination of the award of attorneys' fee.

"There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." Id., pp 434-435.

As to Attorneys' Fees due to David A. Collins after the Notices of Appeal

1. Nature, Extent, and Difficulty of the legal services rendered:

Two very talented lawyers tried this case before me. The initial trial order speaks to the nature, extent and difficulty of the legal services. Responding to the appeal equally, if not more, draws into focus the the nature, extent and difficulty of the legal services required. Considering this factual issue, this Court finds the weight of this factual inquiry favors awarding attorneys' fees and costs to Dudek/Cross.

2. Time and Labor Devoted to the Case

Mr. Collins hourly rate according to his itemization of fees is merely $200.00. I find this rate extremely favorable if not, quite frankly, very low for a lawyer with Mr. Collins' experience. At that rate he devoted 32.2 hours to the appeal. I find this fact weighs extremely favorable in awarding attorneys' fees and costs to Dudek/Cross.

3. Professional Standing Of Counsel

The Court notes Mr. Collins is presently suspended from the practice of law in South Carolina. The reason for this is not a matter of record in this case. Prior to his suspension, this Court notes

that he was a member in good standing with the South Carolina Bar, and generally enjoyed a reputation of being fair, even-mined, and well qualified in matters pertaining to contractual disputes. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

4. Contingency of Compensation

Nothing in the record indicates the attorneys' fees were contingent on a successful outcome. This factor is, therefore, neutral between Ferros and Dudek/Cross.

5. Fee Customarily Charged in the Locality for Similar Services

A 10,000.00 plus fee for the trial of a complex real estate contract is extremely reasonable. Most fees for responding to an appeal exceed $6,442.60. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

6. Beneficial Results Obtained.

Mr. Collins successfully tried the case. All of the appellate work was completed by the time of his suspension and, since the decision was rendered without oral argument, he successfully responded to the appeal. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

As To Attorneys' Fees Due To Steven L. Smith From His Appearance Before The Court Of Appeals Through The Present.

7. This Court views each of the 6 factors set forth above with same results. Mr. Smith is a member in good standing with the South Carolina Bar. He is an excellent trial and appellate lawyer[9]. Mr. Smith submits he is entitled to $5,175.00 in fees and $35.00 in costs. His total fees and costs are $5,210.00. He has made 2 court appearances before me as well as undertaken the representation of Dudek/Cross in the appeal albeit primarily perfunctory. At the Court's request he drafted the April 3, 2017 order which the joint Answer addresses (the joint Answer refers to a draft Order although as discussed in the

[9] A Westlaw search reveals he has represented parties on appeal in 39 cases.

Dudek/Cross Motion hearing, the Court accepted Mr. Smith voluntary offer to submit a proposed Order setting forth the rulings from the Bench). He submitted in his presentation that he has shepherded Dudek/Cross through the scheduling process, and has dealt with issues relating to procuring a closing attorney[10]. Although he has failed to prevail on Mr. Collins' fees for the trial, he is blameless for the shortcoming of Mr. Collins' failure to meet the Court's deadline for filing a Motion and supporting affidavit for attorneys' fees and costs. A fair inference to draw from that failure was that Dudek/Cross would likely not have pressed for the attorneys' fees and costs were the case not appealed. However, defending the pursuit of the appeal by the Ferros cannot be ignored when the real estate contract in dispute permits the non-defaulting party to recover costs and attorneys fees.

For the foregoing reasons as to Ferros responsibility for payment of Dudek/Cross Fees and Cost

8. I find as follows: $7,976.32 in attorneys' fees and cost post the trial of the case is fair and reasonable. These are the fees and cost they incurred with Mr. Collins from the date of the first notice of appeal of the November 6, 2014 trial court order to the time of his suspension. And further,
9. I find Ferros are responsible for the payment of these fees; and as to Mr. Smith's Fees and Cost I find $5,210.00 in attorneys' fees and costs Dudek/Cross have incurred with Mr. Smith's representation from the beginning of his representation during the appeal and to the present against Ferros is fair and reasonable.

10. The total judgment against Ferros for attorneys' fees and cost iSection 18-n favor of Dudek/Cross is $13,186.32[11].

[10] In a separate action, Morphew has sued lawyers and their staff who were to represent Dudek/Cross. With actual notice of pending litigation, the closing attorney declined to process the closing. Mr. Smith reports the closing attorney's title company would not remove an exception to the title commitment relating to the separate action.

[11] The Ferros stated under oath that they would give powers of attorney to an agent to close the real estate transaction with Dudek/Cross. The personal judgment against them will be a cloud on the title. The cloud can be satisfied at closing by deducting the judgment amount from Ferros proceeds and shown as a disbursement to the Dudek/Cross as a line itemt on the HUD-1 and disbursed at closing from the closing attorney's escrow and process of disbursement. Likewise, Mr. Smith can submit a satisfaction of the judgment to the closing attorney with

11. Ferros assert the contract price should not be changed. This Court agrees. The Contract price shall remain $303,000.00.
12. Each of the 11 remaining grounds Morphew and Ferros assert in the joint Answer have no merit. In short, all of the remaining terms of the April 3, 2017 order remain in full force.

13. Specifically, Morphew requested proof of financing from Dudek/Cross before she would be required to move from the Ferros property. At the hearing she demanded she receive 5 items: a Good Faith Estimate, Proof of Approved Financing, the HUD 1 closing statement, the Dudek/Cross loan application and the Contract. At the Dudek/Cross Motion hearing to set a closing schedule, proof of approved financing was a fair request though she did not have any legal right to this under the terms of the Ferros and Dudek/Cross contract. The April 3, 2017 order did specifically address granting a right to proof of approved financing, although the Court suggested from the Bench that some evidence of Dudek/Cross's approved financing should be given to her. Morphew's demand for 4 additional items, matters to which she has no right, 46 days after the April 3, 2017 order, when Dudek/Cross cancelled a closing because they had agreed not to close within 45 days to give her ample time to relocate, now raise the inference that she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross. She took the risk of moving into the property during pending litigation. She must now accept the risk that her contentions were misplaced.
14. Morphew/Ferros submitted no independent corroborating affidavits to support the 11 remaining claims. Neither did they proffer any other testimony in support of their contentions.
15. This matter is now concluded by this Court. To this end, this Court directs the Clerk of Court to mark all Lis Pendens associated with this consolidated case cancelled.

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instructions that it is to be delivered to the Ferros upon payment of the judgment amount to Dudek/Cross. Since the Ferros are pro se, and should choose to appeal this order, the Court suggests they review Rule 241 (b) (1) SCACR stating the exception that money judgments are not stayed by an appeal as provided in South Carolina Code Section 18-9-130.

Conclusions of Law

1. Dudek/Cross have judgment against Ferros in the amount of $13,186.32.

2. The purchase price of the Ferros and Dudek/crosss contract shall remain at $303,000.00.

3. All remaining claims of Morphew and Ferros for alteration or amendment of the April 3, 2017 Order are denied. Except as modified herein, the April 3, 2017 Order remains.

4. Each Lis Pendens is and shall be cancelled. The Clerk of Court for Dorchester County is directed to enter appropriate documentation in the record of this case that each and every Lis Pendens cancelled.

Each of the Court's Findings of Fact shall also be construed as Conclusions of Law. Each of the Court's Conclusions of Law shall are also be construed as Findings of Fact. NOW, THEREFORE, IT IS

1. ORDERED, ADJUDGED, AND DECREED that Dudek/Cross shall be granted judgment against Ferros in the amount of $13,186.32. AND IT IS
2. ORDERED, ADJUDGED, AND DECREED that the purchase price of the Ferros and Dudek/Cross contract shall remain at $303,000.00. AND IT IS
3. ORDERED, ADJUDGED, AND DECREED that this order ends the case on remittitur from Court of Appeal. AND IT IS
4. ORDERED, ADJUDGED, AND DECREED that all Lis Pendens in this action are and shall be cancelled. The Clerk of Court is directed to enter cancellation of lis pendens against each lis pendens filed in this action, including such lis pendens filed prior to consolidation of the cases. AND IT IS
5. ORDERED, ADJUDGED, AND DECREED that the Order Setting Closing Schedule & Awarding Attorneys Fees entered April 3, 2017 is altered and amended only as specifically set forth above. AND IT IS

6. ORDERED, ADJUDGED, AND DECREED that all remaining claims set out in the joint Answer to alter or amend the April 3, 2017, order are hereby denied.

AND, IT IS SO ORDERED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
May 17, 2017

060

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	2017 JUN 14 PM 1:03 CLERK OF COURT DORCHESTER COUNTY	**Thomas Ferro** **Stephen Dudek**	**Lorraine Ferro** **Doreen Cross**
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by: | **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stephen Dudek and Doreen Cross	**Molly M Morphew**	$6,673.97

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

James L Willis

Master in Equity | **3078** **Judge Code** | 6/14/2017 **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

061

For Clerk of Court Office Use Only

This judgment was entered on 06/14/2017, and a copy mailed first class or placed in the appropriate attorney's box on 06/14/2017, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E Butternut Rd Summerville, SC 29483 & VIA email by MJE

~~**David A. Collins** PO Box 40578 Charleston, SC 29423~~
~~**Thomas Ferro** 5501 Carson St Denver, CO 80239~~
~~**Lorraine Ferro** 5501 Carson St. Denver, CO 80239~~
Steven L. Smith PO Box 40578 Charleston, SC 29423-0578
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578 & via email MJE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA **COUNTY OF DORCHESTER**	**IN THE COURT OF COMMON PLEAS** **FIRST JUDICIAL CIRCUIT** **EQUITY DIVISION** **Civil Action No.: 2013CP1800074** **consolidated with Civil Action No. 2013CP1800183**
Stephen Dudek, Doreen Cross, **Plaintiffs** **Versus** **Thomas M Ferro, and Lorraine B Ferro,** **Defendants** **AND** **Molly M Morphew,** **Plaintiff** **Versus** **Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro,** **Defendants**	**CONTEMPT ORDER** **IN RE MOLLY M. MORPHEW**

FILED-RECORDED
2017 JUN 14 PM 1:03
CLERK OF COURT
DORCHESTER COUNTY

INTRODUCTION

This matter is before me on Notice of Motion and Motion by Dudek/Cross[1] for a Rule to Show Cause why Morphew should not be ejected from the Property[2] that is the subject of this four and half-year old suit for specific performance. The Motion also seeks a Rule To Show Cause why Morphew should not be held in contempt. However, since no affidavit is filed in support of the Rule To Show Cause Dudek/Cross moves for the ejectment of Morphew from the Property.

[1] Morphew as used herein refers to Molly M. Morphew. Dudek/Cross as used herein refers to Stephen Dudek and Doreen Cross, jointly and severally

[2] The Property as used herein is 788 East Butternut Road, Summerville, South Carolina; containing approximately 6 acres.

PROCEDURAL HISTORY

The procedural history is well documented in prior orders of this Court. Moreover, the filings of record held by the Dorchester County Clerk of the Court demonstrate a number of proceedings post trial, and pending the appeal, and post remittitur. These show tenacious efforts by the parties to protect their respective rights. Hence, for purposes of the procedural history reference to the numerous filings is craved.

A hearing on the Dudek/Cross Motion was held on June 12, 2017 at 9:00 A.M. Present at the hearing were Dudek/Cross and their attorney Steven L. Smith, Esquire, whose offices are in North Charleston. He Smith serves clients throughout the Lowcountry. He is well known for his practice in representing parties in contract disputes. Molly Morphew, who at the trial of the case had the very competent John Massalon as her attorney, dismissed him after the Notice of Appeal was filed, and has appeared *pro se* since that time. Though she lacks a keen understanding of procedural matters her written word demonstrates she enjoys a high intellect. Based on these writings alone, this Court is comfortable in finding that she understands full well the terms of Court's orders and the consequences of her actions in light of the orders from this Court.

At the conclusion of opening statements by both parties as to the respective positions, this Court *sua sponte* issued a verbal rule to show cause directing Ms. Morphew to show cause why she should not be held in contempt. If a contempt decision were made, it could be used to affect the primary aim Dudek/Cross seek, as well, but also establish a method of compensation to Dudek/Cross for contemptuous behavior were it to be established.

EVIDENTIARY HEARING AND FINDINGS OF FACT

Once the Rule To Show Cause issued, this Court conducted an evidentiary hearing to ascertain the facts that would bear on whether Ms. Morphew should be held in contempt of this Court's Order, dated April 3, 2017, as modified by an Order entered May 17, 2017. In short the central question derives from the precise language in paragraph 8 of the April 3, 2017 Order concerning the Property. Paragraph 8 states:

> Morphew, as the current tenant of the Property, is ordered to vacate the Property on or before the closing date, which will be provided to her by the parties or their counsel.

This provision remained in full force by this Court's Rule 59(e) Order entered May 17, 2017.

After hearing the testimony of Cross, Dudek, and Morphew, I find that Morphew is in contempt of this Court's Order dated April 3, 2017. Morphew received notice that the Ferro and Dudek/Cross closing would be held on June 2, 2017 by email correspondence she received from Mr. Smith on May 31, 2017, within 10 minutes of Mr. Smith's receipt of confirmation that Ferro intended to close the sale via a power of attorney on June 2, 2017[3]. Moreover, Morphew continues in possession of the Property as of the date and time of the hearing 10 days after the date of closing of the Purchase and Sale Agreement between Ferro and Dudek/Cross.

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[3] The email in response to Mr. Smith inquiry that Ferro would close on Friday (June 2, 2017) was a cryptic "poa." Mr. Smith understood this to mean, "power of attorney," confirming the closing date. The email stating "poa" came from Ferro's real estate agent Rick Willis. Mr. Willis is Morphew's real estate agent, too. A Ferro/Morphew contract would have produced a full commission to Mr. Willis, who shared the commission with Dudek/Cross' buying agent under a cooperating broker agreement. I recollect the loss to Mr. Willis of approximately $12,000.00. The impertinent, cryptic email expresses Willis' disdain that the Morphew Ferro contract fails: "This Order shall be construed to terminate the Morphew Contract upon the exchange of the purchase price by Defendants Dudek and Cross for delivery of the deed by Defendants Ferro. Hence, at that point in time, Defendants Dudek and Cross grant of mortgage lien to their conventional residential loan lender shall be free of the encumbrance of the Morphew Contract." See Order, darted November 6, 2014, affirmed *Dudek v. Ferro*, No. 2014-002633, 2017 WL 128702 (S.C. Ct. App. Jan. 11, 2017).

The evidence is undisputed that the closing of title occurred on June the 2, 2017. Moreover, the evidence is undisputed that Morphew continues to reside in the Property and has refused to vacate it prior to or on the date of closing and has refused to vacate the property as of morning of June 12, 2017. I find that Morphew's conduct is a willful failure to vacate the property after notice of the closing date on or before that date. Her willful disobedience of this Court's Order of April 3, 2017 is established by clear and convincing evidence. I find that Morphew shall be confined to the Dorchester County Detention Center for a period of 30 days; provided, however, she shall purge this sentence of confinement by removing herself, any other occupants and all personal property from the Property on or before 9:00 A.M. June 16, 2017.

The issue now turns to an exercise of this court's sound discretion to formulate a reasonable means to address Morphew's contemptuous conduct to achieve the object in addition to having her removed from the property to compensate Dudek/Cross for Morphew's contempt. To this end, this Court inquired of Cross and Dudek as to the loss they have incurred by not having possession of the Property as of June 2, 2017.

Based on the testimony of Cross, I find she and Dudek have paid pre-paid interest on the purchase money note, secured by a mortgage, on the Property in the amount of $399.97.[4] Through Dudek's testimony I find that he and Cross have incurred additional carrying charges on the property in which they reside currently, 236 Cady Drive, Summerville, South Carolina. These charges consist of the following:

[4] During the course of the hearing the calculation of pre-paid interest was made using a 10 key calculator. In chambers, I have calculated the pre-paid interest using an excel spreadsheet. The resulting calculation is a per diem of $28.57 (rounded) [($242,000.00 X 4.25%/)/360.] Morphew's possession will end on the 14th day after the closing. $28.57 X 14 days is $399.97.

Water:	$35.00
Sewer	$45.00
Electric	$225.00
Internet/Cable	$144.00
Telephone	$30.00
Security Alarm	$30.00
Total	$509.00

I find the carrying charges on 236 Cady Drive as reasonable.

In addition, Dudek valued their loss of use of the Property at $200.00 per day. Total loss of use is $2,800.00 (14 days X $200.00). I find Dudek's evaluation of the loss of use reasonable. Moreover, Morphew offered no contravening evidence on the loss of use despite numerous offers by the Court to express additional testimony concerning her position.

In addition to these compensable losses, Mr. Smith submitted an affidavit in support of a request for indemnification of his clients for additional attorney's fees and costs incurred by them arising out the contemptuous behavior of Morphew. An indemnification of costs and attorneys fees requires this Court to consider the reasonableness the amount of the fees and costs. An evaluation of attorney's fees requires this Court to consider 6 factors. They are as follows:

1. Nature, Extent, and Difficulty of the legal services rendered:

The nature of this proceeding is an application for this Court to require Morphew to follow this Court April 3, 2017 order directing her to vacate the Property on or before the date of the closing of the Property on notice of the date of the closing. As attorney for the moving party

Mr. Smith has had to prepare and file a motion, serve the motion, and attend a hearing. He has continued communication with his clients no doubt to explain the procedure and prepare them for participation at the hearing. The difficulty of these proceedings for a seasoned attorney, such as Mr. Smith, is not particularly challenging. Notwithstanding, balancing this factual issue against the amount of attorneys fees asserted, this Court finds the weight of this factual inquiry favors awarding attorneys' fees and costs to Dudek/Cross.

2. Time and Labor Devoted to the Case

Mr. Smith's affidavit does not reveal his hourly rate. From prior hearings, the Court is aware that Mr. Smith took over the representation of Dudek/Cross from Mr. Collins. Mr. Collins' hourly was $200.00 per hour. The preparation of the motion, preparation for the hearing, and preparation of his clients for the hearing and attending the hearing can easily take approximately 10 hours. Any amount of time less than 10 hours would be exceptionally efficient and would easily justify a higher hourly rate. In this venue hourly rate for attorneys with the experience Mr. Smith has are within the range of $350.00 to $425.00 per hour. This Court finds this fact weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

3. Professional Standing Of Counsel

The Court notes Mr. Smith is a member in good standing with the South Carolina Bar. He is an excellent trial and appellate lawyer[5]. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

4. Contingency of Compensation

[5] A Westlaw search reveals he has represented parties on appeal in 39 cases.

Nothing in the record indicates the attorneys' fees were contingent on a successful outcome. This factor is, therefore, neutral on the issue of indemnification for attorneys fees and costs.

5. Fee Customarily Charged in the Locality for Similar Services

An attorney of $1925.00 for a motion is reasonable. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

6. Beneficial Results Obtained.

This Court rules in favor of Mr. Smith's clients. In other words, the actions of Morphew reveal she has no basis for remaining in the Property. She has willfully disobeyed this Court's order[6] and despite her subjective justifications[7] for remaining in the property. Dudek/Cross had no option but to move the Court for her ejection and contempt. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

Taking all of the factors as a whole, this Court finds the request for attorney's fees reasonable, appropriate and proper. The cost of $1,340.00 stated in Mr. Smith's affidavit was adjusted during the hearing to $1,040.00. Mr. Smith explained these costs were in large part the costs of retaining a court reporter. This Court has a standing administrative order that all hearings must be held on the record, and this Court requires a court reporter. The Masters in Equity across this state handle reporting of hearing in many ways, but generally across the state in contested

[6] I take this opportunity to state that Morphew admits I directed her to vacate the property in a hearing before me on May 12, 2017.

[7] Morphew repeatedly stated she felt she had the right to stay the Property; she felt she had not been given proper notice of the closing, she felt she had to protect her rights, etc. Her defense in large part is expressed in subjective terms. She did not consider the objective standards of this Court's prior Order. As I admonished her, Morphew has become so emotionally invested in this case that she cannot "see the forest for the trees", a euphemism which generally means one is so entangled in the details of a situation that she cannot see the larger principal of the whole of the case.

matters the moving party procures the service of a court reporter. This is a cost of the suit. In most cases, these costs when requested by a successful party are taxed to the losing party. This case is no different. Moreover, I find the costs of $1,040.00 reasonable.

In sum, the Court finds that Dudek/Cross are entitled to a compensable fine due from Morphew of the sum of the pre-paid interest, the carrying charges on 236 Cady Drive, and the attorney's fee and costs. The sum of these items is $6,673.97.

During the hearing, this Court expressed a desire that Morphew be required to pay this sum of money on or before June 16, 2017. After due consideration of this verbal ruling, and considering the position of Dudek/Cross, who expressed that they did not want to have Morphew jailed for contempt, this Court revises that oral ruling to the entry of a judgment against Morphew in the amount of the compensable fine.[8]

CONCLUSIONS OF LAW

Based on the foregoing facts, I conclude as a matter of law the following:

1. Morphew is in contempt of this Court's April 3, 2017 Order.

2. Morphew's contempt is willful.

3. Morphew's contempt has been established by clear and convincing evidence.

4. The object of the contempt is to encourage Morphew to abide by this Court's order of April 3, 2017 by having her remove herself, any other occupants, and her personal property (vacate) from the Property.

5. To encourage compliance with my Order, Morphew should be sentenced to confinement in the Dorchester County Detention Center, Deming Way, Summerville, South

[8] I do not think it fair or appropriate to require the payment of a compensable fine, in the circumstance before me, in order to purge confinement in the county detention center.

Carolina for a period of 30 days beginning June 16, 2017 from the time she fails to vacate the Property, through July 16, at Noon; provided, however, Morphew may purge herself of this confinement by vacating the Property on or before June 16, 2017 at 9:00 A.M.

6. In the event Morphew does not vacate the Property on or before June 16, 2017 at 9:00 A.M., this Order shall be used as a directive to the Dorchester County Sheriff, or his duly appointed deputy, place Morphew under arrest and place her in the Dorchester County Detention Center. The Dorchester County Sheriff, or his duly appointed deputy, shall thereupon remove any other occupants, including adults and children, from the Property, using such force as is necessary, and to then and there remove all of the personal property of Morphew, or any occupant into the unpaved portion of the right of way of East Butternut Road in front and at the northern most corner of the property (the corner closest to Old Orangeburg Road) abutting on East Butternut Road. In the event the Dorchester County Sheriff, or his duly appointed deputy, upon entry to the Property, discovers a child or children reside(s) in the Property, the Sheriff shall take said child or children into custody, delivering them over as soon as practical to the Dorchester County Department of Social Services (DSS) as is the standard protocol for the arrest of a person in whose care and custody a child or children reside(s). Once DSS takes protective custody, it shall follow the standard protocols for its care and protection of children, the jurisdiction over which acts would be the Dorchester County Family Court.

7. In the event Morphew vacates the Property but leaves personal property located on the Property, the personal property shall be deemed released, quit claimed, and abandoned unto Dudek/Cross. Dudek/Cross upon entry into possession shall have the right to keep the personal property or may remove it free of any recourse, legal or equitable, from Morphew or any occupant inasmuch as Morphew's or any occupant's act or omission of leaving the personal

property operates as a full and complete release of any and all claims Morphew or any occupant may have to the personal property. NOW, THEREFORE IT IS

ORDERED, ADJUDGED, AND DECREED THAT Molly M. Morphew is in contempt of this Court's Order, dated April 3, 2017, for her failure, after notice of the date of closing, to vacate the Property. IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED THAT Morphew is sentenced to confinement in the Dorchester County Detention Center, Deming Way, Summerville, South Carolina for a period of 30 days beginning June 16, 2017 from such time she is arrested, through Noon the thirtieth day therafter; provided, however, Morphew may purge herself of this confinement by vacating the Property on or before June 16, 2017 at 9:00 A.M. AND IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that Dudek/Cross shall have judgment against Morphew in the amount of $6,673.97. AND IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that if Morphew does not vacate the Property on or before June 16, 2017 at 9:00 A.M. the Dorchester County Sheriff, or his duly appointed deputy, shall arrest Morphew and place her in the Dorchester County Detention Center and remove any other occupants, including adults and children, from the Property, using such force as is necessary, and to then and there remove all of the personal property of Morphew or any occupant into the unpaved portion of the right of way of East Butternut Road in front and at the northern most corner of the property abutting on that road (the corner closest to Old Orangeburg Road). AND IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that if the Sheriff, upon entry to the Property, discovers a child or children reside(s) in the Property, the Sheriff shall take said child

or children into custody, delivering them over as soon as practical to the Dorchester County Department of Social Services (DSS) as is the standard protocol for the processing of a child when the arrest of a person in whose care and custody a child or children reside(s). Once DSS takes protective custody, it shall follow the standard protocols for its care and protection of children. All matters pertaining to such child or children shall become the jurisdiction of the Dorchester County Family Court. AND IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that if Morphew, or any other occupant, vacates the Property but leaves personal property located on the Property, the property shall be deemed released, quit claimed, and abandoned unto Dudek/Cross. Dudek/Cross upon entry into possession shall have the right to keep the personal property or may remove it without any recourse, legal or equitable, from Morphew or any occupant in as much as the act of leaving the personal property operates as a full and complete release of any and all claims Morphew or any other may have to the personal property. AND, IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED that the Dorchester County Sheriff, or his duly appointed deputy, shall place Dudek/Cross is peaceful possession of the Property as soon as practicable on June 16, 2017 at or after 9:00 A.M. AND, IT IS FURTHER

ORDERED, ADJUDGED, AND DECREED the Findings of Fact shall be deemed Conclusions of Law and the Conclusions of Law shall be deemed Findings of Fact.

AND, IT IS SO ORDERED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
June 14, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-18- 74

SUMMONS

NON-JURY

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CLERK OF COURT
DORCHESTER COUNTY

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office at Post Office Box 40578, Charleston, South Carolina, 29423, within thirty (30) days of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire
Post Office Box 40578
Charleston, SC 29423
(843) 760-0220
Attorney for Plaintiff

North Charleston, SC
January 15, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE NO. 2013-CP- 18- 74
Stephen Dudek and Doreen Cross)	
)	
Plaintiffs,)	
)	
vs.)	COMPLAINT
)	
Thomas M. Ferro and Lorraine B. Ferro)	
)	
Defendants)	

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CLERK OF COURT
DORCHESTER COUNTY

The Plaintiffs, complaining of the Defendants named herein, would respectfully allege.

1. That the Plaintiffs are citizens and residents of the County of Dorchester, State of South Carolina.
2. That the Defendants are citizens and residents of the County of Dorchester, State of South Carolina.
3. That all parties are subject to the jurisdiction of this Court and venue is proper.
4. That on or about October 24, 2012, the parties entered in an Agreement to Buy and Sell Real Estate, a copy of which is attached hereto as Exhibit "A".
5. That the contract provided that the Defendants, as Sellers, sell to the Plaintiffs that certain real estate known as 788 East Butternut Road, located in Dorchester, South Carolina for and in consideration of the purchase price of Three Hundred Three Thousand and 00/100 ($303,000.00) Dollars.
6. That the Plaintiffs have complied with all conditions precedent to the contract.
7. That despite repeated demand to close the transaction, the Defendants have refused and still refuse to close the transaction as provided for by the contract.
8. That the Defendants are in breach of their contract with the Plaintiffs.

9. That as a direct and proximate result of the Defendants breach of contract, the Plaintiffs have been damaged in an amount to be determined by this Honorable Court.

10. That the Plaintiffs are entitled to a judgment against the Defendants in an amount to be determined by this Honorable Court.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

11. That the allegations contained in the preceding paragraphs are incorporated herein as if specifically repeated.

12. That the parties entered into an Agreement to Buy and Sell Real Estate on or about October 24, 2012.

13. That the Plaintiffs have filed a Lis Pendens on the property and that said Lis Pendens was filed on January 11, 2013. A copy of said Lis Pendens is attached hereto as Exhibit "B".

14. That should the contract not be ordered to be specifically performed, then the Plaintiffs will have no adequate remedy at law.

15. The contract between the parties constitutes an agreement that is fair, just and equitable.

16. That the Plaintiffs have complied with all terms of the contract and remains ready, willing and able to comply with the contract's terms.

17. That the Plaintiffs are entitled to an order of this Court compelling the Defendants to specifically perform the contract of the parties.

WHEREFORE, the Plaintiffs pray that this Court inquire into the matters as set forth herein, grant them an order compelling the Defendants to specifically perform the contract of the parties, or in the alternative, grant them judgment on their contract claim in an amount to be determined by this Honorable Court, grant them their attorney fees and costs and grant them whatever other relief that this Court deems just and equitable.

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire (Bar # 10294)
Post Office Box 40578
Charleston, SC 29423
Phone (843) 760-0220
Fax (843) 552-2678
Davidacollins2@aol.com

Exhibit "D"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

© Carolina One Real Estate

1. **PARTIES:** This legally binding Agreement entered into on October 20, 2012 between, Buyer(s), Stephan Dudek, Doreen Cross (hereinafter called "**BUYER**"), and Seller(s), _____ (hereinafter called "**SELLER**"). The property shall be deeded in the name(s) of: Tbd

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____.

No personal property will convey as a part of this sale, except as described: All appliances including refrigerator as well as all window treatments.

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 11/30 December 03, 2012, not later than 6:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ ~~200,000.00~~ 303,000.00
Three Hundred Three Thousand Dollars and 00/100 dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: _____

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 1,000.00
Buyer and Seller authorize Carolina One Real Estate as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☒Check, or ☐Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

Carolina One Real Estate • 7 Trolley Road | 510 Old Trolley Road | Summerville, SC 29485 Phone: (843) 873-3000 Fax: (843) 873-3159 | Each Office Is Independently Owned & Operated
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CLERK OF COURT
DORCHESTER COUNTY

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 90.000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☐ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to contribute $5,000-towards Buyers Closing Costs.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☒ will ☐ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☒ Seller not to exceed $ 700.00 . AHS provided by Carolina One.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 6 o'clock P M. on October 22, 2012 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowners association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS. The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based paint and lead based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (GL100) from a licensed and bonded pest control operator on or before November 30, 2012. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

her was not CWD

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that I helsting and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the pr perty is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT I NTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum A, B + C

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek Date 20 OCT 2012 Time 1:45

WITNESS: Susan Nicholson Date 10.20.12 Time 1:48

BUYER: Doreen Cross Date 10 2012 Time 1:47

WITNESS: Susan Nicholson Date 10.20.12 Time 1:48

SELLER: Thomas Ferris Date 10/24/12 Time 11:45 AM

WITNESS: [illegible] Date 10/24/12 Time 11:45 AM

SELLER: [illegible] Date 10/24/12 Time 11:46 AM

WITNESS: [illegible] Date 10/24/12 Time 11:46 AM

LISTING AGENT AND COMPANY Rick Willis The Group, LLC

SELLING AGENT AND COMPANY Susan Nicholson Carolina One Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Susan Nicholson Carolina One Real Estate

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ADDENDUM A

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property; ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Buttercup Rd.

Tax Map # 128-00-00-0.0-00 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agrees as follows:

1. Buyer total satisfaction of home inspection and CT200. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septic tank hasn't been service in the past yr. then Seller agrees to have it serviced.5. Seller agrees to have the property subdivided to include in this sale the 2340 sf house, storage bldg and 5 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to include copies of the survey. Cont. next pg. (8) → C

The herein agreement, upon its execution by both parties, is hereinafter made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Deborah Cross	Date 10.20.12	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Ferris	Date 10/24/12	Time 11:48
WITNESS: Peggy T Ferris	Date 10/24/12	Time 11:48
SELLER: Virginia Ferris	Date 10/24/12	Time 11:49
WITNESS: Peggy T Ferris	Date 10/24/12	Time 11:49

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Phone: 8434191015 Fax: 8432023169 Susan Nicholson
145 Bowling

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ADDENDUM B

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises -- commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 138-00-00-080 City Summerville, S.C. Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SC Sellers Disclosure due to not legible of what is currently on the MLS. 9. Seller to leave current 3 ac. fencing paddock where AC currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc. Buyer shall grant water & sewer easement to adjacent 2 acres. SH

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Debbie Gross	Date 10.20.2012	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Rene	Date 10/24/12	Time 11:48
WITNESS: Kay T Fagan	Date 10/24/12	Time 11:48
SELLER: Marianne Rene	Date 10/24/12	Time 11:49
WITNESS: Kay T Fagan	Date 10/24/12	Time 11:49

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	CASE NO.: 2013-CP-18- 183
Molly M. Morphew,)	
)	
Plaintiff,)	
)	
v.)	**COMPLAINT**
)	**(Jury Trial Demanded)**
Thomas Ferro, Lorraine Ferro,)	
Stephen Dudek, and Doreen Cross,)	
)	
Defendants.)	

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2013 JAN 31 PM 3:2
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff, Molly M. Morphew, complaining of the Defendants, Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross, alleges as follows that:

BACKGROUND

1. The Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. Upon information and belief, Defendants Thomas Ferro and Lorraine Ferro are residents of the State of Kentucky.
3. Upon information and belief, Defendants Thomas and Lorraine Ferro own property in Dorchester County that is the subject of this Complaint, identified as TMS# 128-00-00-090 (hereafter "the Property").
4. Upon information and belief, Defendant Stephen Dudek is resident of Dorchester County, South Carolina.
5. Upon information and belief, Defendant Doreen Cross is a citizen and resident of Dorchester County, South Carolina.
6. This Court has jurisdiction over the parties and subject matter of this litigation and venue is proper in Dorchester County.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

7. Upon information and belief, at some time prior to October 20, 2012, Defendants Thomas and Lorraine Ferrow acquired the Property.
8. On October 20, 2012, Defendants Dudek and Cross entered into an Agreement to Buy and

Sell Real Estate with Defendants Thomas and Lorraine Ferro (hereafter "1st Contract")(See "Exhibit A" attached) to purchase the Property specific terms and conditions stated in the 1st Contract.

9. Upon information and belief, Defendants Thomas and Lorraine Ferro performed their obligations under the 1st Contract and were prepared to close in accordance with the terms of the Contract.

10. Upon information and belief, Defendants Dudek and Cross failed to comply with their obligations under the 1st Contract.

11. Specifically, Defendants Dudek and Cross failed to provide Defendants Thomas and Lorraine Ferro with proof of financing within the time period required by paragraph 8 of the 1st Contract.

12. Additionally, Defendants Dudek and Cross failed or refused to close the purchase of the Property as specified in paragraph 3 of the 1st Contract.

13. The 1st Contract provided that time was of the essence as to both of the time limitations in paragraph 8 and paragraph 3.

14. Pursuant to paragraph 16 of the Contract Defendants Dudek and Cross were obligated to sign a written release after receiving written notice of their default under the 1st Contract.

15. Upon information and belief, on or about December 16, 2012 Defendants Thomas and Lorraine Ferro provided Defendants Dudek and Cross with notice of their default and requested that they sign a release of the 1st Contract, but Defendantd Dudek and Cross failed or refused to sign the release.

16. On or about December 16, 2012, Defendants Thomas and Lorraine Ferro entered into an Agreement to Buy and Sell Real Estate with Plaintiff (hereafter "2nd Contract")(See "Exhibit B" attached) to purchase the Property specific terms and conditions stated in the 2nd Contract.

17. The 2nd Contract states that it is contingent upon Defendants Thomas and Lorraine Ferro obtaining a release of the 1st Contract from Defendants Dudek and Cross.

18. Plaintiff has complied with all of her obligations under the 2nd Contract and she is ready, willing and able to close.

19. Plaintiff has been unable to close because Defendants Dudek and Cross have refused to

sign a release of the 1st Contract despite their breach of that contract.

20. Pursuant to the South Carolina Declaratory Judgments Act, S.C. Code Ann. Sec 15-53-10 et. seq., Plaintiff is entitled to a declaration that Defendants Dudek and Cross are in breach of their obligations under the 1st Contract, that those Defendants are obligated to sign a release of the 1st Contract, and that the Defendants Thomas and Lorraine Ferro are obligated to sell the Property to Plaintiff.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

21. All allegations in the prior paragraphs are fully repeated and incorporated herein.

22. The Defendants Dudek and Cross have unlawfully prevented Defendants Thomas and Lorraine Ferro from fulfilling their obligations under the 2nd Contract and/or unlawfully interfered and disrupted the performance of Defendants Thomas and Lorraine Ferro under the 2nd Contract.

23. Further, Defendants Dudek and Cross filed a lawsuit against Defendants Thomas and Lorraine Ferro in an attempt to disrupt and interfere with the closing of the 2nd Contract.

24. Upon information and belief, Defendants Dudek and Cross engaged in those activities even though she was aware that Defendants Thomas and Lorraine Ferro had contracted to sell the Property to the Plaintiff.

25. Defendants Thomas and Lorraine Ferro have an absolute duty to perform all their obligations under the 2nd Contract.

26. Plaintiff has no adequate legal remedy in that the Property is unique, the Property is uniquely suited for her needs, and Plaintiff has incurred substantial expenses and expended considerable time and effort planning to purchase this particular Property.

27. As a direct and proximate result of Defendants' conduct as set forth herein, Plaintiff is entitled to an order requiring Defendants Thomas and Lorraine Ferro to perform as provided by the 2nd Contract and deliver good and marketable title to the Property to Plaintiff by executing a general warranty deed free of liens, encumbrances and claims.

FOR A THIRD CAUSE OF ACTION
(BREACH OF CONTRACT)

28. All allegations in the prior paragraphs are fully repeated and incorporated herein.

29. As set forth more fully above, Plaintiff entered into a valid and legally binding written

contract with Defendants Thomas and Lorraine Ferro to purchase the Property on certain terms and conditions as stated in the 2nd Contract.

30. After signing the Contract, Plaintiff has secured the financing necessary to purchase the Property and Plaintiff has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

31. Plaintiff has performed all of her obligations under the 2nd Contract.

32. Defendants Thomas and Lorraine Ferro have an absolute duty to perform all their obligations under the 2nd Contract.

33. Upon information and belief, Defendants Thomas and Lorraine Ferro are prepared to perform their obligations under the 2nd Contract.

34. Upon information and belief, Defendants Thomas and Lorraine Ferro have been unable to close due to the unlawful objections of Defendants Dudek and Cross, which have or will result in breach of the terms the 2nd Contract.

35. As a direct and proximate result of Defendants' conduct as set forth herein, Plaintiff has been injured and damaged. Therefore, as an alternative to the Plaintiff's prayer for an order compelling specific performance of the 2nd Contract, Plaintiff is entitled to recover damages against Defendants in an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

FOR A FOURTH CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH
EXISTING CONTRACTUAL RELATIONS)

36. All allegations in the prior paragraphs are fully repeated and incorporated herein.

37. Plaintiff has a valid and binding Contract with Defendants Thomas and Lorraine Ferro.

38. At all times material, Defendants Dudek and Cross had actual knowledge of the 2nd Contract between Plaintiff and Defendants Thomas and Lorraine Ferro.

39. Defendants Dudek and Cross intentionally and tortiously interfered with and precipitated the breach of Plaintiff's 2nd Contract as described more fully above.

40. The actions and conduct of Defendants Dudek and Cross were without any reasonable or legitimate business justification.

41. As a result of the tortious interference with the Contract of Defendants Dudek and Cross Plaintiff has been unsuccessful in acquiring title to the Property pursuant to the 2nd Contract.

42. As a direct and proximate result of the conduct of Defendants Dudek and Cross as set forth herein, Plaintiff has been injured and damaged. Therefore, Plaintiff is entitled to recover actual damages and punitive damages against Defendants Dudek and Cross in an amount to be proven at the trial of this matter.

WHEREFORE, Plaintiff seeks an order of this Court compelling Defendants Thomas and Lorraine Ferro to specifically perform their obligations under the 2nd Contract, or in the alternative, for an award against Defendants Stephen Dudek and Doreen Cross for actual damages, consequential damages, pre-judgment interest at the legal rate, punitive damages and for such other relief as may be just and proper.

John A. Massalon
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

January 30, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	CASE NO.: 2013-CP-18- 183
Molly M. Morphew, Plaintiff,	)	
v.	)	**SUMMONS** **(Jury Trial Demanded)**
Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross, Defendants.	)	

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2013 JAN 31 PM 3:28
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the below subscribed attorney at his office at 97 Broad Street, Charleston, South Carolina 29401 within thirty (30) days after the service hereof exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this action.

John A. Massalon
WILLS MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

January 30, 2013

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CLERK OF COURT
WORCESTER COUNTY

EXHIBIT "A"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

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1. **PARTIES:** This legally binding Agreement entered into on October 20 2012 between, Buyer(s), Stephen Dudek, Doreen Cross (hereinafter called "BUYER"), and Seller(s), _____ (hereinafter called "SELLER"). The property shall be deeded in the name(s) of TBD

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____.

No personal property will convey as a part of this sale, except as described: All appliances including refrigerator as well as all window treatments.

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before ~~November 30~~ December 28, 2012, not later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ ~~250,000.00~~ 803,000.00
Eight hundred three thousand ~~Two hundred fifty~~ and no/100 dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: _____

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 1,000.00
Buyer and Seller authorize Carolina One Real Estate as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☒Check, or ☐Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

SD BUYER SD BUYER TF SELLER SC SELLER HAVE READ THIS PAGE

Carolina One Real Estate · Trolley Road 1510 Old Trolley Road Summerville, SC 29485 Phone: (843) 851-2000 Fax: (843) 821-2100 Lisa Dawkins
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CERTIFIED COPY
2013 JAN 31 PM 3:29
CLERK OF COURT
DORCHESTER COUNTY

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 80,000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with those above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐will ☐will not be added to the mortgage. VA funding fee ☐will ☐will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to Contribute $2,000 towards Buyers Closing Costs.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☒will ☐will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐Buyer or ☒Seller not to exceed $ 700.00. HHS provided by Carolina One.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 6 o'clock P M. on October 22, 2012 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 10 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) Seller's Property Condition Disclosure Statement: (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before November 30, 2012. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment; or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyers expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

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proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum A, B + C

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Ducek	Date 20 OCT 2012	Time 1:45
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
BUYER: Doreen Cruse	Date 10.20.12	Time 1:47
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
SELLER: Thomas Jervey	Date 10/24/12	Time 11:45 AM
WITNESS:	Date 10/24/12	Time 11:45 AM
SELLER: Kathleen Jervey	Date 10/24/12	Time 11:46 AM
WITNESS:	Date 10/24/12	Time 11:46 AM

LISTING AGENT AND COMPANY Rick Willis The Group, LLC

SELLING AGENT AND COMPANY Susan Nicholson Carolina One Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Susan Nicholson Carolina One Real Estate

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ADDENDUM A

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property; ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 708 N Rattlesnake Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

1. Buyer total satisfaction of home inspection and Cl.100. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to turn all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If service tank hasn't been service in the past yr. then Seller agrees to have it serviced.5. Seller agrees to have the property subdivided to include in this sale the 3300 sf house, storage bldg and 5 acres. Any costs will be the responsibility of the Seller. Seller to have review of any and all paperwork of this process to include copies of the survey. Cont. next pg. (A) ✓C

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek		Date 24 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson		Date 10.20.12	Time 1:48 pm
BUYER: Rhonda Cross		Date 10.2012	Time 1:47 pm
WITNESS: Susan Nicholson		Date 10.20.12	Time 1:48 pm
SELLER:		Date 10/24/12	Time 11:48
WITNESS:		Date 10/24/12	Time 11:48
SELLER:		Date 10/24/12	Time 11:49
WITNESS:		Date 10/24/12	Time 11:49

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ADDENDUM B

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 198-00-0- 020 City Summerville Zip 29485

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Also remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a owner's form to buy then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SC Sellers Disclosure due to not terrible of what is currently on the MLS. 9. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc. Buyer shall grant Water & Sewer easement to adjacent 2 acres

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Pudek	Date 20 OCT 2012	Time 1:45 pm
WITNESS:	Date 10.20.12	Time 1:48 pm
BUYER: Deleah Deana	Date 10.2012	Time 1:47 pm
WITNESS:	Date 10.20.12	Time 1:48 pm
SELLER:	Date 10/24/12	Time 11:48
WITNESS:	Date 10/24/12	Time 11:48
SELLER:	Date 10/24/12	Time 11:49
WITNESS:	Date 10/24/12	Time 11:49

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EXHIBIT "B"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

1. **PARTIES:** This legally binding Agreement entered into on December 16, 2012 between, Buyer(s), Molly M. Morphew, (hereinafter called "**BUYER**"), and Seller(s), Thomas Ferro, Lorraine Ferro, (hereinafter called "**SELLER**"). The property shall be deeded in the name(s) of: Molly M. Morphew

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres) Tract B-1

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____.

No personal property will convey as a part of this sale, except as described: Elec Cooktop, Dishwasher, Weher/Dryer Connections, Garbage Disposal, Satellite Dish

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 1/30/13, 1/30/13, not later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

6. **PURCHASE PRICE** shall be $ 280,000.00 Two Hundred Eighty Thousand dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: N/A

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 5,000.00 Pd. To Seller's ~~Buyer and Seller authorize _____ as Escrow Agent to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☐Check or ☐Other. Buyer does not intend a payment of a check or check dated in the future. If earnest money, All earnest money received shall be _____ Real Estate _____ immediately _____ Page _____. Upon consummation of this sale, the earnest money deposit shall be credited to the Buyer.~~

MM BUYER [____] BUYER [MM] SELLER [TF] SELLER HAVE READ THIS PAGE

The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466 Phone: 843-971-4002 Fax: 888-803-1570 788 E. Butternut
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THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 96.500 % loan (loan-to-value ratio) within 5 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 30 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☒ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☒ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller agrees to pay up to $7,000 towards buyers closing costs, prepaids, allowables and non allowables at closing.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☒ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☐ Seller not to exceed $ N/A.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at N/A o'clock N/A M. on N/A unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed N/A consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☐ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will **not** complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by N/A, N/A. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before At Closing, . Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs**: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978**: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____. **(Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information).** This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the acouracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. ~~**COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.~~

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

BUYER [____] BUYER [____] SELLER [____] SELLER HAVE READ THIS PAGE

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See Addendum "A"

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Morphew Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Thomas Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Lorraine Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY The Group, Llc

SELLING AGENT AND COMPANY The Group, Llc

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐BUYER'S AGENT OR ☐SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

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ADDENDUM A

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises -- commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres)

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Property is being purchased in "As Is" condition. This contract is a "back-up" contract. It is contingent upon an existing contract of sale to receive a signed release so that this contract becomes the primary contract. In the event the existing contract does not receive a signed release this agreement may be declared null and void by either party on or before December 30, 2012 with written notice and deposit money returned to purchaser. Attached plat shows property being purchased. Seller agrees to pay 6% of the sales price at closing to The Group, Llc as compensation for this transaction.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Morphew		Date 12/16/12	Time
WITNESS:		Date	Time
BUYER:		Date	Time
WITNESS:		Date	Time
SELLER: Thomas Ferro		Date 12/16/12	Time
WITNESS:		Date	Time
SELLER: Lorraine Ferro		Date 12/16/12	Time
WITNESS:		Date	Time

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The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466
Phone: 843-971-4002 Fax: 888-803-1570 Charlene Willis

788 E. Buttern

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STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for seven transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other agent or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for choosing this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: _____ Seller Date _____ Buyer _____ Date 11/6/12

Rev. 1/03

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM, MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

		Yes	No	No Representation
1.	Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ Brick mono lithic poure green house b. Approximate age of structure ___	☐	☑	☐
2.	Roof (leakage or other problem)? a. Approximate age of roof covering steel roof 8yrs.	☐	☑	☐
3.	Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☑	☐
4.	Electrical system (switches, wiring, panel, switches, fixtures, etc)?	☑	☑	☐
5.	Plumbing system (pipes, fixtures, water heater, etc)?	☑	☑	☐
6.	Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ /cooling unit ___	☑	☑	☐
7.	Water supply (including water quality, quantity and water pressure)? a. Water supply is: city/county ✓ community system ___ private well ✓ b. Water pipes are: copper ___ galvanized ___ PVC/CPVC ✓ poly butelene ___	☐	☑	☐
8.	Septic system? a. Type system: septic tank ✓ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ✓ c. Has the septic system been serviced/pumped during your ownership?	☐	☑	☐
9.	Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc)?	☑	☑	☐
10.	Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ✓	☐	☑	☐
11.	Drainage, grading or stability of soil or retaining structure?	☑	☑	☐
12.	Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ✓ exhaust fan ___ ceiling fan ✓ sump pump ___ irrigation system ✓ cable TV wiring or satellite dish ✓ security system ___ or other systems ___	☐	☑	☐

Initials Seller Date Buyer Date 12/16/12

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

		Yes*	No	No Representation
13.	Room additions or other structural changes?	☐	☑	☐
14.	Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☑	☐
15.	Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☑	☐
16.	Previous damage caused by fire?	☐	☑	☐
17.	Violations or variances of building codes or zoning ordinances?	☐	☑	☐
18.	Restrictions to property use? (covenants or deed)	☐	☑	☐
19.	Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☑	☐
20.	Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☑	☐
21.	Owners' association fees or "common area" expenses or assessments?	☐	☑	☐
22.	Flood hazards or that the property is in a federally-designated flood plain?	☐	☑	☐
23.	Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☑	☐
24.	Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☑	☐

"IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.

Initials: _____ Seller _____ Date _____ Buyer _____ Date 12/16/12

Rev. [illegible]

Page 3 of 4 [illegible]

"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 788 E Butternut Rd Summerville SC 29483.

The property is currently: owner-occupied ✓ leased ___ or an estate ___ in foreclosure ___
vacant ___ (If vacant, how long? ___)

Owner's Name(s): Tom Ford

Owner(s) acknowledge(s) having examined this statement before signing, and that all information is true and correct as of the date signed.

Owner Signature: _____ Date: 12/16/12

Owner Signature: _____ Date: 12/16/12

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: _____ Date: 12/16/12

Purchaser Signature: _____ Date: _____

This form is approved by the South Carolina Real Estate Commission.

DUAL AGENCY AGREEMENT

THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT.

This Dual Agency Agreement is entered into between Molly M. Morphew, Buyer, and The Group, Llc Real Estate Company, Thomas Ferro, Lorraine Ferro, Seller, and The Group, Llc Real Estate Company for Property located at 788 E. Butternut (6 Acres), Summerville, 29483.

The term "Broker" includes the real estate firm, broker-in-charge and associated licensees.

1. **DUAL AGENCY:** Seller and Buyer agree that Broker shall serve as both Seller's agent and Buyer's agent in the sale of Seller's property to Buyer in accordance with Section 40-57-137(M)(1) of the South Carolina Code of Laws, which provides in part that "...in acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited." The parties agree that without permission from the party about whom the information pertains, Broker shall not disclose to the other party the following information:
   a) That a party may agree to a price, terms, or any conditions of sale other than those offered;
   b) The motivation of a party for engaging in the transaction, unless disclosure is otherwise provided by state law or regulation; and
   c) Any information about a party which that party has identified as confidential unless disclosure is otherwise required by state law or regulation.

2. **BROKER'S DUAL AGENCY ROLE:** Because Broker is serving as Agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to represent Seller and Buyer in a balanced and fair manner. Broker shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and Buyer. Seller and Buyer understand and acknowledge that:
   a) Prior to the time this agreement was entered into, Broker acted as the exclusive Agent of Seller and acted as exclusive Agent of Buyer.
   b) In those separate roles Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker.
   c) Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

3. **SELLER'S AND BUYER'S ROLES:** Because of Broker's Dual Agency relationship, Seller and Buyer understand and acknowledge that:
   a) Seller and Buyer have determined that the advantages of entering into this Dual Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
   b) Seller and Buyer each have the responsibility of making their own decisions as to what terms are to be included in any agreement to buy and sell between the Seller and Buyer.
   c) Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Dual Agency role as expressed herein to provide balanced and fair representation of Seller and Buyer and to encourage communication between Seller and Buyer rather than acting as an advocate or exclusive agent.
   d) Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent.
   e) Seller and Buyer may seek independent legal counsel to assist them with the negotiation and preparation of a buy and sell agreement or with any matter relating to the transaction which is the subject matter of a buy and sell agreement.

4. **PREVIOUS AGENCY AGREEMENTS:** The parties agree that this Agreement shall modify any agency agreements previously entered into by Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Dual Agency Agreement shall control.

5. **DURATION OF DUAL AGENCY:** The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

The Group, LLC, 2000 Skylawk Ct Mt. Pleasant, SC 29466 Phone: 843-971-4002 Fax: 888-803-1570. 788 E. Butternut
Marlene Miller

Produced with ZipForm® by ZipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

6. FAIR HOUSING: The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

7. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the execution of this dual agency agreement or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

8. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DUAL AGENCY AGREEMENT.

Seller Thomas Ferro — Date 12/16 — Time

Seller Lorraine Ferro — Date 12/16/12 — Time

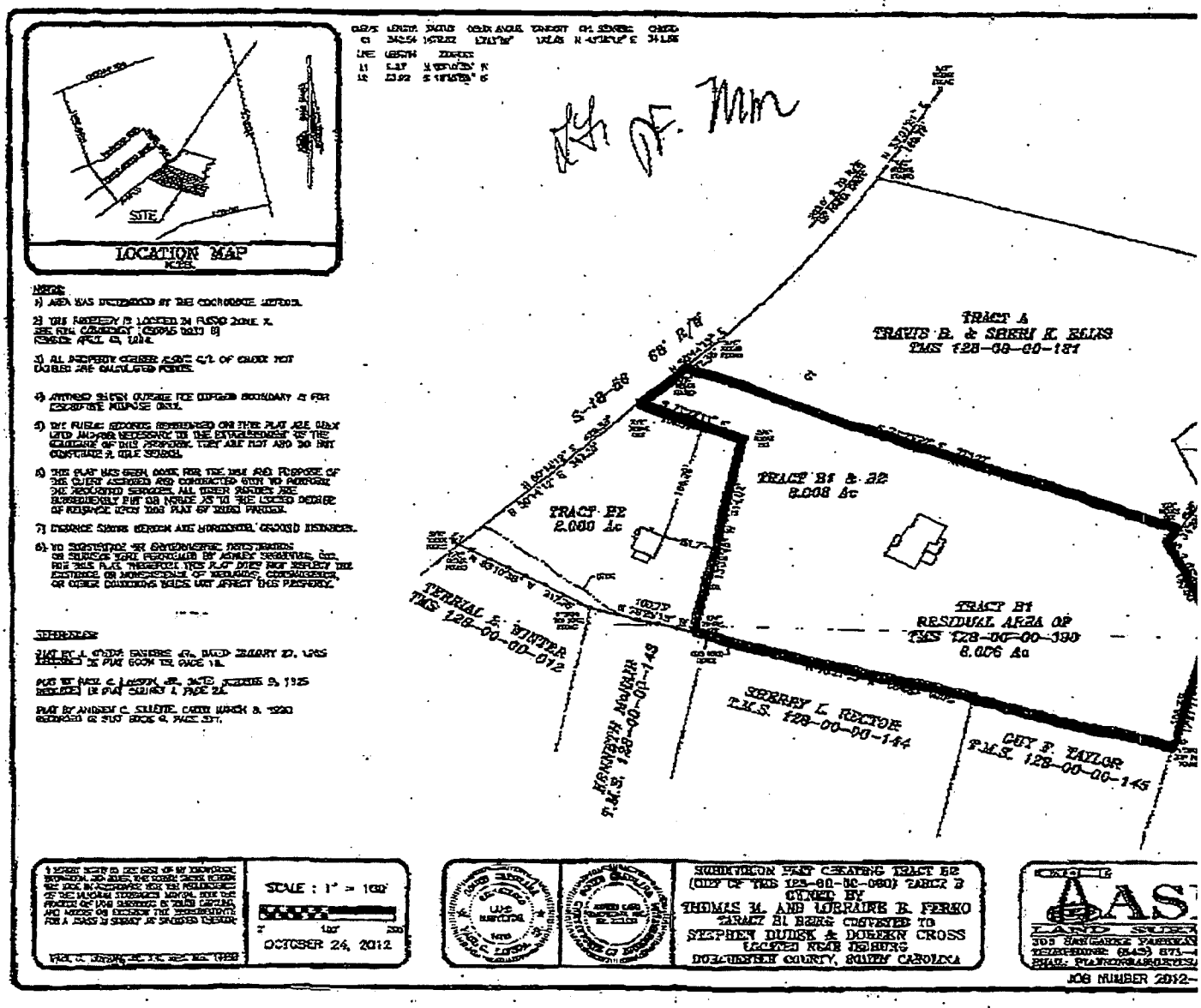
Buyer Molly M. Morphew — Date 12/16/12 — Time

Buyer — Date — Time

The Group, Llc
Real Estate Brokerage (Name of Real Estate Co.)

By: Broker/Assoc. Licensee — Date 12-16-12
Rick Willis

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com


LOCATION MAP
SITE
TRACT A
TRAVIS B. & SHERI K. ELLIS
TMS 128-00-00-181
TRACT B1 & B2
8.008 Ac
TRACT B2
2.000 Ac
TRACT B1
RESIDUAL AREA OF
TMS 128-00-00-390
8.006 Ac
TERRIAL E. WINTER
TMS 128-00-00-012
KENNETH AUBURN
T.M.S. 128-00-01-143
SHERRY L. RECTOR
T.M.S. 128-00-00-144
GUY F. TAYLOR
T.M.S. 128-00-00-145
SCALE : 1" = 100'
OCTOBER 24, 2012
SUBDIVISION PLAT CREATING TRACT B2
(OUT OF TMS 128-00-00-060) TRACT 2
OWNED BY
THOMAS M. AND LORRAINE B. FERKO
TRACT B1 BEING CONVEYED TO
STEPHEN DUDEK & DOREEN CROSS
LOCATED NEAR JEBENS
DUKE-UNION COUNTY, SOUTH CAROLINA
JOB NUMBER 2012-

Thomas and Lorraine Ferro
5501 Carson St.
Denver, CO 80239
843-327-1262

COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STEPHEN DUDEK AND DOREEN CROSS. Plaintiff, vs. THOMAS M. FERRO AND LORRAINE B. FERRO, Defendant	Case No.: 2013-CP-18-74 PLEADING STATEMENT

2014 SEP 10 AM 8:46
CLERK OF COURT
DORCHESTER COUNTY

Dated this 30th of August, 2014.

Due to the facts and testimonies brought to light during the last year and a half, we are now able to answer many of the questions we presented to the Plaintiffs through our "ANSWER" statement submitted February 4th, 2013. We are also able to see the seriousness to which we were blindsided by the Plaintiffs, and able to state our facts using concrete evidence to support them.

This "PLEADINGS" statement answers those questions and confirms our initial claim the Plaintiffs, Stephen Dudek and Doreen Cross are indeed in a serious Breach of Contract, their contract is null and void, and we had every legal right to request and receive a signed cancellation request.

For clarification: Plaintiffs (Stephen Dudek and Doreen Cross) = Buyers
Defendants (Thomas and Lorraine Ferro) = Sellers.

In the case Doreen Cross and Stephen Dudek vs. Thomas Ferro and Lorraine Ferro, we are proving:

- The testimony of the Plaintiffs (Buyers Dudek and Cross) that the reason they did not close per the Time is of the essence contract is because "the Ferro's lack of a clean CL-100, and is STILL the reason the closing still hasn't taken place", is erroneous.

- The complaint against the (Defendants) Sellers, Tommy and Lorraine Ferro, from (Plaintiffs) Buyers, Dudek and Cross, is frivolous and invalid, and that the Plaintiffs, Dudek and Cross are in breach of contract, and that the Defendants had every legal right to terminate the contract between themselves and the Plaintiffs.
- The contract between Cross/Dudek and the Ferro's is no longer valid as of December 16, 2012, and that the contract between Molly Morphew and the Ferro's is the valid contract to purchase 788 East Buttemut as of December 16, 2012.

---

1. Since the Plaintiff's (Buyers), Stephen Dudek and Doreen Cross, did not apply for the loan for 788 E Buttemut Rd before the TIME IS OF THE ESSENCE Contract date of November 30th, 2012, the contract expired and they were unable to secure lending with First Federal, regardless of a CL-100 clearance letter, due to the fact:
    a) First Federal does not process loan applications against an expired contract without an extension addendum or a new contract.
2. When the Plaintiffs applied for the loan on December 5th for 788 E Buttemut Rd, First Federal required a formal Extension Addendum in order to **begin processing** the loan.
    - On December 5th, the Lender issued a Customer Loan Application Checklist that stated an "anticipated closing by 1/4/13" and required a signed extension addendum to process the loan (see ATTACHMENT 1).
    - **The fact the Plaintiffs had not yet applied for a loan on or before November 30th, the fact that First Federal would not begin processing their loan without the extension addendum, and the fact the Lender was giving an estimated closing date of 1-4-2013 was not communicated to the Defendants or their Agent.**
        - Instead, the replies to the Defendants and the Defendants Agent's questions about lending, the appraisal, closing, etc. before November 30th was met with answers such as "*I am inquiring about the appraisal from the lender but have not heard anything yet*" and "*the Lender can't give us an estimate on closing yet but it won't be at the end of this week* (Nov 30th)" and "*the Closing Attorney was waiting on the survey to be recorded before he could perform the title search, which he has now and it will take about a week to do*". Keep in mind that this is before

the loan was applied for so how can an appraisal be "checked on" if it hasn't been ordered yet? How can a Lender give an estimated closing date if the loan hasn't been applied for? And how can a Closing Attorney order a title search without the lender giving a clear to close to the attorney and requesting it from them? We as the Sellers were misled into thinking everything was being done per contract.

- By Law, if the Plaintiffs stated that they had not applied for their loan and allowed the contract to expire, making it impossible to obtain a loan without an extension or new contract, it would be an admission to a serious BREACH OF CONTRACT on the Plaintiffs part. This would open the Plaintiffs up for automatic and undisputed legal ramifications. Therefore they kept the Defendants in the dark thinking the Defendants would feel backed into a corner and have no choice but to close with the Plaintiffs.

3. First Federal **would not complete** the Plaintiff's application without an extension addendum (see ATTACHMENT 1, ATTACHMENT 2, ATTACHMENT 3 and ATTACHMENT 4).
4. First Federal finalized the loan as "Declined" on 1-18-13 due to receiving no response to the 10 day letter sent to the Borrowers to provide a signed extension addendum; application incomplete. **Loan was never secured for closing.**
5. Because the Plaintiffs applied for the loan AFTER the contract date, an extension addendum was required. In turn, because the Defendants refused to sign an extension addendum, the Plaintiffs could never secure a loan for closing. Again, it had nothing to do with the CL-100 Clearance Letter as the Plaintiffs keep telling the Defendants.
6. Defendants refused the extension addendum on Dec 3 (verbally) and on Dec 6 (see ATTACHMENT 5 faxed to Closing Attorney, Woody Law Firm, on Dec. 6).)
7. Defendants were informed by the Plaintiffs' Agent that the contract had a "no fault" extension clause within it and allowed the Plaintiffs until December 15th to close.
   - The "no-fault" extension clause (Paragraph 12) within the contract is stating "*if the closing did not take place due to no fault of either party, and it's agreed upon by both parties, then a 15 day extension to close will be granted.*"

- It also states that if both parties agree to the 15 day extension, "*Closing shall occur within this time extension, but* ***in no event*** *shall closing occur later than the above extension date.* ***Time is of the Essence.***" (see Paragraph 12 of the contract) **

    a) *In no event*", meaning 'in no circumstances whatever'. If the closing does not take place, the contract is automatically null and void.

8. Plaintiffs claimed the no-fault extension clause after they failed to close per the initial contract deadline of November 30th. (Susan verbally stated to Defendants on Dec 3 that the Plaintiffs had an automatic extension in the contract, and via e-mail dated December 16th--see ATTACHMENT 6)

9. Plaintiffs still filed a Lis Pendens on 1-11-13 (then a Complaint on 1-15-13) against the Defendants after they found out the Defendants had another Buyer (see ATTACHMENT 7), claiming the Defendants are at fault for the closing not taking place on or before November 30th and on or before December 15th , and are still at fault to this day.
**Defendants are confused as to how the Plaintiffs can claim a "no fault" extension and still be able to file a "fault" Complaint.

- Either the Complaint is valid and the Plaintiffs cannot claim the extension, therefore an automatic BREACH of CONTRACT because Plaintiffs allowed the contract to expire before applying for their loan **EXPIRED CONTRACT**
- OR the extension clause is valid which in turn would make the Complaint invalid and no longer a case against the Defendants, and the contract automatically null and void after 9pm December 15th. **EXPIRED CONTRACT**
- In both cases, the contract is no longer valid.

10. The Plaintiff's (Buyers), Stephen Dudek and Doreen Cross', testify they were ready to close/had loan approval but the reason they did not close per the ("**Time is of the Essence**") contract is because of:

- "*the Ferro's lack of a clean CL-100, and is STILL the reason the closing still hasn't taken place*" (See ATTACHMENT 8).
- "*couldn't close because they never got a CL-00*" (see ATTACHMENT 9),
- "*seller did not provide a CL-100 Clearance Letter in a timely manner*" (see ATTACHMENT 10)

    a) Since the Plaintiffs did not apply for their loan on or before November 30th, lack of financing is what prevented them from closing on or before

the Time is of the Essence contract date of November 30th; it had nothing to do with a CL-100.

b) Inability of First Federal to process a loan on an expired contract without an extension addendum, plus the fact the Plaintiffs only had 10 days to close from the time they actually applied for the loan, is what prevented the Plaintiffs from closing on or before December 15th. It had nothing to do with a CL-100.

c) Per Doreen Cross' deposition testimony, she did not start lending because she was "*waiting until she was actually satisfied that something was being repaired properly*" (see ATTACHMENT 11). **This was not a repair contingency contract. **Breach of Contract.** It had nothing to do with a CL-100.

d) Not having a valid contract is what is still preventing them from being able to close (see ATTACHMENT 12). It had nothing to do with a CL-100.

11. The Defendants obtained a CL-100 (report) on or before November 30th, 2012, per contract requirement. (see ATTACHMENT 13)

12. The Contract did not state the Defendants had to provide a Clearance Letter, if applicable, to the Plaintiffs on or before November 30.

13. The Contract's CL-100 contingency states "Buyer's total satisfaction of the CL-100" which by law means, if the buyer is not satisfied with the CL-100 report, they have an option to terminate the contract and walk away with their earnest money, take the property as is, or negotiate repairs, per Paragraph 19(E).

14. The Plaintiffs had an option of requesting the Defendants to obtain one sooner but did not do so.

15. The Plaintiffs had an option of obtaining the report themselves, at any time, with the cost to be paid by the Defendants but did not do so.

16. Defendants provided the CL-100 report to the Closing Attorney, even though there was no closing set.

17. Plaintiffs agreed with Susan Nicholson on December 3rd that they felt all with the house was OK and "*the sellers have been very serious about doing what is necessary within reason to close*" and felt "*comfortable to have the mortgage company do what they need so we can close*". (See ATTACHMENT 14). This e-mail confirms the CL-100 is not

what held up the Plaintiffs from applying for a loan per contract, it was the Plaintiffs own satisfaction of the repairs they needed to see done to their approval.

18. Plaintiffs Agent erroneously communicated to the Defendants on December 5th that the bank is requiring repairs to be done and a CL-100 Clearance Letter provided. (See ATTACHMENT 15).
19. Plaintiffs Lender never required a CL-100 (see ATTACHMENT 1, 2, 3, 16 & 17).
20. Plaintiffs did not require a Clearance Letter for themselves, they wanted it to "satisfy the bank and Closing Attorney." (See ATTACHMENT 18). *Again, no requirement from the Lender; nor a requirement from the Closing Attorney via any e-mails/correspondence to Defendants or Defendants Agent.
21. If a Clearance Letter was needed by the Lender, then per contract, Paragraph 19(B), "*If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.*"
22. On December 3rd, Plaintiff's contractor was at the property but could not inspect the repaired termite damage due to the repair had just been treated/sprayed. Contractor stated he will have to "check his schedule and come back another time". Neither the Contractor nor the Plaintiffs/Plaintiffs Agent rescheduled with the Defendants.
23. The CL-100 was provided to the Closing Attorney via the Defendants Agent, Rick Willis, even though no closing date set.
24. The lack of obtaining lending per contract requirements is what prevented the Plaintiffs from closing on or before November 30th.
    - Despite negotiations in regards to the repairs or the Defendants, the Plaintiffs had a contractual obligation to apply for a loan within 10 days of contract ratification, supply the Defendants with an approval letter that contained no income, credit or asset issues within 20 days of contract ratification, and secure lending on or before November 30th. None of which these requirements were met by the Buyer. **Breach of Contract.**
    - The Plaintiff's (Buyers), Stephen Dudek and Doreen Cross', did not secure lending for closing on or before the Time is of the Essence contract date of November 30th, 2012 at no fault of the Defendants. Therefore, **Breach of Contract.**

- **Plaintiffs did not apply for loan within 10 consecutive days from the execution date (October 24th) of the contract, per Time is of the Essence Paragraph 8. Therefore, Breach of Contract**
- Plaintiffs applied for loan on December 5th, 42 days after contract execution and after the Time is of the Essence contract date of November 30th. Therefore, **Breach of Contract.**
- Plaintiffs did not provide the Defendants with written satisfactory loan approval within 20 consecutive days that contains no credit, income or asset conditions, per Time is of the Essence Paragraph 8. Therefore, **Breach of Contract.**
- **Plaintiffs provided Defendants with an approval letter (dated December 12) on December 17th (after the cancellation request was sent) that contained credit, income and/or asset conditions (see ATTACHMENT 2).**
- **Plaintiffs never provided the Defendants with loan approval that contained no credit, income or asset conditions.**
- Per South Carolina Real Estate Law, the Plaintiffs failure to comply with the lending terms (Time of of the Essence) of their contract is a serious Breach of Contract.
- Per South Carolina Real Estate Law, the Plaintiffs failure to close per the Time is of the Essence contract date, is a serious Breach of Contract. *especially if Time is of the Essence can be proved.

25. **Plaintiffs stated they provided Defendants with another "approval" letter and "GFE", dated October 22nd, from their Lender (see ATTACHMENTS 19- EXHIBIT 2 & ATTACHMENT 20).**
    - Documents are not an approval or GFE (see ATTACHMENT 21) nor were they provided to the Defendants or their Agent within 20 days of contract ratification, as stated by the Plaintiffs, because they were developed on 2/10/2013 @ 1:08 Sunday morning (see ATTACHMENT 20; Notice date/time of attachments)
26. Per testimony of the Plaintiffs, Dudek and Cross, their mortgage loan officer, Allison Williams, sent the October 22 e-mail (see ATTACHMENT 21) with above #12 attachments. ****During the trial on June 12 and after it was pointed out that the attachments were dated 3 ½ months after the e-mails were sent and the time was 1:08 am Sunday morning, Allison Williams stated "*that e-mail is not mine.*"**

27. The above "validity in question" October 22nd e-mail, along with pre-approval letter and Closing Cost Worksheet, were not contained in Lending File, nor notated as being sent in the notes section of the Lending File.
28. The Defendants believe the (e-mail) and documents are fraudulent.
29. Lending was cancelled and never secured or given a clear to close due to the application being incomplete (see ATTACHMENT 4, entry dated 1-18-2013 & ATTACHMENT 22 and ATTACHMENT 23).
30. An extension addendum, not agreed on nor signed by the Defendants, was added on 12-20-12 to the Plaintiffs First Federal loan file (see ATTACHMENT 4, entry dated 12-20-12 at 10:43am). The extension addendum was not valid, therefore should not have been included in the Plaintiff's lending file. (See ATTACHMENT 24).
31. A Repair Request Proposal, not agreed on nor signed by the Defendants, was added to the Plaintiff's loan file on December 20th (see ATTACHMENT 25 & ATTACHMENT 4, entry dated 12/20/2012 10:43am). The Repair Request Proposal was not valid, therefore should not have been added to the Plaintiff's lending file.
32. On January 12, 2013, First Federal Underwriters state that "*it has come to our attention that this file is a short sale*", making the extension addendum unnecessary, and the file "*is completely approved just waiting on short sale approval*" (see ATTACHMENT 4, entry dated 1/12/2013). Defendants states this contract was NEVER a short sale (reference Plaintiff's Contract) and is perplexed as to where that information came from.
33. Many statements and documents now provided here were supplied by First Federal 1 day before the trial even though they had 2 written subpoena's sent the prior year (one on March 4th, 2013 and again August 1st, 2013) and a verbal request March 13th, requesting all documents and e-mails for the Cross/Dudek loan on the 788 E Buttermut property.
34. The reply to the written subpoena requests was "no accounts/loan or loan documents for the requested loan number, TMS number or Plaintiffs on file with First Federal" (see ATTACHMENT 26) though the loan #7100323356 was assigned to CROSS on 12/12/12 (see ATTACHMENT 2 and ATTACHMENT 23).
35. It wasn't until the Plaintiff's Mortgage Loan Officer, Allison Williams, was issued a subpoena to appear in court, along with a request provide all documentation for above stated loan that the prior requested documentation was "found" and sent less than 24 hours within the trial. Defendants did not receive them until after the trial due to be in transit at the time of delivery. These items are a major key to the case considering the

majority of the Defendants defense is lack of financing and not closing per the Time is of the Essence Contract terms.

36. The reply to the verbal conversation between Ryan Neville, Atty. and the First Federal representative, Sharon Raye Hester, was "*she could not (or would not) discuss* (Plaintiffs Lending) *with us*"

37. First Federal was never able to issue a clear to close to the Closing Attorney due to an incomplete application/lack of required documentation and a no response from the borrowers to a "10 day Letter" from Plaintiffs for request for initially requested extension addendum (see ATTACHMENT 4, entries dated 1/16/2013 and 1/18/2013).

38. Defendants were misled and deceived in order for the Plaintiffs to have "issues" to use for a re-negotiation and/or closing leverage.

- October 24th: Buyer states to her Agent that the land not subdivided and having to wait for a recorded survey may be a problem obtaining an appraisal. Allison Williams at First Federal is not sure but is confirming internally whether it will be or not (see ATTACHMENT 27). No documentation from Allison Williams or Doreen Cross provided for trial confirming either way. But e-mail from Susan to Doreen states "*if the home isn't subdivided in time it will be their (sellers) fault not yours.*" (See ATTACHMENT 28). *Note that the survey was performed the day after the contract was signed by the Defendants.
- Plaintiffs told their Agent if the Defendants "*threw in the barn and the extra acreage then they would guarantee a closing before November 30th*" in which the Agent responded that "***the trick is to get him to do that without any extra charge***". (See ATTACHMENT 28).
- On Nov. 16, Doreen states to Susan, "*Can we hold Eugene* (structural engineer) *liable if future information becomes available contradicting his report? It sounds like it will be a challenge to take the information from Tim and use it in the counter –offer.*" *(See ATTACHMENT 29).*
- October 24th: Plaintiffs Agent informs the Defendants that the recorded survey may hold up closing if not recorded in time.
    a) October 24th: Plaintiffs and Defendants, with Agents, stake out area to be subdivided for the surveyor.
    b) October 25th: Survey performed.
    c) November 20th: Survey recorded.

39. November 22nd: Plaintiff's Agent receives recorded survey.
40. November 26th: Plaintiff's Lender receives recorded survey from Plaintiff's Agent.
41. **Buyer does not apply for loan or orders an appraisal on November 26th but instead waits for 13 days after Agent receives recorded survey before starting her lending and ordering an appraisal.**
    - Per Cross deposition on June 12, 2013, Plaintiff still did not apply for the loan even though the survey was in hand because of a "private" discussion between Cross and her Lender, Allison Williams, where Ms. Williams "*suggested that I wait until I started seeing that the seller was serious in giving me what I was actually asking for* (repairs, receipts, etc.) *and what he said he would do* (repairs) *before I told her to go ahead* (with the loan), *and I agreed with her.*" (See ATTACHMENT 11)**Defendants were not told this was happening. Instead they were being told all along that the Plaintiffs were working as hard as they could to obtain lending.
    - First Federal does not require a recorded survey to perform an appraisal.
    - If anything, the staked out land can be used by the appraiser and have the value subject to the recorded plat, which it means it would have to be recorded before final loan approval (see ATTACHMENT 30)
42. **Defendants never refused a closing.**
43. No closing date ever set or offered to Defendants even though being told many times the Plaintiffs were ready to close.
44. Plaintiff's Agent, Susan Nicholson, knew that her clients hadn't applied for a loan as of Nov. 16th (see ATTACHMENT 31).
45. **Plaintiffs and Plaintiff's Agent knew by November 16th they would not be closing on or** before the Time is of the Essence contract date of November 30th since they had not even applied for the loan. This was not communicated to the seller.
46. Plaintiffs Agent, Susan Nicholson, was at the Seller's house with Plaintiff's contractor from Vasko, the same day that Palmetto was spraying for termites down in the crawlspace (12-3-12). Defendants were expressing their concerns about the Plaintiffs making the deadline for the closing and Susan said "***I have had difficult clients like this buyer before and have had the deal not go through because of it***", where Seller, Tommy Ferro, told her that "*we have to close on time or the deal will be off, I have a backup buyer*" (although we did not at the time).

47. Defendants stated in writing (on 12-6-12) on the Request for Information letter from the Plaintiff's Closing Attorney, "***Need to close in 7 days or less or no closing.***" This page was faxed to the Closing Attorney, Woody Law Firm, on 12/6/12 (see ATTACHMENT 5).

48. On December 3rd, when the Plaintiff's Agent set in place the 15 day no fault extension clause with the Defendants, the Plaintiffs Agent knew at that time (since the loan hadn't been applied for) that they would not be closing per the extension clause but still claimed it with the Sellers. Defendants understand this is also an automatic BREACH of CONTRACT.

49. After receiving the cancellation request, the Plaintiff's Agent, Susan Nicholson, erroneously stated on 12-16-12: (see ATTACHMENT 32)

- "*The Buyers did everything they were asked to do with the lender*"
  - a) They did not apply for their loan per contract
  - b) They did not provide a signed agreed upon extension agreement as requested to process a loan against an expired contract.
- "*The Entire process was held up because of waiting on the recorded new survey.*"
  - a) First Federal did not require the survey to be recorded to start the loan or to have an appraisal performed.
  - b) Even if the survey held up the loan process, the loan was not applied for as soon as the recorded survey was received by the Agent. Instead it was 13 days later.
- "*Furthermore the CL100 still has not been cleared for closing...*"
  - a) Cleared for whom? The lender was not requesting it, the Closing Attorney did not send out a request to the Defendants or their Agent....
- "*Also, we are waiting on the bathroom leak to be cleared.*"
  - a) But Susan stated to Doreen per 12-3-12 e-mail that "*As for the damaged bathroom floor, the sellers are not wanting to do anything with that so I am getting a contractor to look at that to see what needs to be one to make the repairs to the damaged floor and if it's under $500 I will pay to have that done for you I usually give closing gifts so I thought I could cover that since we are pretty much down to that.*" *(see ATTACHMENT 14)*

b) The Plaintiff's Contractor looked at the bathroom leak and stated the owner had taken care of the leak and attached a quote for the repairs (see ATTACHMENT 33)

- *"The Buyers made application and supplied requested documentation from the lender in a timely manner from the time we ratified the contract."*
  a) Plaintiffs did not apply for loan until after the contract expired.
  b) Lender did not request anything until after the contract expired, when the loan was applied for on December 5th.
  c) The loan application was not sent to the Underwriters until December 11th to review the application.
- *"The contract clearly states that there is a 15 day extension, if at no fault of the buyer or seller, to close which would bring us to the 15th of December."*
  a) But her e-mail is dated December 16th. They are already past that date.
  b) No closing date set or presented to Defendants.
- *"We have everything we need to close hopefully this week pending the title work is clear from the Closing Attorney."*
  a) *"this week"* would mean by 9pm December 20th; but title work hadn't been started as of December 17th.
  b) What happened to all the above issues needed?
  c) No tentative closing date set by Closing Attorney.
  d) No closing date presented to Defendants or their Agent.
  e) Per First Federal loan package papers, First Federal needed a verbal verification of employment at least 10 days before closing on each applicant but could not obtain one on Doreen Cross until January 4th, 2014 due to the holiday closing of school district administrative offices. (see ATTACHMENT 34) *Not communicated to Defendants.

50. After receiving the cancellation request, the President/General Counsel for Carolina One Real Estate, Michael Scarfile erroneously stated: (per e-mail dated December 20th): (see ATTACHMENT 35)

- *"if Buyers were in default (of Paragraph 8 of contract), such default is pursuant of paragraph 16 which requires the Seller to provide "a 5 day written notice" which gives the Buyers the right to cure any default" and "the Sellers provided written notice on December 16th. However, the Buyers have provided such proof*

and are ready to close, both of which would be inside of the 5 day "right to cure" period."

a) No, proof would have been a closing date offered on or before December 21st if the Plaintiffs were so ready to close, which it was not.

b) Proof was not provided. Defendants received "approval letter" on December 17th that contained many contingencies, including First Federal disclosures signed and dated, First Federal to request IRS transcripts for the last 2 years, Verbal verification of employment prior to closing, an appraisal ordered, reviewed and received by First Federal, and a legible copy of the sales contract and all addendums (including an extension addendum). *This did not provide the Defendants with a confident feeling at all.

- *"To work towards closing, and in the spirit of good faith, the Buyers are willing to pay $1300 towards the termite bond that the Sellers have committed to and to also schedule the closing, through an agreed upon Addendum to be executed between the parties, for the middle to end of next week to allow the Sellers to remain in the home through the Christmas Holidays."*

a) Defendants believe when reading the e-mail that if the Plaintiffs were serious then they would have presented them with a closing date, not "if you provide us with an extension we will be so gracious as to give you a closing date….".

b) After reading First Federals lending package documents, Defendants now know that the Plaintiffs could not have closed before the New Year, and again, feel they (the Defendants) were lied to.

c) Defendants had already moved so there was not need to allow them to "remain in the home through the Christmas Holidays." Again another tactic to buy more time on the Plaintiffs part.

51. The loan was not finalized and ready for a closing on or before December 20th due to the fact First Federal was still requesting documentation, including a legible copy of the sales contract, the extension addendum, and a signed Repair Request Proposal, and verbal Verification of Employment on the Plaintiffs which could not be completed until 1-4-13.

52. Defendants had every legal right to cancel the contract.

53. Per Atty. Joe Qualey, the Plaintiffs TIME IS OF THE ESSENCE contract was null and void as of December 16, 2012 (see ATTACHMENT 11).
54. Per Real Estate/Closing Attorney, Mark Weeks, Plaintiffs contract was no longer valid as of December 16th, 2012. (Morphew statement)
55. Per Attorney, John Massalon, Plaintiffs contract was no longer valid as of December 16th, 2012. (Morphew statement).
56. Per First Federal on February 18th, "*The contract on the house is no longer valid.*" (See ATTACHMENT 36).
57. Per South Carolina Real Estate Law, the Plaintiffs failure to close per the **Time is of the Essence** no-fault extension paragraph of the contract automatically makes the contract null and void.
58. Per South Carolina Real Estate Law, a **Time is of the Essence** contract is upheld in court especially if there is a valid reason for the Time is of the Essence.

The Defendants, Thomas Ferro and Lorraine Ferro, testify pro se:

- We (the Defendants) have performed our contract requirements and did everything within reason to close.
- We (the Defendants) were not aware that the (Plaintiffs) Buyers, Doreen Cross and Stephen Dudek, did not have lending secured on or before November 30th, nor that they did not have lending secured on or before December 15th.
- It wasn't until after reviewing First Federal's documents after the trial that we are now aware the Plaintiffs never had lending secured for closing for ANY date, in the past or future.
- We (the Defendants) had a legal right to cancel the contract due to the Plaintiff's Breach of the Time is of the Essence contract.
- The complaint filed on January 15th, 2013 by Doreen Cross and Stephen Dudek against us (the Defendants) for Breach of Contract is not valid due to the fact the extension agreement they agreed upon, and contained within the contract (Paragraph 12), is a "**no fault** of either party" agreement. (The Plaintiffs) taking a no fault extension after failing to meet the initial contract date, knowing at the time they took it they would not meet the date, not closing on or before the December 15th date, and then filing a lawsuit against us (the Sellers) is contradictory, unethical and (possibly) not legal.
- Due to the documents produced from First Federal (1 day before the trial) and, combined with the e-mails between the Plaintiffs, Plaintiff's Agent, Plaintiff's Mortgage Loan Officer and/or the

Plaintiff's Closing Attorney, the facts show a severe lack of honesty, integrity and communication towards us (the Defendants) and our Agent through the life of the contract, and beyond.

- The Plaintiffs, their Agent and their Mortgage Loan Officer misled, lied to, and manipulated us (the Defendants) and our Agent.
- The Plaintiffs produced falsified documents in an attempt to meet their contract requirements.
- We (the Defendants) have been unjustly put on hold, not able to sell our home, not able to purchase a new home in our new location, caused undue stress, put in severe financial difficulties, caused us (the Defendants) a loss of a home and a loss of an investment home in Kentucky, and caused us (the Defendants) extensive loss of time and emotional pain.
- We (the Defendants) have signed a backup contract with Ms. Morphew, and will continue to honor it as agreed upon. She had shown all along she was serious to purchase our home. She has only shown us honesty and integrity. Ms. Morphew was ready to set a closing date within 1 month of signing. She was willing to spend her time and money to be ready per the contract requirements, knowing full well that the initial Plaintiffs might have produced a closing date within a reasonable time after receiving the cancellation notice.
- During a verbal "mediation"(between January 10th and January 18th) between our then lawyer, Joe Qualey, and the Plaintiff's lawyer, David Collins, we were offered $50,000 more to sell to Dudek and Cross. But again a closing date was not offered, only threats of being sued.
- After reading all documents produced before the trial, at the trial, and the First Federal e-mails and documents received less than 24 hours before the trial, we (the Defendants) stand by our initial cancellation request sent to the Plaintiffs, Dudek and Cross.
- We (the Defendants) wish to not sell to the previous Buyers (Plaintiffs Dudek and Cross). We (the Defendants) do not want anyone in the home we built and raised our children, who obviously will not appreciate it. We (the Defendants) do not want anyone in our home that would be less than honest and would conduct themselves the way the Buyers (Plaintiffs Dudek and Cross) have obviously done since signing the contract.

WHEREFORE, the Defendants ask the Court for judgment,

a. honor our contract with Ms. Morphew,
b. dismiss the complaint herein with prejudice,
c. dismiss the Lis Pendens against property stated in agreement,
d. grant written release from said Agreement,
e. in addition, Defendants pray that the Plaintiffs take nothing and the Defendants have judgment against the Plaintiffs and recover the costs of suit herein, and such other relief the court may deem proper.

VERIFICATION AND ACKNOWLEGEMENT

To the best of my knowledge, information and belief, the information contained in the document is well grounded in fact and is warranted by existing law.

I have not been determined by any court of South Carolina or in any other Sate to be a frivolous litigant or subject to an Order precluding me from serving and filing this document.

I am not serving or filing this document for any improper purpose, such as to harass the other party, nor to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

Dated this 30 day of August, 2014

Thomas M. Ferro
5501 Carson St.
Denver, CO 80239

843-327-1262

Lorraine B. Ferro
5501 Carson St.
Denver, CO 80239

843-327-1262

MA LETICIA RODRIGUEZ DE BARRERA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134076128
MY COMMISSION EXPIRES DECEMBER 5 2017

2014 SEP 10 AM 8:16
CLERK OF COURT
DORCHESTER COUNTY

NOTARY PUBLIC (SIGNATURE)

State of Colorado

County of Denver

On this 03 day of September 20 14 . before me a Notary Public, the undersigned officer, personally appeared Thomas M. Ferro and Lorraine B. Ferro, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained. In witness hereof, I hereunto set my hand and official seal.

Notary Public (PRINT)

Certificate of Service

I hereby certify that a true copy of the pleading was sent, postage prepaid, to the following attorneys on the _9th___day of September___, 2014:

David Athell Collins, Esq.
Attorney for the Plaintiffs
P.O. Box 40578
Charleston, SC 29423

2014 SEP 10 AM 8:46
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) Civil Action Case No.: 2016-CP-18-1706
)
Molly Morphew,)
)
Plaintiff,)
)
v.) **SUMMONS**
) **(Jury Trial Demanded)**
Stephen Dudek, Doreen Cross, David)
Collins, Allison Williams, First Federal,)
Michael Scarafile, Susan Nicholson,)
Carolina One Real Estate, Carrie Boyer,)
Woody Law Firm)
)
Defendants)

2016 AUG 24 AM 10:0 CLERK OF COURT DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the below subscribed Pro Se litigant at her address at 788 E Butternut Rd, Summerville, SC 29483 within thirty (30) days after the service hereof exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this action.

Molly M. Morphew, pro se

Molly M. Morphew, Pro Se
788 E Butternut Rd
Summerville, SC 29483
(843) 514-7299
morphew926@gmail.com

SUMMERVILLE, SC
August 23, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) Civil Action Case No.: 2016-CP-18-1706
Molly Morphew,)
Plaintiff,)
v.)
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm)
Defendants)

COMPLAINT
(Jury Trial Demanded)

Plaintiff Molly Morphew sues Defendant Stephen Dudek, Defendant Doreen Cross, Defendant David Collins and/or his agent, Defendant Susan Nicholson and/or her agent, Defendant Carolina One Real Estate, Defendant Michael Scarafile and/or his agent, Defendant Allison Williams and/or her agent, Defendant First Federal (now South State Bank), Defendant Carrie Boyer or her agent, Defendant Wooddy Law Firm, and states as follows:

NATURE OF THE ACTION

1. This is an action for fraud, and specifically fraud on the courts, and torts stemming from the actions, and continued actions, of the Defendants Dudek and Cross, their attorney their real estate agent and company/representatives, and their lending officer and company. Plaintiff Morphew seeks damages, and other appropriate relief based on the (as listed in the causes of action) Defendants' fraud, perjury, breach of fiduciary duty, violation of the SC Rules of Professional Conduct, violation of Title 40 – Professions and Occupations (Chapter 57), contempt, and breach of the Dudek/Cross express, written

contractual obligations per their court Order of November 6, 2014, as well as for violation of their common law duties to Morphew.

2. This is a separate action from combined civil Cases #2013-CP-1800183 (Specific Performance/breach of contract) and #2013-CP-1800074 (Specific Performance/breach of contract), currently on appeal (Appellate Case No. 2014-002633).

   a. Appellants: Plaintiff Morphew, Sellers Thomas Ferro and Lorraine Ferro

   b. Respondents: Defendants Stephen Dudek and Doreen Cross

3. Plaintiff brings this action to recover the losses suffered by Ms. Morphew at the hands of defendant Doreen Cross and Stephen Dudek for compensatory damages of at least $50K, special damages $75K, punitive damages of at least $75K; Susan Nicholson for compensatory damages of at least $25K, special damages $50K, punitive damages of at least $75K; Michael Scarafile for compensatory damages of at least $50K, special damages $75K, punitive damages of at least $75K; Carolina One for compensatory damages of at least $50K, special damages of $50K, and punitive damages of at least $250,000; Allison Williams for compensatory damages of at least $25K, special damages $50K, punitive damages of at least $75K; First Federal (currently State Bank[1]) for special damages of $50K, punitive damages of $250,000 and compensatory damages of $53K, Carrie Boyer for compensatory damages of at least $5K, special damages $5K, punitive damages of at least $25K; Wooddy Law Firm for punitive damages of $25K; and Defendant Collins for punitive damages of $250,000 (to include lost attorney fees and judgement for sanctions), compensatory damages of at least $50K, as well as injunctive relief and declaratory judgment.

[1] Will be referenced as First Federal within this document.

4. The court, and the applicable officers of the court, have been the victim of repeated acts of fraud, dishonesty, deceit, misrepresentation, perjury, non-disclosure of material facts, and bad faith and unfair dealings; including Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act SECTION 15-36-10, Abuse of Rule 11; Violation of ABA Rules of Professional Conduct, Rule 3.1, Rule 3.3, Rule 7.1, 8.4(a), 8.4(b), 8.4(c), 8.4(d), 8.4(e), 8.4(f), 8.4(a); Violation of the Federal Rules of Civil Procedures, Rule 26, Rule 37; Breach of Fiduciary Duty/Breach of Assumed Duty, Duty of care, Duty of full disclosure, Duty to act fairly, and Duty of good faith and fair dealing, tortious conduct; Forgery/falsifying documents with intent to defraud another; Breaking Federal Rules and Regulations (FDIC)/Breaking of Banking Rules and Regulations; Obstruction of Justice; Tortious Interference with Existing Contractual Relations; and contempt by Defendants.
5. Morphew has been, and continues to be, the victim of the repeated acts (allegations in #3 repeated word for word herein), and to include Slander of Title; Breach of Contract followed by fraudulent action(s), Intentional Infliction of Emotional Distress; and harassment and/or discrimination by the Defendants. Despite Morphew's repeated given opportunities for Defendants to disclose the truth, to Morphew's knowledge, there has been no action taken by Defendants to put a halt to their unlawful actions which have caused a vast amount of personal expense, time and distress to, not only Morphew, but all parties involved, including the courts. Morphew ultimately was wronged by failing to be awarded specific performance on 788 E Butternut Rd, Summerville, SC, and instead, Defendants Dudek and Cross were awarded such specific performance based on the Defendants unlawful and/or wrongful acts, and bad faith and unfair dealings, both in and out of court.

To: THE DEFENDANTS ABOVE NAMED:

NOW comes the Plaintiff, complaining of the acts and omissions of the Defendants names above, and says as follows:

6. That the Plaintiff, Molly Marie Morphew, (hereafter "Plaintiff") is a citizen and resident of the County of Dorchester, State of South Carolina.

7. That upon information and belief, Defendants Stephen Dudek and Doreen Cross are residents of Dorchester County, State of South Carolina.

8. That upon information and belief, Defendant David Collins is a resident of Charleston County, State of South Carolina.

9. That Defendant Collins was previously Defendants Dudek and Cross' attorney and/or has been suspended by the Supreme Court from practicing law as of approximately July 16, 2016.

10. That upon information and belief, Defendant Susan Nicholson is a resident of Dorchester County, State of South Carolina.

11. That upon information and belief, Defendant Allison Williams is a resident of Dorchester County, State of South Carolina.

12. That upon information and belief, Defendant Michael Scarafile is a resident of Charleston County, State of South Carolina.

13. That upon information and belief, Defendant Carolina One Real Estate, Inc. (hereinafter "Carolina One"), is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Dorchester County. Defendant is in the business of providing real estate agent services in the selling of property, including personal property.

14. That upon information and belief, Defendant First Federal, now known as South State Bank (hereinafter "First Federal"), is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Dorchester County. Defendant is in the business of providing banking and credit services, including personal mortgages, and other related services.

15. That upon information and belief, Defendant Wooddy Law Firm, is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Berkley County. Defendant is in the business of providing variety of complex business transactions, focusing primarily on real estate matters.

16. That upon information and belief, Defendant Carrie Boyer, is a real estate paralegal employed at the Wooddy Law Firm, in Goose Creek, SC, Berkley County.

17. That upon information and belief, and at all times material, the Defendant(s) or its agent(s)' named above misrepresented facts with the intent to deceive the Plaintiff and/or the courts and/or with the intent of influencing the court[2].

18. That upon information and belief, and at all times material, the misleading acts of the Defendant(s) or its agent(s)' named above prevented the Plaintiff from presenting all of her case or deprived her of the opportunity to be heard.

VENUE AND JURISDICTION

19. That the Plaintiff hereby incorporates paragraphs one (1) through four (18) above, the same as if set forth again verbatim.

[2] Misrepresentation of facts with the intent of influencing the court is fraud upon the court.

20. Venue is proper pursuant to S.C. Code § 15-7-30, as First Federal [now known as South State Bank since 2015] and Carolina One Real Estate have operations in Dorchester County, and Defendants Dudek and Cross reside in Dorchester County, and the actions set forth herein occurred in Dorchester County.
21. Venue is proper pursuant to S.C. Code § 15-7-10, as the property in dispute is located in Dorchester County.
22. The acts and omissions of the Defendants were conducted, disseminated, published and/or performed in South Carolina, at its jobsites and offices and to its employees and/or agents, including in Dorchester County, in a way to affect, reach and cause injury and/or damage to the Plaintiff in the State of South Carolina.
23. The Plaintiff consents to the jurisdiction of this court since she is a resident of the County of Dorchester, State of South Carolina.
24. Morphew is currently, and was during the relevant period, a citizen and resident of South Carolina in Dorchester County.

FACTS

25. That the Plaintiff hereby incorporates paragraphs one (1) through three (24) above, the same as if set forth again verbatim.
26. On October 24th, 2012, the **"Time is of the Essence"** sale contract between Defendants Dudek and Cross and sellers Thomas Ferro and Lorraine Ferro for property located at 788 E Butternut Rd, Summerville, SC 29483, was ratified [and expired on Friday, November 30th, 2012].

27. That, upon information and belief, on December 3rd, Defendants Dudek and Cross claimed the 15-day 'no-fault to either party' extension clause within the contract. Expiration date of clause 12/15/2012.
28. That, upon information and belief, on December 3, Sellers Ferro were presented with a Contract Extension Addendum dated December 28th; sellers refused.
29. On December 5th, [5 days after said contract expired], Defendants Dudek and Cross applied for mortgage credit or lending.
30. That, upon information and belief, on December 5th, Defendant Allison Williams received or reviewed the sales contract for the first time.
31. On or about December 5th, Defendant Allison Williams requested [buyers] Defendants Dudek and Cross to obtain the missing sellers names on the front of the sales contract.
32. On December 10th, Defendants Dudek and Cross signed the mortgage loan application.
33. On December 11th, Underwriting received the Dudek and Cross mortgage file; only item in the file was an expired and unsigned/non-property specific, pre-qualification application dated May 2012, and the [expired] sales contract.
34. On December 12th, First Federal Underwriting sends inquiry to both Defendant Williams and Defendants Dudek and Cross as to the status of the required signed Contract Extension Addendum.
35. On December 12th, First Federal declared the Dudek and Cross sales contract invalid due to its illegibility and/or sent a request for a legible, signed contract with all addendums, including the required signed Contract Extension.
36. On December 12th, First Federal requested a signed application and all banking disclosures.

37. On December 12th, [with no application or signed application/banking disclosures, and/or with no legible signed sales contract and all addendums (including the required signed Contract Extension Addendum[3]), First Federal issued an approval letter.

38. On December 16th, 2012, Sellers Ferro submitted a request for sales contract termination to Defendants Cross and Dudek or their agent.[4]

39. On December 16th, Plaintiff and sellers Ferro ratify back-up sales contract.[5]

40. On December 16th, Defendant Susan Nicholson received the termination request from the sellers.

41. On December 16th, Susan Nicholson replies to sellers Ferro and/or their agent that her clients "*made application and supplied requested documentation from the lender in a timely manner from the time we ratified the contract*", and that 'they' are ready to close, "*hopefully this week pending the title work is clear from the closing attorney.*"

    a. No closing date offered or scheduled.

42. On December 18th, First Federal Underwriting received the Dudek and Cross signed Application, First Federal disclosure, Servicing Disclosure, Authorization to Release, and Local Employer Address for Co-Borrower.

43. On December 20th, legal counsel for Carolina One, Defendant Michael Scarafile, stated Dudek and Cross had provided proof of lending, "*were ready to close*", and could schedule a closing "*next week*".

    a. No closing date offered or scheduled.

[3] First Federal does not accept mortgage applications on an expired sales contract without a signed Contract Extension Addendum or a new contract.
[4] And only after Dudek and Cross failed to close on or before the November 30th contract date and failed to close on or before the contract extension clause date of December 15th.
[5] Contingent upon Dudek and Cross signing the contract termination request.

44. December 31, First Federal Underwriting sent direct requests to both Defendants Dudek and Cross and Defendant Allison Williams for an update on the **required** Contract Extension Addendum.

    a. No reply from Defendants Dudek and Cross.

45. January 3rd, 2013, First Federal sent out separate 10-day adverse notices to both Defendant Dudek and Defendant Cross requesting the signed Contract Extension Addendum they've required and requested since application.

> Said notice, stated "*We must receive all the above documentation within 10 days from the date of this letter. Otherwise, First Federal will regrettably be unable to give further consideration to your credit request....Should you decide at a later date to furnish the above items, we can assist you with a new application.*"

46. January 3rd, 2013, Morphew secured lending, and had a tentative closing date of January 12th[6].

47. January 11, Defendants Dudek and Cross were notified that "the sellers were not going to sell to them" and that "the sellers had secured another contract" and were "going with another buyer".

48. January 11, Defendants Dudek and Cross filed a lis pendens.

49. January 13th, application submitted by Dudek and Cross was no longer valid, and a new application would have to be submitted.

50. January 15th, Defendants Dudek and Cross filed a 2nd lis pendens, along with a breach of contract lawsuit against sellers[7] to compel specific performance and/or damages.

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[6] Ibid 5

[7] Defendants Dudek and Cross claim sellers breached their contract and were the reason Defendants could not close.

51. January 16th, as a result of their failure to provide a complete application to First Federal and [intentional] failure to respond to the 10-day adverse notice, Defendants Dudek and Cross were denied lending/mortgage credit on said sales Contract.

52. January 18th, Defendant Allison Williams informs First Federal that the file is under litigation and "was concerned First Federal could get drawn into the lawsuit".

    a. Williams suggested to keep the file open.

53. As of January 18th, Defendants Dudek and Cross are declined mortgage credit for incomplete application, and their mortgage lending file is closed.

54. January 31, First Federal refunds balance of application fee, and provides official notice of declination.

55. On January 31st, 2013, Morphew filed a complaint for breach of contract and damages against Defendants Dudek and Cross, and sought specific performance [only] from sellers, Thomas and Lorraine Ferro.

56. That, upon information and belief, on or about February 10th, 2013, Defendants Dudek and/or Defendant Cross and/or Defendant Collins produced or assisted in the production of a falsified and/or forged e-mail and/ or in order to provide proof they "applied" for lending per Contract.

57. March 4, 2013, Morphew subpoenas First Federal for Dudek and Cross' lending information, including files, electronic documents, e-mails/communications, etc.

    a. First Federal responds March 13, "*there is no such people or property address on file with their institution nor the TMS numbers found in the county records*".

58. March 15, 2013, Plaintiff Attorney contacts Defendant Collins and informs him that, per First Federal, there are no loans approved for his clients.

a. Defendant Collins responds that "his clients had loan approval but could not close because they never got a CL-100"[89].

59. June 2013, Dudek and Cross deposition held.

a. Dudek and Cross claim they had secured lending per contract, and/or had not breached their contract and/or they had the valid contract and/or were, and were still ready, able and willing to close.

b. Dudek and Cross failed to disclose they had been denied lending.

60. August 1, 2013, Morphew [again] subpoenas First Federal for Dudek and Cross' lending information, including files, electronic documents, e-mails/communications, etc.

a. First Federal responds "*there were no records of any loans with that number at their institution*".

61. August 12th, 2013, Morphew's attorney makes a phone call to First Federal to verify said response(s) are correct.

a. First Federal responds "*they could not* [or would not] *provide that information*".

62. June 10th, 2014, First Federal responds [unexpectedly] to the March 2013 subpoena for Dudek and Cross mortgage lending information.

63. June 11 & 12, 2014, Trial held for combined cases.

64. November 6, 2014, Order issued from court.

a. Specific performance granted to Defendants Dudek and Cross.

65. December 6th, 2014, Morphew filed appeal with the appellate court.

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[8] Per documents from Defendant Cross' files during her deposition in June, 2013, sellers obtained a CL-100 inspection on November 29th, a report on November 30th, as per Cross/Dudek requested in their sales contract.

[9] Per Cross deposition, she received the CL-100 from Defendant Nicholson on Monday, December 3rd, 2012.

a. Appeal is currently 'Under Review', pending Appellate Court decision.

66. December 15, 2014, sellers Ferro filed appeal with the appellate court.

a. Appeal is currently 'Under Review', pending Appellate Court decision.

67. January 8, 2015, Defendants Dudek and Cross or its agents moved forward on court Order [by requesting to schedule an inspection].

68. March 25, 2015, Defendant Dudek, Defendant Cross and Defendant Collins or its agent(s) filed a Motion to compel the courts to order the appellants (Plaintiff Morphew and sellers Ferro) to post a supersedeas bond to stay the court Order[10] or if not awarded bond, to hold Morphew in contempt for attempting to obstruct Dudek and Cross' performance of the court Order of November 2014.

69. May 13, 2015, Motion hearing held.

a. Defendants Dudek and Cross were instructed to perform their due diligence and/or start application per court Order, as "time was of the essence".

i. No action taken.

b. Plaintiff Morphew was instructed to allow Dudek and Cross access to property to perform their inspection.

i. No action taken.

c. The courts allowed Defendant Collins 10 days to respond to Morphew's Answer to the Motion.

[10] A supersedeas bond is defined as a "bond required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful." Black's Law Dictionary 738 (6th ed. 1990); The language of Federal Rule of Civil Procedure 62 indicates that a co-requisite to imposition of a supersedeas bond is a motion for a stay by the appellant; A Supersedeas Bond May not be Imposed in the Absence of a Stay; The district court has no power to impose a supersedeas bond in the absence of a stay. Nothing in the language of these rules indicates that an appellee can move the court for imposition of a supersedeas bond.

i. No response from Defendant Collins.

70. The Defendant(s) or its agent(s) having participated in the civil action(s) are presumed to have acted with full knowledge of the facts, and, knowing that they had [unlawfully] and/or with complete disregard to a legal Contract, allowed said Contract to expire.

71. At all times material, the Defendant(s) or its agent(s) having participated in the civil action(s) are to presumed to have acted with full knowledge of the facts, and, knowing at application on December 5th, 2012, that they were required to produce a signed Contract Extension Addendum, and/or

a. without it had an invalid contract and/or would not be able to obtain financing.

72. At all times material, the Defendant(s) or its agent(s) having participated in the civil action(s) are presumed to have acted with full knowledge of the facts, and, knowing that Defendants Dudek and Cross were denied lending and/or Denied [at their own hand].

73. The Defendant(s) or its agent(s) having participated in the civil action(s) are to presumed to have acted with full knowledge of the facts, had [intentionally] failed to disclose required pertinent material facts to the case.

FOR A FIRST CAUSE OF ACTION
(Fraud, Extrinsic Fraud – Fraud on the Court)
[Against all Defendant(s) or its agent(s)]

74. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

75. Plaintiff alleges Defendant Collins [the attorney for Defendants Dudek and Cross] made fraudulent representations and/or misrepresentations, or omitted pertinent material information and or documents, and/or concealed Defendants Dudek and Cross' 'lost or non-existent' lending records.

76. Upon information and belief, and at all times material, Plaintiff alleges Defendant Collins had, in his possession or had complete knowledge of, the letter(s) from First Federal denying his clients lending, which had not been disclosed to the Plaintiff or the court.

77. Plaintiff alleges, Defendant Collins, having participated in the civil action(s), filed frivolous lawsuits/motions; signing pleadings; notice and opportunity to respond.

78. Plaintiff further maintains Defendant Collins both in the prosecution of the case in the lower court, and on appeal in the Court of Appeals, made representations that were false, material, known to have been false when made, [and] made recklessly and/or with the intention that it be acted upon by all parties involved [including the sellers, Plaintiff, and the courts].

79. Plaintiff argues that where there is a duty to speak[11] and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

80. These acts and/or misrepresentations is blatant extrinsic fraud[12].

81. At all times material and with complete knowledge otherwise, [all] Defendant(s) or its agent(s) made false statements and/or misrepresentations and/or omitted material information pertinent to the case and/or committed perjury and/or committed forgery.

82. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she [and all parties involved] would never have gone to trial or be in this position today if

[11] Where there is a duty to speak, a fiduciary's non-disclosure may be fraudulent. Cf. Manning v. Dial, 271 S.C. 79, 245 S.E.2d 120 (1978).

[12] [E]xtrinsic fraud' refers to frauds collateral or external to the matter tried such as...misleading acts which prevent the movant from presenting all of his case or deprives one of the opportunity to be heard.

Defendant(s) or its agent(s) had been conducted themselves with honesty, and good faith and fair dealings.

83. Plaintiff asserts that the courts relied on the fraudulent act(s) and/or omissions, and representations or misrepresentations made by the Defendant(s) or its agent(s).

84. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

85. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

86. Upon information and belief, Plaintiff affirms these fraudulent act(s) and omissions were intentional and/or made recklessly and/or with malice[13] and/or with intent to deceive.

87. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

88. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

89. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

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[13] Malice is presumed; 1) disparagement of title to real property is false, 2) caused damages, and 3) is not privileged.

90. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

91. Due to these acts [stated herein] of fraud, perjury, falsifying documents, forgery, omissions, and intentional misrepresentations, the Defendant(s) or its agent(s) have cost the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

FOR A SECOND CAUSE OF ACTION
(Perjury)
[Against all Defendant(s) or its agent(s)]

92. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

93. Defendant(s) or its agent(s) falsely and/or [fraudulently] testified unduly during the trial and/or at deposition, including testimony that:

a. Dudek and Cross had applied for lending per contract,
b. Dudek and Cross had provided all documents required of their lender,
c. Dudek and Cross had provided all documents required of their lender per contract and/or in a timely manner,
d. Dudek and Cross had done everything they could to secure financing per contract,
e. Dudek and Cross had done everything they could to close escrow per contract,
f. Dudek and Cross had secured lending per contract,
g. Dudek and Cross were 'ready, able and willing' to close per contract,
h. Dudek and Cross were 'ready, able and willing' to close per contract but the sellers refused,
i. Dudek and Cross were ready to close on December 14th, 2012,

j. First Federal was ready to close on December 14th, 2012,

k. First Federal was "cleared to close" on December 20th, 2012,

l. Dudek and Cross did not receive a CL-100 (report),

m. Defendant Collins has never seen the CL-100,

n. First Federal couldn't *continue* with the loan because they were waiting on the recorded survey,

o. First Federal didn't order the appraisal because they were waiting on the recorded survey,

p. Dudek and Cross did not receive the stamped recorded land survey until 'they drove to the county office themselves to obtain it' [on or about January 2013],

q. Dudek and Cross did not know of the existence of another buyer when filing their lis pendens and lawsuit,

r. the sellers breached their contract,

s. the sellers breach caused Dudek and Cross to breach,

t. the sellers refused to provide required lender and/or closing attorney required documents in order to close,

u. Defendants Dudek and Cross could not close per contract because of the sellers,

v. the Contract Extension Addendum was not required (by their lender), and

w. Defendant Williams turned in the application file [to underwriting] on October 31, 2012.

94. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she (and/or all parties involved) would never have gone to trial or be in this position today if

Defendant(s) or its agent(s) had been conducted themselves with honesty, and good faith and fair dealings.

95. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

96. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

97. Plaintiff insists, if the material facts and/or material evidence was not concealed and the parties went to trial, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

98. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

99. Plaintiff argues the Defendants knew the statements to be false and/or failed or intentionally failed to take remedial measures or disclose to the courts(s) the truth.

100. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

101. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

102. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

103. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A THIRD CAUSE OF ACTION
(Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act SECTION 15-36-10; Abuse of Rule 11 Signing Pleadings, Motions, and Other Papers; Representations to the Court; SC Rules of Professional Conduct Rule 3.1 Meritorious Claims and Contentions Sanctions)
|Against Defendant Collins|

104. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

105. Upon information and belief, Defendant Collins, having participated in the civil action(s), filed frivolous lawsuits/motions; signing pleadings; notice and opportunity to respond.

a. Defendant Collins [unlawfully] and/or [fraudulently] and/or frivolously filed a lawsuit for Specific Performance with complete knowledge the case did not meet all requirements of "Specific Performance" and/or the requirement of the court to compel Specific Performance.

b. Defendant Collins [unlawfully] and/or [fraudulently] and/or frivolously filed a lawsuit claiming seller breach of contract (i.e., seller fault), after Defendants Dudek and Cross had previously claimed the "no fault to either party" extension clause within the contract.

c. Defendant Collins submitted several documents to the courts (including Defendants [Dudek and Cross] Answer to Plaintiff Morphew complaint) that contained numerous or extensive false statements or defenses to the case.

d. In absence of an appellants (Plaintiff Morphew) request for stay of execution, said attorney [unlawfully] and/or [fraudulently] and/or frivolously filed a Motion [for appellants to pay] Supersedeas Bond and/or contempt against Morphew.

i. Upon information and belief, Morphew argues the motion was filed in hopes to "clandestinely" obtain a "stay" to legally excuse his or his client's intentional and fraudulent actions, and/or to harass the appellants.

ii. Due to this [unlawful] and/or [fraudulent] and/or frivolous motion, Plaintiff Morphew had to spend considerable amounts of time, and loss of money, to prepare an answer, and to prepare for and attend a hearing for said motion, including the undue distress it caused Plaintiff Morphew.

106. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his client's sales contract was invalid at application and/or invalid on or before the day they filed or unlawfully and/or frivolously filed the civil action for specific performance.

107. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his clients had not secured lending and/or had been denied lending on or before the day they filed or unlawfully and/or frivolously filed the civil action for specific performance.

108. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his clients had been and/or were unable to obtain lending

without the signed Contract Extension Addendum when they filed or unlawfully and/or frivolously filed said lawsuit for specific performance.

109. At all times material, Defendant Collins, having participated in the civil action(s) had full knowledge his clients had been denied lending, therefore were never able to close (i.e., "ready, able and willing") within the contract life and/or at any time material, as required to compel specific performance.

110. Defendant Collins having participated in the civil action(s) had full knowledge his clients did not meet all requirements of specific performance, but filed or unlawfully and/or frivolously filed said lawsuit in an attempt to disrupt or interfere with the closing in the Morphew contract, and/or in an attempt to harass, and/or in an attempt to blackmail (technically referred to as 'legal blackmail') the sellers into selling to his clients and/or not honoring Morphew's valid contract.

111. Defendant Collins having participated in the civil action(s) had full knowledge his clients had been denied lending and/or were unable to obtain financing on their sales contract without the signed Contract Extension Addendum but continued to [unlawfully and/or frivolously] file said lawsuit in an attempt to blackmail (technically referred to as 'legal blackmail') the sellers into selling to his clients and/or not honoring Morphew's valid contract.

112. Defendant Collins had a duty to disclose any critical material facts, specifically any that may be of intentional misrepresentation, deceit, or concealment of a material fact the concealing party had a duty to disclose, which was gross, oppressive, or malicious and committed with the intention on the part of the perpetrator to thereby deprive a person or entity of property, legal rights or otherwise cause injury.

113. Upon information and belief, the actions of the Defendant or its agent(s) were not the actions of honesty, good faith and fair dealings.

114. Upon information and belief, Defendant Collins or its agent(s) violated the South Carolina Rules of Professional Conduct

115. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

116. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff Morphew has incurred extensive undue burden or expense.

117. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant or its agent had conducted themselves with honesty, and good faith and fair dealings, or obeyed/honored the South Carolina State Bar Association Rules and Regulations.

118. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant or its agent(s).

119. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

120. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

121. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

122. Upon information and belief, Plaintiff argues Defendant Collins exhibited abuse of process and/or malicious prosecution.

123. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff h has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

124. Due to these acts or acts of fraud, perjury, omissions, unlawful conduct, and/or intentional misrepresentations, the Defendant or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

125. Injunctive relief is also necessary to demand Defendant or its agent to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

126. Punitive damages are necessary to deter Defendant or its agent from continuing its wanton conduct.

127. Sanctions, under FRCP Rule 11 and Rule 3.1, are applicable if the fraudulent evidence and perjured testimony was used in a pleading, written motion or other paper and/or the failure of a lawyer's ethical duty not to bring or defend an action or raise or challenge an issue unless there is a non-frivolous basis for doing so.

FOR A FOURTH CAUSE OF ACTION

(Violation of ABA Rules of Professional Conduct, Rule 3.3 Candor Toward the Tribunal)

[Against Defendant David Collins or its agent(s)]

128. All allegations in the prior paragraphs are fully repeated and incorporated herein.

129. Defendant Collins made a false statement(s) of fact or law to the court(s), including the appellate court or failed to correct a false statement(s) of material fact or law he previously made to the courts(s), such as:

a. Defendant Cross had applied for financing with First Federal before ratifying said sales Contract.

b. Defendant Cross had been pre-approved for financing per paragraph 8 of said contract before contract ratification.

c. Defendant Cross had diligently pursued financing per sales contract.

d. The sale would have closed within the life of the contract if the sellers had complied with their side of the contract.

e. The extension clause within the contract (Para. 12) was an automatic extension.

f. The said contract stated the CL-100 was required to be provided to the Defendants Dudek and Cross by November 30th, 2012.

g. The CL-100 was not provided.

h. He had never seen the CL-100.

i. The bank required the CL-100 clearance letter.

j. The CL-100 clearance letter was a contingency in the sales contract.

k. The sellers were required to provide the clearance letter.

l. First Federal ordered the appraisal "*the minute that the re-subdivision of the property was accomplished*".

m. The appraiser wouldn't go out there [to perform appraisal] until the subdivision had been made by the county.

n. Defendant Cross and/or Dudek were not at fault for any delay in getting the appraisal performed.

o. Sellers Ferro didn't provide response to repair request until December 7, 2012.

p. The lender hadn't ordered the appraisal because of the delays in getting the subdivision plat.

q. All repairs and the CL-100 clearance letter had to be done by November30, 2012.

r. Defendants Dudek and Cross have done nothing to delay the closing during the life of the contract (i.e., from ratification to expiration on November 30th).

s. Nobody (i.e., the lender, the closing attorney) was waiting on any documentation from Defendants Dudek and Cross in order to close.

t. Defendants Dudek and Cross did not know of another buyer until they received Plaintiff Morphew's initial lawsuit (approximately or around February 3rd, 2013).

130. Defendant Collins failed to disclose to the courts(s) legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

131. Defendant Collins failed to disclose to the courts Defendants Dudek and Cross were denied lending due to never providing a complete application.

132. Defendant Collins failed to disclose to the courts Defendant Dudek and Cross did not have lending secure and/or 'ready, able and willing' to close during the life of the said sales contract, and/or at any time and/or any time material.

133. Defendant Collins failed to disclose to the courts Defendant Dudek and Cross did not have a valid sales contract at application and/or at any time material.

134. Defendant Collins failed to disclose to the courts Defendants Dudek and Cross did not meet the requirements of specific performance.

135. Defendant Collins offered evidence that with complete knowledge he knew to be false or failed to take remedial measures or disclose to the courts(s).

136. Defendant Collins, with complete knowledge that his clients intended to engage in, is engaging or has engaged in criminal or fraudulent conduct related to the proceedings, has failed to take reasonable remedial measures, including, if necessary, disclosure to the court(s).

137. Defendant Collins was required to adhere and continue the duties he so failed in as stated in paragraphs (128) through (136) to the conclusion of the proceeding, and these duties apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

138. Upon information and belief, the actions of the Defendant or its agent(s) were not the actions of honesty, good faith and fair dealings.

139. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

140. Plaintiff argues the actions of Defendant Collins, as an officer of the court, participated, and is participating, in the failure of the court(s) to make an informed decision.

141. Plaintiff insists, absent of herein stated acts and/or omissions, Plaintiff would not have been deprived of a fair trial and/or the opportunity to present all of her case.

142. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

143. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

144. Due to these acts of fraud, perjury, omissions, and misrepresentations or intentional misrepresentations, the Defendant or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

145. Due to the violation of Rule 3.3, sanctions are necessary due to the Defendant or its agent use of fraudulent evidence and perjured testimony in the court of law.

FOR A FIFTH CAUSE OF ACTION

(Violation of the Federal Rules of Civil Procedures, Rule 26. Duty to Disclose; General Provisions Governing Discovery; Rule 37 Failure to Make Disclosures or to Cooperate in Discovery; Sanctions; SC Rules of Professional Conduct Rule 8.4(c) Misconduct, of the Rules Regulating The South Carolina Bar (Rules of Professional Conduct)

[Against Defendant David Collins or its agent(s), Defendant First Federal or its agent(s), and Defendant Michael Scarafile or its agent(s)]

146. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

147. At all times material, and at the direct request(s) of the Plaintiff or her attorney during initial discovery, Defendant Collins failed or intentionally failed to disclose material fact(s) in connection with the sale of land.

148. Defendant Scarafile, as legal counsel and President of Defendant Carolina One Real Estate provided written documentation falsely stating Defendants Dudek and Cross were 1) 'ready, able and willing' to close, and 2) a closing could be scheduled [as of

December 20th, 2012], and 3) his clients had provided proof of financing [per sales contract].

149. With full knowledge and receipt of said subpoena(s), Defendant Collins failed or intentionally failed to disclose to the opposing attorney or party (including the courts) a material fact(s) in connection with the sale of land.

150. First Federal failed or intentionally failed to disclose, answer or respond to, and/or and in a timely manner, two subpoenas and a phone call requesting Dudek and Cross' lending information or status and/or all documents, letters, correspondences, files, etc. and/or affiliation to First Federal.

151. Upon information and belief, Defendants Williams and/or First Federal failed or intentionally to respond to the lawful requests for proof of Defendants Dudek and Cross lending status and/or lending approval [per Contract] and/or lack of approval.

152. At all times material, and with complete knowledge Dudek and Cross had been denied lending due to an incomplete application and/or their application was not valid and/or the Dudek and Cross sales contract were not valid, First Federal refused to provide and/or disclose stated herein material facts and/or status to the sellers or its agent and/or to the Plaintiff and/or to the courts.

153. With full knowledge her clients and the sellers were in litigation, Defendant Allison Williams testified she had destroyed all documents or communications, electronic or otherwise, between her and the Defendants Dudek and Cross.

154. Upon information and belief, the actions of the Defendants were not the actions of honesty, good faith and fair dealings, but instead implied they had damaging or unfavorable information to hide.

155. Upon information and belief, the actions of the Defendant Collins and/or Defendant Scarafile and/or First Federal were not the actions required per the South Carolina Bar Rules (SCBR) of Professional Conduct but instead were inconsistent with the SCBR requirements of 'honest dealings with others'.

156. Plaintiff asserts that, absent of herein stated act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant(s) or its agent(s) had conducted themselves with honesty, and good faith and fair dealings and/or had honored the SC Rules of Profcssional Conduct and/or honored the Federal Rules of Civil Procedures.

157. Plaintiff asserts that the Plaintiff and/or the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

158. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or a fair trial and/or the courts were prevented from making a lawful or informed ruling.

159. Plaintiff insists, absent of herein stated fraudulent acts or act(s) or omissions, Plaintiff would not have been deprived of a fair trial and/or the opportunity to present all of her case and/or the courts would have been able to make a lawful or properly informed ruling.

160. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

161. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

162. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

163. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

164. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

165. Sanctions, under FRCP Rule 26, are applicable due to the Defendants or its agent's use of fraudulent evidence and perjured testimony, as stated herein, as part of their failure to comply with a discovery order and/or submitted as part of a bad faith affidavit or declaration.

166. Sanctions are compelled for violation of Rule 8.4(c) and/or failure to comply with an obligation or prohibition imposed by a Rule as stated herein, as is a basis for invoking the disciplinary process.

167. Sanctions are compelled for abuse of process and/or malicious prosecution as stated herein, as possibly criminal liability.

FOR A SIXTH CAUSE OF ACTION
(Violation of ABA Rules of Professional Conduct, Rule 4.1 Truthfulness in Statements to Others; Rule 5.3 Responsibilities Regarding Non-lawyer Assistants)
[Against Defendant Scarafile or its agent(s) and Defendant Wooddy Law Firm or its agent(s)]

168. At all times material, Defendant Michael Scarafile, with full knowledge Dudek and Cross were not 'ready, able and willing' to close per the sales contract and/or unable to obtain financing on their sales contract without the signed Contract Extension Addendum and/or had an expired or invalid sales contract, declared Dudek

and Cross had provided proof of financing and are ready to close (i.e., 'ready, able and willing') and/or could schedule a closing.

169. With full knowledge that his clients were unable to obtain financing on their sales contract without the signed Contract Extension Addendum and/or had an expired or invalid sales contract, Defendant Scarafile unlawfully concluded a lawsuit would result if the sellers did not comply [i.e., sell to his clients].

170. On November 27, upon information and belief, Defendant Dudek and/or Defendant Cross and/or Defendant Nicholson requested Wooddy Law Firm to contact the sellers [as Dudek and Cross's closing attorney[14]].

a. Upon information and belief, Plaintiff argues the request was implemented to create a 'façade' that they were preparing for a closing in the near future[15]; and/or to 'cover up' the fact Dudek and Cross had intentionally and/or seriously breached their contract.[16]

171. On November 27, Wooddy Law Firm mailed an [official] letter introducing themselves as the closing attorney handling the closing, and requested the sellers' personal information (PI)[17].

[14] Request was made by Nicholson and/or Cross and/or Dudek after sellers' agent asked "*if a closing time has been set and if so, the place it will occur...*"
[15] Request was 8 days before Defendants Dudek and Cross applied for mortgage lending on their sales contract; no legal relationship existed between Woody Law Firm and the sellers, at all times material, no application for financing had been submitted in connection with Dudek and Cross sales contract.
[16] Contract required application within 10 days of contract ratification; Contract also called for financing approval within 20 days of contract ratification; application for financing had not been submitted until after the said sales contract had expired.
[17] See Note 9

172. On December 5, and at all times material and with full knowledge there was no legal cause and/or justification, Defendant Carrie Boyer required proof [from the sellers] that the [minor] damages stated in the CL-100 have been repaired (i.e., contractors clearance letter)[18].

173. Upon information and belief, Plaintiff argues the actions and/or omissions of the Defendant(s) or its agent(s) created an unjustified expectation or belief as to the status of Defendants Dudek and Cross's financing status, and/or their capacity to close, and/or created a false sense of belief that a closing would take place [in the near future], and or which was materially misleading to the Plaintiff and/or the courts.

174. Upon information and belief, the actions and/or omissions of the Defendant(s) or its agent(s) were not the actions of honesty, good faith and fair dealings, and furthermore violated ABA Rules of Professional Conduct.

175. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

176. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff Morphew has incurred extensive undue burden or expense.

177. Plaintiff asserts that, absent of hercin stated fraudulent act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant or its agent had conducted themselves with honesty, and good faith and fair dealings, or obeyed/honored the South Carolina State Bar Association Rules and Regulations.

[18] See Note 9

178. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

179. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

180. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

181. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

182. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

183. Due to these acts or omissions or misrepresentations, the Defendant(s) or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

184. Injunctive relief is also necessary to demand Defendant or its agent to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

185. Punitive damages are necessary to deter Defendant or its agent from continuing its wanton conduct.

186. Sanctions are compelled under ABA Rules of Professional Conduct Rule 4.1, and are applicable if the fraudulent evidence and/or perjured testimony was a false statement of material fact or law to a third person; or the lawyer failed to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

187. Sanctions are compelled under ABA Rules of Professional Conduct Rule 5.3, stating that the lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

FOR A SEVENTH CAUSE OF ACTION
(Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud)
[Against all Defendant(s) or its agent(s)]

188. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

189. With complete knowledge the sales contract was, 1) their own (i.e., not the sellers'), 2) was of **"Time is of the Essence"**, and 3) vastly reduced in the sales price with agreement Cross and Dudek would close on or before November 30th, 2012, Dudek and Cross failed or intentionally[19] failed to make [mortgage financing] application before said sales contract expired.

[19] Though the sales contract was not a "repair' contingent contract, Defendants Cross testified they knew they were required to apply per contract but didn't because she "*was waiting for the sellers to 'take her seriously*" [in regards to making the repairs].

190. Defendants Dudek and Cross and Defendant Susan Nicholson, with intent and/or pre-meditation, conspired to 'cheat' or 'trick' or 'defraud' the sellers out of their remaining property by placing fault on the sellers, and did so even before the contract was ratified (i.e., signed by the sellers)].

> Doreen: "*The Seller could always throw in the extra acreage and the barn and we'll guarantee the end of November for sure. We're willing to do that.* ☺"
>
> Susan: "*If the home isn't subdivided in time then it will be their [sellers] fault not yours....If the seller wants to throw in any additional property I'm sure you will be ok with it* ***the trick*** *is to get him to do that without any extra charge! You never know he may throw you guys a deal you can't refuse!*"

191. Upon information and belief, 15 days before contract expiration, again Defendants Dudek and Cross attempted to 'cheat' or 'trick' or 'defraud' the sellers out of their remaining property by conspiring to use a 3rd party's information against another 3rd party in order to re-negotiate their contract.

> Doreen to Susan: "*Can we hold Eugene* [structural engineer] *liable if future information becomes available contradicting his report? It sounds like it will be challenge to take the information from Tim* [contractor] *and use it in the counter-offer.*"

192. With complete knowledge their client had not yet applied for lending, Defendant Susan Nicholson or her agent(s) falsely stated that the 'lender' was requiring documents (i.e., repair receipts, a CL-100 or cleared CL-100) [in order to process the loan].

193. With complete knowledge their client had not yet applied for lending and/or supplied a complete application, Defendant Susan Nicholson or her agent(s) falsely stated that the 'lender' had not been able to schedule a closing due to waiting on the recorded survey.

194. Upon information and belief, on December 5, Defendant Susan Nicholson requested Wooddy Law Firm to provide a notice they [closing attorney] required proof

the [minor] damages stated in the CL-100 have been repaired (i.e., contractors clearance letter);

195. At all times material, and with complete knowledge of its falsity, Defendants Dudek and Cross have maintained or testified the reason they could not close [per contract] was due to the lack of a CL-100 or a clear/cleared CL-100.

196. On or about December 20th, Dudek and Cross or Defendant Nicholson submitted or unlawfully submitted a legible but invalid sales contract [unsigned and missing sellers names] to First Federal.

197. First Federal accepted or unlawfully accepted an invalid and/or unsigned sales contract that contained no sellers name for mortgage loan processing.

198. With complete knowledge they had been denied lending due to an incomplete application and/or their application had expired and/or their sales contract was no longer valid or expired, Defendant Cross gave specific directions to First Federal to not provide or disclose their lending/mortgage information or status.

199. Defendants Dudek and Cross and Defendant Collins engaged in filing of frivolous and unlawful actions with complete knowledge Dudek and Cross had been denied lending, and/or that their application had expired and/or was no longer valid, and/or the sales contract was no longer valid and/or had expired.

200. Defendants Dudek and Cross and Defendant Collins engaged in filing of [frivolous and/or unlawful] actions at the time they became aware the sellers had contracted to sell the Property to another buyer [Plaintiff].

201. Upon information and belief, Defendants Dudek and Cross and Defendant Collins engaged in filing of actions or frivolous and/or unlawful actions to prevent the sale of said property to Plaintiff.

202. Defendants Dudek and Cross and Defendant Collins, with complete knowledge Dudek and Cross could not secure lending without the signed Contract Extension Addendum, engaged in filing of actions or frivolous and/or unlawful actions in an attempt to 'force' the sellers to sell to them.

203. Upon information and belief, Defendant Nicholson or its agents, and/or Defendant Scarafile or its agents, in their acts and omissions as stated herein, have engaged in bad faith and unfair dealings by displaying a complete disregard to their company core values, "***TRUTH*** *Commitment to honesty without compromise. An excellent reputation, loyalty and trust. We hold each other accountable. We do what we say we are going to do. We communicate honestly with everyone.*"

204. Defendant(s) or its agent(s) having participated in the civil action(s) had full knowledge all times material Defendants Dudek and Cross were denied lending due to an incomplete application, have never secured lending on said contract, could never obtain lending on said contract without a signed contract extension, but in bad faith and unfair dealings engaged in, continues to engage in, and plans to engage in, fraud, forgery, falsifying documents, misrepresentation, perjury, breach of fiduciary duties, and fraud on the courts.

205. Plaintiff asserts the acts or omissions or representations or misrepresentations made by the Defendant(s) or its agent(s) was relied on by Plaintiff and/or the courts.

206. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

207. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

208. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

209. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

210. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

211. Disciplinary action is compelled per SECTION 40-57-145 (A)(1) [makes a substantial misrepresentation involving a real estate transaction], (3) [pursues a continued and flagrant course of misrepresentation], (4) [in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public], (19) [fails to disclose in accordance with Section 40-57-137 any material facts concerning a real estate transaction], (20) [violates any provision of this chapter or a regulation promulgated under this chapter], (21) [violates a rule or order of the commission], and (23) [engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their client].

212. An investigation is compelled per SECTION 40-57-150 Investigation of violations of law; surrender of license; disciplinary action; report to be posted (A) through (f), with emphasis on (C)(1) [Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days].

FOR AN EIGHTH CAUSE OF ACTION
(Slander of Title)
[Against Defendant Collins and Defendants Dudek and Cross or its agent(s)]

213. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

214. Upon information and belief, Defendant Collins and Defendants Dudek and Cross, in bad faith, filed or frivolously filed a Lis Pendens (and including filing a separate Lis Pendens under a complaint or unlawful or frivolous complaint) with full knowledge Dudek and Cross had been denied lending and/or could not obtain financing on said contract without a signed Contract Extension Addendum, and/or the sales contract was invalid, and/or the application made to First Federal had expired and/or was invalid.

> First Federal 10-day notice letter dated 1-3-13: "*Should you decide at a later date[20] to furnish the above items, we can assist you with a new application.*"

215. Upon information and belief, Plaintiff affirms these acts were intentional and/or made recklessly and/or with malice and/or with intent to deceive[21].

216. Upon information and belief, Defendant Collins and Defendants Dudek and Cross, with complete knowledge of a backup buyer, filed or frivolously filed a Lis

[20] 10-day notice letter was dated January 3, 2013. Expiration of application was January 13, 2013, making Dudek and Cross mortgage application on said contract invalid after January 13, 2013.
[21] See note 13.

Pendens (and including filing a Lis Pendens under a complaint or an unlawful or frivolous complaint) to prevent such sale of said property.

217. Injunctive relief is necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealings.

FOR A NINTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)
[Against Defendants Dudek and Cross]

218. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

219. Defendants Dudek and Cross failed or intentionally failed to perform the court Order of November 15th, 2014 for specific performance[22].

220. At all times material, and upon information and belief, Plaintiff argues Dudek and Cross were unable and/or are currently unable to obtain mortgage credit on said court Order with First Federal and/or any lending institution.

221. Upon information and belief, and with complete knowledge their sales contract within the court order was and/or is invalid [as provided herein], Defendants Dudek and Cross filed a motion, or an unlawful and frivolous motion, to compel the courts to order a supersedeas bond on appellants in order to stay the said court Order[23].

222. At the direction of the court, Dudek and Cross were, 1) directed to contact the sellers to obtain permission to the property, and 2) Morphew was directed to allow access

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[22] Per SC Rule 241(b)(4), orders, judgements, decree or decision on appeal that direct the sale or delivery of possession of real property as provided in S.C. Code Ann § 18-9-170, are not stayed on appeal.

[23] Per S.C. Code Ann § 18-9-170, If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the *judgment shall not be stayed unless a written undertaking be executed on the part of the appellant*, with two sureties…

to the property [in order for Dudek and Cross to perform an inspection and/or due their due diligence], and 3) Dudek and Cross to move forward on said Order.

223. Upon information and belief, Defendants Dudek and Cross failed or intentionally failed to perform their court Order of November 6, 2014, and again are in breach of contract, and contempt.

224. Upon information and belief, Defendants Dudek and Cross breached or intentionally breached sales contract within the court Order with complete knowledge they are unable to and will be unable to obtain financing on their sales contract within the Order; and have withheld or fraudulently withheld and/or continue to withhold that information from the sellers, the Plaintiff, the lower courts and the appellant court.

225. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

226. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

227. Injunctive relief is also necessary to demand Defendants or its agent to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

228. Punitive damages are necessary to deter Defendants or its agent from continuing its wanton conduct.

FOR A TENTH CAUSE OF ACTION

(Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of care; Duty of full disclosure; Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct)

[Against Defendant Williams, Defendant Nicholson Defendant Collins, and Defendant Scarafile]

229. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

230. Upon information and belief, Defendant Allison Williams, lending officer at First Federal, had a fiduciary duty and/or an assumed duty to disclose to the courts true facts and/or representations as to the status or conditions of the Dudek/Cross loan or file.

231. Upon information and belief, Allison Williams [with complete knowledge of said facts or status] misrepresented to the courts that Defendants Dudek and Cross had applied for lending per their sales Contract, and/or obtained approval per Contract, and/or had secured mortgage lending, and/or were ready to close.

232. Upon information and belief, Defendant David Collins, had a fiduciary duty and/or an assumed duty to disclose to the Plaintiff's attorney and/or the courts, true facts and/or representations as to the status or conditions of the Dudek/Cross loan or file.

233. Upon information and belief, and with full knowledge the sales contract expired November 30th, 2012, Defendant Allison Williams gave legal advice on the Dudek and Cross **Time is of the Essence** sales contract.

234. Upon information and belief, Defendant Allison Williams displayed a misuse of her [influential] position in court and provided false testimony [in order to sway the courts decision].

235. Defendant Scarafile or Defendant Carolina One or Defendant Nicholson had a fiduciary duty and/or an assumed duty to disclose to the sellers or their agent, and to the

courts, that their clients, Dudek and Cross, had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending.

236. Defendant Scarafile made false or unlawfully and/or intentionally made false statements that Dudek and Cross, 1) had secured lending, 2) were ready, able and willing to close, and could schedule a closing the week of Christmas.

237. Upon information and belief, Plaintiff argues said statements were unlawfully made and/or made as a 'scare tactic' to compel the sellers into selling to his clients.

238. Plaintiff argues that where there is a duty to speak and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

239. Upon information and belief, Plaintiff argues these fraudulent actions were performed with the intent to deceive.

240. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

241. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

242. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

243. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

244. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

245. Sanctions are compelled under ABA Rules of Professional Conduct Rule 4.1, and are applicable if the lawyer failed to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

FOR AN ELEVENTH CAUSE OF ACTION
(Violation of the Real Estate Code of Conduct SECTION 40-57-137 Real estate brokerage company duties to client; agency relationship; applicability of common law: (H)(4), (H)(6)(a), (H)(6)(b), (H)(6)(c); (K); (O)(2)(e), (O)(4); SECTION 40-57-140 (B); Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct)
[Against Defendant Susan Nicholson, Defendant Scarafile, and Defendant Carolina One Real Estate]

246. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

247. Defendant Scarafile/Carolina One had a fiduciary duty and/or an assumed duty to disclose to the sellers or their agent, and to the courts, that their clients, Dudek and Cross, had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending.

248. Defendant Scarafile made false statements or unlawfully and/or intentionally made false statements that Dudek and Cross, 1) had secured lending, 2) were ready, able and willing to close, and could schedule a closing the week of Christmas.

249. Upon information and belief, Plaintiff argues Defendants Scarafile's actions or fraudulent action as stated [in (#196) above] were initially performed with intent to use 'legal blackmail'[24].

250. Defendant Susan Nicholson made false statements and/or false testimony that Dudek and Cross had secured lending or were ready to close.

251. Defendant Susan Nicholson made false statements and/or false testimony that Dudek and Cross were ready to close but could not schedule a closing because of missing document(s) required of the sellers.

252. Defendant Susan Nicholson or her agent had a duty and/or an assumed duty to disclose to the sellers or their agent and/or to the courts that her clients had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending due to an incomplete application.

253. Defendant Nicholson or its agents, or Defendant Scarafile or its agents, have broken their duty and/or violated the S.C. Real Estate Code of Conduct.

254. Plaintiff argues that where there is a duty to speak and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

255. Upon information and belief, Plaintiff argues these fraudulent actions were performed with the intent to deceive.

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[24] When a buyer uses the legal system to "blackmail" the seller into conveying title to the property and/or at a price agreeable to the buyer; (ex., seller of property "blackmailed" into settling frivolous claims for breach of a real estate sales contract).

256. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

257. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

258. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

259. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

260. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

261. Disciplinary action is compelled per **SECTION 40-57-145 (A)(1)** [makes a substantial misrepresentation involving a real estate transaction], **(3)** [pursues a continued and flagrant course of misrepresentation], **(4)** [in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public], **(19)** [fails to disclose in accordance with Section 40-57-137 any material facts concerning a real estate transaction], **(20)** [violates any provision of this chapter or a regulation promulgated under this chapter], **(21)** [violates a rule or order of the commission], and **(23)** [engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their client].

262. An investigation is compelled per **SECTION 40-57-150** Investigation of violations of law; surrender of license; disciplinary action; report to be posted; (A)

through (f), with emphasis on (C)(1) Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days.

FOR A TWELFTH CAUSE OF ACTION
(Fraud - Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive]
[Against all Defendant(s) or its agent(s)]

263. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

264. At all times material, Defendant(s) or its agent(s) concealed pertinent information to the case.

265. At all times material, Defendant(s) or its agent(s) failed to disclose material facts or nondisclosure of material facts/failure to volunteer information.

a. Defendant(s) or its agent(s) failed to disclose they had been denied lending [due to an incomplete application].

b. Defendant(s) or its agent(s) failed to disclose the sales contract between Defendants Dudek and Cross and the sellers Ferro was, has been, and currently is, invalid.

266. Defendant(s) or its agent(s) knowingly made over a hundred misrepresentations or false statements with intent to deceive, including:

1. Defendants Dudek/Cross testified they had secured lending per contract and had been or were always ready able and willing to close,

a. when in fact, they had been denied mortgage credit due to an incomplete application.

2. Defendants Dudek/Cross, their agent, Defendant Susan Nicholson, and loan officer Defendant Allison Williams stated or testified that the loan had been processing per sales contract but it was held up [for various reasons],
    a. when in fact, an application had not even been submitted until the contract had expired.
3. Defendants Dudek/Cross testified they could not close per contract due to seller's breach of contract,
    a. when in fact, they could not close due to making application after their contract expired and/or they were denied lending because they never submitted a complete application.
4. Defendants Dudek/Cross and their agent, Defendant Susan Nicholson, [fraudulently] communicated that the lender was requiring repair receipts and a cleared CL-100,
    a. when in fact, First Federal never required and/or requested either.
5. Defendant(s) or its agent(s) testified that sellers were to complete all the repairs [to Dudek and Cross' satisfaction] before making application,
    a. when in fact, Defendant(s) or its agent(s) had complete knowledge that 1) Dudek and Cross were required to apply for lending within 10 days of contract ratification, and 2) the sellers were under no legal obligation to perform any repairs until proof of financing.
6. Defendant Cross testified she did not receive a copy of the recorded plat, but instead had to obtain one in January 2013, when Defendant Dudek "drove to the county office to obtain a copy",

a. when in fact, Defendant Cross had received the stamped or recorded plat on or about the 23rd of November (Friday).

i. On (Tuesday) November 27th, Cross sent a confirmation e-mail to Defendant Allison Williams at First Federal, checking to make sure the recorded survey is what they needed.

7. Defendant Allison Williams testified her clients did everything they could to close escrow per contract,

a. when in fact, and with complete knowledge, Dudek and Cross had applied for mortgage credit after the said sales contract expired, and had been denied lending due to an incomplete application.

8. With complete knowledge this was breaking FDIC rules and regulations and First Federal processes, Defendant Allison Williams testified that the said non-property specific, unsigned, pre-qualification application dated for May 7, 2012 was the Defendants Dudek and Cross's application requirement per their October 24th, 2012 sales contract,

a. when in fact, at all times material, First Federal and/or FDIC clearly stated an unsigned pre-application is only valid for 30 days.

267. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

268. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

269. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

270. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A THIRTEENTH CAUSE OF ACTION

(Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal)

[Against Defendant First Federal, Defendants Dudek and Cross and Defendant Collins]

271. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

272. Upon information and belief, at all times material, Plaintiff contends no valid Sales Contract exists, or ever existed, between Dudek/Cross and First Federal.

a. Defendants Dudek and Cross applied for lending on an expired sales contract.

b. First Federal required a signed Contract Extension Addendum at application.

c. Dudek and Cross did not provide a signed Contract Extension Addendum at application and/or never provided said Addendum as required by First Federal to process their mortgage application.

d. First Federal declared the submitted sales contract illegible, therefore making it invalid, on December 12, 2012.

e. First Federal requested a signed legible sales contract and all addendums on December 12, 2012.

f. First Federal never received a [valid] and/or signed legible sales contract.

273. Plaintiff seeks declaratory judgment that at all times material, no sales contract existed or exists between Defendants Dudek and Cross and the sellers, as repeated above.

274. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

275. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

276. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

277. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A FOURTEENTH CAUSE OF ACTION
(Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d))
[Against Defendants Dudek, Cross, Williams, Collins, and Nicholson]

278. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

279. Upon information and belief, Defendant(s) or its agent(s) created or engaged in or assisted in the making of fake or false documents.

280. Upon information and belief, Defendant(s) or its agent(s) used or presented a forged document or other forged item (also referred to as "uttering" the instrument) with intent to deceive and with complete knowledge that the item was forged or false.

281. Upon information and belief, Defendant(s) or its agent(s) used a forged or false or fake instrument or document in an attempt or to obtain or transfer property or money.

282. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

283. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

284. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

285. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

286. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A FIFTEENTH CAUSE OF ACTION
(Violation of Federal Rules and Regulations (FDIC)/Violation of Banking Rules and Regulations)
[Against Defendant Allison Williams and First Federal]

287. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

288. Upon information and belief, Per FDIC and/or First Federal Banking Rules and Regulations, pre-qualification applications (that don't become applications or move forward for processing) expire after 30 days.

289. Upon information and belief, First Federal qualified or unlawfully qualified an 'expired' (over 180 days) unsigned, non-property specific, pre-qualification application as Defendant Dudek and Cross' pre-application 'requirement'.

290. Upon information and belief, FDIC rules specify, a file with a complete application [and with valid loan approval] for residential mortgage credit can only stay open for no more than 90 days without resolution.

291. Upon information and belief, First Federal failed to close Defendant Dudek and Cross' empty lending file (i.e., no application, no valid loan approval, no sales contract) that was over 180 days old.

292. Upon information and belief, and First Federal Banking Rules and Regulations, First Federal requires all necessary or required loan application documents within 10 days of initial application [in order to be considered for mortgage credit and/or process application for mortgage credit].

293. Upon information and belief, and FDIC, and First Federal rules and regulations, an application for mortgage credit cannot be accepted on an expired sales contract without a signed Contract Extension Addendum or a new sales contract with a valid expiration date.

294. First Federal Underwriting continued to process the Dudek/Cross file after the expired 10 days with an invalid or expired contract and no application or signed application from Defendants Dudek and Cross.

295. First Federal failed to close Defendants Dudek and Cross' file when they did not receive a valid contract and/or a signed Contract Extension Addendum within the time required.

296. First Federal accepted or unlawfully accepted an invalid [unsigned, missing seller name(s)], sales contract for mortgage loan processing.

297. Without having a complete application and/or a valid sales contract, First Federal distributed or unlawfully distributed an 'approval' letter dated December 12th, 2012[25].

[25] Submitted as a trial exhibit as proof of financing.

298. Upon information and belief, First Federal 'cleared' their 12/12/12 requirement for a legible signed sales contract and all addendums on 12/20/16 by writing, "*See other copy*[26] *for signatures*" on an unsigned, and nowhere the sellers name appeared on, copy of the sales contract.

299. Defendant Allison Williams and Defendant First Federal provided or intentionally provided false documentation and/or information and/or testimony to the courts:

a. Allison Williams testified Defendant Cross had submitted a pre-approval application" as of October 22nd, 2012 or [per the sales contract].

b. "Satisfactory loan approval" [per contract] was provided on 12/12/12, without a signed application and all banking addendums or a complete application yet received by First Federal.

c. Satisfactory loan approval [that contained no credit, income or asset conditions] per contract was provided on 12/12/12, when in fact approval was still contingent on:

1. First Federal's receipt and review of the IRS request for last two years of transcripts, and a valid sales contract and all addendums (specifically, a signed legible sales contract, and a signed Contract Extension Addendum), and a signed application and all bank disclosures.

d. First Federal provided statement that, "All [final] information and documents requested from the buyers was received on 12/20/12", when in fact they never

[26] 'Note' references to use the illegible signed copy's signature page to validate the unsigned legible copy, which did not contain the sellers name anywhere.

received a valid [legible] signed sales contract with all addendums nor a complete application.

e. First Federal provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact they had not yet received a complete application and/or a valid sales contract.

f. First Federal [unlawfully] provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact First Federal had not ever contacted closing attorney or with a clear to close approval.

g. First Federal provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact, upon information and belief, the closing attorney had not started a title search as of 12/20/12.

300. Upon information and belief, Defendant Allison Williams provided or unlawfully provided underwriting with invalid and [**unsigned**] documents for processing[27].

301. Upon information and belief, First Federal displayed blatant discrimination[28], specifically but not limited to, Evidence of Disparate Treatment (Treat a borrower differently in servicing a loan or invoking default remedies) and Overt Evidence of

[27] Pre-qualification application dated May 2012, unsigned Contract Extension Addendum on 12/20/16, Unsigned Repair Addendum on 12/20/16, Unsigned sales contract on 12/20/16.

[28] The Department of Housing and Urban Development ("HUD"), the Department of Justice ("DOJ"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Housing Finance Board ("FHFB"), the Federal Trade Commission ("FTC"), the National Credit Union Administration ("NCUA"), and the Office of Federal Housing Enterprise Oversight ("OFHEO") (collectively, "the Agencies") will not tolerate lending discrimination in any form. (FDIC Law, Regulations, Related Acts 5000 – Statements of Policy).

Discrimination (overt evidence of discrimination when a lender openly discriminates on a prohibited basis).

b. All allegations in paragraphs 211-233 are fully repeated and incorporated herein.

c. Without a pre-qualification application or a credit check, First Federal provided or unlawfully and/or fraudulently provided a buyer with a pre-approval letter in the amount of $295,000 to provide to sellers as "*an indication of credit worthiness*" and/or "help borrowers let the seller know that they are about to get financing."

d. First Federal accepted an application on an expired contract (i.e., invalid contract) from Dudek and Cross, when Plaintiff Morphew was told by First Federal that they do not accept applications on expired contracts without, "*a Contract Extension Addendum or a new sales contract*".

e. First Federal failed to close Dudek and Cross' 'empty' residential lending file that was over 180 days old.

f. First Federal used Dudek and Cross' unsigned and incomplete pre-qualification application dated over 180 days as their pre-qualification application requirement (i.e., electronic application).

g. First Federal used an expired or invalid sales contract for Defendant Dudek and Cross' mortgage loan processing.

h. At all times material, and/or with full knowledge Defendant Cross was married at the time, Defendant Allison Williams or Defendant First Federal changed

Defendant Cross' marital status to 'single female' and/or reviewed application as such[29].

i. Defendant Williams, as an agent of a federal bank, provided false testimony or perjury in court [in favor of Defendants Dudek and Cross].

j. Upon information and belief, Ms. Williams failed to disclose pertinent material lending information during trial [in favor of Defendants Dudek and Cross] to hide damaging evidence against her clients.

302. Upon information and belief, Allison Williams or its agents and/or First Federal or its agents provided or unlawfully provided or testified altered information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards at the court trial in order to sway the court's ruling [in favor of Defendants Dudek and Cross].

303. Defendant(s) or its agent(s)' actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

304. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

305. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

306. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

[29] Mrs. Cross' filed her applicable tax returns as 'single female'.

307. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A SIXTEENTH CAUSE OF ACTION
(Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4 (a), Rule 3.4(d))
[Against all Defendant(s) or its agent(s)]

308. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

309. First Federal failed or intentionally failed to provide Defendants Dudek and Cross lending file in a timely manner[30].

310. First Federal responded to 2 separate subpoena requests and 1 direct telephone call by stating:

a. "*there are no accounts for this client at our institution*" and "*unable to locate any loan documents related to the above referenced customers for the specific address and TMS number*" [1st request dated March 4th, 2013]

b. "*no records of any loans with that number at our institution*" [2nd request dated August 1, 2013]

c. "*could not provide any information.*" [phone call August 2013]

311. Upon information and belief, First Federal was forced to supply the file [and only] when lending officer and Defendant, Allison Williams, was subpoenaed by the Plaintiff to appear at trial.

a. File "magically" appeared 15 months later in response to the March 4th, 2013 subpoena request.

[30] First Federal failed to supply the subpoenaed information for 15 months, and when provided, it was just hours before the trial.

b. File was unexpectedly delivered to the applicable attorneys just hours before the trial on June 10th, 2014.

312. Upon documentation and belief, on or about January 18th, 2013, First Federal was initially concerned they would be "*pulled into the lawsuit*".

> "*The attorneys are in negotiation still as of a couple of days ago & the attorney for the buyer has placed an order that the seller cannot sell to anyone else until the matter is resolved. I think someone there should speak to our attorney about how to proceed. We could get drawn into this law suit if it in fact becomes a lawsuit*".

313. Upon information and belief, Defendant Collins failed or intentionally failed to provide the Defendants Dudek and Cross lending status, [even at the direct request(s) of the Plaintiff's attorney and/or with knowledge of the 2 subpoenas[31] [32] [33]].

314. Upon information and belief, Defendant Collins directed First Federal not to provide the Defendants Dudek and Cross lending file and/or status to the opposing party or parties[34] [35].

315. Upon information and belief, Defendants, or their agents, [intentionally] refused to provide Dudek and Cross' true lending status.

316. Upon information and belief, the actions of the Defendants were not the actions of honesty, good faith and fair dealings, but instead implied they had something negative to their case to hide.

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[31] Rule 3.4 (a) (a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act)
[32] Rule 3.4(d) (in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party)
[33] Rule 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information)
[34] See Note 25
[35] Rule 3.4(f) (a lawyer shall not request a person other than a client to refrain from voluntarily giving relevant information to another party)

317. Upon information and belief, Plaintiff alleges there were critical material facts that would contradict Defendants Dudek and Cross' lawsuit against the sellers, and contradict their defense against the Morphew complaint, therefore damaging their legal stance and character.

318. Upon information and belief, Plaintiff alleges there is an abundant amount of damaging information contained herein to prove intent for obstruction.

319. Furthermore, Plaintiff asserts the damaging material facts withheld by the Defendant(s) or its agent(s) is, in itself, enough to demonstrate [malicious] intent in their obstruction.

320. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

321. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

322. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

323. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

324. Sanctions, under FRCP Rule 26, are compelled due to the Defendant(s) or its agent(s) use of fraudulent evidence and perjured testimony as part of their failure to comply with a discovery order.

FOR A SEVENTEENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
[Against all Defendant(s) or its agent(s)]

325. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

326. With complete knowledge that Defendants Dudek and Cross were denied lending due to an incomplete application, Defendant(s) or its agent(s) subjected or intentionally and/or recklessly subjected Morphew to unnecessary spending, time, effort, lost work hours, and extreme emotional distress.

327. Furthermore, Defendant(s) or its agent(s) subjected or intentionally and/or recklessly subjected, and/or is currently subjecting, Morphew to further unnecessary spending, time, effort, lost work hours, and extreme emotional stress[36].

328. Defendants Dudek and Cross, and Defendant Collins or its agents subjected or intentionally and/or recklessly subjected Morphew to [again] unnecessary spending, time, effort, lost work hours, and extreme emotional stress by subjecting Morphew to an unlawful and frivolous motion.

329. Defendant's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

330. The emotional distress that Morphew suffered, and continues to suffer, because of Defendant(s) or its agent(s) conduct is so unreasonable and unnecessary that no reasonable person can be expected to tolerate it.

331. As a result of Defendants conduct, Morphew suffered, and still continues to suffer, emotional distress and embarrassment.

[36] With complete knowledge that Dudek and Cross fraudulently filed an unlawful and frivolous lawsuit [with intent to deceive].

332. Plaintiff seeks actual and punitive damages to redress her damages.

333. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

334. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR AN EIGHTEENTH CAUSE OF ACTION
(Tortious Interference with Existing Contractual Relations)
[Against all Defendant(s) or its agent(s)]

335. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

336. Upon information and belief, Plaintiff has the valid and binding Contract with the sellers.

337. Upon information and belief, and at all times material, Defendant(s) or its agent(s) had actual knowledge of the Contract between the Plaintiff and the sellers.

338. At all times material, Defendant(s) or its agent(s) had actual knowledge that they did not have a valid sales contract.

339. At all times material, Defendant(s) or its agent(s) had actual knowledge that they, by their own hand, seriously breached their sales contract or could not obtain financing without a signed Contract Extension Addendum or had been denied mortgage credit.

340. Upon information and belief, Defendants Dudek and Cross currently cannot obtain financing on the sales contract and/or with the court order of November 2014.

341. Upon information and belief, Defendants Dudek and Cross have, and still are, interfering or intentionally and/or tortuously interfering with Plaintiffs Contract.

342. The herein stated actions and conduct of Defendants Dudek and Cross are without reasonable or legitimate business justification.

343. As a result of the tortious interference with their fraudulent actions Plaintiff has been unable in acquiring title to the Property pursuant to her Contract.

344. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

345. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

346. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to be truthful in its dealings with their clients and towards all parties involved.

347. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

As a direct and proximate result of the conduct of Defendant or its agents as set forth herein complaint, Plaintiff Morphew has incurred extensive undue burden or expense, time and emotional distress. Plaintiff seeks damages, as stated herein (to include actual, injunctive, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

WHEREFORE, having fully set forth his Complaint, Morphew prays the jury award her available relief including but not limited to the following:

A. Award Morphew appropriate compensatory, actual, consequential, and punitive Damages against Defendants to compensate Morphew for her monetary loss, lost wages, humiliation, embarrassment and emotional

distress, and loss of litigation costs caused by Defendants fraudulent acts, omissions, and of its violation of its duties to the courts and to Morphew; and

B. Award Morphew such other and further relief as the Court deems just and proper, and

C. Sanctions against applicable Defendant(s) or its agent(s) who had a fiduciary duty or duty to follow Rules and Regulations and Rules of Conduct as stated herein but failed or intentionally failed to do so.

Molly M. Morphew, Pro Se

Molly M. Morphew, Pro Se
788 E Butternut Rd
Summerville, SC 29483
(843) 514-7299
morphew926@gmail.com

SUMMERVILLE, SC
August 23, 2016

. 198

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Dorchester)
)
Molly M. Morphew) CIVIL ACTION COVERSHEET
Plaintiff(s))
) 2016-CP-18-1706
vs.)
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Woody Law Firm)
Defendant(s))

Submitted By: Molly M Morphew, Pro Se
Address: 788 E Butternut Rd, Summerville, SC 29483
SC Bar #: N/A
Telephone #: 843-514-7299
Fax #:
E-mail: morphew926@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

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- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699) Fraud/Fraud on courts/Breach of Fiduciary Duty/ Privacy/Property Obstr. of Justice, Breach of Contract, Tort
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: Molly M Morphew Date: 8/24/16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

RECEIVED
JAN 24 2017
SC Court of Appeals

The Honorable James E. Chellis
Master in Equity

Appellate Case No. 2014-002633

Molly M Morphew, Thomas M. Ferro and Lorraine B. Ferro..... Appellants,

v.

Stephen Dudek and Doreen Cross.....
Respondents

PETITION FOR REHEARING

Molly M. Morphew, pro se
788 E Butternut Rd.
Summerville, SC 29483

Mr. Stephen L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423

Thomas M. Ferro, pro se
5501 Carson St
Denver, Colorado 80239

Lorraine B. Ferro, pro se
5501 Carson St
Denver, Colorado 80239

Pursuant to South Carolina Appellate Rule (SCAPR) 221, Appellant Molly Morphew petitions this Court to rehear its Decision released January 11th, 2017 ("Decision"). Appellant respectfully requests rehearing on three issues, 1) The Breaches of Contract, 2) Bad Faith and Unfair Dealings, and 3) The Respondents lawful ability to compel specific performance.

TABLE OF AUTHORITIES

Cases

Champion v. Whaley, 280 S.C. 116, 120, 311 S.E.2d 404, 406 (Ct. Appt. 1984) ix
Commercial Credit Corp v. Nelson Motors, Inc., 247 S.C. 360, 367, 147 S.E.2d 481, 484 (1966) ix
Id at 121, 311 E.E.2d at 407 ix
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Id. At 121-22, 311 E.E.2d at 407 x
Id. At 122, 311 S.E.2d at 407 ix
Ingram v. Kasey's Assocs., 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000) vi
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INTRODUCTION

(1) The breach(es) of contract. The Decision appropriately recognizes that the Respondents indeed did breach their sales Contract. Nevertheless, the Decision appears to have rejected Appellants' position in the Appeal and misapprehended that the Respondents' individualized issues associated with their breach(es) of contract preclude any alleged sellers breach of contract or alleged bad faith and unfair dealings. Ultimately, Respondents Dudek and Cross had failed to "apply or complete a mortgage application" per their **TIME IS OF THE ESSENCE** Contract requirement. Actually, they failed to apply 'within the life' of the contract, therefore let their Contract expire; they also failed to complete their lending application, and failed to answer their lender's 10-day adverse letter; and because of the buyers breaches or failures alone, were ultimately denied lending on said Contract. These individualized determinations are alone enough to require that the trial court's order be overturned since the Appellant has recognized Dudek and Cross have breached first and only, therefore ultimately caused their own failure to close escrow, regardless of any seller breach or bad faith and unfair

dealings, if any[1]. Because of this exclusion Appellant Morphew seeks a rehearing to clarify whether or not Dudek and Cross' failure to make application per their Contract or their failure to even complete an application for financing [thus allowing their contract to expire] has any bearing in the Respondents lawful ability to compel specific performance; or if any alleged failures of the Appellants Ferro failures can legitimately excuse Dudek and Cross of their significant breach(es). Appellant Morphew also requests that the Court hold that specific performance must be denied because the Respondents individualized issues associated with their breach(es) of contract predominate over any other issue raised against the Appellants Ferro (sellers).

(2) Bad faith and unfair dealings. The Decision seems to have rejected the Appellants significantly supported defense in the Appeal that the sellers did not act in bad faith and unfair dealings, but instead this Court has agreed with the lower court Order. As repeated above (1), the Respondents individualized issues associated with their breach(es) of contract [and their own bad faith and unfair dealings] predominate over any other issue raised against the Appellants Ferro.

(3) The Respondents ability to compel specific performance. Again, and as repeated in (1) and (2) above, the Decision appears to have overlooked the fact or misapprehended the facts the Respondents breached their Contract first and only, and that their critical breach was not caused by any failure, if any, of the Appellants Ferro but instead by their own hand. In order to compel Specific Performance, at the exact time the Respondents requested specific performance, there has to be evidence of a valid and enforceable contract, and the Respondents Dudek and

[1] Appellants pointed out in the Appellants Final Brief, and with specificity (i.e., addressed each seller requirement or contingency), Appellants Ferro (sellers) did not breach the Dudek and Cross Contract, but instead went above and beyond their requirements; nor did they act with bad faith and unfair dealings.

Cross had to be able to perform their Contract. The Respondents did not meet these 2 elements of Specific Performance. The contract was rendered invalid and unenforceable by a lapse of time and/or illegibility (i.e., it expired because Dudek and Cross failed to apply or complete a mortgage application within the life of their Contract; at application the lender was requiring a Contract Extension Addendum in order to make the Contract enforceable or valid. This was never submitted by the buyers. Furthermore, the lender had ruled the contract illegible [for processing] and a required legible signed Contract was never produced by the Respondents. Ultimately, the Respondents were denied lending due to an incomplete application, thus Dudek and Cross were NEVER "ready" or "able" to perform their Contract, and specifically at the time they requested specific performance. Still, with complete knowledge of such, Dudek and Cross "unlawfully" filed a lis pendens and a complaint for specific performance, and did so to prevent the sale of said property to Appellant Morphew and/or use the legal system to force the sellers to sell [their home and property] to them and not to Morphew. There is no evidence or facts that prevented Dudek and Cross from applying or completing a lending application for financing except for themselves, making their serious breach inexcusable, which in itself waives their right to compel specific performance.

In further support of this Petition, Appellant Morphew submits the incorporated Memorandum. Morphew respectfully requests that upon rehearing, the Court modify or clarify its Decision as described below.

APPELLATE MORPHEW's MEMORANDUM OF LAW IN SUPPORT OF ITS PETITION FOR REHEARING

I. Brief

Appellant acknowledge the Court's holding that to the extent the Respondents Dudek and Cross' breach of contract in this case was perpetrated. This Petition is not addressed to that holding. Rather, it appears the Court overlooked several material facts and arguments involving the three interdependent issues critical to the resolution of Appellants' appeal -- concerning Respondents ability to compel specific performance, bad faith and unfair dealing, and breach(es) of contract -- and this Petition seeks correction of those oversights and clarification of the Decision.

The Appellant respectfully brings this Request for a Rehearing to the Appellate court as there is irrefutable material evidence that by law, and not by speculation or assumptions, Dudek and Cross did not meet the strict legal requirements to compel Specific Performance, they acted in bad faith and unfair dealings, and the Defendants (Sellers Ferro) had not breached or acted in bad faith and unfair dealings, therefore were not at fault for Dudek and Cross' serious buyer breach(es) of contract.

II. Issue 1: Respondents Failure to Meet Specific Performance

Appellant strongly appeals to the Appellate court to allow a rehearing, and claim the court erred in holding Respondents had met the legal requirement(s) to compel Specific Performance, specifically, but not limited to, they were 'financially' ready to close the deal in order to demand specific performance.

Specific performance is addressed to the sound discretion of the Court of equity. *Sumner v. Bankhead,* 119 S.C. 78 (S.C. 1922). Specific Relief Act, S 20 provides — Discretion as to decreeing specific performance: — "The jurisdiction to decree specific performance is

discretionary and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of court is not arbitrary, but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal." Id.

"Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *Ingram v. Kasey's Assocs., 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000).* In *Ingram*, the Supreme Court of South Carolina held to compel specific performance, a court of equity must find:

> (1) [T]here is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.
>
> Id.

Here, Dudek and Cross had initially met the first element of specific performance as evidence by record, but Appellant Morphew argues that agreement had become invalid as of 9p.m., November 30th, 2012 because the Respondents Dudek and Cross let their TIME IS OF THE ESSENCE contract expire before making application[2] for financing.

Dudek and Cross contacted First Federal to apply for financing on said contract on December 5th, 2012 [(5) days after the contract expiration date] (see **Attachment #1**, Mortgage Application Deposit Agreement/Authorization Form). Because the contract had expired and was not enforceable, First Federal required a [signed] Contract Extension Addendum at application in

[2] "Application' in this instance refers to their INITIAL request for mortgage credit on the sales contract/property as stated within that contract (i.e., the very first instance Dudek/Cross contacted First Federal asking for a loan application to apply for mortgage credit on said sales contract).

order for the expired Dudek/Cross sales contract to be valid[3] (see **Record on Appeal (ROA) #301, #307, 308**; and **Attachment #2** Underwriting Memos for Loan, date 12/17/2012 1:36 pm (#1); date 12/31/12 3:24 pm; date 1/16/13; date 1/18/13 10:24 am). An expired land sale contract is no longer enforceable, unless supported by a signed contract extension addendum.

First Federal [Underwriting] received the expired sales contract on December 12, 2012, and on review deemed the sales contract illegible[4]. First Federal then required a legible copy of the sales contract and all addendums (including, but not limited to, the signed Contract Extension Addendum) (see **ROA #259,** CONDITION #6; and **Attachment #2** - entry: 12/17/2012 1:36 pm). Neither a signed legible sales contract nor a signed Contract Extension Addendum was ever received from the Respondents (see **ROA #310**).

Without the Contract Extension Addendum the Dudek and Cross Time is of the Essence contract expired on November 30th, 2012. And a legible contract without the sellers' signatures or name(s) on the contract was received on December 20th. In this instance, the Statute of Frauds[5] was not satisfied, and therefore there was no enforceable agreement to sell the property or a valid agreement in which could be processed for mortgage credit by a federal banking institution.

---

[3] Rendering the Dudek and Cross sales Contract null and void at application, when not accompanied by a signed Contract Extension Addendum *.

[4] An illegible contract is deemed null and void [*Void Contract 1. A contract that is of no legal effect, so that there is really no contract in existence at all. • A contract may be void because it is technically defective, contrary to public policy, or illegal. — Also termed void agreement. Cf. illegal contract; unenforceable contract; voidable contract."* Black's Law Dictionary

[5] "...The principal characteristic of various state laws modeled after the original statute is the provision that no suit or action shall be maintained on a contract unless there is a ..... and the identity of the parties, signed by the party to be charged or obligated under it or an authorized agent. The purpose of the statute is to prevent the proof of a nonexistent agreement through fraud or perjury in actions for breach of an alleged contract." ALM's Law.com online Real Life Dictionary of the Law

Consequently, at all times material to this case, and specifically at the exact time the Respondents requested specific performance, there was no evidence of a valid agreement, therefore the Respondents failed to meet the first requirement to compel Specific Performance.

As for the third element of specific performance, the Respondents had to prove the ability to perform the contract on January 15th, 2013. Dudek and Cross had not even completed their application at that time, had complete knowledge at all times material they would not be able to obtain financing if they did not provide a signed Contract Extension Addendum, and were denied lending due to an incomplete application (see **ROA #299** and **ROA #301**). Ultimately, Dudek and Cross failed to meet the first and third required elements of specific performance, and the court erred by determining Respondents Dudek and Cross were able to perform at the time it filed its action for specific performance.

Additionally, in order to compel Specific Performance, the movant must not have breached the "Time is of the Essence" Contract. In this case, the courts have 'forgiven' the Respondents critical breach of contract due to the alleged action that the Appellants Ferro breached first, and as a result caused Dudek and Cross' serious breach. "Ordinarily, a contract for the sale of land containing a clause that 'time is of the essence must be performed by the date fixed in the contract or the contract is no longer viable." *Ingram v. Kasey's Assocs., 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000)*.Id. (This general rule is, however, subject to the limitation that such a contract may nevertheless be specifically enforced if the failure to perform within the designated time results from the act or fault of the party against whom specific performance is demanded." Id. ("Accordingly, where a contract expressly states that time is of the essence- such that performance by the purchaser within a specified time a condition precedent to the seller's duty to perform his part- and the purchaser has been caused to delay his performance beyond the

specified time by the request or agreement or other conduct of the seller, the purchaser can enforce the contract in spite of the seller's delay." *Commercial Credit Corp v. Nelson Motors, Inc.*, 247 S.C. 360, 367, 147 S.E.2d 481, 484 (1966) ("There exists in every contract an implied covenant of good faith and fair dealing."); id. ("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." (quoting Williams Trucking Co. v. JW Constr. Co., 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct. App. 1994)); Champion v. Whaley, 280 S.C. 116, 120, 311 S.E.2d 404, 406 (Ct. Appt. 1984)("One who prevents a condition of a contract cannot rely on the other party's resulting non-performance in an action on the contract."); id. At 122, 311 S.E.2d at 407 ("It is sufficient for the plaintiff to present evidence that the defendant's prevention 'substantially contributed to the nonoccurrence of the condition." Id at 121, 311 E.E.2d at 407 ("Almost all cases in which prevention is alleged will involve speculation as to what would have happened had the defendant's conduct not taken place"); id. At 121-22, 311 E.E.2d at 407 ("The defendant cannot take advantage of the uncertainty created by his own wrongdoing. If it were otherwise, then it would be virtually impossible for a plaintiff to prove a case of prevention.")

In the Appeal, the Appellants prove that the transaction didn't close by November 30, 2012 because the Respondents Cross and Dudek didn't even apply or complete a mortgage application for their financing by November 30th, 2012 or their failure to close is because they didn't apply or complete a mortgage application as they were required to do per their mortgage contingency within their sales Contract. In this instance, Dudek and Cross had 10 days within contract ratification to apply or complete a mortgage application. Contract ratified on October 24th, 2012. Dudek and Cross failed to apply or complete a mortgage application by November 3rd (see **ROA #302**), which inherently led to their direct failure to close escrow.

The standard forms approved by the **South Carolina Association of Realtors (SCAR)** are used for most residential real estate transactions in South Carolina. Paragraph 8 of the standard agreement contains the mortgage contingency clause. Under the terms of the agreement, the buyer is required to complete a mortgage application[6] within an agreed upon period of time from the date of the agreement is fully executed by the parties. If the buyer fails to apply for a mortgage within the agreed upon time period, he is in default of the agreement.[7]

Because Dudek and Cross did not apply for lending per their Contract or even apply within the life of their Contract [i.e., before expiration], they were in default. This led to their inability to comply with the 2nd part of the mortgage contingency, to obtain "satisfactory" loan approval [not to be confused with final loan approval], and then directly to their failure to close escrow by November 30th, 2012.

The buyer is also in default of the agreement if he furnishes false or incomplete information concerning his legal or financial status or fails to cooperate in good faith in processing the mortgage loan application which results in the mortgage lender refusing to approve a mortgage commitment.[8] Dudek and Cross again defaulted because they did not apply until the contract expired and did not provide all buyer documentation required at application, and were ultimately denied lending "due to an incomplete application" and failure to respond to their "10-day letter" (see **ROA #326** – entry 1/18/13; **#301**; **#299**).

The lower Court found that Dudek and Cross were "bound by the obligation of good faith and fair dealings which when considered with the intent and meaning of the Contract, required [them] to pursue [conventional] residential loan financing without delay" (see **ROA #1** - Finding

[6] "Applying" or "completing a mortgage application" is not the same as obtaining a loan commitment or satisfactory loan approval.
[7] South Carolina Association of Realtors (SCAR)
[8] Id

of Fact #18). And though Cross testified that she knew she was required to apply for their loan per contract (see **Attachment #3**, trial testimony pg. 27 line 6-13). Instead Dudek and Cross did not contact First Federal to "apply" or "to begin a loan for processing" until December 5th, 2012 (see **ROA #302, 307, 308**).

The Decision does not call out with specificity the Respondents or the Appellants [Ferro] alleged breach or breaches, and Appellant has assumed to refer to the lower court Order. In further support for a rehearing, Appellant Morphew addresses specific performance as outlined in [1] through [7] below from the Order, paragraph 13, Findings of Fact.

The lower court found that, "Defendants Ferro failure to address each item of critical concern in the manner in which it was presented violates Defendants Ferros' obligation to deal in good faith and fairly with Defendants Dudek and Cross. [1] The Court finds Defendants Ferros' failure to immediately respond to Defendants Dudek and Cross in writing to the critical concerns to eliminate, or at least lessen, misunderstandings for Defendants Dudek and Cross to evaluate facts regarding their due diligence [inspection], together with Defendants Ferro's [2] failure to provide an approved subdivision plat until effectively four (4) days prior to the Paragraph 3 date, and [3] the utter failure to provide a timely "clear" CL 100, demonstrate that Defendants Ferro did not perform their obligations under the contract. [4]These failures prevented or hindered the ability of Defendants Dudek and Cross to complete their evaluation of the property as the contract provides." "[5] Thus, this Court finds Defendants Ferro's failures excuse the obligation of Defendants Dudek and Cross to deliver the purchase price on or before November 30, 2012 by the method of payment to which the parties agreed. Reinstatement (First) of Contract § 295 (1932). The Court finds [6] the actions of Defendants Ferro establish they failed to observe TIME IS OF THE ESSENCE, a mutual obligation that the contract required. And found [7]

Defendants Ferro's failure to respond with dispatch and with clear intentions, collectively waives their right to assert Defendants Dudek and Cross did not comply with their obligation to observe that TIME IS OF THE ESSENCE."

DEFENSES

[1] The Appellants Ferro responded immediately or within a very reasonable time, to every inquiry the Respondents sent [see (a)-(d) below], therefore did not violate their obligation to deal in good faith and fairly with Dudek/Cross or did not prevent Dudek and Cross' due diligence or did not hinder their understandings for Defendants Dudek and Cross to evaluate facts regarding their due diligence [inspection]. Additionally, Respondents let 15 days go by before communicating to the sellers that a second 'clarification' was needed, at which time their inspection contingency had been expired for 7 days. Appellant contends this does not seem the normal action of a substantially concerned buyer.

a) Respondents sent the initial list from the inspection to seller's agent on November 3rd. Sellers answered on November 5th with a list of what they agree to do.
b) Respondents request more clarification on November 8. Seller again responds on November 11 with a list directly correlating to the Respondents list on what they will do.
c) On November 26, Buyers agent states to sellers agent via e-mail, her "*clients may consider a credit to have the repairs done themselves because the sellers were having an issue getting licensed contractor's to do the repairs.*" [nothing more from buyers on credit]
d) On November 27, buyer's agent sends seller's agent a [Contract] Repair Addendum from the buyers that they 'need' the sellers to initial because the buyers are still unclear as to what is being agreed on. Note: the buyers initiated the amended the list, not the sellers. Sellers did not sign this Addendum[9], but

[9] Signing a Contract Repair Addendum would or could have turned their Contract into a "Repair Contract", which was not the intention of the said ratified Contract.

instead sent the original list from the Dudek and Cross addressing each line item with action or non-action taken and initialing each one on November 29th.

Moreover, Respondents "inspection" contingency expired on November 20th, (see **ROA #229** paragraph 19b) and they did not release their contingency [or take the house as is] or negotiate for repairs or terminate their contract; therefore per contract Dudek and Cross waived their right to condition closing escrow via inspection contingency, regardless how many times they may have gone back and forth negotiating repairs after that date. Ultimately,

Furthermore, Respondents were so focused on the seller's obligations, they lost sight of their own critical contract contingency to secure financing per their contract. The inspection contingency is used to waive the buyers closing escrow contingency but does not waive the buyers financing contingency.

Again, the buyers' failure to apply or secure financing per the Contract was no fault of the sellers, and even if the sellers failed some or all of their contract requirements, those failures became moot as soon as the Respondents allowed their contract to expire for failing to apply for financing.

[2] Appellants Ferro had the land survey scheduled the very day of contract ratification. The surveyor surveyed the land the very next morning after contract ratification. At this point it was out of their hands for processing by the surveyor and the county. As soon as the Appellants Ferro received the recorded plat [dated November 20th] on November 21st p.m. from the surveyor, they forwarded to their agent. Sellers' agent forwarded to buyers agent November 22nd 7:50a.m (see **Attachment #4**, e-mail dated November 22 & 26th from sellers' agent to buyers' agent with recorded plat).

Plat was provided 8 days before the contract expired, not 4 as the lower court stated; the sellers had the land surveyed immediately after contract ratification, and they provided the

recorded plat as soon as it was available to them. And not with less significance, the sellers allowed Dudek and Cross to map out the part(s) of the property they wanted and how they wanted it, and they took on this effort and substantial cost BEFORE the buyers even scheduled an inspection or applied for lending. The sellers went above and beyond the 'good faith and fair dealings' threshold. As provided above, the lower court erred that the sellers acted in bad faith and unfair dealings. It was the Respondents that acted unlawfully or with bad faith and unfair dealing by falsely claiming they were held up from pursuing their financing because the survey needed to be recorded first. Respondents never provided or failed to provide any proof the recorded plat had prevented them from application or completing a mortgage application. The issue they claimed was the appraisal could not be performed until the land survey was recorded, but again, since they had not even applied within the life of their contract and/or never even completed a loan application, their alleged issue with the plat/recorded plat has no legitimate bearing or legal standing. Furthermore, it appears that Jackson Appraisal Service, the appraisal company that performed the Respondents' appraisal, could and "*will do* [an] *appraisal based on the assumption the land is being subdivided*" – survey does not need to be recorded first (see **Attachment #5**, Jackson Appraisal's response to Appellant Morphew's inquiry). Furthermore, the Respondents waited 13 days after receiving the recorded plat to actually apply for lending, proving that the Respondents were not waiting on the recorded plat. Dudek and Cross were the ones acting in bad faith and unfair dealings, and it appears were only trying to use this "excuse" to forgive their serious breach of contract. Again, it was Respondents Dudek and Cross' own intentional failure to apply or complete a mortgage application per contract or within the life of the contracts, that prevented them from closing escrow.

[3] The trial court erred that Appellants Ferro utterly failed to provide a timely "cleared" CL-100. Per the Contract, sellers were required only to "obtain" a CL-100 report on or before November 30th, 2012, not "provide" a "cleared" CL-100 (see **ROA #229** paragraph 19d). The sellers obtained such report per their contract requirement. Note, there was no communication prior to the Contract expiration from Respondents to Appellants Ferro emphasizing the need for the CL-100 any sooner than the date specified in the contract.

The CL-100 contingency date was established by the Respondents, not the sellers, and the Respondents' agent, Susan Nicholson, testified at trial that "she *should have changed the date on the CL-100 to give them* [buyers] *plenty of time*"; AND she testified that she had accepted responsibility for contacting her contractor to clear the CL-100 (see **Attachment #6**, trial transcript – Nicholson – CL-100 date change and **Attachment #7**, trial transcript -Nicholson accepting responsibility to clear the CL-100). The sellers were and should have been under no assumption that they were required to provide the clearance letter.

Even if the sellers had maintained that responsibility, they were under no legal obligation or requirement to make those "repairs" until proof of financing or a closing date has been set. The Contract also contains a disclaimer that states, "*The seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved*" (see **ROA #229** paragraph 19h),[10] therefore the Respondents cannot hold the Ferros responsible for not providing a "cleared" CL-100 until they could provide satisfactory approval per the Contract or a closing date.

[10] This is in place to protect the sellers from making any unnecessary repairs until the buyers can prove they can perform their contract.

In this instance, the Appellants Ferro did not fail to meet their CL-100 contract requirement or did not fail to comply with Time Is of the Essence in regards to their Wood Infestation contingency.

[4] Appellant disagrees with the court Order that the Ferros prevented or hindered the ability of Defendants Dudek and Cross to complete their evaluation of the property as the contract provides" because the Ferros did not fail their contract contingencies or requirements, as specifically defended herein. Even if the seller's did fail, the Respondents serious breach(es) of contract predominate over any other issue raised against the Appellants Ferro (sellers).

[5] Hence, the Appellant Morphew stands in the Appeal defenses the Respondents' failed to lawfully meet the standards required to be 'excused' from a serious breach of contract in order for a court to compel specific performance. **Reinstatement (First) of Contract § 295 (1932).**

[6] Additionally, the Appellants Ferro did observe TIME IS OF THE ESSENCE, "*a mutual obligation that the contract required*", while the Respondents did not. As stated herein and with specificity within the Appellant' Final Brief. The Respondents utterly failed to perform their financing contingency, therefore this breach of contract is predominate over any other issue raised against the Appellants Ferro (sellers).

[7] And Appellant contends the Ferro's did not "fail to respond with dispatch and with clear intentions", and collectively hold to their right to assert Defendants Dudek and Cross did not comply with their obligation to observe that TIME IS OF THE ESSENCE, as repeated herein.

III. Issue II: The Breach(es) Of Contract

All agree that the Respondents indeed did breach their sales Contract. But what is at issue is whether or not the Appellants Ferro caused this failure through their alleged breach(es)

or bad faith and unfair dealings; or did the Respondents, by their own hand and with bad faith and unfair dealings, cause their own breach of contract. As repeated above in (1), (2) and (3) above, the Respondents did not apply or complete a mortgage application per their Contract or even within the life of their Contract, allowed their Contract to expire, failed to complete their mortgage application, failed to respond to their lender's 10-day letter, and were ultimately denied mortgage credit on said Contract. Additionally, there was no evidence or irrefutable proof that the Appellants Ferro [sellers] breached the contract. Instead the Respondents and their lender told the court that they had applied per Contract and had secured financing. Appellant maintains that the courts have erred in law and in its review of the documents.

Even if the Appellants Ferro did breach or act with bad faith and unfair dealings, and as repeated herein, Dudek and Cross' individualized issues associated with their own breach(es) of contract predominate over any other issue raised against the Appellants Ferro.

IV. Issue III: Bad Faith and Unfair Dealings

As repeated herein (I, II and IV), the Respondents individualized issues associated with their breach(es) of contract [and their own bad faith and unfair dealings] predominate over any other issues raised against the Appellants Ferro. Appellant Morphew would also like to point out that they did not have concrete evidence at trial to argue due to the Respondents intentional withholding or obstruction of obtaining their financing status or lending file, even after several subpoenas AND [Appellants'] attorney-to- [Respondents'] attorney[11] meetings. And what is more, the Respondents and their defense specifically stated they had applied and were approved for financing. Please note, the Respondents no longer retain the "attorney" referenced herein due to his suspension by the Supreme Court, per SCACR Rule 413 and South Carolina Rule 7(b)

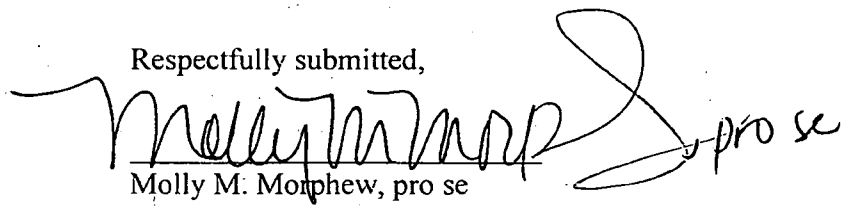
[11] The Respondents no longer retain the "attorney" referenced herein due to his suspension by the Supreme Court, per SCACR Rule 413 7(b).

Interim Suspension, "Upon receipt of sufficient evidence demonstrating that a lawyer poses a substantial threat of serious harm to the public or to the administration of justice, the Supreme Court may place the lawyer on interim suspension pending a final determination in any proceeding under these rules." Due to this development, the Appellant Morphew would ask the Appeal courts to take further scrutiny in their review and confirm that the Respondents or their attorney had truly acted lawfully in their actions prior, during and after litigation.

CONCLUSION

For the reasons set forth in this petition, Appellant respectfully requests that the Petition for Rehearing be granted, and that the Court modify and/or clarify its Decision as set forth herein.

Respectfully submitted,



Molly M. Morphew, pro se

FIRST FEDERAL

W12AW08756

MORTGAGE APPLICATION DEPOSIT AGREEMENT/AUTHORIZATION FORM

The Application Deposit is comprised of an estimate of the property appraisal fee, the credit report fee, and additional third party fees that are incurred by First Federal upfront (such as another lender's Subordination Agreement charge or Condominium documents). Should the actual costs exceed the estimate, I understand that I will be billed and pay the shortfall at or prior to closing.

The Application Deposit will be applied as follows:

*At the closing of my loan, to the actual property appraisal fee, credit report fee & upfront 3rd party fees. Any excess will be applied to additional closing costs.

*Upon First Federal issuing a declination of my loan request, I will be reimbursed the portion of the Application Deposit that exceeds the actual vendor costs incurred (this includes, but is not limited to, appraisal, credit report, Subordination Agreement, Condominium documents and Flood Certification).

*I understand that should I choose to withdraw/cancel my loan application the entire Application Deposit will be retained and not refunded.

I DOREEN C CROSS, authorize First Federal to:

☑ Charge my Visa/Mastercard/Discover Card in the amount of $ 425.00

Select One

☐ Debit my First Federal checking/savings account in the amount of $_____ for my mortgage application deposit.

☐ Cash my personal or certified check in the amount of $_____

Name: DOREEN C CROSS

Address: 236 CADY DRIVE SUMMERVILLE SC 29483

Billing Address on card (if different from above):

#121221 processed 12/6/12 DB

FOR CREDIT CARD USE ONLY:

Type of Credit Card: VISA

Credit Card Number: 4149 4001 1386 8499

Expiration Date of Card: 9/2013

VCode on Back of Card: _____ _____

FIRST FEDERAL OF CHARLE
1440 HALL APPIE BLVD 120
CHARLESTON, SC 29405

TERMINAL I.D.: 0010577

MERCHANT ID: 8239410990356726

VISA
[redacted]
SALE

BATCH: 000562
DATE: DEC-06-12
AGENT: 2141154017318
CARD RESPONSE: M
AUTH: V

INVOICE: 121221
TIME: 10:09
AUTH NO: 075560

TOTAL $425.00

FOR FIRST FEDERAL CHECKING/SAVINGS ACCOUNT

Account Number: _____

Signature * By Phone Date 12/5/12

Loan Officer Signature: Allison Williams

WILLIAMS, ALLISON

CRCDAU
Rev 9/12

Attachment #1

Memos for Loan: W12AW08756

Generated on 01-31-2013 at 11:07:43

AND EMAILED TO LO (sales price $303,000)

12/17/2012 10:13:17 AM SANDI: plr appraisal reviewed. file to mla. approved du #6

12/17/2012 1:36:21 PM MADDY: PLR LOAN STILL TO TO BE REVIEWED BY UW ONCE ITEMS ARE RECIEVED:
1. CONTRACT WITH ADDEMS LEGIBLE COPY
2. TRANSCRIPTS

12/18/2012 11:56:58 AM QADEERA: PLR TRANSCRIPTS ORDERED.

12/18/2012 5:37:25 PM MADDY: PLR FILE TO UW FOR CONDITION REVIEW -SANDI

12/20/2012 10:43:07 AM SANDI: RECEIVED/REVIEWED LEGIBLE COPY OF SALES CONTRACT INCLUDING ALL ADDENDUMS. A REPAIR ADDENDUM WAS ALSO PROVIDED THAT WAS NOT PRESENT AT ORIGINAL UNDERWRITE. REPAIRS SEEM SUBSTANTIAL AND COULD INVOLVE STRUCTURAL/SAFETY ISSUES.
PER ADDENDUM ALL ITEMS TO BE ADDRESSED BY A LICENSED CONTRACTOR. I HAVE REQUESTED COPIES OF THOSE LETTERS AT CLOSING AS WELL AS A HOLD HARMLESS. FILE BACK TO MLA

12/20/2012 11:05:59 AM MADDY: PLR FILE TO QADEERA FOR VOE LABLES. TRYING TO CLOSE ON DEC 28TH

12/31/2012 3:24:56 PM MADDY: plr emailed bwr and mlo to get update on contract extension.....

1/3/2013 11:29:25 AM MADDY: PLR 10 DAY LETTER SENT

1/12/2013 12:19:53 PM KAY: PLR IS HAS COME TO OUR ATTENTION THAT THIS FILE IS A SHORT SALE. (PREVIOUSLY SENT A 10 DAY LETTER ASKING OF FOR AN EXTENSION BUT THIS IS NOT THE CASE) I ASK THE LO TO CALL OR HAVE HER ASK THE PROCESSOR TO CALL THE BORROWER AND
INQUIRE IF THERE HAS BEEN A VERBAL ACCEPTANCE. FILE IS COMPLETLY APPROVED JUST WAITING ON SHORT SALE APPROVAL.

1/16/2013 5:46:00 PM MADDY: PLR FILE BACK TO SANDI FOR DECLINE DUE TO EXPIRED 10 DAY LETTER

1/18/2013 10:01:31 AM SANDI: FILE DECLINED FOR INCOMPLETE APP AND SENT TO MARGIE TO COMPLETE.

1/18/2013 10:24:47 AM SANDI: EMAILED LO JUST TO BE SURE SHE HAD NOT HEARD FROM THE BORROWER REGARDING A CONTRACT EXTENSION. SHE SENT AN EMAIL BACK TO ME STATING THE BORROWER/SELLER ARE IN LITIGATION WITH EACH OTHER AND THE BORROWERS ATTY HAS PLACED AN
ORDER THAT THE SELLER CANNOT SELL THE HOME TO ANYONE OTHER THAN THE BUYER. LO IS REQUESTING THE FILE BE ESCALATED TO LINDA HITCHCOCK FOR DETERMINATION OF DECLINATION OR HOLD UNTIL RESOLUTION. LINDA IS OUT TODAY AND WILL RETURN TUES. I WILL HOLD FILE
UNTIL THEN TO DISCUSS.

Attach. #2 Page 002

THE COURT: Thank you.

Q If I can refer you back to the contract and I will give you a moment to find it. Paragraph 8 of the contract, please?

A Yes, sir, I'm there.

Q Now, paragraph 8 had some obligations that you were required to meet to apply for your financing, is that right?

A That is correct.

Q Paragraph 8 required you to apply for financing within 10 days and provide the Ferro's with proof of financing within 20 days of the contract?

A Yes, sir.

Q We didn't talk about this before, but I think the Judge brought it up, you submitted the contract initially on October 20th, is that right?

A That is the date that we signed it and handed it off to Ms. Nicholson, so if she sent it -- it was a Saturday, I believe.

Q If we look over on page 6 of the contract we see that the Ferro's signed it on the 24th?

A Correct.

Q Using the 24th as a contract day that meant that you were required to apply for your financing no later than November the 3rd, right?

Attach #3

Gmail by Google

Rick Willis< rwillisteam@gmail.com>

Fwd: Butternut Plat is Attached

4 messages

Rick Willis < rwillisteam@gmail.com> Mon, Nov 26, 2012 at 11:13 AM
To: Susan Nicholson <snicholson@carolinaone.com>

Susan,

The attached plat which was sent over last Thursday morning is the one your looking for...It is approved and registered.

Please let me know you have received this...Thanks

That would be Nov 22

Charlene

——— Forwarded message ———
From: **Rick Willis** <rwillisteam@gmail.com>
Date: Thu, Nov 22, 2012 at 7:50 AM
Subject: Butternut Plat
To: Susan Nicholson <snicholson@carolinaone.com>

Good morning Susan,

Attached is the plat of Butternut property for your files.

Please let me know if you need anything further.

Thank you and Happy Thanksgiving to you.

Charlene Willis
The Willis Team, Llc
843-971-4002

——— Forwarded message ———
From: **RingCentral** <notify@ringcentral.com>
Date: Thu, Nov 22, 2012 at 7:49 AM
Subject: New Fax Message from (843) 881-3856 on 11/22/2012 at 04:49 AM
To: Fax <rickwillis8@yahoo.com>

You Have a New Fax Message

From:	(843) 881-3856
Received:	Thursday, November 22, 2012 at 04:49 AM
Pages:	1
To:	(888) 803-1570 (Fax)

To view this message, please open the attachment or login to your RingCentral account by clicking here.

Thank you for using ***RingCentral***.

Subject: Fwd: Performing Appraisal on land being subdivided

From: Molly (firegirl0926@yahoo.com)

To: molly.morphew@engilitycorp.com; kirrayacht@cox.net;

Date: Tuesday, March 15, 2016 4:35 PM

Sent from my iPhone

Begin forwarded message:

> **From:** "JAS@JacksonApp.com" <jas@jacksonapp.com>
> **Date:** March 15, 2016 at 10:38:43 AM EDT
> **To:** "'Molly'" <firegirl0926@yahoo.com>
> **Subject: RE: Performing Appraisal on land being subdivided**

Yes We will do the appraisal based on the assumption that it is subdivided.

Emily H. Kovach

Jackson Appraisal Service

Office (843) 571-6385

Fax (843) 571-6890

From: Molly [mailto:firegirl0926@yahoo.com]
Sent: Monday, March 14, 2016 9:51 PM
To: JAS@JacksonApp.com
Subject: Re: Performing Appraisal on land being subdivided

So as long as you have a copy of the site with an indication of what is being done? It's not recorded yet...

Sent from my iPhone

On Mar 14, 2016, at 4:45 PM, JAS@JacksonApp.com <jas@jacksonapp.com> wrote:

> Molly,
>
> Yes, as long as we have a copy of the survey showing the new site. If you provide me the address I can get you a quote. Thanks!

Attach. #5 224

Emily H. Kovach

Jackson Appraisal Service

Office (843) 571-6385

Fax (843) 571-6890

From: molly morphew [mailto:firegirl0926@yahoo.com]
Sent: Sunday, March 13, 2016 5:37 PM
To: JAS@Jacksonapp.com
Subject: Performing Appraisal on land being subdivided

Hi,

I have a question about doing an appraisal.

Can you perform an appraisal on a house/land that is in the process of being subdivided by surveyors? The situation is basically, the land has been flagged off by the surveyors and they will submit to the county. The appraisal would include the house and part of the land.

Thanks!

Molly

First Federal probably didn't care if the CL100 was clear or not, right?

A Well, I got a letter or an e-mail, either an e-mail or a voice, talking to her on the phone from Allison wanting to know if we got that. Also, I got an e-mail from the closing attorney wanting to know if that was clear.

Q And that was probably because Ms. Cross and Mr. Dudek had to approve it, not because of the bank?

A I have no idea.

Q In your experience is the CL100 to be produced at closing?

A No.

Q Do you think that it would be fair to say that it happens, but in your experience it is not typical?

A Well it depends on this particular deal because they changed the date, we probably should have changed the date on the CL100 to bump that up as well to give us plenty of time. But sometimes with closing that I've handled there has been issues with the CL100 and sometimes it will take up to the day of closing to get it cleared.

Q CL100s are only good for how long?

A 30 days.

Q Your may have answered my question and I missed

Attach #6 226

because I had already talked to Mr. Willis after I had the conversation with Mr. Ferro and he told me to go ahead and get the contractor out, he wanted him and I to pay for the letter from the contractor and I explained that I wasn't going to pay any more money. I had already agreed some of the cost for the hall repair to help ease Doreen and Steve's mind.

Q But you all were still negotiating?

A Yes, sir. He said for me to go ahead and send the contractor out and he would pay for it and he would talk to Mr. Ferro and take care of it. I apologize for interrupting him because he was still at the hospital with his son. I then didn't contact Mr. Ferro anymore and let Mr. Willis inform him of everything.

I then sent an e-mail to the contractor with Mr. Ferro's information and Mr. Willis' information to make arrangements for him to come out and to get payments from them for the letter because I didn't want to set up the appointment and then have my contractor if he didn't get paid and come back to me and say you ordered it, you need to pay me.

Q I guess what trying to get at Susan, is that during this time, the second week of December, you and Mr. Willis, my clients and Mr. Ferro are negotiating

Attach. #7

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

RECEIVED
JAN 24 2017
SC Court of Appeals

The Honorable James E. Chellis
Master in Equity

Appellate Case No. 2014-002633

Molly M Morphew, Thomas M. Ferro and Lorraine B. Ferro..... Appellants,

v.

Stephen Dudek and Doreen Cross..... Respondents

NOTICE OF FILING and PROOF OF SERVICE

I certify that I served the Notice of Petition for Rehearing on Respondents Stephen Dudek and Doreen Cross by depositing a copy of it in the United States Mail, postage prepaid, on January 23, 2017, addressed to their attorney of record, Mr. Stephen L. Smith, Esquire, P.O. Box 40578, Charleston, SC 29423.

January 23, 2017

Molly M. Morphew, pro se
788 E. Butternut Rd.
Summerville, SC 29483

CC: Thomas & Lorraine Ferro, pro se

82430

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Master in Equity

RECEIVED
FEB 09 2017
SC Court of Appeals

Appellate Case No. 2014-002633

Molly M Morphew, Thomas M. Ferro and Lorraine B. Ferro..... Appellants,

v.

Stephen Dudek and Doreen Cross.....
Respondents

MOTION TO DISMISS PETITION FOR REHEARING

Molly M. Morphew, pro se
788 E Butternut Rd.
Summerville, SC 29483

Mr. Stephen L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423

Pursuant to South Carolina Appellate Rule (SCAPR) 221, Appellant Molly Morphew recently submitted a petition to the Court of Appeals requesting a rehearing on its Decision released January 11th, 2017 ("Decision"). Appellants Ferro did not submit a Petition for Rehearing, nor were included in the previous Petition.

It's been 4+ years since the case started, and 2+ years since Appellants Morphew and Appellants Ferro had appealed the lower court's Order for Specific Performance of November 2014. In the interim, the sellers, Appellants Ferro have found themselves under dangerous

economic stress and emotional distress. In order not to cause an innocent party further harm or damages, Appellant Morphew has agreed to withdraw any further continuances of the appeal for Specific Performance. Morphew would like to respectfully make clear to the lower court and to this court, that this is neither an agreement with the Courts' rulings nor an acquiescence in favor of the Defendants Dudek and Cross, but instead agreed to as a matter of 'what is right' as to as not cause any further harm than what has been caused the Ferros.

CONCLUSION

For the reasons set forth herein this Motion, and governed under Rule 240, Motions and Petitions Generally, Morphew regrettably and most respectfully requests the Court to dismiss its Petition for Rehearing.

Respectfully submitted,

Molly Morphew, pro se

Molly M. Morphew, pro se
788 E Butternut Rd.
Summerville, SC 29483
843-514-7299

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Master in Equity

Appellate Case No. 2014-002633

RECEIVED
FEB 09 2017
SC Court of Appeals

Molly M Morphew, Thomas M. Ferro and Lorraine B. Ferro..... Appellants,

v.

Stephen Dudek and Doreen Cross..... Respondents

NOTICE OF FILING and PROOF OF SERVICE

I certify that I served the Notice of Motion to Dismiss Petition for Rehearing on Respondents Stephen Dudek and Doreen Cross by depositing a copy of it in the United States Mail, postage prepaid, on February 7, 2017, addressed to their attorney of record, Mr. Stephen L. Smith, Esquire, P.O. Box 40578, Charleston, SC 29423.

February 6, 2017

Molly M. Morphew, pro se
788 E. Butternut Rd.
Summerville, SC 29483

CC: Thomas & Lorraine Ferro, pro se

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

AND

Molly M. Morphew

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro

Defendants.

NOTICE OF MOTION AND MOTION TO SET CLOSING SCHEDULE AND FOR ATTORNEY'S FEES

FILED - RECORDED
2017 MAR 16 AM 11:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Stephen Dudek and Doreen Cross ("Dudeks"), by and through their undersigned attorneys, hereby move to set a schedule for the Dudeks to close on the home and real property located at 788 E. Butternut Road, Summerville, SC, TMS # 128-00-00-090 ("Property"), and for attorney's fees and costs.

These actions arose out of separate sales contracts to purchase the Property, one contract between the Dudeks and the Ferros, and the other contract between Morphew and the Ferros. Both the Dudeks and Morphew sought specific performance in separate suits, which were consolidated under the above case number. Following a trial, this Court issued an order ("Order") awarding the Dudeks specific performance and the right to apply for attorney's fees against the Ferros. (See Final Order, November 6, 2014). Both Morphew and the Ferros appealed the Order. By way of a per curiam order, filed January 11, 2017, the South Carolina Court of Appeal affirmed the Order. Morphew initially filed a petition for rehearing, but she

voluntarily withdrew it, leading the Court of Appeals to dismiss the appeal and remit the case back to this Court on or about February 15, 2017.

The Dudeks are prepared to proceed with closing on the Property, pursuant to the Order, which noted, at the time of issuances, that two years had passed since this sales contracts had been entered into by the Dudeks and the Ferros. (Order, p. 12). Due to the passage of considerable time, the Court held that certain steps were to be required, including, but not limited to, the parties obtaining a property inspection and an updated CL 100. Now, with the appeal, an additional two years have passed, so the above steps are even more important.

The Dudeks move to have this Court set a schedule for closing on the Property. In addition, also pursuant to the Order, they seek attorney's fees.

Pursuant to direction of this Court, **this motion is scheduled to be heard on March 27, 2017, at 3:00 p.m., in front of the Dorchester County Master-In-Equity, 5200 E Jim Bilton Blvd, St George, SC 29477**. The Ferros will be permitted to attend via telephone.

SMITH | CLOSSER, P.A.

Steven L. Smith – ssmith@scnlaw.com
(SC Bar No.: 05173)
Zachary J. Closser – zclosser@scnlaw.com
(SC Bar No.: 74005)
Samuel M. Wheeler – swheeler@scnlaw.com
(SC Bar No.: 101008)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for Dudek and Cross

March 14, 2017
Charleston, South Carolina

16-232

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-183
Stephen Dudek and Doreen Cross,	)	
Plaintiffs,	)	
vs.	)	CERTIFICATE OF SERVICE
Thomas M. Ferro and Lorraine B. Ferro,	)	
Defendants.	)	
AND	)	
Molly M. Morphew	)	
Plaintiff,	)	
vs.	)	
Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro	)	
Defendants.	)	

FILED - RECORDED
2017 MAR 16 AM 11:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Notice of Motion and Motion to Set Closing Schedule and for Attorney's Fees was served by mailing, hand delivery or electronic mail on the following:

Molly M. Morphew
788 E. Butternut Road
Summerville, SC 29483

Thomas and Lorraine Ferro
5501 Carson Street
Denver, CO 80239

Peggy M. Rochay

March 14, 2017
16-232

235

1) 25.00 RED ✓

MB

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED - RECORDED
2017 MAR 16 AM 11:49
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS

Stephen Dudek and Doreen Cross,
(x) Plaintiff
v.

Thomas M. Ferro, et al.,
( ) Defendant
check box above indicating submitting party

Case No. 2013-CP-18-183

MOTION INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Samuel M. Wheeler - 101008 Smith | Closser, PA P.O. Box 40578 Charleston, SC 29423 telephone: 843-760-0220 fax: 843-552-2678 e-mail: swheeler@scnlaw.com	Thomas and Lorraine Ferro 5501 Carson Street Denver, CO 80239 telephone: fax: e-mail: lbferro3200@gmail.com

(x) MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
( ) FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
( ) PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: minutes Court Reporter Needed: YES / NO

SECTION II: Motion Type

(x) Written motion attached
( ) Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant — Date submitted: 3/14/17

SECTION III: Motion Fee

(x) PAID - AMOUNT: $25.00
( ) EXEMPT: (check reason)
( ) Rule to Show Cause in Child or Spousal Support
( ) Domestic Abuse or Abuse and Neglect
( ) Indigent Status ( ) State Agency v. Indigent Party
( ) Sexually Violent Predator Act ( ) Post-Conviction Relief
( ) Motion for Stay in Bankruptcy
( ) Motion for Publication ( ) Motion for Execution (Rule 69, SCRCP)
( ) Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
( ) Other:

JUDGE'S SECTION

( ) Motion Fee to be paid upon filing of the attached order.
( ) Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____ _____(print name)
( ) MOTION FEE COLLECTION:_____
( ) CONTESTED - AMOUNT DUE:_____

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER MOLLY MORPHEW, Plaintiff, v. STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE B. FERRO, Defendants	IN THE COURT OF COMMON PLEAS Civil Action No. 2013CP1800183 consolidated with Civil Action No. 2013CP1800074 **DEFENDANTS FERRO AND PLAINTIFF MORPHEW'S ANSWER TO DUDEK AND CROSS' NOTICE OF MOTION AND MOTION TO SET CLOSING SCHEDULE AND FOR ATTORNEY'S FEES; AND RESPONSE TO PROPOSED ORDER**
STEPHEN DUDEK AND DOREEN CROSS, Plaintiffs, v. THOMAS M. FERRO and LORRAINE B. FERRO, Defendants	

FILED-RECORDED
2017 APR -6 PM 12:43
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Defendants Ferro and Plaintiff Morphew, both Pro Se, hereby Answer the **Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees** filed by Plaintiff/Defendants Stephen Dudek and Doreen Cross, and hereby Respond to the **DRAFT ORDER** (by same), as follows:

BRIEF FACTS

On March 27th, 2017, a hearing took place before this Court to set a closing schedule and award attorney's fees and costs to Plaintiffs/Defendants Dudek and Cross in regards to the above

referenced case. During this hearing, it was brought to the Court's attention that any damages to be awarded per the Court Order filed November 6th, 2014, had been waived due to the Plaintiff's failure to submit the required Motion and Affidavit within the time limit set by said Order. The Court requested Plaintiffs Dudek and Cross to update their DRAFT ORDER as applicable to the hearing, and Defendants Ferro to submit an Answer to the Plaintiff's **Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees.** No time limit for submitting said Answer was set.

To save time and prevent redundancy, this Answer and Response "references" the **DRAFT ORDER** only, but which covers any applicable items within the **Motion to Set Closing Schedule and for Attorney Fees.**

ARGUEMENTS

1. **Pg. 2 "*...the SC Court of Appeals affirmed the order and this Court's ruling that the Dudeks were entitled specific performance under the prevailing* contract".** As stated below (see below **#3**) , there is a substantially supported concern brought forth at this hearing that Dudek and Cross MAY NOT be entitled to specific performance as it now seems that at no time were they "Ready, able and willing" to close on the contract, and currently are not 'ready, able and willing'. It seems Dudek/Cross, their lawyer and their lending officer, may ALL have falsely testified they were "ready, able and willing" to close escrow per the sales contract, at the exact moment they requested specific performance, and at trial. Meaning, the courts may have been victims of fraud, and both Morphew and Defendants Ferro were prevented from lawfully presented their cases fully, as is their Constitutional right. Morphew testified at this hearing that Dudek/Cross' lender **denied** them lending and closed their file as of January 18th, 2013-- due to an

incomplete application (see **Attachment 1A**). It seems they applied for mortgage credit after their sales Contract had expired, which voided the sales contract, and never provided First Federal with a signed Extension Addendum to make their contract valid as required on the day of application (see **Attachment 1D**). Based on the facts brought forth in this hearing, Defendants Ferro request the courts to review the lawful validity that "the Dudeks were entitled specific performance under the prevailing contract" before making a final decision.

2. **Pg. 2, paragraph 1 under Brief Facts and Procedural History**: "***Morphew initially filed a petition for rehearing, but she voluntarily withdrew it....***" Morphew would like to clarify to this Court that though she voluntarily withdrew her petition for a rehearing, she did so neither freely nor in agreement to this Court's or the Appellate Court's review and decision. Instead due to the request of the sellers Ferro stating they were in severe financial and economic distress, Morphew honored her promise to the Ferros that if at any time they were in severe economic or mental distress and could not continue with the appeal, she would withdraw her part of the appeal as to not cause any further harm to an innocent party.
3. **Pg. 2, paragraph 2 under Finding and Rulings: "*The Dudeks[1] are prepared to proceed with closing on the Property, pursuant to the Order...*"** The Defendants Ferro and Plaintiff Morphew question this statement as "prepared" indicates they are currently "ready, able and willing" to close. During the hearing, Plaintiff/Defendant Doreen Cross testified their lender, First Federal Bank (now known as South State Bank) is not willing

[1] "Dudeks" may be incorrect (as it assumes a "marriage contract"); if so, the accurate application is 'Stephen Dudek and Doreen Cross' or 'Dudek and Cross', and should be corrected in said Order.

to accept their application because of another case against them[2] [Morphew's separate action for Fraud/Fraud on the Court]; which brings forth the questions, were and are they {Dudek and Cross] currently "ready, able and willing" to close escrow? Specific Performance strictly requires by law that in order for the Court to compel Specific Performance. And why does another separate case against First Federal prevent them from accepting and processing a loan Dudek/Cross and First Federal had stated was approved for closing [and pending this case]? And why would their lender require a new or separate application if they were and have maintained their ability to close escrow as required to compel Specific Performance?

The Estate Agents (Provision of Information) Regulations 1991 define a Purchaser who is 'ready, willing and able' as a person (or persons) who "is prepared and is able to exchange unconditional contracts for the sale of your property". 'Ready and willing' means that the purchaser must be prepared to enter into the contract on the terms offered and such a position should not be impeded by an outside factor..." (Comley v Wellman (1948) 65 WN (NSW) 268 (Aus); Dellafiora v Lester [1962] 1 WLR 1208, [1962] 3 All ER 393 (CA); Nelson v. Bolton, 72 Ill App.3d 519, 391 N.E.2d 182 (1979); Savills Land & Property Ltd v Kibble [1998] EGCS 170 (CA)). A purchaser cannot be said to be 'ready' if the essential terms are not agreed upon (Gabrielli v. Fabian, 167 AD.2d 684, 563 NYS.2d 266 (1990)). In particular, 'willing' means that the purchaser should be prepared to put his signature to a binding contract on the terms offered and be

[2] When questioned by the Judge as to why Dudek and Cross had not started their due diligence (specifically the house inspection or scheduling said inspection), Doreen Cross replied to the Court that it was *because of (Morphew's other) complaint against the lender, and she was not going to obtain an inspection until the bank agreed to move forward*...while her attorney, Smith, replied the lender *wouldn't move on the court Order until the Judge filed the final Order* (even though the case was remitted back to the lower court 38 days prior to this hearing).

bound thereby; "for the words 'ready and willing' imply not only the disposition, but the capacity to do the act", De Medina v Norman (1842) 11 LJ Ex 320, 322. As a rule, a person is not 'willing' to purchase if all he has done is sign a conditional contract, such as a contract 'subject to finance', at least until the condition is fulfilled (Graham & Scott (Southgate) Ltd v Oxlade [1950] 2 KB 257 (CA); Woodland Realty, Inc. v. Winzenreid, 82 Wis.2d 218, 262 N.W.2d 106 (1978)). A purchaser cannot be said to be 'willing to purchase' if he is unable to complete the purchase or, at least, prove a willingness to execute an unconditional and binding contract (and the seller is able to do so) (McCallum v Hicks [1950] 2 KB 271 (CA); Ellsworth Dobbs v. Johnson, supra at 855; Bennett Realty, Inc. v. Muller, 396 S.E.2d 630 (NC Ct App 1990)).

In this case, the Buyers' Dudek and Cross' ability to complete[3] the transaction was dependent on, (1) a satisfactory survey and division of the Seller's property, (2) searches[4], and (3) a successful mortgage application[5]. Only #(1) had been completed. #(2) has yet to be confirmed[6], and #(3) has never been achieved per First Federal (see **Attachments 1A-D**, including Dudek and Cross' denial letters due to an incomplete application). Therefore, on the basis of the testimony of the hearing and evidence herein provided to the Courts, we are not persuaded that the Buyers satisfied the definition of 'ready, willing and able' purchasers. Indeed, given the Buyers' circumstances, it was clear that, at the point that the transaction broke down, the Buyers were neither 'ready' nor 'able' (regardless of whether they could be considered 'willing') to complete the

[3] "Complete" meaning closing escrow, not start an application process.
[4] At a hearing on March 27, 2017, Defendants Dudek and Cross were unsure if a title search was ever completed, though they are requesting a 'title search' fee in their damages.
[5] Meaning "applied, approved and secured for closing".
[6] Id

transaction. More importantly, if this is the case, then allegedly Dudek and Cross' award for specific performance/damages may have been obtained unlawfully or fraudulently (including fraud upon the Court), and requires further review by this court in order to support or uphold the Judicial Machinery of the Court. The Court can ONLY be effective, fair and "just" if is allowed to function as the laws proscribe, which in this case the Defendants Dudek and Cross may have prevented such functioning. In any case, it is illegal, and EVERY case which has had fraud involved can be re-opened AT ANY TIME, because there is no statute of limitations on fraud. "A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23.

4. **Pg. 2** ***"The Dudeks and Ferros entered into the Prevailing Contract on October 20, 2012..."*** This is incorrect. Please correct Order to read "...on October 24th, 2012", as this is the correct date of original ratification. Additionally, closing is for a period of thirty-seven (37) days, not forty (40), and will also need to be corrected in said Order. As well, it was understood that the sixty (60) day maximum closing time set by the Judge covers the initial thirty-seven (37) day contract expiration date, the forty-five (45) day stipulation by Morphew (as stated above), and the five (5) day extension request from the Defendants Dudek and Cross' proposal during the hearing, and any possible reasonable delays. It was agreed that all other terms and conditions remain the same, meaning that the proof of financing per said Contract will be provided within twenty (20) days of this hearing, all buyer inspections shall be accomplished within twenty-seven (27) days from this hearing; and closing shall take place within sixty (60) days of this hearing, and no more. **Time is of the Essence.**

*Proof of financing will not contain or list any 'buyer' contingencies (i.e., income, credit, asset or application contingencies), and if it is presented and contains any buyer financing contingencies as listed, then said 'proof' will not be accepted. Note, appraisal and title search are not buyer contingencies; these are not required to obtain *proof of financing per sales contract; they are required only for "final approval" to prepare the loan package for closing.

5. **Pg. 3, #2 under IT IS THEREFORE ORDERED**: Per the authority of the court during the hearing on March 27th, 2017, Defendants Ferro have been instructed to Answer the Plaintiffs Dudek and Cross' Notice of Hearing and Motion and Motion to Set Closing Schedule and for Attorney's Fees before final Order.

   A. Attorney Collins failed to file the damages via Motion and Affidavit within the 10-day period and as instructed to by the courts. This right for damages was therefore waived, and cannot be awarded in this case. Even if damages were allowable at this time, total at that time, Nov 2014, was $12,833.79, and is incorrect. Included in this amount is $1,000 being held in escrow by Dudek and Cross' real estate agent. This fee is not a "recoverable expense", as it is not an expense and it is refundable. Also, a title search fee of $285 is included, but during the hearing the Defendants Dudek and Cross could not answer the Judge's inquiry if a title search had indeed been performed, nor has any documentation been provided proving such search has been performed. Proof of a completed title search sent directly from Wooddy Law Firm to Defendants/sellers Ferro is being requested before agreeing to pay such fee.

B. Secondary charge on Collins: total claimed = $16,592.60 less the $12,833.79 (above, and which is not correct) = $5292.53. This amount is very questionable and a complete breakdown, including all invoices, is requested for a complete review before resolution.

C. Smith and Closser = $3758. Defendants Ferro request actual invoices. Need to compare this breakdown to verify no charges overlap from the Dudek/Cross Fraud case which may be included in his total. Also, the way this breakdown is presented it is very confusing by the parameters they set on the fees.

6. **Pg. 3, #3 under IT IS THEREFORE ORDERED:** "Purchase price @$281,731.18 with $21,268.82 damages deducted from $303,000" is not applicable in this Order, since damages were waived (see #5A above). Even if damages were applicable, the total would still need to be determined (see #5A-C above), and said Motion/Affidavit and Order updated to reflect such decision.
7. **Pg. 3, #4 under IT IS THEREFORE ORDERED:** At said hearing, Judge Chellis stated closing as soon as possible, as TIME IS OF THE ESSENCE, but will happen between forty-five (45) and sixty (60) days maximum from date of hearing, March 27th, 2017. Verbiage in final Order should reflect this parameter and make clear, and include "Time is of the Essence".
8. **Pg. 3, #5 under IT IS THEREFORE ORDERED:** *"The Dudeks will apply for a loan and secure lending as soon as feasible"*. This is not acceptable in both verbiage and terms. First, a new 'application' should not be required, as Dudek and Cross have clearly stated they had <u>secured</u> lending and have been "ready, able and willing" to close escrow per their sales contract, and at all times, including pending this case and its

appeal, as required by law to compel specific performance. Second, the hearing on March 27th, 2017, provided and all agreed, the terms and conditions of the contract will remain the same, with the exception for the 60-day max allowance from the date of the hearing to close escrow (see #4 above), therefore this paragraph should be removed wholly from this Order.

As this case has been officially 'disposed' as of 2/17/2017, Plaintiffs/Defendants Dudek and Cross SHOULD have no trouble closing within the terms since they have allegedly maintained their "ready, able and willing" status, therefore only a FINAL loan approval is pending, with the final loan approval being based on the lender's verification of the buyer's documentation (income, credit and assets, meaning credit report, bank statements, verification of employment, W-2's, tax returns). If Plaintiffs/Defendants Dudek and Cross were indeed "ready, able and willing" to complete the purchase at the time their performance was due under the agreement and at the time of the decree of Specific Performance (filed their complaint), it is legally assumed the lender has already "accepted" their original application, and are only required to update the buyers documentation to verify they still qualify (i.e., there is no "application" to reject since Dudek and Cross and the bank both testified at trial the application had already been accepted and approved and they were ready, able and willing to close.) More so, as strictly regulated by the remedy of Specific Performance, if at any time the ability of Defendants Dudek and Cross to perform said Contract has changed, such as their financial condition of the contract cannot be performed (see denial letters **Attachment 1B**), this would automatically terminate their sales contract and they were to immediately inform the courts, the Ferros and Morphew. Dudek and Cross failed to maintain their

ability status, and failed to inform the courts as such, therefore failing to comply with the Court Order and to act in good faith and fair dealings at all times.

Due to Dudek and Cross' failures, and because of the concerns brought forth during the hearing and within this Draft Order, Defendants/sellers Ferro respectfully request Dudek and Cross' pending application and sales contract currently on file with South State Bank (formally named First Federal) be provided directly from South State to them and to the courts for review.

9. **Pg. 3, #6 under IT IS THEREFORE ORDERED:** Dudek and Cross are required to adhere to the contract terms as agreed upon in the hearing, meaning all inspections are due on or before twenty-six (26) days of the hearing, not "prior to closing". The CL-100 shall be obtained per contract. Per Dudek and Cross' contract, the CL-100 is not required by the Ferros until the "contract expiration date", in this current instance meaning sixty (60) days from the hearing. This term was initially provided by Dudek and Cross. If Dudek and Cross require this document any sooner than the term they had set in the original contract, they are to request in writing, to the Ferros, a specific time needed and the reason why they are requiring a contract change. In writing and hand written signatures are required by both parties (per sales contract terms and conditions for "contract changes"). Furthermore, only a CL-100 report is required per contract and as agreed on during this hearing. IF an additional inspection to obtain a clearance "letter" is required by the closing attorney or lender to clear the CL-100 for closing, that request shall be in writing (with handwritten signatures) and shall originate from the closing attorney or South State Bank and addressed to ALL parties to this case. Also, it will be the responsibility of the buyers Dudek and Cross to obtain said clearance letter, as per

original contract. Note, Susan Nicholson, agent for the buyers Dudek and Cross, testified during the trial that she herself was responsible for clearing the CL-100 but failed to do so because she didn't want to be left "holding the bag".

10. **Pg. 3, #7 under IT IS THEREFORE ORDERED:** No term or condition within the contract has been agreed to be extended upon during the hearing except for the sixty (60) day maximum closing date. Please remove #7 or update to reflect as such.
11. **Pg. 3, #8 under IT IS THEREFORE ORDERED:** During the hearing, Morphew had agreed to vacate the property within forty-five (45) days of receiving proof of financing from Dudek and Cross. She had not agreed to this Orders verbiage "*on or before closing*", but instead Morphew had proposed that she will pay a daily rate based on what she is currently paying for rent to the Ferros for every day she occupies said property after closing, if applicable. Morphew reaffirms the reason for her stipulation is due to her distrust in Dudek and Cross [as reflected in her separate action for Fraud/Fraud on the Courts) and that the effort and cost to move out and find another location for living and then possibly have to move back in is too excessive to accomplish if Dudek and Cross fail to perform. Morphew also assures this court that she will not intentionally delay vacating said property within forty-five (45) days from receiving the acceptable Dudek/Cross loan approval per contract, if applicable, and that she will do her best to vacate the house on or before closing. Therefore, #8 of the Defendants proposed Order needs to be reflected to what she agreed upon in the hearing.
12. **Pg. 3, #9 under IT IS THEREFORE ORDERED:** *"Morphew is ordered not to change or damage the property in any manner. Any violation of this order will be considered contempt, punishable by fine, arrest, attorney's fees and costs."* Morphew

respectfully takes exception to this paragraph, and would note that this 'order' is insulting in many ways. First of all, Morphew has a vested interest in the property, and as any decent person(s) would do, would not damage property that does not belong to her, especially one that she may own. Second, there is no way to measure or determine a "violation" of this 'paragraph, unless blatant destruction or major changes are visible. Even if there were blatant destruction or major changes, in order for Morphew to be held responsible irrefutable proof would have to be provided by Dudek and Cross that it was in no doubt performed at the hands of Morphew. Furthermore, there is no way to measure "any violation" (any accusation by Dudek and Cross can only be based on their personal opinion, which is not lawful in this instance); therefore for the reasons so stated, this 'Order' in part is not proper and cannot be [so generally] enforced.

13. This Order failed to address the Dudek/Cross requirement to immediately obtain a real estate attorney to make sure they meet all requirements and comply with all their contract contingencies and requirements, as Time is of the Essence. Defendants Ferro respectfully request confirmation that Dudek and Cross have obtained a real estate attorney as required by the Order filed November 6th, 2012 (see Order, para. 18, FINDINGS OF FACT). Confirmation is requested to be sent directly from said acquired Attorney to the Ferros and the Courts. Please insert an additional paragraph in the Draft Order, stating such.

Due to the reasons, allegations and requests above, Defendants Ferro and Plaintiff Morphew respectfully request this Court further review of the Defendants Dudek and Cross' proposed Order and Motion and amend as applicable.

Respectfully submitted,

Thomas M. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
843-327-1262

Lorraine B. Ferro, pro se
76 Elk Range Dr.
Snowmass, CO 81654
843-327-1262

Molly M. Morphew, *Pro Se*
788 E. Butternut Rd.
Summerville, SC 29483
(843)514-7299

May 1, 2017

Attachment 1A

Underwriting Approval Conditions

Loan Officer: WILLIAMS, ALLISON 10334
MLA/CAM: MADDY MCWHIRTER
Underwriter: SANDI

Permanent Loan #: 7100327356
FF Loan ID: W12AW08756
DU/LP#: L073356662
FHA/VA#:
Broker Name:
Application Date: 12/5/12

Borrowers: DOREEN CROSS STEPHEN C DUDEK
Property: 788 E BUTTERNUT RD SUMMERVILLE SC 29483 County: DORCHESTER

Loan Amt: $242,400 Sales Price: $ 303,000 Appraised Val: $ 340,000 Land Value: $ 80,000 Stop Sale?: N	Loan Type: C FIX 1000 Occupancy: Occupant Purpose: Purchase Interest Rate: 3.750 Term: 360 Empl Int Rate/P&I: ADJ Index: Margin:	LTV: 80.00 CLTV/HCLTV 80.00 80.00 Cr Score B 803 Cr Score CoB 697 Housing Ratio: 13.62 Debt Ratio: 29.26	Lock Expiration: 2/3/13 Est. Close Date: 1/30/13 Cr Rpt Expir: 3/5/13 Verbal Expir: Self Emp Verb Exp: N/A Income Expiration: 2/28/13 Asset Expiration: 1/29/13 Appraisal Expir: 4/9/13 Approval Date: 12/11/12
P & I Pymt: $1122.40 Escrows Waived N Orig Fee Buyer: $2424.00 Discount Pts: $0.00	Sp Feature 127 180 Code:	PMI Company: PMI Coverage: PMI/MIP Mthly: 0.00 PMI/MIP fin: 0.00 VA FF: $0.00	

Note: signed by: DOREEN C CROSS, STEPHEN C DUDEK — Settlement Agent:
Mortgage/Title Name: DOREEN C CROSS, STEPHEN C DUDEK — AUBREY J WOODDY JR

Request Date	Role Party	Cleared By ClearDate	Description/Notes	DOREEN CROSS W12AW08756
1/18/13	Z2	SANDI 1/18/13	Loan is declined as of 01/18/2013 - INCOMPLETE APPLICATION - NO RESPONSE TO 10 DAY LETTER	
12/17/12	Z1	SANDI 12/17/12	Loan Approval as of 12/17/2012 in the amount of $242400). Interest rate is 3.750. LTV is 80% and DTI is 29.262%	
12/11/12	Z	SANDI 12/11/12	Loan Approval as of 12/11/2012 in the amount of $242400). Interest rate is 3.750. LTV is 80% and DTI is 28.832%	
12/11/12	UW	SANDI 12/20/12	Fully ratified sales contract, including all pages, addenda - MISSING ADDENDUM C, SELLER NAME TO SHOW ON PAGE 1 -with a sales price of 303000.00 NEED ADDENDUM C & SELLER NAMES TO SHOW ON PG 1	
12/11/12	UW	SANDI 12/20/12	LEGIBLE COPY OF sales contract, including all pages, addenda with a sales price of 303000.00	
12/11/12	UW	SANDI 12/17/12	Satisfactory Appraisal with a minimum value of $303000.00	

FILED-RECORDED
2013 APR 2 PM 12:44
CLERK OF COURT
DORCHESTER COUNTY

1B pg. 1

First Federal

RECORDED
2017 APR -6 PM 12:44
CHERYL D. SNELGROVE
CLERK OF COURT
DORCHESTER COUNTY

January 31, 2013

DOREEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

Loan Application # W12AW08756

DOREEN CROSS

Thank you for considering First Federal for your mortgage needs. Enclosed you will find our check number #643216 in the amount of $13.20, for the unused portion of your loan application fee, and a Statement of Credit Denial, Termination or Change. Please keep us in mind for any mortgage and banking services you may need in the future.

***If you have any questions regarding this loan application, please contact your loan officer*.** Thank you for your prompt attention to this matter.

Thank you,

Margie Vincent

Margie Vincent
Compliance Auditor

Enclosure

1B Pg 2

First Federal

RE-RECORDED
2017 APR -6 PM 12:44
CHERYL F. TIMMONS
CLERK OF COURT
DORCHESTER COUNTY

January 31, 2013

DOREEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

Loan Application # W12AW08756

STEPHEN DUDEK\

Thank you for considering First Federal for your mortgage needs. Enclosed you will find our check number #643216 in the amount of $13.20*, for the unused portion of your loan application fee, and a Statement of Credit Denial, Termination or Change. Please keep us in mind for any mortgage and banking services you may need in the future.

Sent with Doreen's letter

***If you have any questions regarding this loan application, please contact your loan officer*.** Thank you for your prompt attention to this matter.

Thank you,

Margie Vincent

Margie Vincent
Compliance Auditor

Enclosure

1B P13

Statement of Credit Denial, Termination or Change

Lender	Applicant	Date
FIRST FEDERAL BANK	DORSEN CROSS	January 31st, 2013
2440 MALL DRIVE	236 CADY DRIVE	Application or Loan Number
NORTH CHARLESTON, SC 29406	SUMMERVILLE, SC 29483	W12AW08756
"We" means Lender.	*"You"* means Applicant.	

2017 APR -6 PM 12:44
RE-RECORDED
CHERYL BRUNSON
CLERK OF COURT
DORCHESTER COUNTY

Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Description of Account, Transaction or Requested Credit.

Mortgage Loan

Description of Action Taken. SEE BELOW

Principal Reasons for Credit Denial, Termination or Other Action Taken Concerning Credit

- [X] Credit Application Incomplete
- [ ] Insufficient Number of Credit References Provided
- [ ] Unacceptable Type of Credit References Provided
- [ ] Unable to Verify Credit References
- [ ] Temporary or Irregular Employment
- [ ] Unable to Verify Employment
- [ ] Length of Employment
- [ ] Income Insufficient for Amount of Credit Requested
- [ ] Excessive Obligations in Relation to Income
- [ ] Unable to Verify Income
- [ ] Length of Residence
- [ ] Temporary Residence
- [ ] Unable to Verify Residence
- [ ] No Credit File
- [ ] Limited Credit Experience
- [ ] Poor Credit Performance with Us
- [ ] Delinquent Past or Present Credit Obligations with Others
- [ ] Collection Action or Judgment
- [ ] Garnishment or Attachment
- [ ] Foreclosure or Repossession
- [ ] Bankruptcy
- [ ] Number of Recent Inquiries on Credit Bureau Report
- [ ] Value or Type of Collateral not Sufficient
- [ ]
- [ ]
- [ ]
- [ ]

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

16 p.4

Statement of Credit Denial, Termination or Change

Lender	Applicant	Date
FIRST FEDERAL BANK 2440 MALL DRIVE NORTH CHARLESTON, SC 29406	STEPHEN DUDEK 236 CADY DRIVE SUMMERVILLE, SC 29483	January 31st, 2013 Application or Loan Number W12AN08756

"We" means Lender. "You" means Applicant.

2017 APR -6 PM 12:44
RECORDED
CLERK OF COURT
DORCHESTER COUNTY

Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Description of Account, Transaction or Requested Credit.

Mortgage Loan

Description of Action Taken. SEE BELOW

Principal Reasons for Credit Denial, Termination or Other Action Taken Concerning Credit

- [X] Credit Application Incomplete
- [ ] Insufficient Number of Credit References Provided
- [ ] Unacceptable Type of Credit References Provided
- [ ] Unable to Verify Credit References
- [ ] Temporary or Irregular Employment
- [ ] Unable to Verify Employment
- [ ] Length of Employment
- [ ] Income Insufficient for Amount of Credit Requested
- [ ] Excessive Obligations in Relation to Income
- [ ] Unable to Verify Income
- [ ] Length of Residence
- [ ] Temporary Residence
- [ ] Unable to Verify Residence
- [ ] No Credit File
- [ ] Limited Credit Experience
- [ ] Poor Credit Performance with Us
- [ ] Delinquent Past or Present Credit Obligations with Others
- [ ] Collection Action or Judgment
- [ ] Garnishment or Attachment
- [ ] Foreclosure or Repossession
- [ ] Bankruptcy
- [ ] Number of Recent Inquiries on Credit Bureau Report
- [ ] Value or Type of Collateral not Sufficient
- [ ]
- [ ]
- [ ]
- [ ]
- [ ]

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

1B pg 5

Statement of Credit Denial, Termination or Change [continued]

Consumer Reporting Agency Name	Mailing Address	Telephone Toll-Free	Web Address
EQUIFAX MORTGAGE SOLUTI	6 E. CLEMENTON RD STE A2 GIBBSBORO, NJ 08026	800-333-0037	www.equifax.com

☐ We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

- **Your credit score:**
- **Date:**
- **Scores range from a low of to a high of**
- **Key factors that adversely affected your credit score:**

2017 APR -6 PM 12:44
CLERK OF COURT
DORCHESTER COUNTY
RE-RECORDED

If you have any questions regarding your credit score, you should contact
Equifax 800-685-1111 Experian 888-397-3742 TransUnion 800-916-8800

☐ Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the *Fair Credit Reporting Act*, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

1B pg.6

Statement of Credit Denial, Termination or Change [continued]

Questions

If you have any questions regarding this notice, you should contact:

Creditor's Name: FIRST FEDERAL BANK
Address: 2440 MALL DRIVE
NORTH CHARLESTON, SC 29406
Telephone: 888-529-2220

Notice. The federal *Equal Credit Opportunity Act* prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the *Consumer Credit Protection Act.* The federal agency that administers compliance with this law concerning this creditor is:

Federal Reserve Consumer Help Center
P. O. Box 1200
Minneapolis, MN 55480

FILED-RECORDED
2017 APR -6 PM 12:44
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

1C

mos for Loan: W12AW08756

Generated on 01-31-2013 at 11:07:43

1/23/2013 10:40:39 AM MARGIE: PLR; FILE TO 2ND REV--SINGLE FEMALE--DECLINE FOR INCOMP APP

1/25/2013 1:25:26 PM KAY: PLR RECEIVED A REQUEST FROM THE SELLING AGENT FOR SPECIFICS ABOUT WHEN FILE WAS RECEIVED, APPROVED, WHEN SHE MADE APPPLICATION ETC... I HAVE CALLED MRS. CROSS TO ASK IF THE BORROWER WANT ME TO PROVIDE THE LISTING AGENT. IF SO,
NEED STATEMENT IN WRITING.

1/29/2013 8:14:25 AM KAY: PLR NO RETURN CALL FROM BORROWER. FILE IS GOING BACK TO MARGIE FOR SECOND REVIEW.

1/29/2013 4:41:56 PM KAY: PLR BORROWER CALLED ME BACK. GOT MY VOICE MAIL..I LEFT HER ANOTHER VOICE MAIL.

1/30/2013 8:22:59 AM KAY: PLR BORROWER CALLED ME BACK AND REQUESTED THAT I EMAIL HER THE QUESTIONS THAT WERE BEING ASKED FROM THE SELLING AGENT. I DID AT 08:20AM TODAY.

1/30/2013 9:57:20 AM KAY: PLR BORROWER EMAILED ME THE NAME OF HER ATTORNY...DAVID A COLLINS 843-760-0220 AND ASKED ME TO DIRECT ALL QUESTIONS THUR HER ATTORNEY.

1/31/2013 11:05:44 AM MARGIE: PLR; REC'D FILE FROM 2ND REV; LETTER AND REFUND CK MAILED TODAY; FILE TO W/R STORAGE DRAWER

RECORDED
2017 APR -6 PM 12:44
CLERK OF COURT
DORCHESTER COUNTY

257

ID

First Federal

W12AW08756

Date 01/03/2013

DORSEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

RE-RECORDED
2017 APR -6 PM 12:44
CLERK OF COURT
DORCHESTER COUNTY

Re: Request for additional information

Dear Applicant(s):

Thank you for trusting us with your residential loan application.

As discussed during the application process, we require all necessary loan documents within 10 days of your initial application. As of today, First Federal has not received all the requested documents. We are missing the following items:

1. PLEASE PROVIDE A SALES CONTRACT EXTENSION SIGNED BY ALL PARTIES.
2. FIRST FEDERAL TO OBTAINA VERBAL VERIFICATION OF EMPLOYMENT PRIOIR TO CLOSING.
3.

Please fax or drop off these documents at any one of our convenient locations.

We must receive all the above documentation within 10 days from the date of this letter. Otherwise, First Federal will regrettably be unable to give further consideration to your credit request and any corresponding interest rate lock agreements. Should you decide at a later date to furnish the above items, we can assist you with a new application.

Please call me with any questions. My contact information is shown below. I look forward to providing you with your home financing.

Sincerely,

NMLS Registry #000000607897

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	Civil Action No. 2013CP1800183 consolidated with Civil Action No. 2013CP1800074
STEPHEN DUDEK and DOREEN)	
Plaintiffs,)	
v.)	
THOMAS M. FERRO and LORRAINE B. FERRO,)	
Defendants)	
MOLLY MORPHEW,)	
Plaintiff,)	
v.)	
STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO)	
Defendants)	

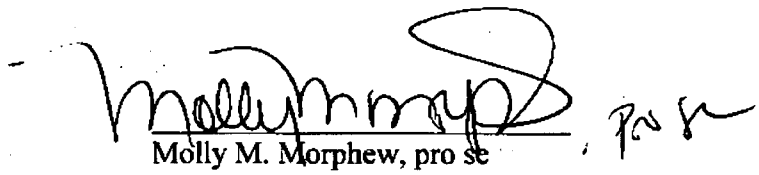
RE-RECORDED
2017 APR -6 PM 12:43
CLERK OF COURT
DORCHESTER COUNTY

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Plaintiff [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with the **DEFENDANTS FERRO AND PLAINTIFF MORPHEW'S ANSWER TO DUDEK AND CROSS' NOTICE OF MOTION AND MOTION TO SET CLOSING SCHDULE AND FOR ATTORNEY'S FEES; AND RESPONSE TO PROPOSED ORDER** by mailing

a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Stephen L. Smith, Esquire
Samuel M. Wheeler, Esquire
P.O. Box 40578
Charleston, SC 29423



Molly M. Morphew, pro se
788 E Butternut Rd
Summerville, SC 29483
843-514-7299

April 7, 2017

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Dorchester)

Molly M Morphew)
Plaintiff(s))

vs.)

Doreen Cross and Stephen Dudek)
Defendant(s))

CIVIL ACTION COVERSHEET

2017-CP - 18 - 987

Submitted By: Molly Morphew
Address: 788 E. Butternut Rd, Summerville, SC 29483

SC Bar #: N/A
Telephone #: 843-514-7299
Fax #:
Other:
E-mail: morphew926@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filed out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

FILED
2017 JUN 12 AM 11:43
DORCHESTER COUNTY
CLERK OF COURT

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499) Constructive Trust and Quiet Title

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (688)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: Molly Morphew Jr **Date:** 6/12/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

260

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

17 JUN 12 AM 11:43
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA,)
)
COUNTY OF Dorchester)
)
Molly M. Mayhew, pro se)
Plaintiff,)
)
vs.)
)
Darren Cross & Stephen Duckett)
Defendant.)

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2017-CP-18-987

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Summerville, SC, South Carolina

Dated: 6/12/17

Molly M. Mayhew pro se
Plaintiff/Attorney for Plaintiff

Address: 788 E Butternut Rd
Summerville, SC 29483

SCCA 401 (5/02)

FILED
2017 JUN 12 AM 11:43
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP-18-987
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**COMPLAINT FOR CONSTRUCTIVE TRUST**
	)	
Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

INTRODUCTION

COMES NOW, Molly M Morphew, Plaintiff in the above entitled matter, and brings her cause of action for claim of right of possession and right of property [actual and legal], abuse of process, fraud, and unclean hands against, Defendants Dudek and Cross who allegedly and unlawfully acquired property (as hereinafter described), and by said actions intentionally prevented, and by same actions are still preventing, the Plaintiff from her legal right to acquire.

1. That the Plaintiff, Molly Marie Morphew, (hereafter "Plaintiff") is a citizen and resident of the County of Dorchester, State of South Carolina.

2. That upon information and belief, Defendants Stephen Dudek and Doreen Cross are residents of Dorchester County, State of South Carolina.

3. That the property as stated herein, is located in Dorchester County, South Carolina.

4. That the Defendants named above used the lawful judicial system and its processes to unlawfully obtain said property.
5. That the Defendants, at all times material, had no legal right to said property.
6. That the Defendants, at all times material, intentionally prevented, and are currently preventing, the Plaintiff from her legal right to said property.
7. That the Plaintiff has a legal and/or equitable claim, and is in possession of said property.
    a. Morphew ratified a sales contract on December 16th, 2012.
    b. Morphew secured financing on said sales contract had a closing scheduled January 31st, 2013.
    c. Morphew has had, and currently has, tenancy of said property since June 2013.
8. At all times material, the misleading or unlawful acts of the Defendant(s) violated the Plaintiff's Constitutional right by preventing the Plaintiff from presenting all of her case or deprived her of the opportunity to be heard fully.
9. That due to the Defendants unlawful acts or fraudulent misrepresentations, the Judge was influenced to make an uninformed ruling (thus where the impartial function of the court have been directly corrupted), the judicial machinery was prevented from performing, and the court itself was defiled.
10. Though the Judge in the prior proceedings itself may have been unknowingly "fooled" to make an unlawful or uninformed ruling, he was recently presented with recently found evidence of fraud on his court, but then chose to turn a blind eye at the expense of justice and violating the Due Process Clause of the U.S. Constitution, inferring partiality towards the Defendants by rewarding them for their unlawful actions.

VENUE AND JURISDICTION

11. That the Plaintiff hereby incorporates paragraphs one (1) through ten (10) above, the same as if set forth again verbatim.

12. Venue is proper pursuant to S.C. Code § 15-7-30, as Defendants Dudek and Cross reside in Dorchester County, and the actions set forth herein occurred in Dorchester County.

13. Venue is proper pursuant to S.C. Code § 15-7-10, as the property in dispute is located in Dorchester County.

14. The acts and omissions of the Defendants were conducted, disseminated, published and/or performed in South Carolina, at its jobsites and offices and to its employees and/or agents, including in Dorchester County, in a way to affect, reach and cause injury and/or damage to the Plaintiff in the State of South Carolina.

15. The Plaintiff consents to the jurisdiction of this court since she is a resident of the County of Dorchester, State of South Carolina.

16. Morphew is currently, and was during the relevant period, a citizen and resident of South Carolina in Dorchester County.

Plaintiff complains and for causes of action alleges as follows:

FIRST CAUSE OF ACTION
(Right of possession; right of property)

17. That the Plaintiff Morphew argues she is the equitable owner of title to the property referenced herein, and claims right of possession and right of property [actual and legal],

18. Therefore, Plaintiff alleges she is under no legal obligation to vacate the said property, but instead seeks restitution to recover the property and obtain legal title by constructive trust, or as the alternate, damages equivalent to the loss of the property and any costs associated with this claim.

19. That the Plaintiff has had a legal binding, valid and enforceable sales contract since December 16th, 2012. (Sales Contract, **Attachment 1**)
20. That the Plaintiff had secured financing per said sales contract as of December 23rd, 2012.
21. That the Plaintiff had final approval as of January 3rd, 2013.
22. That the Plaintiff has had possession of said property since June 2013.
23. That the Plaintiff has a lease agreement, and still currently has, tenancy of said property.
24. That the Defendant, at any time material, had no legal or equitable claim to said property.
25. That the Defendant obtained said property unlawfully including, but not limited to, filing frivolous claims, fraudulent misrepresentations, and said acts on the court.

SECOND CAUSE OF ACTION
(Abuse of Process)

26. That the Plaintiff hereby incorporates paragraphs one (1) through twenty-five (25) above, the same as if set forth again verbatim.
27. The Plaintiff contends that the Defendants utilized the legal process to prevent the plaintiff from closing on the said property.
    a. Plaintiff contends Defendants filed a lis pendens the very day they became aware the sellers of the said property ratified a sales contract with Plaintiff Morphew to prevent its closing.
    b. Plaintiff contends Defendants, knowing full well they did not meet the lawful requirements or rules to compel specific performance, frivolously filed a complaint for Specific Performance against the sellers to prevent said sale to Morphew and/or to use the legal process to "blackmail" the sellers into selling to them.

28. The Plaintiff contends that the Defendants utilized the legal process to unlawfully or fraudulently obtain the property.

a. Plaintiff argues the Defendants unlawfully requested and litigated Specific Performance to obtain said property by:

1) The Defendants, at all times material, did not have a valid and enforceable contract.

2) Defendants did not complete a mortgage application per their sales contract.

3) The Defendants were denied lending.

4) The Defendants requested Specific Performance with full knowledge they had been denied lending.

5) The Defendants were never "ready, able and willing" to perform their sales contract.

6) The Defendants requested Specific Performance with full knowledge they never were "ready, able and willing" to perform their sales contract.

c. The Defendants participated, and continue to participate, in their unlawful behavior with full knowledge they never were "ready, able and willing" to perform their sales contract as required by law or rules to compel Specific Performance.

d. The Defendants falsely testified in filings, depositions and at trials and hearings as such (including, but not limited to):

1) Defendants falsely testified in filings, depositions and at trials and hearings they had approved financing per their sales contract.

2) Defendants falsely testified in filings, depositions and at trials and hearings they were ready, able and willing to close escrow per their sales contract.

3) Defendants falsely testified in filings, depositions and at trials and hearings they were ready, able and willing to close escrow but could not because of a seller breach.

29. The Defendants continue to utilize the legal process in order to unlawfully possess the property in which they have, at all times material, never had a legal or equitable claim to.

a. Plaintiff alleges that the Defendants, at all times material, did not have a legal or equitable claim on said property.

b. That all times material, the Defendants did not have valid enforceable sales contract.

e. The Defendants sales contract expired on November 30th, 2012.

f. The Defendants did not complete a mortgage application per their sales contract.

g. The Defendants had been denied lending at application and/or before filing for Specific Performance.

h. The Defendants did not have a valid and enforceable sales contract when they filed for Specific Performance.

i. The Defendants did not have a valid and enforceable sales contract during their depositions or at trial or at any time material.

j. Plaintiff alleges, that all times material, the Defendants did not have equitable ownership or right to said property.

k. Plaintiff alleges, that all times material, the Defendants did not have possession or right of possession to said property.

30. Plaintiff alleges the Defendants violated the Federal and State Constitutional Right to Due Process.

31. The Defendants or their agent acted, and is continuing to act, with Unclean Hands (i.e., unjustly in the very transaction of which he complained and still continues to act unjustly), as stated herein complaint.

THIRD CAUSE OF ACTION
(Fraud)

32. That the Plaintiff hereby incorporates paragraphs one (1) through thirty-two (31) above, the same as if set forth again verbatim.

33. The Defendants made false statements or misrepresentations as to material facts critical to the prior civil proceedings.

a. Defendants falsely stated or misrepresented in filings, depositions, at the trial and hearings, they had, included but not limited to, applied for financing per their sales contract, did not breach their sales contract, secured mortgage financing per their sales contract, were ready, able and willing to close escrow, and the sellers prevented them from closing.

34. The Defendants created false document(s) and was provided as evidence to support their false claims.

35. The Defendants or their agents misrepresented, concealed or failed to disclose the material fact(s) pertinent to the prior proceedings, even on direct questioning in filings, depositions, trials, hearings or subpoenas.

36. The Defendants and their attorney, real estate agent and its agent, loan officer and its agent, and closing attorney or its employee(s) committed conspired to commit fraud on the court by providing false documentation or testimony, including by not limited to, stating or inferring Cross and Dudek had applied for mortgage financing, secured mortgage credit, and were ready, able and willing to close escrow per their sales contract, or that the sellers were at fault for Cross and Dudek failing to close escrow.
37. The Defendants or their agents knew the statements or forgery were false.
38. Plaintiff contends the Defendants or their agents made the false statements or misrepresentations or forgery in order to persuade the Plaintiff to act or not act, and to fraudulently sway the court to make a ruling in their favor (i.e., make an uninformed ruling).
39. Plaintiff contends the misrepresentations is of such character that if it had not been misrepresented, obstructed, concealed or forged, there would have never been a trial or Specific Performance would not have been awarded.
40. The Defendants made the false statements or misrepresentations or forgery in order to unlawfully obtain said property.
41. The Plaintiff or the courts were ignorant of the representation's falsity.
42. The prior case continued and/or was adjudicated unlawfully because of these fraudulent actions or non-actions of the Defendants.
43. Plaintiff relied on the representations in order for her to present her case fully or be heard fully as due process allows.
44. Plaintiff's Question in Fact to her prior case was based solely on these representations.
45. The court relied solely on these representations to make an informed ruling.

46. The Courts made an unlawful and uniformed ruling because of the reliance on the representations.
47. In consequence, an injustice has been served.
48. The judicial machinery was intentionally disrupted by the Defendants.
49. The courts have spent an undue amount of time and resources litigating the Defendants complaint.
50. The Plaintiff has been unable to obtain rightful ownership of the property.
51. The Plaintiff has extended undue amounts of distress, money, and time in order to defend her right to the property and to due process.
52. The Plaintiff argues the said above property was therefore "stolen" from her by the Defendants.
53. As a proximate result of the Defendants Cross and Dudek's fraudulent misrepresentations and otherwise wrongful conduct as alleged herein, Plaintiff Morphew was or has been prevented from closing on or obtaining 788 E. Butternut Rd., Summerville, SC for over 4+ years, has spent an excessive amount of money to obtain said property, and respectfully asks the court for restitution by "returning" said property and for all costs associated to obtain said property. In lieu of, Plaintiff would ask the court for damages, specifically for the difference in her sales price and the current market value, plus all costs associated with the litigation of her prior case and this case.
54. By reason of the fraudulent and otherwise wrongful manner in which the Defendants Cross and Dudek, obtained their alleged right, claim or interest in and to the property, Defendants Cross and Dudek, have no legal or equitable right, claim or interest therein, but, instead, Defendants Cross and Dudek are involuntary trustees holding said property

and profits therefrom, if applicable, in constructive trust for Plaintiff Morphew with the duty to convey the same to Plaintiff Morphew forthwith.

WHEREFORE, Plaintiff Morphew pray judgment against Defendants Cross and Dudek and each of them, as follows:

<> For a declaration that Defendants Cross and Dudek hold the property [with the duty to convey] as constructive trustees for the benefit of the Plaintiff Morphew; or in lieu, damages as stated in #53 above;

<> For costs of suit incurred herein; and

<> For such other and further relief as the court may deem proper.

Molly M. Morphew, pro se

6/12/17
Dated

VERIFICATION

I, Molly M. Morphew, am a Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Summerville, South Carolina.

DATED: 6/12/17 BY:

273

2017 JUN 12 AM 11:44
CLERK OF COURT
DORCHESTER COUNTY

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

1. **PARTIES:** This legally binding Agreement entered into on December 16, 2012 between, Buyer(s), Molly M. Morphew, (hereinafter called "**BUYER**"), and Seller(s), Thomas Ferro, Lorraine Ferro, (hereinafter called "**SELLER**"). The property shall be deeded in the name(s) of: Molly M. Morphew

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres) Tract B-1

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____.

No personal property will convey as a part of this sale, except as described: Elec Cooktop, Dishwasher, Washer/Dryer Connections, Garbage Disposal, Satellite Dish

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 1/30/13, 1/30/13, not later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ 280,000.00
Two Hundred Eighty Thousand dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: N/A

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 5,000.00 Pd. To Seller's MF
~~Buyer and Seller authorize _____ as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☐Check or ☐Other. Broker does not guarantee payment of a check or draft. Upon receipt of earnest money, all earnest money obtained shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.~~

MM BUYER [____] BUYER [MM] SELLER [MF] SELLER HAVE READ THIS PAGE

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Charlene Willis
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Att. 273 (1)

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 96.500 % loan (loan-to-value ratio) within 5 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 30 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. **Time is of the essence.** Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☒ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☒ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller agrees to pay up to $7,000 towards buyers closing costs, prepaids, allowables and non allowables at closing.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☒ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☐ Seller not to exceed $ N/A .

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at N/A o'clock N/A M. on N/A unless accepted or countered by Seller in written form prior to such time. **Time is of the essence.**

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed N/A consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☐ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by N/A, N/A. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. **Time is of the essence.** If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before At Closing, . **Time is of the essence.** If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs**: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978**: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. **(Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information)**. This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

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proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. ~~**COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.~~

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

BUYER [____] BUYER [____] SELLER [____] SELLER HAVE READ THIS PAGE

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See Addendum "A"

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M Morphew Molly M. Morphew Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Thomas Ferro Thomas Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Lorraine Ferro Lorraine Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY The Group, Llc

SELLING AGENT AND COMPANY The Group, Llc

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐BUYER'S AGENT OR ☐SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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ADDENDUM A

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres)

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Property is being purchased in "As Is" condition. This contract is a "back up" contract. It is contingent upon an existing contract of sale to receive a signed release so that this contract becomes the primary contract. In the event the existing contract does not receive a signed release this agreement may be declared null and void by either party on or before December 30, 2012 with written notice and deposit money returned to purchaser. Attached plat shows property being purchased. Seller agrees to pay 6% of the sales price at closing to The Group, LLC as compensation for this transaction.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Morphew	Date 12/16/12	Time _____
WITNESS: _____	Date _____	Time _____
BUYER: _____	Date _____	Time _____
WITNESS: _____	Date _____	Time _____
SELLER: Thomas Ferro	Date 12/16/12	Time _____
WITNESS: _____	Date _____	Time _____
SELLER: Lorraine Ferro	Date 12/16/12	Time _____
WITNESS: _____	Date _____	Time _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466
Phone: 843-971-4002 Fax: 888-803-1570 Charlene Willis

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788 E. Buttern

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2013, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: _____ Seller Date _____ Buyer _____ Date 12/6/12

Rev. 1/13

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM, MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

		Yes	No	No Representation
1.	Foundation, slab, fireplace/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure: Brick mobile home pond green house	☐	☒	☐
2.	Roof (leakage or other problem)? a. Approximate age of roof covering steel roof 8 yrs.	☐	☒	☐
3.	Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the property?	☐	☒	☐
4.	Electrical system (switches, wiring, panel, switches, fixtures, etc.)?	☒	☒	☐
5.	Plumbing system (pipes, fixtures, water heater, etc.)?	☒	☒	☐
6.	Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window units) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ cooling unit ___	☒	☒	☐
7.	Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county ✓ community system ___ private well ✓ b. water pipes are: copper ___ galvanized ___ PVC/CPVC ✓ poly butelene ___	☐	☒	☐
8.	Septic system? a. Type system: septic tank ✓ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ✓ c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9.	Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☒	☒	☐
10.	Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ✓	☐	☒	☐
11.	Drainage, grading or stability of soil or retaining structure?	☒	☒	☐
12.	Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ✓ exhaust fan ___ ceiling fan ✓ sump pump ___ irrigation system ✓ cable tv wiring or satellite dish ✓ security system ___ or other systems ___	☐	☒	☐

Initials: Seller ___ Date ___ Buyer ___ Date 12/16/12

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

		Yes*	No	No Representation
13.	Room additions or other structural changes?	☐	☑	☐
14.	Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☑	☐
15.	Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☑	☐
16.	Previous damage caused by fire?	☐	☑	☐
17.	Violations or variances of building codes or zoning ordinances?	☐	☑	☐
18.	Restrictions to property use? (covenants or deed)	☐	☑	☐
19.	Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☑	☐
20.	Lawsuits, foreclosures, bankruptcy, summons, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☑	☐
21.	Owners' association fees or "common area" expenses or assessments?	☐	☑	☐
22.	Flood hazards or that the property is in a federally-designated flood plain?	☐	☑	☐
23.	Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☑	☐
24.	Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☑	☐

"IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.

Initials: _____ Seller _____ Date _____ Buyer mm Date 12/16/12

Rev. 6/04

"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 788 E Buttercup Rd Summerville SC 29483

The property is currently: owner-occupied ✓ leased ___ in an estate ___ in foreclosure ___
vacant ___ (If vacant, how long? ___)
Owner's Name(s): Tom Ford

Owner(s) acknowledge having examined this information before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date: 12/16/12

Owner Signature: _____ Date: 12/16/12

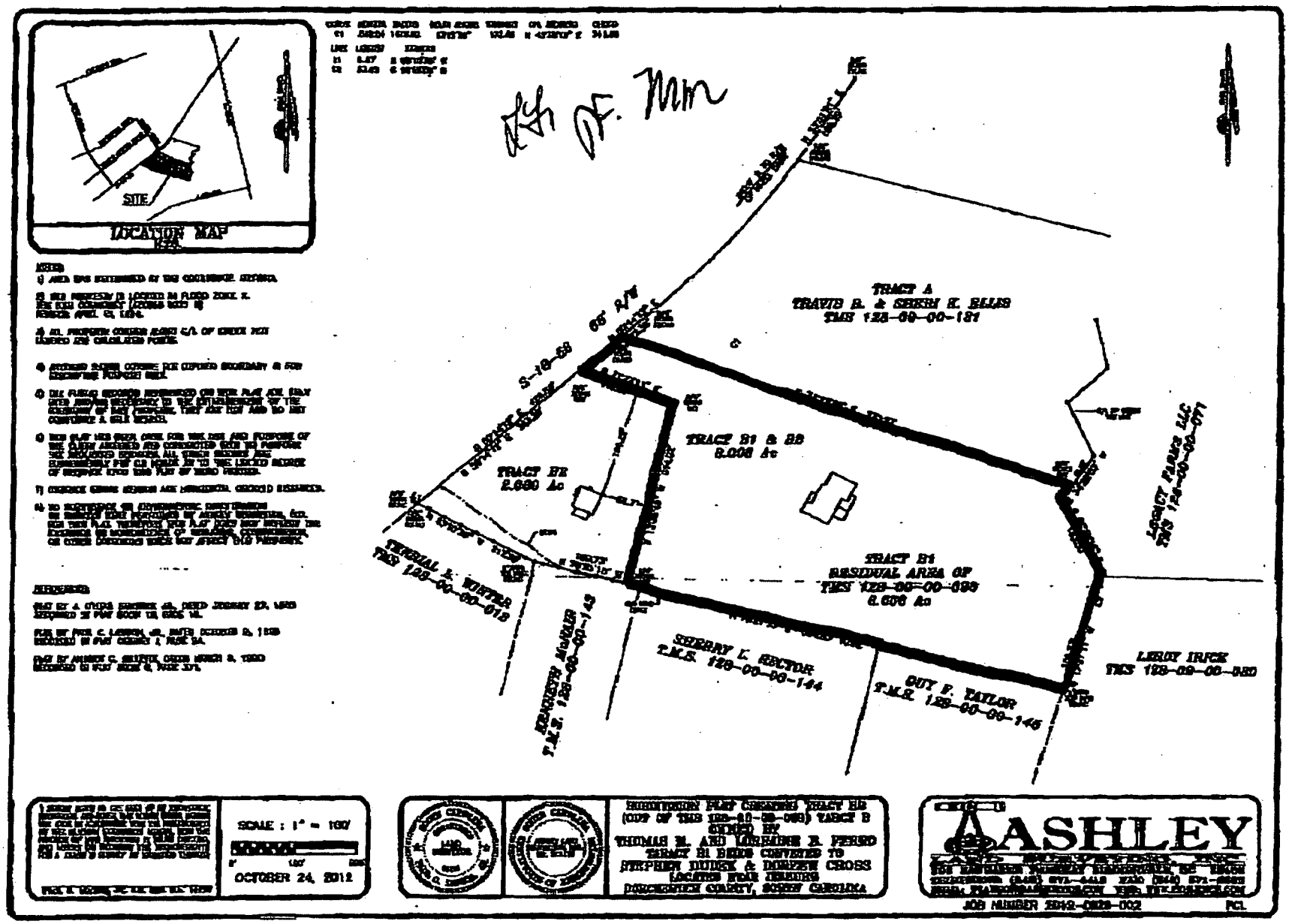
Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: _____ Date: 12/16/12

Purchaser Signature: _____ Date: _____

(This form is approved by the South Carolina Real Estate Commission.)


LOCATION MAP
SITE
TRACT A
TRAVIS B. & SHERRI H. ELLIS
TMS 123-00-00-131
TRACT B1 & B2
2.008 Ac
TRACT B2
2.000 Ac
TRACT B1
RESIDUAL AREA OF
TMS 123-00-00-099
6.606 Ac
TRACT FARMS LLC
TMS 123-00-00-077
LEROY IRICK
TMS 123-00-00-080
SHERRY L. HECTOR
T.M.S. 123-00-00-144
GUY F. TAYLOR
T.M.S. 123-00-00-145
TERRIAL L. WINTER
TMS 123-00-00-015
KENNETH MOELLER
T.M.S. 123-00-00-143
SCALE : 1" = 100'
OCTOBER 24, 2012
ASHLEY
JOB NUMBER 2012-0828-002

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP-18-987
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

FILED FOR RECORD
2017 JUN 12 AM 11:44
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Complaint for Constructive Trust and Quiet Title, and Lis Pendens was served by mailing USPS, certified mail, restricted Delivery with signature confirmation on the following:

Doreen Cross
236 Cady Dr.
Summerville, SC 29483

Stephen Dudek
236 Cady Dr.
Summerville, SC 29483

Molly M. Morphew, pro se
788 E. Butternut Rd.
Summerville, SC 29483

Molly M. Morphew, pro se

June 12, 2017

RECORD
2017 JUL -6 PM 3:55
CHERYL STRICKLAND
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE NO. 2017-CP-18-987
Molly M. Morphew,)	
)	
Plaintiff,)	
)	
vs.)	NOTICE OF MOTION AND
)	MOTION TO DISMISS COMPLAINT
Stephen Dudek and Doreen Cross,)	PURSUANT TO RULE 12(B)(6) SCRCP
)	
Defendants,)	

2017 JUN 27 AM 10:52
CLERK OF COURT
DORCHESTER COUNTY
FILED/RECORDED

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the Defendants, will move before the Presiding Judge for the First Judicial Circuit within ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as Counsel may be heard, for an Order dismissing the above entitled action pursuant to Rule 12(b)(6) South Carolina Rules of Civil Procedure.

This Motion is based on the fact that the Plaintiff has failed to state facts sufficient to constitute a cause of action against the Defendants.

SMITH | CLOSSER, PA

June 26, 2017

Steven L. Smith
SC Bar No. 5173; ssmith@scnlaw.com
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
Attorneys for the Defendants

17-167

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT
) CASE NO. 2017-CP-18-987

RECORDED
2017 JUL -6 PM 3:55
CHERYL SMALL
CLERK OF COURT
DORCHESTER COUNTY
RECORDED
2017 JUN 27 AM 10:52
CHERYL SMALL
CLERK OF COURT
DORCHESTER COUNTY

Molly M. Morphew,

Plaintiff,

vs.

Stephen Dudek and Doreen Cross,

Defendants,

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Notice of Motion and Motion to Dismiss Complaint Pursuant to Rule 12(b)(6) SCRCP was served by mailing or hand delivery and/or electronic mail on the following:

Molly M. Morphew
1605 Central Avenue, Ste 6/347
Summerville, SC 29483

Peggy M. Rochay

June 26, 2017
17-167

288

$25.00 MB ✓

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2017 JUL -6 PM 3:55

Molly M. Morphew,
( ) Plaintiff
v.

Stephen Dudek and Doreen Cross,
(x) Defendant
check box above indicating submitting party

Case No. 2017-CP-18-987
MOTION INFORMATION FORM AND COVER SHEET

JUN 27 2017
CANCELLED

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Steven L. Smith - 5173 Smith | Closser, PA P.O. Box 40578 Charleston, SC 29423 telephone: 843-760-0220 fax: 843-552-2678 e-mail: ssmith@scnlaw.com	Molly M. Morphew – pro se 1605 Central Avenue, Ste 6/347 Summerville, SC 29483 telephone: 843-514-7299 fax: e-mail: morphew926@gmail.com

(x) MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
( ) FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
( ) PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: to Dismiss Complaint Pursuant to Rule 12(b)(6) SCRCP
Estimated Time Needed: 30 minutes Court Reporter Needed: YES /

SECTION II: Motion Type

(x) Written motion attached
( ) Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant — Date submitted: 6-26-17

SECTION III: Motion Fee

(x) PAID - AMOUNT: $25.00
( ) EXEMPT: (check reason)
( ) Rule to Show Cause in Child or Spousal Support
( ) Domestic Abuse or Abuse and Neglect
( ) Indigent Status ( ) State Agency v. Indigent Party
( ) Sexually Violent Predator Act ( ) Post-Conviction Relief
( ) Motion for Stay in Bankruptcy
( ) Motion for Publication ( ) Motion for Execution (Rule 69, SCRCP)
( ) Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
( ) Other:

JUDGE'S SECTION

( ) Motion Fee to be paid upon filing of the attached order.
( ) Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____ _____ (print name)
( ) MOTION FEE COLLECTION: _____
( ) CONTESTED - AMOUNT DUE: _____

288

CERTIFIED COPY
2017 JUN 27 AM 10:53
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) CASE NO. 2017-CP-18-987

RECD
2017 JUL -6 PM 3:54
CHERYL STRAHAN
CLERK OF COURT
DORCHESTER COUNTY

Molly M. Morphew,

Plaintiff,

vs.

Stephen Dudek and Doreen Cross,

Defendants,

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO RULE 12(B)(8) SCRCP

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the Defendants, will move before the Presiding Judge for the First Judicial Circuit within ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as Counsel may be heard, for an Order dismissing the above entitled action pursuant to Rule 12(b)(8) South Carolina Rules of Civil Procedure.

This Motion is based on the fact that an action has been adjudicated between the same parties for the same claim in which the Plaintiff recently filed an appeal. See Stephen Dudek, Doreen Cross v. Thomas M. Ferro and Lorraine B. Ferro and Molly M. Morphew v. Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro, Case No. 2013-CP-074 consolidated with Case No. 2013-CP-18-183.

SMITH | CLOSSER, PA

June 26, 2017

Steven L. Smith
SC Bar No. 5173, ssmith@scnlaw.com
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
843-760-0220; 843-552-2678 (fax)
Attorneys for the Defendants

17-167

FILED - RECORD
2017 JUL -6 PM 3:34
SHERYL GAINEY
CLERK OF COURT
DORCHESTER COUNTY

CERTIFIED COPY
2017 JUN 27 AM 10:54
Cheryl Gainey
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	CASE NO. 2017-CP-18-987
Molly M. Morphew,)	
Plaintiff,)	
vs.)	CERTIFICATE OF SERVICE
Stephen Dudek and Doreen Cross,)	
Defendants,)	

I certify that on this date a copy of the foregoing Notice of Motion and Motion to Dismiss Complaint Pursuant to Rule 12(b)(8) was served by mailing or hand delivery and/or electronic mail on the following:

Molly M. Morphew
1605 Central Avenue, Ste 6/347
Summerville, SC 29483

Peggy M. Rochay

Peggy M. Rochay

June 26, 2017
17-167

291

$250.00 MB ✓

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

CERTIFIED COPY
2017 JUN 27 AM 10:53
JUN 30 2017
CLERK OF COURT
DORCHESTER COUNTY

Molly M. Morphew,)
( ) Plaintiff)
v,)
)
Stephen Dudek and Doreen Cross,)
(x) Defendant)
check box above indicating submitting party)

Case No. 2017-CP-18-987
MOTION INFORMATION FORM AND COVER SHEET

2017 JUL -6 PM 3:54
FILED - RECORDED
CLERK OF COURT
DORCHESTER COUNTY

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Steven L. Smith - 5173 Smith | Closser, PA P.O. Box 40578 Charleston, SC 29423 telephone: 843-760-0220 fax: 843-552-2678 e-mail: ssmith@scnlaw.com	Molly M. Morphew – pro se 1605 Central Avenue, Ste 6/347 Summerville, SC 29483 telephone: 843-514-7299 fax: e-mail: morphew926@gmail.com

(x) MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
( ) FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
( ) PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: to Dismiss Complaint Pursuant to Rule 12(b)(8) SCRCP
Estimated Time Needed: 30 minutes Court Reporter Needed: YES /

SECTION II: Motion Type

(x) Written motion attached
( ) Form Motion –
I hereby move for relief or action by the ~~court~~ as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant — Date submitted: 6-26-17

SECTION III: Motion Fee

(x) PAID - AMOUNT: $25.00
( ) EXEMPT: (check reason)
( ) Rule to Show Cause in Child or Spousal Support
( ) Domestic Abuse or Abuse and Neglect
( ) Indigent Status ( ) State Agency v. Indigent Party
( ) Sexually Violent Predator Act ( ) Post-Conviction Relief
( ) Motion for Stay in Bankruptcy
( ) Motion for Publication ( ) Motion for Execution (Rule 69, SCRCP)
( ) Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
( ) Other:

JUDGE'S SECTION

( ) Motion Fee to be paid upon filing of the attached order.
( ) Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____ _____(print name)
( ) MOTION FEE COLLECTION: _____
( ) CONTESTED - AMOUNT DUE: _____

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DEC 05 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

Molly M. Morphew — Appellant

v.

Stephen Dudek, and Doreen Cross,
Thomas Ferro, Lorraine Ferro

Respondents

APPELLANT'S INITIAL BRIEF

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843) 514-7299

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STATEMENT OF ISSUES ON APPEAL

In this breach of contract action, Appellant Morphew appeals the master-in equity's decision to finalize or close this case granting Specific Performance (by demanding a closing to take place and Morphew to vacate on or before closing), [and especially] without considering newly discovered evidence of alleged fraud/fraud on the courts, or with knowledge of a pending fraud on [his] court case. Additionally, Morphew appeals the Contempt/Ejectment/Attorney Fees and Costs Order based on same and/or lack of jurisdiction and/or being void.

When presented with allegations of fraud on the court, the court has a duty to consider the matter in order to prevent an injustice or corruption of the judicial process, but in this instance failed to do so. First, the power to set aside a judgment exists in every court. (*WRIGHT ET AL.*, supra note 151). Second, in whichever court the fraud was committed, that court should consider the matter. (Id.) (Citing *Universal Oil Prods. Co. v. Root Refining Co.*, 328 U.S. 575

(1946) (other citations omitted). Third, while parties have the right to file a motion requesting the court to set aside a judgment procured by fraud, the court may also proceed on its own motion.(Id.) Indeed, one court stated that the facts that had come to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist."(*Root Refining Co. v. Universal Oil Prods. Co.*, 169 F.2d 514, 521–23 (3d Cir. 1948) (emphasis added). Fourth, 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 *WRIGHT ET AL.*, supra 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).

QUESTIONS ON APPEAL

1. Did the Judge abuse its discretion and/or abuse the process by demanding a closing and/or scheduling closing terms, and especially without first considering fraud on [his] court?
2. Did the Judge abuse its discretion, err and/or abuse the process by ignoring, or deeming "moot" or 'irrelevant', evidence and testimony that the prevailing party may have unlawfully procured a judgment for Specific Performance by fraud?
3. Did the Judge abuse its discretion or err in not allowing or demanding Defendants Dudek and Cross to provide Plaintiff Morphew documented proof of compliance and/or ability to perform per their Specific Performance complaint, and especially with knowledge Morphew has a pending complaint against Dudek/Cross for allegedly procuring their Specific Performance judgment by fraud and fraud on [his] court?

4. Did the Judge abuse its discretion and/or process or err in demanding the [then tenant] Morphew to vacate the property at issue, and be held in Contempt, especially without first considering Dudek/Cross' alleged fraud on [his] court?
5. Did the Judge abuse its discretion or process or err in ordering, sua sponte, Rule to Show Cause (Contempt), and/or issuing an Order for Contempt?

STATEMENTS OF THE CASE

On November 6, 2014, an Order was issued for Specific Performance in favor of Plaintiffs Stephen Dudek and Doreen Cross ("Dudek/Cross" or "Respondents"). Both Defendants/sellers Ferro and Plaintiff Morphew filed an appeal. On February 17, 2017, the Appellate court affirmed the lower court ruling and remitted back to the lower court. On March 27, 2014 a hearing was held for the Dudek/Cross Motion for Closing/Attorney Fees. At said hearing, the court gave leave for the opposing litigants to file an Answer to the Dudek/Cross Motion, but filed its Order before receiving the Answer. Order was filed April 3 and Answer was filed April 6, 2017, so the judge scheduled a second hearing and sua sponte deemed the Answer to be a Rule 59(e) Motion. On May 12, said second hearing took place, fees were established and an Order was filed May 17, on which Morphew has appealed.

On May 30, Morphew received notice from Dudek/Cross attorney that a closing was scheduled for June 2, 2017. On June 1, Morphew received notice from the sellers that a closing was scheduled and if the closing took place the buyers will be in touch with me regarding the rent. On June4th, Morphew contacts sellers to ask for closing status. On June 5th, Morphew receives Dudek/Cross Motion for Contempt/Ejectment/Attorney Fees and costs. On June 7th, Morphew receives email from court a Rule to Show Cause hearing is scheduled for tomorrow. Morphew files answer and attends hearing, at which the Judge dissolves the Rule to Show Cause

due to the Motion being defective, specifically, did not contain the required Affidavit, and hearing was continued for the following week to hear the additional items on the Motion.

On June 12, the Ejectment hearing turned into a Contempt Hearing as the judge, sua sponte, Ordered a Rule to Show Cause for Contempt, and to heard immediately. Even though Morphew had presented documentation in her defense, the judge found Morphew in contempt, and ordered her Ejectment within 3 days or she would be arrested. He also awarded attorney fees and costs and ordered those paid within 3 days too or else Morphew would be arrested. Order issued June 14, 207.

Since then, Morphew has appealed the Contempt/Ejectment/Attorney Fees and costs.

ARGUMENTS

1) ***Did the Judge abuse its discretion and/or abuse the process by demanding a closing and/or scheduling closing terms, and especially without first considering fraud on [his] court?***

In March, 2017, the Dudek/Cross Motion for Closing/Closing Schedule/Fees was heard. During this hearing, Cross verbally made the court aware of Appellant Morphew's separate action alleging fraud and/or fraud on the court against them.

Plaintiff confirmed this statement, stating her separate action in the civil court for fraud/fraud on the court addresses the unlawful acts or non-actions of Dudek and Cross, their attorney, sales agent, and loan officer, and their alleged fraud on his court during the litigation of the 2 complaints for Specific Performance. Morphew stated Dudek and Cross failed to comply with the requirements of Specific Performance as they were never "ready, able and willing to perform" under their contract, making them legally required to sign the termination request so Morphew could close, but instead 'frauded' the court in order to mislead the court into making

an unlawful ruling in their favor. Instead of considering the matter of fraud before finalizing the Order for closing, the judge chose to ignore the possibility of fraud on his court, and declared the alleged fraudulent facts to be irrelevant to his hearing.

Morphew claims the master-in-equity had a duty to consider the fraud[1] before demanding a closing on said property or attempting to 'close' this case. Because of this standard, Morphew appeals that the Closing Order of May 17, 2017, the Contempt/Ejectment/Attorney Fees and Costs Order of June 14, 2017, and the Order for Specific Performance of November 6, 2014, be reversed or set aside due to the judgment(s) being allegedly obtained by fraud on the court. (Closing Order of May 17, 2017) (Contempt/Ejectment/Attorney Fees and Costs Order of June 14, 2017) (Order for Specific Performance of November 6, 2014)

2) ***Did the Judge abuse its discretion, err and/or abuse the process by ignoring, or deeming "moot" or 'irrelevant', evidence and testimony that the prevailing party may have unlawfully procured a judgment for Specific Performance by fraud?***

After the trial, but even before his decision, Defendants/Sellers Ferro filed a petition with the lower court presenting newly discovered evidence proving Respondents Dudek and Cross had filed a frivolous complaint for Specific Performance, while never meeting the strict and unique principles it's governed by; specifically, were denied mortgage credit because they ultimately applied for financing with an expired sales contract and never completed their mortgage application. Their petition clearly pointed out:

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[1] First, the power to set aside a judgment exists in every court. (WRIGHT ET AL., supra note 151). Second, in whichever court the fraud was committed, that court should consider the matter. (Id.) (citing Universal Oil Prods. Co. v. Root Refining Co., 328 U.S. 575 (1946) (other citations omitted). Third, while parties have the right to file a motion requesting the court to set aside a judgment procured by fraud, the court may also proceed on its own motion.(Id.) Indeed, one court stated that the facts that had come to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist."(Root Refining Co. v. Universal Oil Prods. Co., 169 F.2d 514, 521–23 (3d Cir. 1948) (emphasis added). Fourth, 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 WRIGHT ET AL., supra 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).

a. *The Defendants applied for financing AFTER their contract had already expired, therefore,*

b. *at all times material, did not have a valid, enforceable sales contract, and,*

c. *were denied lending [due to an incomplete application for not providing a valid and enforceable sales contract],*

d. *which led to their lending file being closed, therefore*

e. *proving Defendants were, at their own hand, at fault for their inexcusable failure to obtain financing (serious breach of contract) and*

f. *were ultimately responsible for their inexcusable failure to close escrow (serious breach of contract).*

The Ferros petitioned the court to consider this new evidence before making his ruling (Ferro Petition dated September 9, 2014), and eventually, the evidence discovered led to a separate action for fraud/fraud on the court against Dudek/Cross, their agent, lending officer and attorney, claiming a frivolous lawsuit was filed, forgery committed, false statements and/or misrepresentations of material facts in filings, answers, at depositions, discovery, at trial, on appeal and at hearings, and conspiracy to commit fraud. Supporting documentation discovered includes but not limited to, expired and/or an illegible sales contract, incomplete application, mortgage credit denied, and failure to respond to adverse 10-day notice, all transpiring before Dudek/Cross filed their claim for Specific Performance.

The court was applied to, several more times, to review the unlawful actions of Dudek/Cross or to compel proof they lawfully met their Specific Performance requirements.

On June 14, 2016, and after several "unanswered" requests, Defendants Ferro filed a Motion to Compel Response from Respondents Dudek/Cross for proof of lending (Ferro Motion

to Compel June 16, 2016). In this Motion, said contentions to Defendants Dudek and Cross' ability to previously close or currently close were raised. Motion was refused. On August 9, 2016, the lower court removed Motion to Compel from roster stating the "*court does not have jurisdiction*" [to compel proof of ability to close escrow]. (Order on Ferro Motion to Compel August 9, 2016)

On the March 27, 2017, hearing for Dudek/Cross' Motion for Closing, in defense of the court's inquiry as to their status to closing, Cross stated they weren't ready as Morphew's fraud complaint filed last year against them [and First Federal] has prevented them from securing financing on their 2012 sales contract. Adding their lender "refused to accept their application for financing on their October 24th, 2012 sales contract" until the court filed an Order for closing. Morphew raised the issue of fraud on its court, and that the Defendants were never ready, able and willing to close escrow, and were denied mortgage credit. The court declared that information as no bearing on this case.

On April 6, 2017, with leave of the court, Morphew and sellers submitted an answer to Defendants Motion for Closing/Fees, again bringing in detail evidence of unlawful behavior, and requested proof of financing per Specific performance complaint. (Ferro/Morphew Answer to Defendants Motion for Closing/Fees April 6, 2017)

On May 12, 2017, a hearing on Ferro/Morphew Answer [converted sua sponte by the court as a Motion 59(e)] was conducted and again Morphew requested proof of financing. Denied. (May 12, 2017 Hearing Transcripts, pg. 98-100)

On June 8, 2017, Morphew filed an Answer to Dudek/Cross Notice and Motion for Rule to Show Cause (Contempt), Ejectment and Attorney's Fees. Within that Answer, Morphew again asked for proof of financing per Specific performance complaint. (Morphew Answer to

Dudek/Cross Notice and Motion for Rule to Show Cause (Contempt), Ejectment and Attorney's Fees , pg. 9-10, para. 9(b), bullet 3; pg. 10, para. 10(b); pg. 10-11, para. 10(d) and (f); pg. 13, para. 13(b)).

Though the court had apparent knowledge of Dudek and Cross' unlawful or fraudulent behavior, was pressed several times by opposing litigants to compel the truth from Dudek/Cross, it appears by ignoring, or deeming "moot" or 'irrelevant' such legally damaging and material facts, the court has abused its discretion and the processes, as it had a duty to consider the fraud before attempting to close the case. Morphew prays this court will set aside, the Closing Order of May 17, 2017, and the Contempt Order of June 14, 2017, and reverse the Order for Specific Performance of November 6, 2014, based on the judgment(s) being allegedly obtained by fraud.

3) ***Did the Judge abuse its discretion or err in not allowing or demanding Defendants Dudek and Cross to provide Plaintiff Morphew documented proof of compliance and/or ability to perform per their Specific Performance complaint, and especially with knowledge Morphew has a pending complaint against Dudek/Cross for allegedly procuring their Specific Performance judgment by fraud and fraud on [his] court?***

Plaintiff contends that no documented proof of the Defendants Dudek and Cross' initial "ready, able and willing" status was EVER required, but instead requests for this proof was over and over again, refused by the Judge (Argument for Questions on Appeal #2 incorporated herein). Moreover, By law, "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2)... and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Campbell v. Carr*, 361 S.C. 258, 262, 603 S.E.2d 625, 628 (Ct.App.2004). The party seeking to compel specific performance "must be able to

perform at the exact time he requested specific performance, not some 'reasonable time' in the future." *Ingram*, 340 S.C. at 106 n. 1, 531 S.E.2d at 291 n. 1.

Even though the judge ruled Morphew's initial request and then her Motion for request for such proof to be reasonable, and was approved by the court (Rule 59(e) Order, para. 13), the judge ultimately denied her request because "he changed his mind". (May 12, 2017 Hearing Transcripts, pg. 98-100)). Plaintiff contends such action is abuse of discretion and should be deemed unlawful--as there appeared to be no legal reason or justification (besides "changing one's mind") to deny her request after previously approving it (twice). Plaintiff suggests if the court had ordered such proof from Dudek and Cross, the court most likely would have concluded the Defendants Dudek/Cross had no legal right to file a complaint for Specific Performance, rendering the judgment(s) were void due to frauding its court, and the Order of November 6, 2012 may have been reversed and/or Morphew would have been granted Specific Performance instead.

Additionally, to the Plaintiff Morphew, and to any reasonable person, this questionable action of the judge gives the appearance of prejudice or partiality, as Morphew's Motion and request was simple, deemed reasonable, seemed no hardship on the Dudek and Cross, did not prejudice the Respondents. Furthermore, providing Morphew with such an easy request would have provided her a clear conscious to expend the vast amount of time, stress and money to vacate her home of 4 years, and, most importantly, would clear up any question(s) at issue, resulting in a conclusion to both complaints (including her complaint alleging fraud and/or fraud on the court).[2]

[2] Because, in order to stifle fraud, South Carolina requires a non-breaching party to prove he or she has performed his or her part, or has been and remains "ready, willing, and able to perform" under the contract. *Lowcountry Open Land Rf. v. Charleston S. Univ.*, 376 S.C. 399, 408, 6956 S.E.2d 7755, 780 (Ct. App. 2008) ("The party seeking to compel specific performance must be able to perform at the exact time he requested specific performance, not

Because of the court and Dudek and Cross' intentional refusal of Morphew's simple request for proof of Dudek/Cross' compliance and/or ability to perform per their specific performance complaint, Morphew claims she has been prejudiced, and undue delay has been caused in these proceedings, and in its Fraud on the Court proceedings.

Plaintiff argues the lower court abused its discretion by intentionally ignoring the governing principles of the remedy for Specific Performance, even when discovered evidence of unfair dealings, fraud or overreaching by Dudek and Cross was presented before its ruling in 2014, and should have reconsidered the matter. Additionally, the court should have allowed and/or demanded documented proof to support there was no fraud or intent to fraud the courts from Dudek/Cross, and in order to satisfy the elements required in order for a party to compel Specific Performance. The remedy of specific performance is equitable in nature and governed by equitable principles. *Strahan v. Haynes*, 33 Ariz. 128, 139, 262 P. 995, 999 (1928). Thus, it is not an appropriate remedy if there is evidence of unfairness, fraud, or overreaching on the part of the non-breaching party. *Shreeve v. Greer*, 65 Ariz. 35, 39, 173 P.2d 641, 644 (1946). Moreover, a non-breaching party does not have the right to specific performance, but must prove several elements and overcome various equitable defenses in order to succeed in such an action. *Canton v. Monaco P'ship*, 156 Ariz. 468, 470, 753 P.2d 158, 160 (Ct. App. 1987).

Morphew prays this court will consider the matter and reverse or set aside, the Closing Order of May 17, 2017, the Contempt Order of June 14, 2017, and the Order for Specific Performance of November 6, 2014.

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some "reasonable time" I the future." (quoting *Ingram v. Kasey's Assoc.*, 340 S.C. 98, 106 n.1, 531 S.E.2d 287, 291 n. 1 (2000))); 61 Am. Jur. 3d Proof of Facts § 325 (2001) ("Ordinarily, a contract for the sale of land containing a clause that 'time is of the essence' must be performed by the date fixed in the contract or the contract is no longer viable."); id. *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 367, 147 S.E.2d 481, 484 (1966) ("[T]here exists in every contract an implied covenant of good faith and fair dealing."); id.

4) ***Did the Judge abuse its discretion and/or process or err in demanding the [then tenant] Morphew to vacate the property at issue, and be held in Contempt, especially without first considering Dudek/Cross' alleged fraud on [his] court?***

Morphew claims the court, by forcing a Closing Order and forcing a Contempt/Ejectment Order on Morphew, and doing so with knowledge it may have been unlawful, appears to be unjust and a violation of its discretion.

Morphew has consistently, openly, and with legal cause, requested documented proof in hand that Dudek/Cross performed their part, or has been and remains "ready, willing, and able to perform" under the contract per Specific Performance.

Moreover, she formally requested and received approval "*to be allowed 45-days, after receiving proof of financing per their Specific Performance complaint in hand, to vacate her home. And if closing took place within that 45-day timeframe and she was still in the house, she would pay a daily rate per the current lease agreement with the sellers until vacating.*" Morphew openly stated her justification for such a request is that , 1) she had a pending fraud/fraud on the court complaint against Dudek/Cross, which in itself indicates Morphew had no faith in their words nor their actions, 2) they failed to close previously, 3) they lied to all parties involved –including the court(s) -- about their ability to close, and many other material facts, and 4) have held up the sale of the house for 4 years. In light of these facts, before expending the excessive time and cost to vacate the property in which she had a valid and legal sales contract to purchase if Dudek and Cross failed to close, Morphew simply asked for proof of financing per Specific Performance and a reasonable amount of time to seek alternate residence and vacate the premises.

All parties had agreed to her request, but 6 weeks later, sua sponte, and for the reason-- the judge "changed his mind"— the judge dissolved the agreement and demanded she '*vacate on or before closing'*. Appellant contends that this action and demand is unlawful and unfair, and what was not agreed to by the parties in the hearing. And such an 'ambiguous' demand places Morphew in an impossible position, as it is without boundaries. As an example, if notice is given at 8 am that a closing will take place at 9am that same day, then per the court Order, Morphew would be legally required to vacate in 1 hour-- or could be held in contempt of court.

This is not only unfair and unjust, but it contradicts another legal document already in place, the Morphew lease agreement with the Ferros. It states 30-day notice to terminate is required. Morphew, as a tenant, never received notice to terminate her lease.

When Dudek/Cross purchased the property, Morphew's lease transferred[3], and they became the landlords. Morphew was not served a termination notice, therefore Ejectment proceedings were improper. Pursuant to SC Code § 27-40-770 (b), South Carolina has a minimum 30-day notice on a month-to-month lease agreement. ("Periodic tenancy; holdover remedies: (b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days before the termination date specified in the notice.")

As there was no termination of her lease, there was no expiration of the term of the rental agreement or its termination, therefore Dudek/Cross unlawfully or improperly brought an action for possession against Morphew. SC Code § 27-40-770 (c) "If the tenant remains in possession

[3] Ordinarily, if your landlord sells the rental property where you live, your lease doesn't end (or "terminate"). Rather, the buyer of the property becomes your new landlord and must comply with both the length and terms of the existing lease. Likewise, you remain bound by the lease and must perform all your obligations and duties under it, such as paying rent, keeping the premises clean, and not destroying or damaging the property. Month-to-month lease. If your lease is month-to-month, the new owner can terminate your tenancy by giving you the required amount of notice, typically 30 days under state law, though it could be less. (For example, Colorado law requires only seven days' notice to terminate a month-to-month lease.) (https://www.lawyers.com/legal-info/real-estate/landlord-tenant-law/lessees-rights-on-foreclosure-and-on-sale.html)

without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. ").

The court lacked both subject matter jurisdiction and personal jurisdiction of Morphew, therefore the entire judgment is void and should be vacated. Morphew respectfully request this court to render the Order of Contempt/Ejectment/Fees void, and to be dissolved.

Even if the Ejectment was proper, Morphew argues she did not willfully or with bad faith, remain in possession of the property, therefore fees should not have been awarded. ("If the holdover is not in good faith, the landlord may recover reasonable attorney's fees. If the tenant's holdover is a willful violation of the provisions of this chapter or the rental agreement, the landlord may also recover an amount not more than three months periodic rent or twice the actual damages sustained by him, whichever is greater and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, SC Code § 27-40-310(d) applies). Morphew clearly brought forth evidence and testified that she was under the impression that a closing was tentative, as Dudek and Cross were hesitant to purchase the property with a tenant in place, and that they were aware they would be inheriting Morphew as a tenant if they closed. Further, Morphew was given the impression that Dudek/Cross were transferring the lease agreement, and she was not required to vacate on or before closing, as an e-mail was received from the sellers on June 1st (one day before scheduled closing), stating "*that the Weeks Law Firm has a closing scheduled for tomorrow at 2pm. Should it not go through I will contact you right away. Rick will be in touch with you for a walk-thru. If the closing finalizes tomorrow, the buyers or their attorney will contact you as to their information regarding the rent.*" (June 1, 2017 e-mail Lorraine Ferro)

Even if the court had no duty to reconsider the matter of his Order, and vacating was lawful, Dudek/Cross failed to serve a Rule to Show Cause for Ejectment, which is required under South Carolina law ("Any tenant may be ejected in the following manner, to wit: Upon application by the landlord or his agent or attorney any magistrate having jurisdiction shall issue a written rule requiring the tenant forthwith to vacate the premises occupied by him or to show cause why he should not be ejected before the magistrate within ten days after service of a copy of such rule upon the tenant.") SC Code § 27-37-20; therefore the [Ejectment] Order is invalid, as the court did not have subject matter[4] or personal jurisdiction[5] over the tenant. Also note, a Rule to Show Cause for Contempt was never served on Morphew, therefore this court should also find the [Contempt] Order and Fees/Costs to be void.

Morphew argues due to the ambiguity of the Order, the direction of her landlord/other litigant to the case, no notice of termination of tenancy, lack of subject matter jurisdiction and/or personal jurisdiction, and/or the pending fraud on the court case against Dudek/Cross, Morphew prays for relief from the Closing Order of May 17, 2017, and the Contempt Order of June 14, 2017.

5) ***Did the Judge abuse its discretion or process or err in ordering, sua sponte, Rule to Show Cause (Contempt), and/or issuing an Order for Contempt?***

As stated above, the court lacked personal jurisdiction over the Defendant Morphew, for failure to be properly served a Rule to Show Cause (Contempt), therefore the Order for Contempt/Eviction/Attorney Fees and Costs should be rendered void and dissolved. "A

[4] See Simmons v. Simmons, 370 S.C. 109, 116, 634 S.E.2d 1, 4 (Ct.App.2006) ("It is axiomatic that an order entered by a court without subject matter jurisdiction is utterly void.").

[5] The court lacked personal jurisdiction over Morphew, for failure to be served or properly served an Order to Show Cause for Ejectment, therefore the Order for Contempt/Ejection/Attorney Fees and costs is void. A judgment is void if a court acts without personal jurisdiction." BB & T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). "A court generally obtains personal jurisdiction by the service of a summons." Morphew was never properly served the Rule to Show Cause, therefore the courts acted without personal jurisdiction and all orders in this matter are void.

judgment is void if a court acts without personal jurisdiction." *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). "A court generally obtains personal jurisdiction by the service of a summons."(Id). Morphew was not served or never properly served the Rule to Show Cause, therefore the court acted without jurisdiction over Morphew.

Though an Affidavit of Service was provided her during the hearing for Ejectment, which sua sponte turned into a hearing for Contempt, she contests she was not properly served, nor did she waive her right to object to service by attending the hearing, as she 'objected' in her Answer and during the hearing **(Morphew's Contempt Answer) (June 14, 2017, Contempt Hearing Transcript)**

First, the Affidavit of Service for the Rule to Show Cause (Contempt) is defective for the following reasons, and should be rendered void: (AFFIDAVIT of Service (Rule to Show Cause (Contempt))

1) The Affidavit did not include the Rule. The service date of said Affidavit was June 6, but the Rule was signed and issued on June 7, therefore a signed Rule was not available until the following day, making service of the Rule on June 6th impossible.
2) The Affidavit says that it was served on a female, approx. 60 years of age, grey hair, approx. height of 5'9'' and weighing approx. 160 lbs. Morphew meets none of those description(s), except 'female'.
3) Morphew was not in residence at that time. The Affidavit says it was served on Morphew at 8:45pm on June 6th, 2017. Morphew was working out of state, and was still at work until approx. 8:15pm. It would have been impossible for her to be home at that time.

Even if the Appellant was properly served, the Motion and Motion for Rule to Show Cause (Contempt), Ejectment, and Attorney Fees contained a fatal defect as it did not include the required affidavit or verified petition specifically required to support the rule to show cause, nor did the Motion claim with specificity the allegations, and was therefore incomplete or improper. As a result, the court dissolved the Rule to Show Cause at start of the hearing and issued an Order for such on June 7, 2017, as improvidently granted, and specifically stated in the Order, "*Upon presentation of an affidavit establishing grounds for the Court's issuance of a Rule to Show Cause, this court will reconsider the issuance of a Rule to Show Cause, and set a time for hearing the same accordingly.*" To this date, no Affidavit has been presented. The hearing was continued for the following week to hear the final items on the motion (Ejectment/Fees/Costs).

The following Monday, Morphew attended what she thought was a continued hearing on Ejectment/Fees/Costs, but before she knew it, the Judge issued an immediate Order to Show Cause, sua sponte, and without justification or Affidavit supporting why an "emergency hearing" that moment was required, the court immediately directed the Movants attorney to call his witnesses and started proceedings. Before Appellant knew what was going on she was called to the stand and aggressively questioned by the judge. Surprisingly, the more she defended herself against Ejectment and Contempt, the angrier the judge became. He called her a liar, even when she told him she had material documentation to prove that she did not willfully or knowingly fail to obey a court Order. When questioned where her proof was, she stated it was in his hand [contained in her Answer she had provided last week], which indicates the judge had not taken the time to read her Answer to such serious charges before accusing her of bad character and charging her thousands of dollars as punishment. As Morphew tried to object that she was not given proper notice, nor given time to obtain witnesses in her defense to his charges

(due process was violated[6]), or as she tried to prove she was not those awful things he was accusing her of (liar, obstructionist), the judge continued to raise his voice, and stated "I am in charge of this court, not you".

Appellant admits she was afraid to anything else as he eventually threatened her, saying she is a liar and obstructionist, he finds her in Contempt, and if she does not vacate the property within 3 days, she will be arrested and detained for 30 days and her child could be retained in state custody. Morphew refused to object or defend herself any further as she was afraid she would be arrested on the spot, which would guarantee the loss of her job and possibly her child detained. The bailiff had even stood up and started to come forward as the judge got angrier, giving the impression Ms. Morphew was some sort of criminal. The judge further threatened her by saying she will pay the costs Attorney Smith had presented [during the hearing] (over $6K) by Friday 9am, or she will be arrested for failure to pay. When she exclaimed that she does not have that kind of money on hand, the judge suggested if she could afford the house and down payment she could afford to pay the damages, and she'll just have to find it. Court was adjourned.

Appellant asserts she is actually frightened of Judge Chellis, and no longer feels comfortable in his presence. Though she understands his frustration in the proceedings, feels this was clearly a personal attack on her person, abuse of discretion and/or process, prejudice and loss of control. Morphew stresses the way she was treated in Court was unfair, unjust, unreasonable, without justification, embarrassing, and meant to shame her into feeling she was

[6] Due process was violated as there was no adequate notice, leading to an inadequate opportunity for a hearing, and her right to obtain witnesses or testimony in her defense was violated. Due process is a flexible concept which "calls for such procedural protections as the particular situation demands." Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 341 (1991). At a minimum, certain elements must be met in order for procedural due process requirements to be satisfied, including adequate notice, adequate opportunity for a hearing, the right to introduce evidence, and the right to confront and cross-examine witnesses. Huellmantel v. Greenville Hosp. System, 303 S.C. 549, 402 S.E. d. 489 (Ct. App. 1991).

the criminal, not the innocent party, and feels he is no longer impartial and unable to provide Morphew with fair proceedings.

The severe mental distress during and after this hearing, and excessive costs, time and effort to secure alternate living arrangements, pack and move – all in 3 days-- was almost unbearable and undue. On top of all that, Morphew was forced to miss a week's pay which is very critical to supporting her family. Morphew prays for relief from the Closing Order of May 17, 2017, and the Contempt Order of June 14, 2017, and also to be reimbursed for all costs to defend herself in these improper or unlawful actions, including but not limited to, loss of work, travel, cost of Ejectment, and any other damages this court may find acceptable.

CONCLUSION

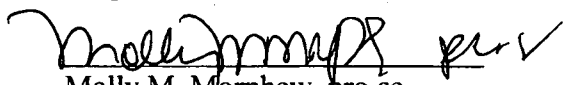
Plaintiff contends the court abused its discretion and/or processes as it had a duty, in fairness to all the parties and to protect the judicial system, to demand further consideration of the matters in this case due to the alleged fraud, but [as it had intentionally chose to ignore the material documentation of supporting the legal failures of Dudek/Cross' complaint and trial testimony], it again intentionally chose to turn a blind eye to the possibility of fraud on its own court, which may have prejudiced Morphew and caused or currently causing the courts, and all parties involved, additional stress, time, money and resources. Therefore, the Appellant is asking the Order of November 6, 2014 should be rendered void and reversed, or as an alternate, void and vacated with this case remanded back for re-trial.

As to the June 14, 2017 Order for Contempt/Ejectment/Attorney Fees and cost, and the May 17, 2017 Order for Closing, the court did not have subject matter or personal jurisdiction on the Matters concerning Morphew, therefore Morphew is asking this court to void and vacate said Order(s), or in part, along with vacating any fees or damages awarded to Dudek/Cross. If any

part of the Orders remain, Morphew is asking those parts be reconsidered based on the fraud presented, and overturned.

In addition, Morphew is asking this court to award costs to defend herself in these improper or unlawful actions, including but not limited to, loss of work, travel, cost of Ejectment, and any other damages this court may find acceptable.

Respectfully submitted,



Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843) 514-7299

December 4, 2017

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

Molly M. Morphew — Appellant

v.

Stephen Dudek, and Doreen Cross, Thomas Ferro, Lorraine Ferro — 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 counsel below with an Appellants Initial Brief and Designation of Matter to be included in Record on Appeal by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents

Molly M. Morphew, pro se

December 5, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Master of Equity

Appellate Case No. 2014-002633

Molly M. Morphew, Thomas M. Ferro and Lorraine B. Ferro..... Appellants

v.

Stephen Dudek and Doreen Cross..... Respondents

APPELLANTS' FINAL BRIEF

Molly M. Morphew, *pro se*
788 E Butternut Rd.
Summerville, SC 29483
(843) 514-7299

Thomas & Lorraine Ferro, *pro se*
5501 Carson St.
Denver, CO 80239

Other Parties of Record:
David Athell Collins
P.O. Box 40578
Charleston, SC 29405
(843) 760-0220

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In this breach of contract action, Appellant Morphew and Appellants Ferro appeal the master-in-equity's decision to grant specific performance to Respondents Stephen Dudek and Doreen Cross, and his decision to award damages to same.

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STATEMENT OF ISSUES ON APPEAL

1. Did the master in equity err in his ruling that the Respondents Contract is enforceable?
2. Did the master in equity err in concluding that the failure of Respondents to meet their conditions of their contract in a timely manner incapable of being defended?
3. Did the master in equity err by basing his ruling on findings of fact that were not supported by the testimony in the record?
4. Did the master in equity err by supporting his decisions upon false, inconsistent, unreliable and obfuscated testimonies, therefore showing bias in favor of the Respondents?
5. Did the master in equity err in his assertion that Appellant Morphew alternatively sought damages against Appellants Ferro on breach of the Morphew Contract, therefore Appellants Ferro champion the Morphew Contract?

STATEMENT OF THE CASE

On October 20, 2012, Respondents (Buyers, Stephen Dudek and Doreen Cross) signed the said Contract. Ms. Nicholson, agent for Respondents, negotiates with Appellants (Sellers, Thomas and Lorraine Ferro)/their agent, Rick Willis.

On October 22, 2012, Allison Williams (FF lending officer) generates and provides pre-approval letter for Respondents (R. pg. 191, lines 5-9 pg. 228)[1]

On October 24, Ms. Williams told Respondent Cross that the dividing of the land "may" be a problem for the appraiser. Ms. Williams sent an e-mail to [someone she could not specify (R. pg. 167 lines 6-10) to inquire if the land division will be a problem for the appraiser.[2] Ms. Nicholson met with Appellants Ferro (sellers) to ratify contract. Contract ratified. Nicholson told Appellants Ferro that the recording of the survey was required in order for Respondents to pursue their financing. Tommy Ferro immediately went to the surveyor's office and set an appointment for survey. Respondents, Ms. Nicholson, Rick Willis (agent for Ferro) and Appellants Ferro met on said property to flag property lines for surveyor.

On October 25, land survey performed by Ben Coker from Ashley Surveying.

On October 31, Respondents' Home Inspection performed.

On November 4, Appellants Ferro receive Respondents' "critical" repair list. The next day, Appellants Ferro answer what they will agree to in a short paragraph via e-mail.

On November 7, Ms. Nicholson receives the original critical list that has been marked as to what Appellants Ferro will and won't do. Ms. Nicholson forwards list to Respondents. The next

[1] "T." will represent "transcript", "pg." will represent "page number" and "l." will represent "line(s)" herein.
[2] Ms. Williams' testimony concludes the land division issue is her opinion only; she never followed up on the answer; therefore the information that the appraisal cannot be ordered or performed until the survey is recorded is just speculation. Ms. Williams did testify that this concern was more hers because she didn't want to have to correct the appraisal if anything changed after the survey got recorded (R. pg. 161, lines 13 -21 and pg. 214 lines 10-19)

day Ms. Nicholson asks for more clarification in regards to what Appellants Ferro agree on in regards to the repair list.

On November 10, Ferro again replies to clarification request from Respondents and sends back Respondents' original repair list request with his hand marked entries to as what he agrees to and what he doesn't agree to. Ferro schedules appointment for Structural Engineer inspection. The very next day, Appellants Ferro respond to another clarification request from Respondents in regards to the repair list. This line by line list corresponds to the sections and numbers from the original repair list request but with only items that the Appellants Ferro are agreeing to perform.

On November 12, Plumber inspection and repairs completed.

On November 14, Structural inspection performed. Structural engineer states to all present [Respondents, Ms. Nicholson, Tim Arnold (Respondents' contractor), and Appellants Ferro that he feels comfortable with the structural integrity of the home (as repeated below).

On November 20, Ben Coker from Ashley Surveying sends completed and recorded plat to Appellants Ferro. The next evening, Appellants Ferro forward to Willis.

On November 22, Willis sends recorded plat to Ms. Nicholson and asks for confirmation. No reply from Ms. Nicholson.

On November 23, Willis asks Ms. Nicholson if "*everything was on track to close next week*" and if she "*received the plat*" yesterday. No reply from Ms. Nicholson. Respondents receives recorded plat from Ms. Nicholson.

On November 26, Willis again asks Ms. Nicholson if "*the closing time has been set for the property*" and "*if they could please know where it is being held*". Ms. Nicholson responds that she's "*talking to the mortgage company now but they hadn't done the appraisal yet... Bank has not given a timeline for closing.*"[3] Willis forwards the 11-22-12 e-mail again to Ms. Nicholson

[3] Respondents have not applied for loan yet; appraisal would not be ordered; lender cannot give a closing date if application is not even made. Ms. Nicholson is providing misleading information to Willis/Appellants Ferro.

stating that the plat Ms. Nicholson received last Thursday IS the correct and recorded plat, and to please confirm she has received.

On November 27, Appellants Ferro asks what they should be expecting as a closing date. Ms. Nicholson responds that the bank does not know when they will be ready for closing.[4] Respondents contact closing attorney. Closing attorney (Woody Law Firm) sends out engagement letter, via U.S.P.S., to the Appellants Ferro asking them to fill out the required information (Social Security numbers, phone numbers and e-mail addresses) and return to them (R. pg. 258[5]). Respondents sends Appellants Ferro another revised request for repairs list.

On November 27, Respondent Cross contacts Ms. Williams (First Financial loan officer) and states she is still waiting for the structural and moisture reports so "*we can firm everything up*" and that her realtor [Nicholson] is "*starting to chew her nails ☺*" and that she "*will be in touch soon*". Respondent Cross verifies FF has the correct recorded survey plat (R. pg. 276[6]). Woody Law Firm sends introduction e-mail to FF stating they were contacted to handle Mr. Dudek's purchase, and that title has been ordered and asked for FF's title request.[7]

November 28, CL-100 performed by Palmetto Exterminators. Willis inquires to Ms. Nicholson if she is going to prepare an extension. (R. pg. 342)

November 30, FF updates status of Respondents "May 2012 file" to "Dead File"- over 180 days old.[8]

On November 30, Appellants Ferro receive completed CL-100 from Palmetto Exterminators. Willis takes CL-100 to closing attorney. All repairs agreed by Appellants Ferro are completed. Willis again asks Ms. Nicholson if they "*have any idea on a closing*", and "*if the*

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[4] Id.
[5] "Ex." Will represent "Exhibit" herein.
[6] "sp." will represent "specifically" herein.
[7] R. pg. 277 -E-mail 11-27-12 5:14pm from Carrie Boyer (Woody Law) to Allison Williams.
[8] R. pg. 278- "Memos for Loan", entry 11/30/12 9:27am; R. pg. 157, line 12 thru pg. 158, line 14.

appraisal got back" and to "*let them know when it was done*" (R. pg. 343). Appellants Ferro complete minor repair from termite damage and schedules appointment for treatment to termites and minor damage. **Contract expires**.

December 3, Rick implores to Ms. Nicholson "*get the appraisal done asap or they [Respondents] may lose the deal by default from the time taking so long*!" Ms. Nicholson then contacts Respondent Cross and asks her to start her loan process since the Appellants Ferro have shown they are "*serious about doing what is necessary within reason to close do **YOU** feel comfortable to have the mortgage company do what they need so we can close?"* Respondents agree they have no other concerns about the house and contact FF to apply for financing on Contract. Respondent Cross receives an automated "out of office" [until Dec. 5] message from Ms. William. Ms. Nicholson worriedly replies, "*we really need to get with FF hopefully they will call you back*" (R. pg. 352- e-mails 12-3-12 3 between Willis, Respondents, Ms. Nicholson).

December 3, Palmetto treats termites and minor repair. Ms. Nicholson is present at said property with her contractor to inspect repairs and insists to the "**no fault**" extension clause in paragraph 12 of contract, giving Respondents until the 15th of December to close.

December 5, Ms. Nicholson requests an e-mail from Carrie Boyer (Closing Attorney's paralegal) to state Woody Law Firm needs proof that the damage on the CL-100 report was repaired. Carrie Boyer sends e-mail to Ms. Nicholson stating, "*As requested. We will have to have proof that the damages have been repaired. Thanks.*" (R. pg. 346- e-mail 12-5-12 2:38pm).

On December 5, Respondents apply for loan phone call. Respondents receive loan application, bank disclosures and their "Customer Loan Application Checklist" requirements from Allison Williams at FF[9], via e-mail & attachments.

[9] "FF" will represent First Federal Bank herein.

On December 6, Appellants Ferro fax closing attorney's completed engagement letter back. **Appellants Ferro handwrites on the bottom of the letter, "*Today 12/6/12 Need to close in 7 days or less or no closing. Tom 12/6/12.*" File sent to first reviewing department. FF appraisal department orders appraisal. FF requests another contract due to the Sellers names missing.

On December 7, Respondents' file sent to UW[10].

On December 8, Appellant Morphew looks at house.

On December 10, Respondents sign and mail application and disclosures to FF.

On December 11, UW reviews file [but nothing in it except for a blank prequalification application dated May 7, 2012].

On December 11, Appellant Morphew applies with several lenders for pre-approval.

On December 12, UW requests the signed application and banking disclosures, a legible copy of the sales contract, Addendum A, B, C and the signed Contract Extension from Respondents. Appraisal performed.

On December 15, 15-Day contract extension clause (paragraph 12) expires.

On December 16, Appellants Ferro send Respondents a contract cancellation notice due to not closing on or before the contract date. Appellant Morphew signed a contingent back up contract. Ms. Nicholson sends response back to Willis questioning the cancellation notice.

On December 17, Ms. Nicholson sends another response requesting more repairs plus attaching the December 12th approval letter, containing several buyer contingencies including Respondents IRS Transcripts, a legible contract and all its Addendums, and a Contract Extension. Rick responds and explains in detail why they issued the cancellation notice.

[10] "UW" will represent First Federal Underwriting department.

On December 17, Appraisal reviewed by UW. UW "still to review loan once the contract and all addendums, including a Contract Extension, and Respondent' IRS Transcripts are received." Respondents IRS Transcripts ordered by FF.

On December 18, UW receives application and banking disclosures.

On December 20, UW receives a legible Contract unsigned by the Appellants Ferro. Michael Scarafile (President and General Counsel of Carolina One Real Estate) sends letter to Willis stating Respondents are able and willing to close within 5 day notice [by December 21, 2012], and if Appellants Ferro don't agree to close then a lawsuit will be filed against them, plus a Lis Pendens to "prevent the Appellants Ferro from selling to anyone else". No closing date offered by Mr. Scarafile.

December 20, UW receives the legible copy of the sales contract and all addendums. UW questions an **unsigned** copy of a Repair Addendum that appeared but "*was not in the original submission*" (R. pg. 278- "Memos for Loan", entry 12/20/12 10:43am)

December 24, Attorney Joe Qualey, for Appellants Ferro, reviews contract and sends a letter to Susan Nicholson stating, "*Since the closing did not occur within the required time period (**Time being of the Essence**), this contract is null and void.*"[11]

On December 31, 2012, UW sends a request to Ms. Williams (FF lending officer) to get an update on the Contract Extension needed from Respondents to obtain the loan.

On January 3, **2013**: FF issues a 10-day notice to Respondents, again requesting a signed Contract Extension.

On January 10, Appellants Ferro speaks with Atty. Joe Qualey and informs him he has another buyer and intends to sell to other buyer. Atty. Qualey informs Respondents attorney, David Collins, the Appellants Ferro have another buyer and do not intend to sell to Respondents.

[11] (R. pg. 275)

On January 11, Atty. Collins files a Lis Pendens on property to prevent the sale of said property to Appellants Ferro backup buyer. On January 12, FF is told the loan is a short sale, therefore they don't need a Contract Extension. UW sends out inquiry to Respondents to see if there has been a verbal acceptance of a short sale.[12]

On January 15, 2013: Atty. Collins files another Lis Pendens, and a lawsuit against Appellants Ferro.

On January 16, Respondents file is reviewed for non-compliance and sent back to UW for decline due to expired 10-day notice (no response from Respondents).

On January 18, Respondents loan declined as of 1/18/2013 due to incomplete application and no response to FF's 10- day letter requesting the Contract Extension required at application on December 5, 2012. FF sends e-mail to Ms. Williams stating the file is being declined for not sending a Contract Extension.[13] Ms. Williams informs Sandi Steele (FF) that Respondents are in litigation, an order was placed so the Seller cannot sell to anyone else, and suggests speaking to their (FF) attorneys about how to proceed in case they get drawn into a lawsuit. Allison Williams requested the file be escalated to Linda Hitchcock (FF) for determination of declination or hold until resolution (R. pg. 281).

January 23, File is sent back to UW for 2nd review [as a single female]. Declined for incomplete application (R. pg. 278- Memos for Loan entry 1-23-13 10:40am)

January 25, 2013: Willis requests information from FF regarding Respondents loan status. Kay (Mortgage Processor Team Leader) at FF calls Respondent Cross to ask her if she want her to provide the information to the listing agent [Willis] and if so Kay would need this in writing (R. pg. 278- Memos for Loan entry 1-25-13 1:25pm)

January 29, 2013: UW states no response from Respondent re: Willis request for their financing information (R. pg. 278- entry 1-29-13 8:14am). File is sent back to UW for another review.

January 30, 2013: Respondent Cross responds to FF inquiry re: Willis. Respondent Cross requests FF to e-mail the questions that were being asked by the listing agent. Kay (FF) e-mails

[12] Ms. Williams testifies she doesn't know why/how that came about but "it looks like "that girl" made an assumption and that is not right and that entire paragraph is not right" (R. pg. 183 lines 1-4 and pg. 278 Memos for Loan entry 1-12-2013 12:19pm).

[13] (R. pg. 281)

questions to Respondent Cross. Cross e-mails Kay the name of their attorney and to direct any questions to him[14]. Morphew files lawsuit against Respondents for breach of contract and damages.

January 31, 2013: Refund and decline letter e-mailed to Respondents. File is put in W/R storage drawer[15].

March 4, Atty. Massalon sends subpoena to FF requesting any information, documents, etc. in their possession relating to Respondents regarding purchase of 788 E. Butternut (TMS#128-00-00-090). (R. pg. 283)

March 8, 2013: Atty. Massalon/Atty. Collins mtg. to discuss if Respondents had financing and were not in breach of contract. Atty. Collins provided the Dec 12th pre-approval letter and stated that the reason his clients did not close is because "*the sellers did not provide a Cl-100.*"

March 13, 2013: FF response to the subpoena from Atty. Massalon for information regarding Respondents loan: "*...there are no accounts for this client at our institution. We researched our internal system and Dorchester County Register of Deeds and were unable to locate any loan documents related to the above referenced customers for the specific address and TMS number.*" (R. pg. 282).

March 15, Atty. Massalon mtg. with Atty. Collins. Though FF stated there were no loans approved or even on file for his client, Atty. Collins stated "*his clients had loan approval, but couldn't close because they never got a CL-100.*"

[14] (R. pg. 309- E-mails 1-30-13 8:23am and 9:18am between Respondent Cross and Kay Rode (Mortgage Processing Team Leader)

[15] (R. pg. 278- Memos for Loan entry 1-31-13 11:05am)

March 21, Atty. Massalon has office conference with Atty. Collins re settlement and rediscovery. Dec 12th pre-approval letter presented as "proof" Collins clients had financing per contract. Collins again stated the CL-100 was the issue his clients couldn't close.

May 23, 2013, 9:15am, Atty. Collins cancelled today's 10:00am deposition for his clients. Respondent Dudek would not be able to attend and Respondent Cross" felt uncomfortable performing a deposition without Mr. Dudek". Deposition rescheduled for 6-12-13.

June 12, 2013, 10am: Deposition postponed to 10:23. Respondents arrived late.

On Aug 1, Atty. Massalon sends 2nd subpoena to FF to obtain any documentation, etc. on Respondents; included the loan number.

August 8, 2013, FF again responds there is not such loan, customer or property. Atty. Neville, for Atty. Massalon, calls FF and discusses this anomaly. Was told she "could not/would not" discuss.

November 20, 2013, Consent Order for Reference to the Honorable James E. Chellis, Master of Equity.

June 10, 2014, Atty. Massalon received the pertinent loan file from FF less than 24 hours before trial; file received in response to the Subpoena issued to FF last year (March 4, 2013) (R. pg. 291)

June 11, 2014 (9:30am), First day of trial, Appellant Morphew, Respondents Dudek and Cross, and Appellants Ferro.

June 12, (9:30am), Second, and final, day of trial.

November 7, Judge sends out ruling from trial.

December 5, 2014, Appellant Morphew files and serves appeal. Appellants Ferro serve Notice of Appeal.

December 11, 2014, Appellants Ferro file Notice of Appeal.

STANDARD OF REVIEW

"On appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors at law. Madren v.. Bradford, 378 S.C. 187, 191, 661 S.E.2d 390, 393 (Ct.App.2008) (citing Epworth Children's Home v. Beasley, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005)). "The judge's findings are equivalent to a jury's findings in a law action."

Questions regarding credibility and weight of evidence are exclusively for the trial judge. Sheek v. Crimestoppers Alarm Sys., 297 S.C. 375, 377, 377 S.E.2d 132, 133 (CT.App. 1989). "The appellate court will not disturb the trial court's findings of fact as long as they are reasonably supported by the evidence." Epworth, 365 S.C. at 164, 616 S.E.2d at 714.

A case with legal and equitable issues presents a divided scope of review. *Perry v. Gadsden*, 313 S.C. 296, 437 S.E.2d 174 (CT.App. 1993). When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal. *Corley v. Ott*, 326 S.C. 89, 485 S.E.2d 97 (1997)

"An action for breach of fiduciary duty is an action at law and the trial judge's findings of fact will be upheld unless without evidentiary support." *Id.*; *Future Group, II v. Nationsbank*, 324 S.C. 89, 478 S.E.2d 45 (1996). An action seeking damages for breach of contract is also an action at law and the trial judge's findings of fact will be upheld unless without support.*Brown v. Allstate Ins. Co.*, 337 S.C. 499, 523 S.E.2d 807 (CT.App. 1999).

"Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party." *Town of Winnsboro v. Wiedeman-Singleton, Inc. (Winnsboro I)*, 303 S.C. 52, 56, 398 S.E.2d 500, 502 (CT.App. 1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992) (*Winnsboro II*) (citation omitted).

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action. *Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 211 S.E.2d 876 (1974)." *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

"Conclusions of law, however, are reviewed under a pure de novo standard, according no deference to the conclusions of law made by the lower courts." *Bank/First Citizens Bank v. Citizens & Assocs.*, 82 S.W.3d 259, *262 (2002).*

ARGUMENTS

I. THE MASTER IN EQUITY ERRED IN RULING THE RESPONDENTS CONTRACT IS ENFORCEABLE.

Respondents Contract was ratified on October 24, 2012. Respondents were required to apply for financing by November 3, 2012. Respondents applied for financing on December 5, 2012. Contract expired on November 30, 2012. FF did not have a "live contract" when Respondents made application for said property and would not provide financing to Respondents without the Contract Extension (R. pg. 181, lines 3-6; pg. 182 lines 22-23; pg. 110 lines 2-6; pg. 111 line 24 thru pg. 112 line 6). When a contract expires, it is no longer is enforceable; "*a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable"* 1949 Cap. 192. 25 *of* 53. 7 *of* 56, 2-(2)(j), and "*an agreement not enforceable by law is said to be void*" 1949 Cap. 192. 25 *of* 53. 7 *of* 56, 2-(2)(g). Respondents' Contract is void.

Respondents loan file was re-reviewed for compliance and officially declined by FF due to an incomplete application/lack of a required signed Contract Extension and failure to respond to FF's 10-day notice (R.pg. 295-300- "Notice of Withdrawal/Decline"; R. pg. 301-"10 day letter" requesting the Contract Extension required [as of Dec. 5]; R. pg. 281- e-mail 1-18-13 between Sandi Steele and Allison Williams), which rendered the said Contract void and invalid. FF closed the file as of 1-18-13. (R. pg. 194, lines 2-13). Ms. Williams testified there never was a closing date because **the remaining condition**, a signed Contract Extension, was never received from Respondents (R. pg. 180, line 14 thru pg. 181 line 1-6).

Respondents utter failure and intentional refusal (R. pg.104 line 22 thru pg.105 line 22) to perform their financing condition rendered the said Contract voidable in itself and placed the Respondents in a material breach of contract. Therefore, Appellants Ferro were well within their

rights, as per Contract paragraph, to cancel the Contract; and as provided by the effect of failure to perform at a fixed time, in a contract in which time is essential (**Time is of the Essence**): "*When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.*" 1949 Cap. 192. 25 *of* 53. 7 *of* 56, 55(1).

Appellants argue that the trial court erred in its finding that the Respondents Contract was, and is, enforceable. The contract does not meet the provision of Specific Performance, and the Respondents unlawfully failed to perform their obligations and were not **able** (from the time of application) on December 5th, to perform the closing of escrow without the Contract Extension[16], therefore Specific Performance cannot be ordered on Appellants Ferro. "*In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement has been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract.*" *Ingram v.* , 340 .C. at 106, 531 S.E.2d at 291, *Cambell v. Carr.* 361 S.C. 258, 263-64, 603 S.E.2d 625. 627-28 (CT.App. 2004).

Appellants contend Respondents, (1) unlawfully failed to perform their conditions of said Contract, (2) applied for financing on an expired contract without a Contract Extension, (3) were denied financing due to an incomplete application for not supplying a signed Contract Extension, (4) for not responding to a 10-day notice from FF, and (5) concealed above material

[16] FF issued a requirement for a "signed Contract Extension" at the time of Respondent's request for financing on December 5, 2012. Ms. Williams sent Respondents with a list of needed items in order to close by anticipated closing date of 1/4/2013. (Pl. Ex. 16 sp. Customer Loan Application Checklist 12-5-12)

facts from Appellants, their lawyers, and the trial court. Appellants further contend Respondents are in serious Buyer Material Breach of Contract, and clearly acted unjustly, unfairly and in bad faith without any regard to the consequences or to the well-being of ALL parties past and currently involved (all as repeated therein) "*Specific performance may be refused if the claimant has acted unjustly or unfairly on the basis that the claimant must come to equity with "clean hands.*" Stickney v Keeble [1915] AC 386.

II. THE MASTER IN EQUITY ERRED IN CONCLUDING THAT THE FAILURE OF RESPONDENTS TO MEET THEIR CONDITIONS OF THEIR CONTRACT IN A TIMELY MANNER IS INCAPABLE OF BEING DEFENDED.

Respondents' failure to meet their conditions of their Contract per **Time is of the Essence** IS fully capable of being defended, as stated in each failed Respondent contract condition addressed below. Therefore Respondents failure to meet their conditions per their **Time is of the Essence** Contract is an evident Breach of Contract.

A contingency clause, in the context of real estate, refers to "conditions attached to an offer to purchase property and included in the real estate contract which must be met in order to make the purchase offer binding on the buyer." Meaning, i.e., "if the prospective buyer cannot get a mortgage within a fixed period of time with the specified terms, the buyer can call off the whole deal and get back his deposit." The agreement with the seller is therefore conditional on the buyer being able to obtain a mortgage on the property". The buyer must perform that duty OR discharge the contingency, to avoid liability for breach of contract[17] (The American Bar Association[18]).

1. FINANCING CONTINGENCY

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17 http://www.americanbar.org/content/dam/aba/migrated/publiced/practical/books/family/chapter4.authcheckdam.pdf

18 The American Bar Association, founded August 21, 1878, is a voluntary bar association of lawyers and law students, which is not specific to any jurisdiction in the United States.

There are a total of 5 **Buyer sub-contingencies** [1.1 through 1.5 below] under Paragraph 8 of Respondents contract (R. pg. 229, para. 8)

1.1 Respondents were required per their Residential Sales Contract, to "*apply for lending within 10 consecutive days of contract ratification.*" TIME IS OF THE ESSENCE.

Respondent Cross testified that she was required to apply for her loan within 10 consecutive days of contract ratification (R. pg. 98 l. 23-25 thru pg. 99 l. 1-14). Ms. Nicholson testified she sent notice to Respondent Cross on October 24 that she needed to APPLY for her loan (R. pg. 206 line 12 thru pg. 207 line 9).

Per FF, application was made December 5th, 2012 (R. pg. 302- "Uniform Residential Loan Application" signed by Respondents on December 10, 2012)

Respondent Cross admits the application was made over 40 days from contract ratification (R. pg. 103 lines 12-15) AND it was made after the Contract escrow closing expiration date. Application was not made within 10 days, per contract terms. Buyer Default.

1.2 Respondents were obligated under financing condition, to "*provide to the Sellers [Appellants Ferro] written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions. TIME IS OF THE ESSENCE.*"

Cross testified she was required to provide Appellants Ferro with proof of financing no later than November13, 2012 (R. pg. 99 lines 2-4). Cross also testified she supplied an [satisfactory] approval letter for $295,000 [dated 10-22-12] (R. pg. 228) to Appellants Ferro on October 24, 2012 (R. pgs. 99-100). Appellants argue that if Respondents applied for financing on December 5, 2012, and FF pulled their credit on December 5 (R. pg. 340 and 341- credit reports, pg.

278 -"Memos for Loan" entry 12-12-12 1:27pm), then it is impossible to receive satisfactory loan approval (per contract terms as stated above) 45 days **before** applying for the loan on a contract that is not even signed by the Sellers. Appellants further argue that Respondents lending officer, Allison Williams, did not have a copy of said Contract when issuing such approval letter (R. pg. 158 line 1 thru pg. 159 line 11), had no banking disclosures, and no application (R. pg. 163 line 4-21) on file for said property, so again how can an approval letter, below the contract price, be issued and therefore legally provided to Appellants Ferro on October 24th ?

Per FF, satisfactory loan approval was on December 12, 2014. Sellers received this document via e-mail on December 17 from Ms. Nicholson (R. pg. 259), after Sellers issued a notice of termination on December 16, 2012. Appellants further argue if FF bank did not issue satisfactory loan approval per contract until December 12th, (1) the October 24th letter is not valid; (2) Appellants Ferro receiving such document 54 days after ratification does not meet the 20 day requirement; (3) presenting such notice to the Appellants Ferro is intentional misrepresentation; and by suggesting the Respondents have started their loan process AND are able to secure financing per contract, (3) tribute Buyer breach of contract.

1.3 ***"Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner."*** (R. pg. 229, pa. 8)[19]

FF requested lending documents be completed and returned within 48 hours (R. pg. 307 and pg. 308) - FF "Letter of Introduction" and "Customer Loan

[19] "pa." will represent "paragraph" for all reference documents herein.

Application Check List"). When Respondents made application, they did not sign and return the application and bank disclosures until 5 days later.

FF had requested a Contract Extension from Respondents at the time they made application on December 5th due to the contract being expired. FF again asked for this item on December 12th, and again on January 3, 2013. Respondents did not provide, nor did they disclose to FF that the sellers had not agreed to an extension (R. pg. 180 line 24 thru pg. 181 line 6) (R. pg. 295)(R. pg. 301- "10 day letter" requesting the Contract Extension requested Dec. 5th).

Respondents failed to respond at all to the 10-day notice issued on January 3 from FF (as repeated above).

1.4 ***"Buyer...diligently pursue...take any action that is needed or requested by Lender to process the loan application..."***

Respondents did not diligently pursue financing for said property. Respondents did not apply for their financing until December 5th. Respondent Cross testifies that she diligently pursued their financing since contract ratification by "communicating" with her lender (R. pg. 117). Appellants argue that "communicating with a lender does not qualify as applying for and "diligently pursuing" a loan. Buyer breach of contract.

Respondents did not take the action that was needed, or requested by the Lender, to process the loan. (1) Respondents waited until the Contract expired to apply for financing; (2) FF requested the application and all disclosures to be returned within 48 hours, but Respondents did not sign or return them for 5 days after making application; (3) FF required a Contract Extension at time of application in order to process the loan for closing. Respondents neither provided that document, nor did she respond to FF's 10-day notice, (3) FF submitted a

request on December 12, 2012 for a required legible contract and all addendums (R. pg. 278- line dated 12-12-12 1:29pm) that would include the missing Sellers names. Under Writing received and cleared this request on December 20th. The legible contract submitted and cleared by FF on December 20 contained no Sellers names. The legible Contract was unsigned by the Appellants Ferro, not initialed by the changes made by the Buyer's agent, not initialed at the bottom of each page, and none of the addendums were signed or initialed. (R. pg. 310).

1.5 ***"Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit –worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agents(s)"*** (R. pg. 229- Paragraph 8).

Respondent Cross denied Appellants Ferro agent, Rick Willis, access to Respondents loan processing information when Willis contacted Respondents' lender to inquire about Respondents financing status. Respondent Cross replies to Kathryn Rode (FF Mortgage Loan Team Lead), "*Thank you for bringing this request to our attention. Stephen and I would like to direct any questions from Mr. Willis regarding this matter to Mr. David Collins (contract information attached).*" (R. pg. 309- e-mail 1-30-13 Respondent Cross and Kathryn Rode dated 1-30-13). Buyer default.

Attorney John Massalon submitted two (2) subpoenas (March 2013 and August 2013) and spoke directly with one of the answering representatives on August 12, 2013. He requested all and any information, documents, e-mails, etc., in regards to Stephen Dudek and /or Doreen Cross and/or 788 E Butternut and/or loan # to FF's Registered Agent office in Columbia, SC. All 3 requests came back with the same response, "no such names, no such loan number, no such property."

(R. pg. 192). It wasn't until Ms. Williams received a subpoena for said trial that Atty. Massalon received the requested documents...in reply to his March 4th subpoena. FF file (R. pg. 276-341 *What is represented in the Record on Appeal is not the complete file received) documents were provided to Atty. Massalon less than 24 hours before court was to start (R. pg. 32 lines 3-7).

Per contract, Para 8, "*Should the Buyer fail to make application OR receive approval within said period AND to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice*" And "*If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of Para 16.*" (R. pg. 229, para 8). Respondents did not perform this required obligation, therefore, per contract, Respondents are in default and Appellants Ferro have every legal right to terminate said contract.

2. CLOSING OF ESCROW CONTINGENCY

Respondents had a contract close of escrow date of November 30, 2012. Respondents did not (by their own hand) perform this condition due to the fact they had not applied for financing on or before November 30, 2012 (as prev.[20] defended above). Respondents, and their Agent Ms. Nicholson, concealed the fact that they were not going to close [on or before November 30] because Respondents refused to move forward to obtain financing on said property until they were satisfied Appellants Ferro had COMPLETED all repairs to their complete satisfaction (as prev. defended above). This constitutes a serious Buyer Breach of Contract.

[20] "prev." represents "previously" herein said document.

Respondents enforced "their right" to use the no fault extension clause (R. pg. 229, para 12) which Respondents, by doing so, guaranteed they would close on or before December 15, 2012 **TIME IS OF THE ESSENCE**. Respondents did not (by their own hand) perform this clause agreement (as prev. defended herein).

Ms. Morphew argues that Respondents and their agent, Susan Nicholson, knew when they "enforced their right" to the Contract's "no fault" extension clause that there would be no way they could close on or before December 15. Ms. Morphew also argues that Respondents and their agents were very aware that closing escrow would be impossible without the formal Contract Extension (as prev. stated). Ms. Williams testified there never was a closing date because **the remaining condition**, a signed contract extension, was never received from Respondents (R. pg. 180 line 14 through pg. 181 line 6).

Respondent Cross testified that she had a right to the 15-day [no fault] extension clause in the contract (R. pg. 92 lines 23-25) and that she spoke to her agent and lender before presenting it to the Appellants Ferro (R. pg. 94 lines 11-13). Respondent Cross agreed the extension clause was a "no fault" clause (R. pg. 94 lines 2-5), but then contends the Appellants Ferro were at fault (R. pg. 93 line 25 thru pg. 94 line 1). Respondent Cross agrees extension clause was **TIME IS OF THE ESSENCE**." (R. pg. 94 lines 6-10).

Appellant Ferro testified that Respondents were at fault for not closing on or before November 30 and was not due this extension because the extension did not apply (R. pg. 146 lines 3-25). Contract states, "*If the Transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party than both parties agree to extend this period not to exceed 15 consecutive days from the original closing date.* ***Closing shall occur during this time extension and in no event shall closing occur later than the above extension date, time is of the***

essence. *" (R. pg. 93 lines 7-15),* which means, if you don't close by the date stipulated then the contract is over, and absolutely "no event" can prevent it. Respondent Cross agreed that "in no event could the closing happen after December 15, 2013 but stated she "didn't know how strenuous this [law] is" (R. pg. 93 lines 22-25). Appellants argue that Respondent Cross didn't take the Contract clause seriously even though Respondents knew closing was critical for the Appellants Ferro (R. pg. 221, lines 3-9) (R. pg. 134, lines 3-8), that's why they were given a discount on the price [to agree to close quickly] (R. pg. 135, lines 17-21).

Appellants argue that Respondents filing a lawsuit and placing all fault on the Appellants Ferro for their own failure [to obtain financing and to close escrow] after they made a claimed a "no- fault agreement" with the Appellants Ferro is unlawful.

Respondents' lawyer, Collins, states in his request for a direct verdict, "*The fact of the matter is if this thing* [Contract] *had been carried over to maybe the next week this transaction probably would have gone ahead and closed and we wouldn't be sitting here in front of you.*" (R. pg. 197, lines 12-16). Material fact proves that Atty. Collins is incorrect and stated false information. Because Respondents were legally required by FF to submit a signed Contract Extension due to applying on an expired contract, and Respondents did not provide a signed Contract Extension to FF, they were denied financing on said Contract. Therefore, despite Atty. Collins testimony, the closing could never have taken place, regardless of any other contract condition, without a signed Contract Extension. Hence why the Appellants Ferro were never presented with a closing date.

3. INSPECTION CONTINGENCY

Per Respondents, Paragraph 19H "Condition of Property: Disclaimer", "***The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.***" Appellants argue that Appellants Ferro spent a considerable amount of time and money making repairs (R. pg. 352 and pgs. 342-360, various e-mails) and they did this without proof that the Respondents had financing or were going close[21] escrow per contract. By this action, Appellants Ferro showed extreme good faith and fair dealings, and clearly showed they were more than willing to close with Respondents.

Respondent Cross testified that that the reason she didn't start her financing per contract is because Ms. Williams suggested Respondent Cross to make sure the sellers were showing some effort on their part according to the contract and "*whenever I felt that was happening to let her* [Ms. Williams] *know and she would start the loan.*" Respondent Cross admitted she unilaterally "changed" the language of the Contract and unlawfully performed as such (R. pg. 109 lines 3-15). Buyer Breach of Contract.

Buyer's Inspection Contingency expired on November 20 (R. pg. 229, Para 19B). Respondents were required to submit a notice of cancellation of the contract on or before November 20 if they were not satisfied with the Inspection Report and/or what the Appellants Ferro agreed on as to repairs. Respondents did not send a cancellation request per Para 19B terms. Therefore, Appellants argue that per the contract language so stated in Para 19B, Respondents waived their right to the Inspection Condition and were obligated to close escrow on or before Contract date of November 30, 2012. Appellants also argue that the Buyer's Inspection Condition does not waive Respondents financial obligations.

[21] On December 3, 2012, Appellants Ferro did not think Respondents were going to close and told this directly to Ms. Nicholson (R. pg. 219 line 21 thru pg. 220 line 3)

Appellants argue Respondents spent all month negotiating repairs, while critically failing to meet their financing condition. (R. pg. 209, line 23 thru pg. 218, line 23; R. pg 342-360, various e-mails).

4. CL-100 CONTINGENCY

Respondents Contract Cl-100 contingency (R. pg. 229, Addendum A, first line) is similar to the inspection condition as stated above. The CL-100 condition, "*Buyer total satisfaction of CL-100*" is protection for the buyer that enables the buyer to waive his **escrow to close condition** if the Buyer is not satisfied with the Cl-100 report. This does not waive their obligation to obtain financing (as defended herein).

If the Buyer is not totally satisfied with the CL-100 [report], they have the (1) option to terminate the contract and retain their earnest money, (2) take the property as is, or (3) negotiate repairs and/or credit at closing. If the seller refuses to make repairs, and the Buyer is not satisfied, the Buyer is obligated to send written notice of termination (R. pg. 229, para. 19E). Respondents did not send a written notice of termination, therefore waived their right to this condition.

If Seller agrees to make repairs and/or treat any applicable damage, the contract itself states, "*If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies, subject to section (E) below, and shall furnish buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.*" NOT on or before Contract's expiration date of November 30, 2012. A closing date and time was NEVER set because financing was never cleared for closing (R. pg. 319 - UW blank "FILE TO CLOSE REQUIREMENTS"), therefore again, Appellants

were under no legal obligation to provide Respondents with a Cl-100 clearance letter until closing. (R. pg. 229, paragraph 19D).

Appellants contend that, (1) the Appellants Ferro performed per contract CL-100 date (R.pg. 229, para 19D), (2) Respondents set the CL-100 expiration date of November 30th, and (3) if the Respondents required the CL-100 sooner THEY were obligated to request a date change by submitting, in writing, to Appellants Ferro a request; (3) the Appellants Ferro performed the minor, and not structual, damage immediately, and then had the repair and termites professionally treated the very next business day after receiving the report (R. pg. 242 and pg. 255, Wood Infestation Report and Treatment receipt), and Appellants Ferro performed without a closing date; (4) Ms. Nicholson was present while Palmetto was treating per Cl-100 (R. pg. 359 - e-mail 12-6-12 1:11pm), therefore Respondents knew about treatment/repair on December 3; (5) Respondents received the full CL-100 (R. pg. 59 line 12 thru pg. 60 line 7).

Atty. Collins incorrectly stated that the contract required Appellants Ferro to provide [Respondents] a Cl-100 report by November 30 (R. pg. 118 lines 20-22). The contract clearly states, "*The Seller shall, at their expense, have the property inspected and shall **OBTAIN** a current Wood Infestation Report (CL-100) from a licensed and bonded pest control operator, on or before November 30, 2012."*(R. pg. 229, para 19D) The Contract does not state "provide Buyer" on or before November 30. Providing it to Respondents on or before contract expiration date was not a contract requirement, therefore Appellants Ferro performed per contract and are not in breach of contract. Further note, Respondent Cross testifies they received the report the date it was prepared and required (November 30). (R. pg. 119 lines 1-7).

Appellants Ferro repaired the minor damage within 24 hours of receiving the report and had treatment performed within 1 business day of receiving the report. Minor,

"not structurally significant damage should not interfere with the sale of the house" (R. pg. 242- Clemson University Department of Pesticide Regulation, Bulletin 16, "Understanding Your Wood Infestation Report", pg. 1) and is not required by a closing attorney or lender to be repaired, "*If a Wood Destroying Insect Information Report (Termite Report) is required, it is the closing agent's responsibility to determine that the report is completed properly and will be acceptable in all respects. Borrower(s) must sign the report [at closing] accepting and acknowledging receipt of the Termite Report. The form must be completed in detail and signed by the exterminator. The original must be forwarded to Lender[if applicable] in the closed loan package. If active termite infestation is indicated, the property must be treated prior to closing. A qualified building expert must also inspect the home for any structural damage. If the Structural Report shows only cosmetic damage, the loan may then close. If the Structural Report shows any structural damage, that damage must be repaired prior to closing.*" (FF Mortgage General Closing Instructions, (7/2011)

Though Rick Willis and Appellants Ferro agreed to pay for the CL-100 clearance inspection (R. pg. 204 lines 9-11), Ms. Nicholson testified that she had been tasked to arrange her client's contractor to come back to inspect, which she tried to do but was afraid if she scheduled it she would be left holding the bill. Ms. Nicholson testified that she "*sent an e-mail to Mr. Vasco [contractor] and gave him their [Sellers] contact information because everything had to be through the Ferros in order to get access to the property and appointments confirmed. Again, I didn't want to be the one that actually set it up because I didn't want to be held to pay if nobody paid, which was an agreement that Mr. Willis and Mr. Ferro decided on*" (R. pg. 204, lines 16-22). Ms. Nicholson also

testified that she "*left it up to the contractor to call him* [Ferro]...." (R. pg. 205, lines 14-15)

Ms. Nicholson admits that it was her responsibility to change the date required of the Sellers to obtain a CL-100, to give her clients more time by stating, "*Well, it depends. On this particular deal because they changed the date, we [herself/Cross/Dudek] probably should have changed the date on the Cl-100 to bump that up as well to give us plenty of time*".

Ms. Nicholson testified she couldn't confirm that the bank required the CL-100 on Respondents' financing to be cleared but "just asked if everything was satisfied" (R. pg. 212, line 25 thru pg. 213, line 9). Even Ms. Williams (FF lending officer) testified that she had no idea if the bank was requiring a clearance letter or not (R. pg. 203, lines 9-12). But Ms. Nicholson clearly tells Appellants Ferro that it IS being required from FF; she states, "*The bank is requiring that it gets repaired to clear the report...*" *And* "*...the bank will need a letter from a certified contractor to evaluate...those repairs need to be completed and a receipt...will need to be sent to the lender*" (R. pg. 366 - e-mail 12-6-12, 1:11pm) (R. pg. 358 - e-mail 12-5-12, 2:56pm)

Allison Williams testified that FF does not require a CL-100 from any client unless something is on the appraisal, and specifically did not, and never, had required a Cl-100 from Respondents. (R. pg. 177 lines 20-25) (R. pg. 338, question #4).

Respondent Cross admits that she was not waiting on the recorded plat or the CL-100 to start her financing, but that she making sure "*that there was some sort of effort on the buyers part to take care of things according to the contract and whenever I felt that was happening to let her know and she would start the loan*" (R. pg. 108 line 13 through pg. 109 line 15).

The trial court was putting this CL-100 critical date on the Appellants Ferro, making them totally at fault. Appellants Ferro did not set the date the CL-100 was to be obtained, it was set by their agent Susan Nicholson, which she admits she should have changed the date to give her clients more time. Appellants Ferro were not asked by Respondents to change the date due or to obtain the CL-100 at an earlier date in order to review the report. The Sellers did not draft the Contract, Respondents agent, Ms. Nicholson, did. The Respondents never issued a cancellation notice to Appellants Ferro is they were so dissatisfied with the CL-100.

The trial court erred in its ruling that the Sellers are in breach of contract due to not delivering the CL-100 in a timely fashion, not making repairs in a timely fashion, and not communicating in fair and decent manner. The Sellers performed per contract and are not in breach of contract per CL-100 contingency (as defended herein).

Respondents have been claiming [for the past 2 years] "they could not/would not close on or before November 30 is because they never received the CL-100", and that "the lack of Appellants Ferro "clearing the CL-100" is what prevented them from closing on or before the contract extension date of December 15", and what "was preventing them from closing at any time after". During the trial, when asked "If the judge finds in this case that the contract did not expire, can you still say I don't want to buy it because I don't like the inspection report of the termite letter?" Cross replies, "You want me to look into the future, okay." Atty. Massalon questions, "No, I'm saying that if in this case that the contract that you have is still valid, can you still get out of it if you don't like the CL-100 or the inspection?" Cross replies, "No, I know I will like the CL-100 and I would assume that the Judge would order that." Appellants reason, If Respondent Cross "knows" she will like the CL-100 /inspection now [without seeing it], then how come she didn't

"know" 2 years ago [without seeing it] that she would like it? Why is it a non-issue now? It's the "same scenario" just different times.

Appellants argue that the Respondent's claim is misrepresentation, when material fact and trial testimony clearly shows it was own failures to perform their legal contractual conditions as per their own Time is of the Essence Contract, specifically their financing condition, that prevented them from closing on or before November 30, 2012. It was because Respondents applied for financing after the contract expired, and they could not obtain a Contract Extension, is what prevented them from closing on or before December 15, 2012. It was this very reason that Respondents could not close at any time after December 15. Appellants argue that Respondents were not concerned with the CL-100 as they have been insisting for the past 2 years[22], but instead have been using this "excuse" to justify and excuse their failing to close escrow by blaming fault on Appellants Ferro.

Appellants argue this is a serious Buyer Material Breach of Contract.

5. EXTENSION CLAUSE (Paragraph 12)

"If the Transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party than both parties agree to extend this period not to exceed 15 consecutive days from the original closing date. Closing shall occur during this time extension and in no event shall closing occur later than the above extension date, TIME IS OF THE ESSENCE."

Ms. Nicholson agrees the extension clause is a "no fault" extension, meaning closing did not occur for a reason and it was neither party's fault (R. pg. 207 line 16 thru pg. 208 line 22). When the Respondents claimed this no-fault extension clause, they were

[22] Respondents stated that they were satisfied with everything and were ready to contact their lender to start the financing process (R. pg. 344 - E-mails 12-3-12 11:11am, 11:20am, 3.22pm, 4:13pm)

guaranteeing to the Appellants Ferro they were **able** and willing to close on or before December 15th, 2012, therefore leading Appellants Ferro they had already applied for financing.

Respondents and Ms. Nicholson intentionally misrepresented themselves to the Appellants Ferro by claiming this "no fault" clause:

First argument: Respondents place [all] fault on the Sellers. Furthermore, Respondents had placed "fault" on the Sellers **before** the Sellers had even signed the Contract (R. pg. 362 - e-mail 10-24-12 10:47am). Respondents were, in fact, at fault themselves for not applying for financing before the Contract expired.

Second argument: Respondents had firsthand knowledge that they were **not able** to close on or before December 15th. When Respondents applied for their loan on 12-5-12, FF stated an anticipated closing date of **1/4/2013** (R. pg. 308 - 12-5-12 "Customer Loan Application Checklist"). Allison Williams [also] stated an anticipated closing date of **12/31/12** (R. pg. 307 - the cover letter from Ms. Williams to Respondents).

Third argument: [Common sense and] fact show that it is near to impossible to close escrow within 10 days of applying for a loan.

Ms. Morphew argues that not only did Respondents display a blatant disregard for the legal ramifications of this **Time is of the Essence** clause, but they clearly displayed bad faith and unfair dealings with the Appellants Ferro by misrepresentation and concealment of pertinent information that effects the merits of the contract, and are in serious Breach of Contract.

6. SURVEY/LAND DIVISION

Provision in Contract, "*Seller shall have property subdivided to include in this sale the 3340 of house, storage building and 6 acres.*" Appellants Ferro scheduled appt for survey within 1 hour of Contract ratification -for the very next day. Respondents

marked survey lines of property, they were purchasing, the day of Contract ratification. Appellants Ferro sent Respondents recorded plat immediately after receiving it. Appellants performed and completed per the land division condition per **Time is of the Essence** (R. pgs. 136-139).

Respondent Cross indicates using this as a bargaining tool to gain more acreage and the barn, without paying for it, later on by stating to her agent Ms. Nicholson, [the sellers could] "*throw in the extra acreage and the barn and we'll guarantee the end of November for sure. We're willing to do that ☺*". Ms. Nicholson replied "*If the home isn't divided in time then it will be their fault not yours*" and "*If the seller wants to throw in the extra acreage....the trick is to get him to do that without any extra charge!*" (R. pg. 362, e-mail 10-24-12, 10:41am & 10:47am, between Respondent Cross and Ms. Nicholson.).

7. STRUCTURAL ENGINEER INSPECTION

Respondents asked Appellants to schedule and pay for a Structural Engineer due to their concern after receiving the Home Inspection report. Appellants Ferro agreed to do this and spoke to the Structural Engineer about the Appellants' concerns and scheduled an inspection immediately (R. pg. 136 lines 14-22) (R. pg. 353-354 - e-mail 11-10-12 Ferro to Willis dated 11-10).The inspection was performed by Eugene Brisbane on November 15th. During the inspection he told the Respondents, Respondents' contractor, Tim, and the Appellants Ferro several times the home is structurally sound (T. 140 line 11 through pg. 141 line 15). Ms. Nicholson also testified that the structural engineer stated to "all" that the home was structurally good, and that their contractor agreed with the Structural Engineer. (R. pg. 214 lines 22-25) (R. pg. 355, e-mail dated 11-27-12, 12:44pm).

Respondent Cross testified that she was not satisfied with the structural integrity of the home until she received the structural engineers report (R. pg. 106 lines 7-23 and pg. 107 lines 17-18), even though she was aware the structural engineer and their

contractor were comfortable on the 14th when the structural engineer stated that he felt the structural integrity of the home was ok (R. pg. 215 lines 4-8).

Appellant Tommy Ferro also testified that the structural engineer stated to Respondents that he said "*I assure you that in my experience this house is fine and sound and he was going to write off on it that it was sound*" and "*the structure is fine…*" "*…this house is structurally sound*" (R. pg. 140 line 15 through pg. 141 line 15). Appellant Tommy Ferro testified that Respondent Cross was badgering Eugene every time he answered her questions (R. pg. 140 lines 19-25). Respondent Cross demonstrated a belligerent and condescending attitude in regards to the structural engineer and all parties involved that day (R. pg. 360). Respondent Cross asked Ms. Nicholson later "*can we hold Eugene* [structural engineer] *liable* [sue him] *if future information becomes available contradicting this report,..*" (R. pg. 360) (R. pg. 215 lines 23 -25, pg. 216 lines 10-17), and "*It sounds like it will be a challenge to take the information from Tim and use it in the counteroffer*" (R. pg. 360, e-mail dated 11-16-12, 10:52am) (R. pg. 216 line 19 through pg. 217 line 13).

Appellants argues that Respondents claim they were very concerned about the structural integrity of the home but never issued a written notice, as required per paragraph 16 of said Contract, to the Appellants Ferro stating her concerns and asking for an Inspection extension, or a cancellation notice. Also, Appellants argues the structural inspection was not a contingency contained within the Contract. This was an item on Respondents repair/issue list that Appellants Ferro agreed to schedule and pay for (R. pg. 238, A.1.) The structural inspection, like the Home Inspection (as prev. stated) did not waive Respondents obligation to apply and obtain financing per Contract.

Appellants contend that Appellants Ferro demonstrated good faith and fair dealings by scheduling and paying for the structural inspection, and demonstrated TIME IS OF THE ESSENCE by scheduling this inspection as soon as it was agreed upon.

III. THE MASTER IN EQUITY ERRED IN BASING HIS RULING ON FINDINGS OF FACT THAT WERE NOT SUPPORTED BY THE TESTIMONY IN THE RECORD.

Appellants appeal the following FINDINGS OF FACT and contends they were not supported by testimony in the record and/or material evidence:

(1) Though the trial court was correct that Respondents were not obligated to close on escrow until Appellants Ferro performed the conditions for which they were responsible, it erred in his failure to realize that the Respondents' Inspection Condition had an expiration date [of November 20] and were obligated to perform per paragraph 19E of Contract[23] Respondents did not issue a notice of cancellation, therefore waived their rights per Inspection Condition. Also, under this Finding of Fact's footnote, reference #13, the trial court erred stating the 'Respondents never received the CL-100 so therefore they did not have an opportunity to determine if the structure of the home was satisfactory'. Respondent Dudek clearly testified they, did in fact, receive a copy of the termite report and it was dated November 30th, 2012 (R. pg. 119 lines 1-10) (R. pg. 131 line 19 thru pg. 132 line 22) (R. pg.133 lines 17-25). Furthermore, Respondent Cross testified that they were waiting on a clear CL-100 [not the CL-100] (R. pg. 110 lines 6-7). Appellants argue if Respondents never saw the CL-100 to review, then how can they have stated to Appellants Ferro on December 5th that their lender was requiring the repair/treatment and a letter of clearance?

Appellants argue that Ms. Nicholson testified she received it, therefore it's assumed by the duties of the agent that Respondents also received this information. Agent will "*in accordance*

[23] Respondents were to either 1) issue a cancellation request, 2) take the property as is, or 3) negotiate with the Sellers for a credit at closing.

with subsection (A), promote the interest of the buyer by performing the buyer's agent's duties which include:", "disclosing to the buyer all relevant facts concerning the transaction which are actually known to the licensee or, if acting in a reasonable manner, should have been known to the licensee, except as directed otherwise in this section." S.C. Code § SECTION 40-57-137, (H)(2)(c).

(2) The trial court erred that the Respondents obligation to provide written satisfactory loan approval within 20 consecutive days [of contract ratification] that contains no credit, income or asset conditions, is impossible.

(a) An impossibility cannot be measured if the preceding event never occurred "*If an event is sure, then it will always happen, and no outcome not in this event can possibly occur*" Law of Probability, Jacod, Jean; Protter, (2004). Probability Essentials. Springer. p. 37 (i.e., If Respondents did not apply for financing until the contract expired, there is no way to measure the possibility the Respondents could not obtain a satisfactory loan approval per Contract; therefore one cannot state as a fact loan approval per Contract is an impossibility.

(b) Respondents applied for financing on 12-5-12 (R. pg. 338, line 1) and received such approval on 12-12-12 [7 days] (R. pg. 114 line 23 thru pg. 115 line 2). This data theoretically proves the very certain possibility Respondents would have received satisfactory loan approval [per contract terms] within 20 days of contract ratification; therefore disproving the trial court statement of impossibility. "*In probability theory, one says that an event happens almost surely if it happens with probability one.*"Stroock, D. W. (2011). Probability theory: an analytic view, p 186, Cambridge University press.

(c) Appellant Morphew testified her contract had the same approval requirement of "satisfactory loan approval with no credit, income or asset issues" as Respondents' Contract (R. pg. 261) and had loan approval per contract in 13 days. **(3)** The trial court erred in its assessment

that Respondents' contract required unconditional loan approval described in Paragraph 8. The Contract required "*satisfactory loan approval within 20 consecutive days that contains no* [buyer] *credit, income, or asset conditions.* ***TIME IS OF THE ESSENCE.***" Contract terms for financing is not an "unconditional" requirement, nor does it state "unconditional" (R. pg. 229, paragraph 8).

(4) The trial court erred stating conventional residential loan approvals without conditions are impossible. Not only are loan approvals without conditions possible, but every mortgage loan that is cleared for closing is an unconditional loan approval. "*After a thorough study of the borrower's credit and finances has been undertaken along with an appraisal of the property the lender may agree to make the loan. The lender will then issue a "commitment";* as in commitment, meaning *"an unconditional promise to lend money."*[24]

(5) The trial court erred stating there was uncontroverted evidence that revealed an approved subdivided plat dated October 20, 2012 that was received by Respondents on Friday November 23, 2012 and that this lack not providing the approved survey for over a month delayed the Buyer's from pursuing their financing. The plat is dated **November 20, 2013** , not October 20 (R. Pg. 97 lines 20-21). Because of his error, the Master in Equity was under the misunderstanding Appellants Ferros did not provide the recorded plat in a timely manner (per Time is of the Essence) and caused the Respondents a critical delay from pursuing financing. Appellants Ferro did provide the recorded plat immediately to Respondents AND per Respondent Cross' testimony, the recorded plat did not prevent them from pursuing their financing (R. pg. 104 line 12 thru pg. 105 line 9). (All as prev. defended herein).

On October 24th, the day of Contract ratification, Respondent Cross indicates using the alleged "recorded survey" issue as a bargaining tool to gain more acreage and the barn later on, [and get it for free], by stating to her agent Ms. Nicholson, [the sellers could] "*throw in the extra*

[24] Jerome P. Friedlander, II, Attorney at Law, "Understanding The Residential Real Estate Contract" (2010) http://www.friedlanderlaw.net/wp-content/themes/friedlander/inc/real-estate-booklet.pdf .

acreage and the barn and we'll guarantee the end of November for sure. We're willing to do that☺". Ms. Nicholson replied "*If the home isn't divided in time then it will be their fault not yours*" and "*If the seller wants to throw in the extra acreage....the trick is to get him to do that without any extra charge!*" (R. pg. 362, e-mail dated Oct 24 10:41am & 10:47am). Furthermore, Ms. Williams had never followed up within her bank if there even was going to be a problem at all (R. pg. 361, e-mail 10-24-12 12:23pm). Therefore Respondents and their agent were acting on opinion not fact.

Appellants argue Respondents testified the recorded plat caused them delay in pursuing their financing per contract when in fact Respondents used this "non-issue" as to help excuse them from their financing obligation, and were clearly planning to use this information as a "trump" card to claim more and blame fault on the Sellers later. This clearly shows bad faith and unfair dealings on part of the Respondents and their agent.

(6) The trial court erred stating the CL-100 report had a "number" of problems. This suggests "numerous" when in actuality there was only 1 minor issue, and not structurally related. The CL-100 report revealed very minor damage to a piece of subflooring that was not structural related. The CL-100 report revealed a few live termites at subfloor damage. The home is steel framed with brick outer. No other issue reported. Appellants argue that if the cleared CL-100 was an issue for closing, and continued to be an issue, then why did Ms. Nicholson from Carolina One claim (after receiving the notice of cancellation from the Appellants Ferro) that "*We have everything we need to close hopefully this week pending the title work is clear from the closing attorney.*" (R. pg. 356 - e-mail 12-16-12 6:09pm from Ms. Nicholson to Willis)

(7) (a) The trial court erred that the Appellants Ferro responses to the critical concern list was labeled as a failure and that (b) the Appellants Ferro responses and the manner of which it was presented violates Appellants Ferro's obligation to deal in good faith and fairly with Respondents, and (c) that the Appellant Ferro failed to immediately respond in writing to the

critical concerns per Respondent Cross' submitted list. Appellants Ferro not only responded immediately to several requests and inquiries by Respondents, but Appellants Ferro had all agreed to repair items completed before the contract expiration date and they performed all items without a closing date (As prev. defended herein, "Inspection Condition").

(8) The trial court erred that the Appellants Ferro failed to provide Respondents with an approved subdivision plat until four days prior to the escrow closing date on said contract. Appellants Ferro provided the plat within 2 days of receiving it AND it was 8 days, not 4 days, prior to escrow closing date on said Contract. Note that the Respondents waited 13 days after receiving said recorded plat to apply for financing. Respondents testified the recorded plat was not what prevented them from applying for financing (as prev. defended herein, "Survey").

(9) (a) The trial court was correct the contract called for the Appellants Ferro to provide a CL-100 "clearance" letter if they so agreed to make the repairs/treatment, but erred when stating the Appellants Ferro completely and utterly failed this condition. The Contract called for the Appellants Ferro, to provide a clearance letter on or before **CLOSING**, NOT on or before November 30th (as defended herein,"CL-100 Condition"). Appellants Ferro were under no obligation to perform this condition until receiving a closing date from Respondents. Also, Appellants Ferro were *"not obligated to make ANY repairs under ANY circumstances until Purchaser's financing has been approved."* (R. pg. 229, paragraph 19(H).

(10) The trial court erred by finding Appellants Ferro's alleged failures as a reason to excuse the obligation of Respondents Dudek and Cross to deliver the purchase price on or before November 30, 2012. As prev. defended herein, Appellants Ferro did not fail at all, while the Respondents unlawfully failed (by their own hand) many of their obligations and therefore are not entitled to be excused for non-performance (as repeated herein, covering entire brief).

(11) The trial court erred that the Appellants Ferro failed to observe TIME IS OF THE ESSENCE. Appellants Ferro Appellants Ferro observed and performed all contract obligations

before contract escrow expiration date of the said Contract, even though they were not obligated to do so (as prev. defended herein).

(12) The court erred in stating that Appellants Ferro failed to respond with dispatch and with clear intentions, which in turn waives their right to assert Respondents Dudek and Cross did not comply with their obligations to observe that TIME IS OF THE ESSENCE. Appellants Ferro responded to all dispatch and made clear their intentions (as repeated herein, Conditions). Appellants Ferro observed that TIME IS OF THE ESSENCE and acted with good faith and fair dealings at all times with Respondents, while Respondents did not observe that TIME IS OF THE ESSENCE by failing to perform their Contract obligations. Therefore the Appellants Ferro had every right to assert Respondents did not comply with their obligations to observe that TIME IS OF THE ESSENCE.

(13) The trial court erred that the Respondents' Paragraph 8 (financing) conditions are impossible (as repeated herein, "Financing Conditions"); therefore the trial court erred allowing Respondents conditions to be reset.

(14) The trial court erred that, (1) Respondents observed TIME IS OF THE ESSENCE per their obligations in the said contract, (2) erred that Appellants Ferro did not reciprocate TIME IS OF THE ESSENCE and if Appellants Ferro observed TIME IS OF THE ESSENCE, this would have led to a closing nearly two years ago. As repeated above arguments, Appellants Ferro observed that TIME IS OF THE ESSENCE but Respondents did not. Furthermore, Respondents failed to consider the position they have put Appellants Ferro, and consequently Appellant Morphew, in by not observing that TIME IS OF THE ESSENCE. It was the Respondents failure to observe TIME IS OF THE ESSENCE that prevented the closing two years ago (as defended herein, "Financing/Inspection Conditions").

(15) The trial court erred that Appellants Ferro did not exercise a simple rule of common decency, that is, "do unto others as you would have them do unto you." by exercising a

duty of good faith and fair dealings in its performance and in its enforcement. Appellants Ferro clearly exercised good faith and fair dealing. It was the Respondents failures to exercise the simple rule of common decency.[25]

(16) The trial court erred ruling the Appellants Ferro are in default, therefore Respondents are entitled to recover reasonable costs, including a reasonable attorney fee Appellants Ferro are in not in default. The Respondents are in default, therefore are not entitled to recover any costs (all as defended herein).

(17) The trial court erred compelling specific performance due to no adequate remedy at law Contract is not enforceable (as defended herein). Respondents are in Breach of Contract (as defended herein). Therefore specific performance is neither applicable nor an applicable remedy.

(18) (a) The trial court erred concluding the Respondents worked in good faith to consummate the sale. By not respecting and performing their contract terms and conditions, and intentionally misleading all parties involved, the Respondents clearly demonstrated bad faith and unfair dealings (as defended herein); (b) the trial court erred stating evidence supports a finding Appellants Ferro acts and omissions demonstrated unfair dealing. Evidence did not support a finding that Appellants Ferro neither acted in bad faith nor omitted anything required of them (as

[25] Respondents failed by, (1) waiting until the contract expired before making application, (2) failure to observe their duty to disclose critical material facts, such as being declined for financing, to Appellants Ferro, (3) not responding to FF's 10-day notice, (4) intentionally preventing listing agent from obtaining Respondents financing information, (5) taking the "no fault" extension clause when they knew they themselves were at fault and wouldn't be closing by the clause's date, (6) taking the "no fault" extension clause when they had been faulting, and are continuing to fault, Ferros for missing the closing date, (7) claiming the CL-100 prevented them from closing for the past 2 years, when they had stated [on 12-3-12]they were satisfied with all the critical concerns, (8) falsely stating [and all along to, Appellants Ferro] that the land had to be subdivided before an appraisal could be ordered and/or performed, (9) falsely stating [and all along to, Appellants Ferro] that the CL-100 and or cleared CL-100 was required by FF; (10) falsely stating they were able and ready to close on November 30 and December 15, (11) misleading Appellants Ferro in order to take the 15-day "no fault" extension clause within the Contract, (12) filing a lawsuit against Appellants Ferro after taking the "no fault" extension clause, (13) filing a lawsuit against Appellants Ferro knowing they had no "contract" without a formal signed Contract Extension, (14) continuing their lawsuit after receiving the declination of financing from FF on 1-18-13, (15) taking an oath to tell the truth in a court of law and intentionally breaking that oath. (All as prev. argued above).

defended herein); (c) the trial court erred concluding Appellants Ferro failed to point to meaningful communication with Respondents. Respondents were the ones to utterly fail in their communication with Appellants Ferro (as defended herein); (d) the trial court erred concluding that Respondents acted with care and kept Appellants Ferro advised of the concerns they had. Respondents did not act with care, but instead unlawfully acted with total disregard for the Contract (as defended herein) and for the well-being of Appellants Ferro and Appellate Morphew; (e) the trial court erred concluding Pl. Exhibit 3 demonstrated Appellants Ferro obfuscated the intent and meaning of the contract in the performance conditions incumbent upon them to fulfill. Appellants Ferro followed and fulfilled their Contract obligations to the lawful intent and meaning of the Contract, while it was Respondents that obfuscated the intent and meaning of said Contract (as defended herein); (f) the trial court erred concluding Appellants Ferro acted without intent to fulfill the contract according to its plain terms. Appellants Ferro had completed their contract obligations by November 30, and went above and beyond to further complete their obligations not required until financing had been obtained and/or until a closing. Also, Appellants Ferro agreed to the 15- day no fault extension clause contained in the Contract with the [misled] assumption Respondents were guaranteeing a closing on or before December 15th, 2012 (as defended herein). Also, Appellants Ferro had more than enough reason to not only want, but need, the Respondents to close per agreement since they had already obtained a house in Kentucky and were in the process of moving in November and Appellants Ferro gave Respondents a very large discount (R. Pg. 135 lines 9-21), from $325,000 to $303,000 plus they would pay $5,000 towards closing cost (R. pg. 91 lines 1-15); (g) the trial court erred concluding the Appellants Ferro attempted to use the contracts time is of the essence provisions as an exemption and tried to use it as a tool to avoid their having to deal with critical concerns raised by Respondents. Appellants Ferro acted fairly and honestly and observed all Time is of the Essence deadlines (as defended herein); (h) the trial

court erred concluding Respondents were acting at all times within their right under the contract. Respondents utterly failed to act within their right under the Contract (as stated herein).

IV: THE MASTER IN EQUITY ERRED BY SUPPORTING HIS DECISION IN HIS ORDER USING FALSE, INCONSISTENT, UNRELIABLE AND OBFUSCATED TESTIMONIES, THEREFORE SHOWING BIAS IN FAVOR OF THE RESPONDENTS.

Appellants contend the trial court was presented with conflicting, false and/or obfuscated testimony from Respondents, and its choice to rely on Respondent Cross, Ms. Williams and Ms. Nicholson's, trial testimony was unreasonable and showed bias in favor of the Respondents.

The examples below reveal that the key witnesses were duplicitous and disingenuous by "testifying one thing" and then "testifying the complete opposite".

Example 1:

First, Respondent Cross testified she was required to apply for her loan per her contract and states she applied on May 7, 2012 [5 months before said property was a "twinkle in their eye"] (R. pg. 98 l. 23-25, R. pg. 99 l. 1-14). **Then** Respondent Cross admits she applied for financing on said Contract on December 5, 2012 (R. pg. 103 l. 2-15) (R. pg. 302, "Uniform Residential Loan Application signed/dated by Respondents 12-10-12). Respondent Cross admits the application was made over 40 days from contract ratification (R. pg. 103 lines 12-15) AND made after Contract's closing expiration date.

Example 2:

First, Allison William, FF, testified Respondents submitted an application for said property in May 2012 (T.pg. 180-181). **Then** Ms. Williams admits later that the May pre-approval application was not an "application" for Respondents' Contract. She testifies an "application" is made on a loan when there's property specified (R.pg. 150-151). Application dated May 7 2012 is not property specific, therefore does not qualify as an application per Respondents contract terms (R. pg. 320, "Residential Loan Application" 5-7-12).

Example 3:

Respondent Cross testified she supplied a [satisfactory] approval letter to Sellers on October 24, 2012 (R. pg. 99-100). Appellants argue the Respondents' loan was applied for on December 5, 2012, hence it is impossible to receive a satisfactory loan approval 40 days prior to ever applying.

Example 4:

Ms. Williams (FF) testified she supplied a pre-approval letter on 10-22-12 to Respondents per their request. Ms. Williams then admits, after looking at the evidence, this would not be from her due to the e-mail formatting not hers and the dates and times on the attachments were 3 ½ months in the future in the middle of the night (R. p. 163-166). Appellants argue as to the validity of said documents and, again question how satisfactory loan approval can be given 10-22-12 if the loan wasn't applied for until 12-5-12 and FF has neither seen nor has the signed contract (R. pg. 159 lines 10-15).

Example 5:

Respondent Cross testified they were ready and able to close with all documents, and that '*nobody was waiting on anything from us*' because they 'provided [it all] a long time ago' (R. pg. 122, lines 8-14). But FF WAS waiting on a signed Contract Extension, a legible signed contract and all addendums, IRS transcripts, and a completed title search. Also, per FF they were unable to obtain Respondent Cross' verbal verification of employment until January 4, 2013, therefore Respondents were NOT ready to close on the 14th of December.

Example 6:

First Respondent Cross testified that she had all required application/loan documents in place before contract end date of Nov. 30. **Then** Respondent Cross changes her story and testifies that she had all documents in place at bank on the December 5th (R. pg. 101) but **then again** changes her story to testify that she applied and received the documents from Ms. Williams, per encrypted e-mail on December 5 but didn't sign and return the papers until 12-10-12. (R. pg. 104). Respondent Cross further testified she held onto the application and banking documents because she was waiting for repairs to be completed and "*for Mr. Ferro to take me seriously...*" It would be impossible for loan documents to be in file before application was made; there was nothing in the December 6th submitted loan file but an [unsigned/no property] pre-qualification application dated 5-7-12 (R.pg. 326 - "Underwriting Approval Conditions", several 12-11-12 entries); (3)

Application and all FF disclosures were dated December 5 but not signed and submitted by Respondents [via mail] to FF until December 10, 2012. (R. pg. 329 and pg. 302 - bank's disclosures and the "Uniform Residential Loan Application"), (4) FF received all signed disclosures and a signed application December 12, cleared December 18 (R. pg. 326 - "Underwriting Approval Conditions", several 12-11-12 entries)

Example 7:

Respondent Cross testified that the appraisal was ordered the "minute that the re-division of the property was accomplished" (R. pg. 120 lines 10-15). Appellants argue that the subdivision was accomplished on November 20th and the appraisal was ordered on December 6th, therefore the appraisal was not ordered as Respondent Cross testified; instead it was ordered 16 days later.

Example 8:

First Respondent Cross testified that she received the recorded plat on November 23, 2012 from her agent, Ms. Nicholson (R. pg. 95 lines 8-10 and pg. 96 lines 15-16). **Then** Respondent Cross testified that she "*never saw the plat with the stamp, never,*" **and then** testified that she received the recorded plat in January 2013 when Respondent Dudek went to St. George to get a copy of it (R. pg. 125 line 19 thru pg. 126 line 8).

Example 9:

Respondent Cross testified the clear CL-100 was a requirement for lender in order to start/obtain financing (R. pg. 118 lines 20-22; R. pg. 110 lines 2-8)). But Allison Williams, FF Lending Officer, testified that FF does not require a CL-100 from any client unless something is on the appraisal, and specifically did not, and never, had required a Cl-100 from Respondents (as stated herein), (R. pg. 177 lines 20 through pg. 178 line 15), (R. pg. 338, question #4).

Example 10:

First, Ms. Nicholson testified that the bank did not request or require the CL-100 or the CL-100 to be cleared but only that Ms. Williams asked her if "*they* [Respondents] *got it cleared*" . **Then** immediately afterwards, Ms. Nicholson testified that she had no idea if the bank was requiring a clearance letter or not (R. pg. 212 line 25 through pg. 213 line 9). **But** Ms. Nicholson

told the Appellants Ferro and their agent that the bank was requiring the CI-100 to be cleared, "*The bank is requiring that it gets repaired to clear the report which will need to be done by a certified licensed contractor.*" (R. pg. 358 - e-mail 12-5-12, 2:56pm), and "*...the bank will need a letter from a certified contractor to evaluate. If they decide that repairs are needed then those repairs need to be completed and a receipt of work completed will need to be sent to the lender*" (R. pg. 359 - e-mail 12-6-12 1:19pm). The Respondents agent has a duty to treat all prospective sellers honestly and not knowingly give them false information. "*A licensee who represents a buyer shall treat all prospective sellers honestly and may not knowingly give them false or misleading information about the buyer's ability to perform the terms of a transaction.*" S.C. Code § SECTION 40-57-137 (K).

Example 11:

First, Respondent Cross testified that she received the structural engineer report on November 28 (R. pg. 108 lines 16-20). **Then** Respondent Cross testified that she received the structural engineer's report on November 8, read it and showed it to her nephew [not a structural engineer] to check it (R. pg. 107, lines 10-19).

Example 12:

Respondent Cross stated she did not sign a buyer's agreement with Susan Nicholson and Carolina One (R. Pg. 86 lines 8-13). Whereas Susan Nicholson's testimony says Respondents did sign a buyer's agreement (R. pg. 202 lines 18-23)

Appellants contend the trial court was presented with questionable, false, conflicting and obfuscated testimony associated to material documents and facts of law, and its choice to rely on key witnesses Respondent Cross, Allison Williams, Respondent Dudek and Susan Nicholson's testimony as part of its reasoning for judgment was unreasonable and warrants a reversal by this court.

The trial courts judgment was centered on Respondents and their applicable witness's testimonies, not the common contract law and the material documents presented at trial. Appellants argue based on the trial court's many errors in its Order (all as prev. defended herein), the trial court revealed bias in favor of Respondents.

V: THE MASTER IN EQUITY ERRED IN, (1) HIS ASSERTION THAT APPELLANT MORPHEW SOUGHT DAMAGES AGAINST APPELLANTS FERRO ON BREACH OF

THE MORPHEW CONTRACT, (2) THEREFORE APPELLANTS FERRO CHAMPION THE MORPHEW CONTRACT.

The trial court erred in his Order that Appellant Morphew was seeking damages against Appellants Ferro, specifically on breach of the Morphew Contract. Appellants argue that the Complaint filed by Appellant Morphew in January of 2013 was for Respondents' breach of contract and was to seek damages against Respondents Dudek and Cross for causing Appellant Morphew breach of contract due to Respondents' unlawful objections. Appellant Morphew was seeking specific performance [only] from Appellants Ferro. (Respondents' Complaint and Lis Pendens).

The trial court erred that the reason Appellants Ferro champion the Morphew Contract is because Appellant Morphew sought damages from them. As stated above Appellant Morphew did not seek damages from Appellants Ferro, only specific performance. Appellants Ferro champion Morphew Contract because Respondents were asked and given several chances to close escrow/produce a closing date but they did not. When they were delivered a cancellation notice Respondents did not and/or could not supply a closing date, only more excuses, blame, threats of a lawsuit and tying up their home for 2+ years. [Especially] at this point, Appellants Ferro had no faith Respondents were going to close and chose to move on and honor the Morphew Contract. She has been honest and forthright, and proved she has been and is able to close escrow, whereas Respondents have continuously shown a lack of honesty, and unfaithful and unfair dealings.

Conclusion

Respondents failed to apply for financing [as contractually required]. Respondents applied after the Contract close of escrow expiration date, which led to a requirement for a Contract Extension from their lender. Respondents failed to provide FF with a signed Contract Extension. Respondents were not ABLE [and have not been able] to close escrow per said

Contract, despite Respondents continuous contention (as stated in Respondent Complaint, trial testimony, and trial court Order) that they "*...have complied with all terms of the contract and remains ready, willing and able to comply with the contract's terms.*" Appellants contend Respondents unlawfully provided false information to the Appellants Ferro, their agent Rick Willis, Appellant Morphew, Atty. Massalon and to the trial court.

Respondents failed to close escrow on or before November 30, 2012 because they purposely waited [42 days] to apply for financing. Respondents were intentionally negligent (as prev. defended). Respondents are in default per paragraph 8, and therefore the trial court erred in awarding specific performance to Respondents. "*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.*" Cureton v. Gilmore, 3 S.C. 46.

Respondents failed to close escrow on or before December 15, 2012 [and any time after December 15th] because they applied for financing on December 5th, the contract had already expired, and Respondents failed to provide their lender with a required, signed Contract Extension. This led to Respondents being declined for financing and the contract declared invalid. Where there was previously a valid and enforceable contract and the contract became invalid and unenforceable, the Respondents and their agent were obligated to inform the Sellers of the change in their contract and loan status, "*Where a statement was true when it was made but due to a change of circumstances becomes false, there is a duty to disclose the change*"[26] and "*fails to*

[26] With v O'Flanagan [1936] Ch 575

disclose in accordance with Section 40-57-137 any material facts concerning a real estate action." S.C. Code §40-57-145 (19)[27] Not only did Respondents intentionally failed to inform the Appellants Ferro they no longer had financing, but they chose to deny any and all loan information from the Sellers agent when he inquired specific information from FF, breaching yet another of their contract conditions.

Appellants hold true the Respondents also failed to disclose their loan information when, (1) 2 separate subpoenas from Atty. Massalon was issued to FF in 2013 to provide any and all loan documents and correspondence related to Respondents, property and/or Loan number [note, FF denied such people, loan and property existed in their system until a subpoena was issued for Ms. Williams' attendance at trial in 2014. The financing/loan file was provided, per March 2013 subpoena, just hours before trial was to begin (R. pg. 88 lines 5-9)(Pl. Ex. 16, First Federal File), (2) Appellants Ferro Answer to Respondents complaint asked for details (such as date application made, why a closing date was not set, etc.), (3) at their deposition in June 2013 and, (4) **while under oath** during the trial, Respondents and their agent(s) failed to disclose Respondents had been denied a loan. Instead they gave inconsistent, misleading and false information, and did not provide honest and truthful answers as sworn in a court of law. "It is unlawful for a person to wilfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State." S.C. Code §16-9-10 (A)(1).

The Contract expired by its own terms several times over (as defended herein) and warranted no signature on the cancellation request from the Appellants Ferro; therefore Appellant Morphew's contingent contract was enforceable and the valid contract as of 1-18-2012.

The court focused its inquiry on whether the Sellers performed and completed their contract obligations before the Contract's escrow expiration date of November 30, 2012. That

[27] HISTORY: 1997 Act No. 24, Section 1; 2004 Act No. 218, Sections 20, 21; 2006 Act No. 352, Section 1; 2014 Act No. 258 (S.75), Section 3, eff June 9, 2014.

inquiry in turn focused on whether the completion of the particular Seller's contract obligations waived the Buyer's contract obligations. This would be a correct focus if the issue contained a contract that specified in writing, as a whole, or individually, that Buyer [financing and inspection] contingencies are waived until Seller [completed repairs] obligations are performed. However, the Seller's contract conditions were not a pre-requisite for the Buyers to perform their conditions (i.e., **financing** and **inspection** conditions) (as prev. defended herein, Conditions arguments).

The trial court was presented with conflicting, false and/or obfuscated testimony from Respondents, and its choice to rely on Ms. Williams, Respondent Cross and Ms. Nicholson testimony, was unreasonable (especially since they provided no documentation themselves to back up their testimony at trial), and showed bias in favor of the Respondents, therefore warrants a reversal by this court.

Appellants ask the appellate court to reverse the trial court's Order of Specific Performance. "*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.*" Thompson v. Dulles, 5 Rich. Eq. 370.

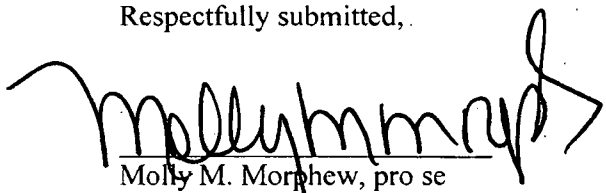
If the Respondents and their agents disclosed the material facts regarding the status of Respondents loan status in a fair and timely manner, as their duty intended, we wouldn't be here 2 years later wasting the court's and the other parties' time, resources and legal fees. The Respondents unlawful actions have caused Appellant Morphew to incur substantial expenses and expended considerable time, effort, and emotional equity in order to purchase the Property. As a

direct and proximate result of Respondents' conduct as set forth herein, Appellant Morphew has been injured and damaged. Appellant Morphew is entitled to recover damages against respondents in an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

Appellants Ferro fulfilled all their conditions contained within the purchase agreement, acted with good faith, fairness and honesty, observed Time is of the Essence, and are not, and have never been, in breach of contract (as stated herein). On the other hand, Respondents are in serious material breach of contract by refusing and/or failing to perform their contract conditions, showing bad faith and unfair dealing towards the Appellants Ferro, intentionally give false information to the Appellants Ferro to slow down their Time is of the Essence Contract in order to attempt to attain all requested repairs completed and paid for by the Appellants Ferro, and by refusing to sign a release of their contract after their contract expired (as stated herein).

The Respondents unlawfully filed and continued a lawsuit that was frivolous, and if they or their agents had disclosed Respondents' financing information 2 years ago, as duty required, they would have sold their home and save Appellants Ferro substantial expenses, considerable time, effort, and emotional equity. As a direct and proximate result of Respondent Cross conduct as set forth herein, Appellants Ferro have been injured and damaged. Appellants Ferro are entitled to recover damages against Respondents in an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

Respectfully submitted,



Molly M. Morphew, pro se
788 E. Butternut Rd.
Summerville, SC 29483
(843)514-7299

Thomas & Lorraine Ferro, pro se
5501 Carson St.
Denver, CO 80239

January 31, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Master of Equity

Appellate Case No. 2014-002633

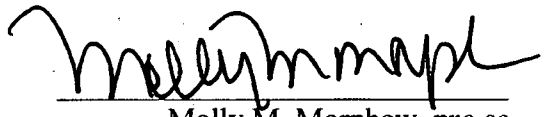
Molly M. Morphew, Thomas M. Ferro and Lorraine B. Ferro..... Appellants

v.

Stephen Dudek and Doreen Cross..... Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.



Molly M. Morphew, *pro se*
788 E Butternut Rd.
Summerville, SC 29483
morphew.wyas@gmail.com
(843) 514-7299

April 21, 2015

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	CASE NO.: 2017-CP-1800987
)	
Molly M. Morphew,)	
)	
Plaintiff,)	
)	
v.)	**PLAINTIFF'S BRIEF IN OPPOSITION TO DUDEK AND CROSS' NOTICE OF MOTION AND MOTION TO DISMISS PURSUANT RULE 12(b)(6), SCRCP**
)	
Stephen Dudek, and Doreen Cross,)	
)	
Defendants.)	
)	

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CLERK OF COURT
DORCHESTER COUNTY, S.C.

Plaintiff Morphew, pro se, submits the following Brief in Opposition to Dudek and Cross's Notice of Motion and Motion to Dismiss. For the reasons set forth below, Morphew requests that this Court deny the Motion to Dismiss in its entirety.

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INTRODUCTION

MORPHEW ALLEGES IN ITS COMPLAINT:

1. **That the Plaintiff has a legal and/or equitable claim, and is in possession of said property**.

   a) Morphew ratified a sales contract on December 16, 2012;

   b) Morphew secured financing on said sales contract had a closing scheduled January 31, 2013[1];

   c) Morphew has had, and currently has[2], tenancy of said property since June 2013.

2. **That the Defendants, at all times material, had no legal right or equitable claim to said**

[1] Morphew had final loan approval on January 3, 2013; a closing could have been scheduled any time after that, but her lender allowed for Dudek and Cross time to sign the termination request issued by the sellers when they failed two contract dates to close escrow and provide proof of financing.
[2] Since filing said complaint, Morphew has been 'forced' from said property, and will be appealed.

property.

a) At application for mortgage credit, the Defendants did not have a valid and enforceable sales contract for said property:

   i. The sales contract had expired 5 days before Defendants made initial application for mortgage credit on said property;

   ii. First Federal, now known as South State Bank (known herein as Defendants 'lender') required a signed Contract Extension Addendum at application because the sales contract had expired; None was ever provided.

   iii. Additionally, lender Underwriting declared the sales contract as illegible[3], therefore void and non-enforceable, and required a legible, signed sales Contract and ALL addendums (including, but not limited to, the required signed Contract Extension Addendum). A legible, signed sales contract was never provided[4]

b) Defendants were denied lending:

   i. Because they did not have a valid and enforceable sales contract;

   ii. Because they did not complete a mortgage application.

c) Defendants did not meet the legal requirements to request Specific Performance.

   i. Defendants did not complete a mortgage application per their sales contract;

[3] "incapable of being read or deciphered" Merriam-Webster Dictionary

[4] Though an 'unsigned legible sales contract' was provided by Dudek and Cross, it was not signed or initialed by the sellers, nor was the sellers name located on the alleged legible copy, therefore not meeting the Statute of Frauds. Furthermore, an "illegible contract is not valid", and "attaching an alleged unsigned copy for clarity does not make it valid, it only makes you look lazy" (Carolyn Nelson, Real Estate Broker/Owner with REALTYONE 247, August 2011, http://activerain.com/blogsview/2443675/illegible-contracts-and-disclosures-are-unacceptable-). Additionally, Dudek and Cross' lender would not accept the illegible document.

ii. Defendants did not have a valid and enforceable sales contract for said property;

iii. The Defendants were denied lending;

iv. Defendants were never "ready, able and willing" to perform their sales contract;

v. Defendants knew the sellers did not breach the sales contract.

3. **That the Defendant obtained said property unlawfully including, but not limited to, filing frivolous claims, fraudulent misrepresentations, and said acts on the court.**

4. **That the Defendants named above used the lawful judicial system and its processes to unlawfully obtain said property.**

a) Defendants filed a lis pendens and complaint for Specific Performance when they knew with full knowledge they did not meet the requirements;

b) Defendants knew they had been denied lending but frivolously and unlawfully filed a complaint for Specific Performance;

c) Defendants knew the sellers did not breach but claimed they did in order to get the courts to excuse their failure to close escrow;

d) Defendants, and their attorney, lied under oath during depositions that Dudek and Cross had, 1) applied and obtained financing per the sales contract; 2) could not close because the sellers 'failed to provide a CL-100 or clear CL-100'.."

e) Defendants, their attorney, their sales agent and their lending officer lied under oath during the trial that Dudek and Cross had applied and obtained financing per the sales contract;

f) Defendants, their attorney, their sales agent and their lending officer all lied on oath

during the trial that the sellers had caused that breach;

g) Defendants had given strict direction to their lender to not disclose any information [to any one] about their lending status;

h) Defendants intentionally obstructed discovery and prevented Morphew from material facts to her case, thus intentionally preventing her from presenting her case fully;

i) they did so with full knowledge of 2 subpoenas, and several meetings and telephone calls between counsels, requesting full disclosure of lending status and all documents, communications, etc. proving or disproving lending applicability;

j) Defendants failed to provide or disclose such information, but instead contended "they had secured lending but could not close due to the sellers 'failing to provide a CL-100"or "failing to provide a clear CL-100.[5]"

5. **That the Defendants, at all times material, intentionally prevented, and are currently preventing, the Plaintiff from her legal right to said property.**

6. **At all times material , the misleading or unlawful acts of the Defendant(s) violated the Plaintiff's Constitutional right of due process by preventing the Plaintiff from presenting all of her case or deprived her of the opportunity to be heard fully.**

7. **That due to the Defendants unlawful acts or fraudulent misrepresentations, the Judge was influenced to make an uninformed ruling (thus where the impartial function of the court have been directly corrupted), the judicial machinery was prevented from performing, and the court itself was defiled.**

8. **Though the Judge in the prior proceedings itself may have been unknowingly**

[5] Even though the sellers did obtain the CL-100 per the sales contract, whether or not the sellers 'did or did not" do so fails to excuse Dudek and Cross' breached by not providing a CL-100 or clear CL-100 is moot if Dudek and Cross had failed to be approved for financing or applied for financing on an expired contract or never completed their mortgage application or were denied lending due to an incomplete application.

"deceived" to make an unlawful or uninformed ruling, he was presented with recently found evidence of fraud on his court, but then seemed to choose to turn a blind eye at the expense of justice, therefore potentially violating the Due Process Clause of the U.S. Constitution; Additionally, its actions or non-actions inferred partiality towards the Defendants, especially by its action to ultimately reward Dudek and Cross for their unlawful actions or non-actions.

ARGUMENT

MOTION TO DISMISS STANDARD

Defendants claim Morphew's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRP, "*Plaintiff has failed to state facts sufficient to constitute a cause of action against the Defendants.*"

Plaintiff argues the Defendants motion to dismiss should be dismissed in its entirety because the Motion failed to state with particularity the grounds therefor. "A motion presented in writing "shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion." Rule 7(b)(1), SCRCP." Plaintiff argues the Motion identified the Rule the Motion was brought under but failed to comply with Rule 7(b)(1) as it did not state with particularity the grounds therefor. The language at issue "failed to state even one ground for granting the motion." *Martinez v. Trainor*, 556 F.2d at 819 (7th Cir. 1977). This failure also makes it impossible for Plaintiff to fully and properly defend herself in her response.

Even if the Defendants Motion complied with Rule 7(b)(1), a motion to

dismiss under Rule 12(b)(6) ["failure to state facts sufficient to constitute a cause of action"] should be granted only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. *Brown v. /,Everette*, 291 S.C 34, 353 SE.2d 697 (1987); *McCormick v.England*, 328 SC. 627, 494 S.E.2d 431 (Ct. App. 1997). When deciding a motion to dismiss made under Federal Rule of Civil Procedure 12(b)(6), the Court must accept all well-pled facts alleged in the complaint as true and draw all reasonable inferences in the plaintiff's favor. *Nemet Chevrolet, Ltd. v. Consumeraffairs*. com, Inc., 591 F.3d 250, 253 (4th Cir. 2009). To survive a Rule 12(b)(6) motion, "(f]actual allegations must be enough to raise a right to relief above the speculative level" and have "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, 570, 127 S Ct. 1955, 1960, 1974)2007). The Court will not dismiss the plaintiff's complaint so long as he provides adequate detail about his claims to show he has a "more-than-conceivable chance of success on the merits." *Owens v. Baltimore City State's Attorneys Office*, 767 F.3d 379, 396 (4th Cir. 2014) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2006)). "Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Twombly*, 550 U.S. at 563. A motion under Rule 12(b)(6) merely tests the legal sufficiency of a complaint, requiring a court to construe the complaint liberally, assume all facts as true, and draw all reasonable inferences in favor of the plaintiff. *Id.*, 550 U.S. at 556-57. "[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular,

documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Fraud or fraud upon the court is a matter in which a court may take judicial notice. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

Consideration of the Complaint as a whole demonstrates that it meets the requirements established under the Federal Rules. "[A] complaint must contain sufficient factual matter . . . to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This standard is met where "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S.Ct. at 1949 (citing *Twombly*, 550 U.S. at 556). Here, the Complaint presents a detailed recitation of Plaintiffs' assertions that more than satisfies the pleading requirements. A review of the entire Complaint demonstrates that the Complaint in no way relies upon mere legal conclusions but contains a significant opinion that the Plaintiff has substantial legal and equitable rights to the said property, and also contains a detailed factual

account of Defendants' illegal practices which establish their liability for the violations of both Rule 11, Due Process, and Specific Performance Rules.

For these reasons above, the Defendants Motion to Dismiss should be dismissed in its entirety.

CONCLUSION

For all the foregoing reasons, the Court should deny Defendant's Motion to dismiss in its entirety.

Further, the Plaintiff Morphew would hereby respectfully move the Court for an order for Defendant's to pay for all costs (and treble damages) associated to Plaintiff in defending this DUDEK AND CROSS'S NOTICE OF MOTION AND MOTION TO DISMISS.

Respectfully Submitted,

Molly M. Morphew, pro se

Molly M. Morphew, Pro Se
1605 Central Avenue Ste 6/347
Summerville, SC 29483
(843) 514-7299
morphew926@gmail.com

July 6, 2017

Exhibit "B"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

© Carolina One Real Estate

1. **PARTIES:** This legally binding Agreement entered into on October 20, 2012 between, Buyer(s), Stephen Dudek, Doreen Crees, (hereinafter called "BUYER"), and Seller(s), _____, (hereinafter called "SELLER"). The property shall be deeded in the name(s) of: same

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

CERTIFIED COPY
2013 JAN 15 PM 3:14
CLERK OF COURT
DORCHESTER COUNTY

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____.

No personal property will convey as a part of this sale, except as described: All appliances including refrigerator as well as all window treatments.

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before ~~30 November 20~~ 30 December, 2012, not later than 6:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ ~~223,000.00~~ 303,000.00
Three hundred three thousand ~~Two Hundred Twenty Five Thousand~~ & 00/100 dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: _____

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 1,000.00
Buyer and Seller authorize Carolina One Real Estate as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☒Check, or ☐ Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

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THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 90.000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☐ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to Contribute $5,000-towards Buyers Closing Costs.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☐ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☒ Seller not to exceed $ 700.00 . AHS provided by Carolina One.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 6 o'clock p M. on October 29, 2012 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS. The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based paint and lead based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012, in the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lenders commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (GL100) from a licensed and bonded pest control operator on or before November 30, 2012. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

Ben Wall and Chad

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyers expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____, (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead In Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.

Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that I hoisting and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** I any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT I NTEREST/CHARITABLECONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendus A, B + C

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
BUYER: Dorothy Cross	Date 10 20 12	Time 1:47
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
SELLER: Thomas Ferris	Date 10/24/12	Time 11:45 AM
WITNESS: K Ferris	Date 10/24/12	Time 11:45 AM
SELLER: Kathleen Ferris	Date 10/24/12	Time 11:46 AM
WITNESS: Thomas Ferris	Date 10/24/12	Time 11:46 AM

LISTING AGENT AND COMPANY Rick Willis The Grove, LLC

SELLING AGENT AND COMPANY Susan Nicholson Carolina One Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Susan Nicholson Carolina One Real Estate

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ADDENDUM A

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property; ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 N Buttonput Rd.

Tax Map # 128-00-00-080 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

1. Buyer total satisfaction of home inspection and CR100. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septics each hasn't been service in the past yr. then seller agrees to have it serviced.5. Seller agrees to have the property subdivided to include in this sale the 3240 sf house, storage bldg and 5 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to include copies of the survey. Cont. next pg. (B) ✓C

The rental agreement, upon its execution by both parties, is hereinafter made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Carolyn Cross	Date 10.2012	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Ferro	Date 10/24/12	Time 11:48
WITNESS: Kelly J Ferro	Date 10/24/12	Time 11:48
SELLER: Virginia Ferro	Date 10/24/12	Time 11:49
WITNESS: Kelly J Ferro	Date 10/24/12	Time 11:49

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Phone: 8434191015 Fax: 8452023169 Susan Nicholson

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ADDENDUM B

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 138-00-00-090 City Summerville, S.C. Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SC Sellers Disclosure due to not legible of what is currently on the MLS. 9. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc. Buyer shall grant water & Sewer easement to adjacent 2 acres +/-

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

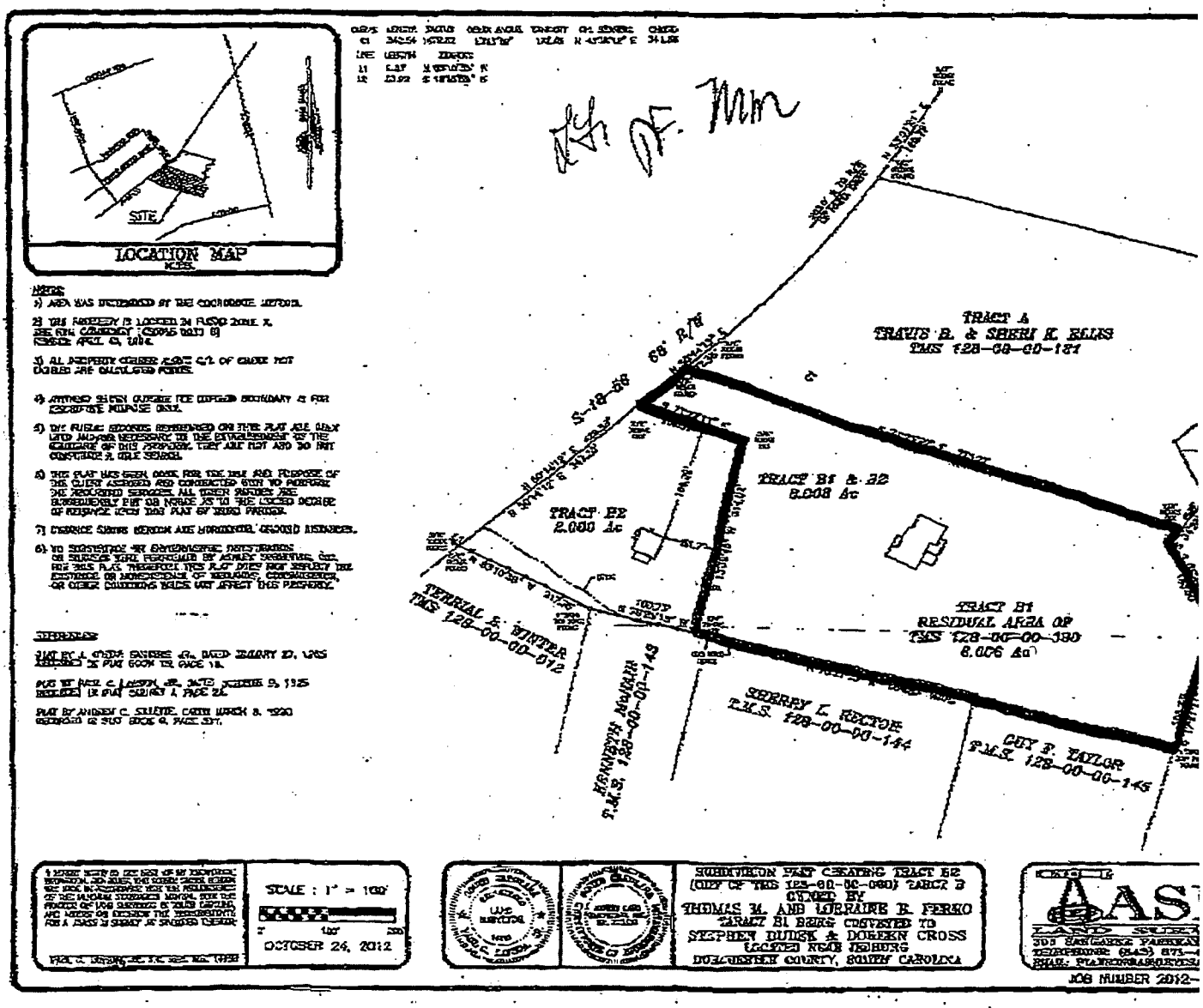
BUYER: Stephen C. Dell (Stephen Dudek)	Date 20 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Theresa Dell (Theresa Dell)	Date 10.20.2012	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Dell	Date 10/24/12	Time 11:48
WITNESS: Peggy T Dell	Date 10/24/12	Time 11:48
SELLER: Virginia Dell	Date 10/24/12	Time 11:49
WITNESS: Peggy T Dell	Date 10/24/12	Time 11:49

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Phone: 8434191016 Fax: 8432023169 Susan Nicholson
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145 Browning


LOCATION MAP
NOTES:
1) AREA WAS DETERMINED BY THE COORDINATE METHOD.
2) THIS PROPERTY IS LOCATED IN FLOOD ZONE X,
AREA OF MINIMAL FLOOD HAZARD
PER FIRM COMMUNITY PANEL NUMBER 0210 G
EFFECTIVE DATE: APRIL 05, 2012.
3) ALL PROPERTY CORNERS ARE SET 1/2" OR CRIMP PIPE
UNLESS ARE CALCULATED POINTS.
4) APPROXIMATE 50' MARSH/DUNE LINE DELINEATION BOUNDARY IS FOR
DESCRIPTIVE PURPOSE ONLY.
5) ANY PUBLIC DEDICATIONS REFERENCED ON THIS PLAT ARE NOT
LIMITED AND/OR DETERMINATIVE OF THE ESTABLISHMENT OF THE
OWNERSHIP OF THIS PROPERTY. THEY ARE NOT AND DO NOT
CONSTITUTE A PUBLIC SERVICE.
6) THIS PLAT HAS BEEN MADE FOR THE USE AND PURPOSE OF
THE CLIENT ASSIGNED AND CONTRACTED WITH TO PURPOSE
THE DESCRIBED SERVICES. ALL OTHER PARTIES ARE
SUBSEQUENTLY PUT ON NOTICE AS TO THE LIMITED SCOPE
OF REFERENCE WITH THIS PLAT OF RECORD PARTIES.
7) DISTANCE SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES.
8) NO SUBSTANCE OR ENVIRONMENTAL INVESTIGATION
OR SURVEY WAS PERFORMED BY ASHLEY ENGINEERING, INC.
THIS SURVEY PLAT PRESENTS NO OPINION REGARDING THE
EXISTENCE OR NONEXISTENCE OF WETLANDS, CONTAMINATION,
OR OTHER ENVIRONMENTAL ISSUES THAT AFFECT THIS PROPERTY.
REFERENCES
PLAT BY J. CHRIS ASHLEY JR., DATED JANUARY 27, 1995
RECORDED IN PLAT BOOK 70 PAGE 18.
PLAT BY PAUL C. LAWTON JR., DATED OCTOBER 9, 1975
RECORDED IN PLAT CABINET I, PAGE 24.
PLAT BY ANDREW C. SILLIKE, DATED MARCH 8, 1990
RECORDED IN PLAT BOOK 9, PAGE 331.
TRACT A
TRAVIS B. & SHERI K. ELLIS
TMS 128-00-00-121
TRACT B1 & B2
8.008 Ac
TRACT B2
2.000 Ac
TRACT B1
RESIDUAL AREA OF
TMS 128-00-00-130
6.006 Ac
TERRIAL & WINTER
TMS 128-00-00-012
HOWARTH MARMON
T.M.S. 128-00-00-143
SHERRY L. RECTOR
T.M.S. 128-00-00-144
CHY B. TAYLOR
T.M.S. 128-00-00-145
S 48-58
68' R/W
SCALE : 1" = 100'
OCTOBER 24, 2012
SUBDIVISION PLAT CREATING TRACT B2
(OUT OF TMS 128-00-00-080) TRACT B
OWNED BY
THOMAS M. AND LORRAINE B. FERKO
TRACT B1 BEING CONVEYED TO
STEPHEN DUDEK & DOREEN CROSS
LOCATED NEAR JEDBURG
DORCHESTER COUNTY, SOUTH CAROLINA
JOB NUMBER 2012-

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

1. **PARTIES:** This legally binding Agreement entered into on December 16, 2012 between, Buyer(s), Molly M. Morphew, (hereinafter called "**BUYER**"), and Seller(s), Thomas Ferro, Lorraine Ferro, (hereinafter called "**SELLER**"). The property shall be deeded in the name(s) of: Molly M. Morphew

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres) Tract B-1

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____.

No personal property will convey as a part of this sale, except as described: Elec Cooktop, Dishwasher, Weher/Dryer Connections, Garbage Disposal, Satellite Dish

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 1/30/13, 1/30/13, not later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

6. **PURCHASE PRICE** shall be $ 280,000.00 Two Hundred Eighty Thousand dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: N/A

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 5,000.00 Pd. To Seller's

~~Buyer and Seller authorize _____ as Escrowagent, to hold and disburse, except as money is credited to the purchase price of this agreement. Earnest money paid by ☐Cash, ☐Check or ☐Other. Agent does not guarantee payment of a check or check accepted as earnest money. All earnest money or earnest money checks shall be _____ and Paid to _____ or payable _____ Regardless of the outcome of this sale, the earnest money deposit shall be credited to the Buyer.~~

[MW] BUYER [____] BUYER [MW] SELLER [TF] SELLER HAVE READ THIS PAGE

The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466 Phone: 843-971-4002 Fax: 888-803-1570 788 E. Butternut
Charlene Wells
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THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 96.500 % loan (loan-to-value ratio) within 5 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 30 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☒ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☒ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller agrees to pay up to $7,000 towards buyers closing costs, prepaids, allowables and non allowables at closing.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☒ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☐ Seller not to exceed $ N/A.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at N/A o'clock N/A M. on N/A unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed N/A consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☐ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 366 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will **not** complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by N/A, N/A. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before At Closing. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs**: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978**: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. **(Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information).** This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the acouracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. ~~**COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.~~

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

BUYER [____] BUYER [____] SELLER [____] SELLER HAVE READ THIS PAGE

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See Addendum "A"

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Morphew Molly M. Morphew Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Thomas Ferro Thomas Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Lorraine Ferro Lorraine Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY The Group, Llc

SELLING AGENT AND COMPANY The Group, Llc

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐BUYER'S AGENT OR ☐SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

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ADDENDUM A

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises -- commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres)

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Property is being purchased in "As Is" condition. This contract is a "back up" contract. It is contingent upon an existing contract of sale to receive a signed release so that this contract becomes the primary contract. In the event the existing contract does not receive a signed release this agreement may be declared null and void by either party on or before December 30, 2012 with written notice and deposit money returned to purchaser. Attached plat shows property being purchased. Seller agrees to pay 6% of the sales price at closing to The Group, LLC as compensation for this transaction.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Morphew Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Thomas Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Lorraine Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

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The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466
Phone: 843-971-4002 Fax: 888-803-1570 Charlene Willis

788 E. Buttern

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STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for seven transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have an actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or incomplete (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: _____ Seller Date _____ Buyer Date 12/16/12

Rev. 1/08

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM, MALFUNCTION OR DEFECT WITH ANY OF THE FOLLOWING:

		Yes	No	No Representation
1.	Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ Brick mono like pour green house b. Approximate age of structure ___	☐	☒	☐
2.	Roof (leakage or other problem)? a. Approximate age of roof covering steel Roof 8yrs.	☐	☒	☐
3.	Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4.	Electrical system (switches, wiring, panel, switches, fixtures, etc)?	☒	☒	☐
5.	Plumbing system (pipes, fixtures, water heater, etc)?	☒	☒	☐
6.	Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ cooling unit ___	☒	☒	☐
7.	Water supply (including water quality, quantity and water pressure)? a. Water supply is: city/county ✓ community system ___ private well ___ b. Water pipes are: copper ___ galvanized ___ PVC/CPVC ✓ poly butelene ___	☐	☒	☐
8.	Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ✓ c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9.	Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc)?	☒	☒	☐
10.	Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ✓	☐	☒	☐
11.	Drainage, grading or stability of soil or retaining structure?	☒	☒	☐
12.	Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ✓ exhaust fan ___ ceiling fan ✓ sump pump ___ irrigation system ✓ cable or wiring or satellite dish ✓ security system ___ or other systems ___	☐	☒	☐

Initials ___ Seller ___ Date ___ Buyer ___ Date 12/16/12

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

		Yes*	No	No Representation
13.	Room additions or other structural changes?	☐	☑	☐
14.	Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☑	☐
15.	Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☑	☐
16.	Previous damage caused by fire?	☐	☑	☐
17.	Violations or variances of building codes or zoning ordinances?	☐	☑	☐
18.	Restrictions to property use? (covenants or deed)	☐	☑	☐
19.	Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☑	☐
20.	Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☑	☐
21.	Owners' association fees or "common area" expenses or assessments?	☐	☑	☐
22.	Flood hazards or that the property is in a federally-designated flood plain?	☐	☑	☐
23.	Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☑	☐
24.	Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☑	☐

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

Initials: Seller _____ Date _____ Buyer MM Date 12/6/12

Rev. 10/11

"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 788 E Butternut Rd Summerville, S.C. 29483.

The property is currently: owner-occupied ✓ leased ___ on an estate ___ in foreclosure ___
vacant ___ (If vacant, how long? ___)

Owner's Name(s): Jon Ford

Owner(s) acknowledge(s) they examined this statement before signing, and that all information is true and correct as of the date signed.

Owner Signature: _____ Date: 12/16/12

Owner Signature: _____ Date: 12/16/12

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: _____ Date: 12/16/12

Purchaser Signature: _____ Date: _____

(This form is approved by the South Carolina Real Estate Commission.)

DUAL AGENCY AGREEMENT

THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT.

This Dual Agency Agreement is entered into between Molly M. Morphew, Buyer, and The Group, Llc Real Estate Company, Thomas Ferro, Lorraine Ferro, Seller, and The Group, Llc Real Estate Company for Property located at 788 E. Butternut (6 Acres), Summerville, 29483.

The term "Broker" includes the real estate firm, broker-in-charge and associated licensees.

1. **DUAL AGENCY:** Seller and Buyer agree that Broker shall serve as both Seller's agent and Buyer's agent in the sale of Seller's property to Buyer in accordance with Section 40-57-137(M)(1) of the South Carolina Code of Laws, which provides in part that "...In acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited." The parties agree that without permission from the party about whom the information pertains, Broker shall not disclose to the other party the following information:
   a) That a party may agree to a price, terms, or any conditions of sale other than those offered;
   b) The motivation of a party for engaging in the transaction, unless disclosure is otherwise provided by state law or regulation; and
   c) Any information about a party which that party has identified as confidential unless disclosure is otherwise required by state law or regulation.
2. **BROKER'S DUAL AGENCY ROLE:** Because Broker is serving as Agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to represent Seller and Buyer in a balanced and fair manner. Broker shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and Buyer. Seller and Buyer understand and acknowledge that:
   a) Prior to the time this agreement was entered into, Broker acted as the exclusive Agent of Seller and acted as exclusive Agent of Buyer.
   b) In those separate roles Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker.
   c) Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.
3. **SELLER'S AND BUYER'S ROLES:** Because of Broker's Dual Agency relationship, Seller and Buyer understand and acknowledge that:
   a) Seller and Buyer have determined that the advantages of entering into this Dual Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
   b) Seller and Buyer each have the responsibility of making their own decisions as to what terms are to be included in any agreement to buy and sell between the Seller and Buyer.
   c) Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Dual Agency role as expressed herein to provide balanced and fair representation of Seller and Buyer and to encourage communication between Seller and Buyer rather than acting as an advocate or exclusive agent.
   d) Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent.
   e) Seller and Buyer may seek independent legal counsel to assist them with the negotiation and preparation of a buy and sell agreement or with any matter relating to the transaction which is the subject matter of a buy and sell agreement.
4. **PREVIOUS AGENCY AGREEMENTS:** The parties agree that this Agreement shall modify any agency agreements previously entered into by Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Dual Agency Agreement shall control.
5. **DURATION OF DUAL AGENCY:** The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

The Group, LLC, 1660 Skylawk Ct, Mt. Pleasant, SC 29466 Phone: 843-971-4003 Fax: 888-803-1570. 788 E. Butternut
Thalene Wills Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

6. FAIR HOUSING: The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

7. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the execution of this dual agency agreement or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

8. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DUAL AGENCY AGREEMENT.

Seller Thomas Ferro — Date 12/16 — Time

Seller Lorraine Ferro — Date 12/16/12 — Time

Buyer Molly M. Morphew — Date 12/16/12 — Time

Buyer — Date — Time

The Group, Llc
Real Estate Brokerage (Name of Real Estate Co.)

By: Broker/Assoc. Licensee — Date 12-16-12
Rick Willis

Produced with ZipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.ziplogix.com

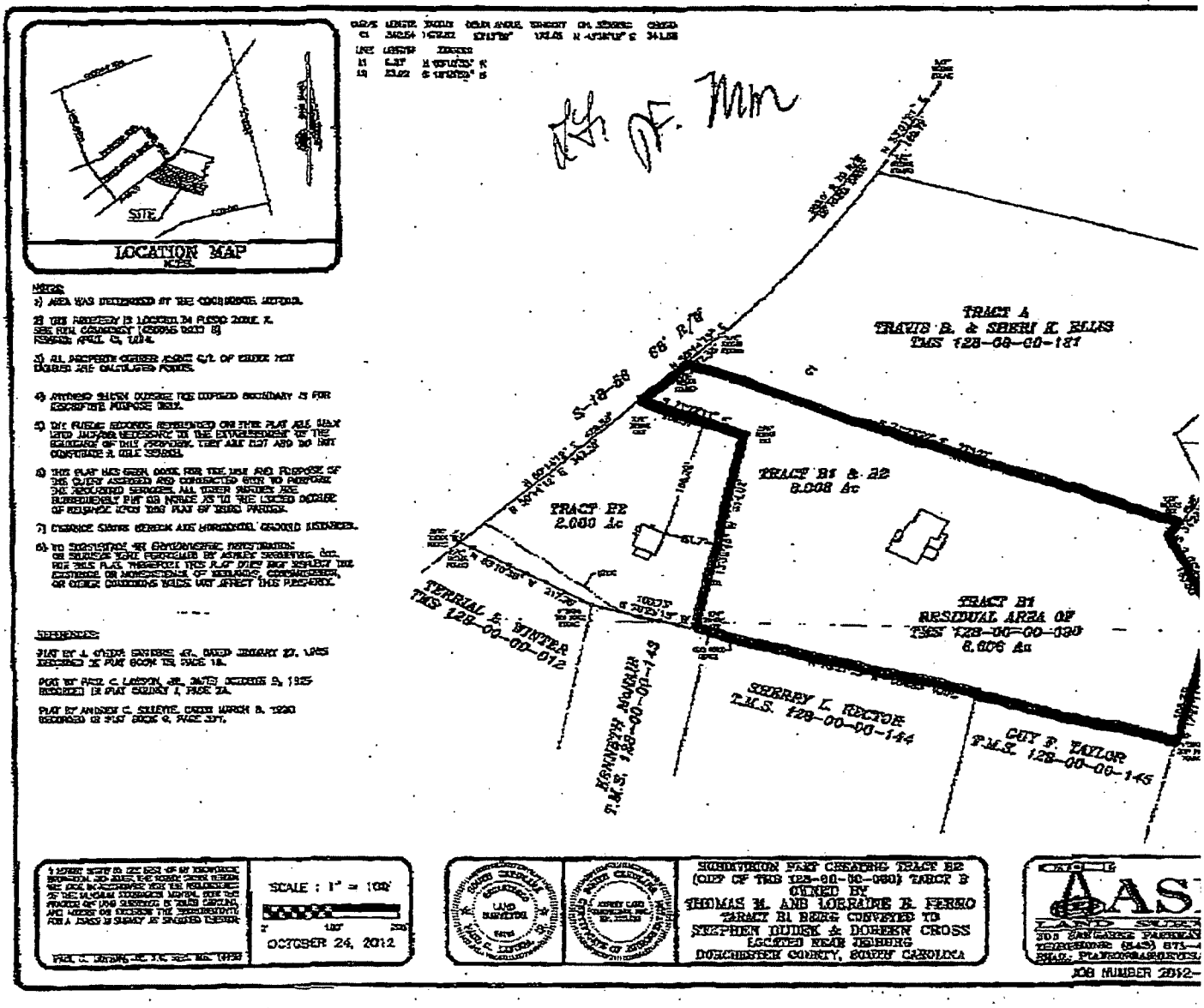

LOCATION MAP
SITE
TRACT A
TRAVIS B. & SHERI K. ELLIS
TMS 128-00-00-181
TRACT B1 & B2
8.008 Ac
TRACT B2
2.000 Ac
TRACT B1
RESIDUAL AREA OF
TMS 128-00-00-030
6.606 Ac
TERRIAL E. WINTER
TMS 128-00-00-012
KENNETH MAHAIN
T.M.S. 128-00-00-143
SHERRY L. RECTOR
T.M.S. 128-00-00-144
GUY F. TAYLOR
T.M.S. 128-00-00-145
SCALE : 1" = 100'
OCTOBER 24, 2012
SUBDIVISION PLAT CREATING TRACT B2
(OUT OF TMS 128-00-00-030) TRACT B
OWNED BY
THOMAS M. AND LORRAINE B. FERRO
TRACT B1 BEING CONVEYED TO
STEPHEN DUDEK & DOREEN CROSS
LOCATED NEAR JEDBURG
DORCHESTER COUNTY, SOUTH CAROLINA

Exhibit "B"

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO. ~~2013-CP-18-~~ 2013-LP-18-18
Stephen Dudek and Doreen Cross Plaintiffs, vs. Thomas M. Ferro and Lorraine B. Ferro Defendants	)	LIS PENDENS

CERTIFIED COPY
2013 JAN 11 PM 3:27
CLERK OF COURT
DORCHESTER COUNTY

Notice is hereby given that an action has been commenced and is pending in this Court upon complaint of the above named Plaintiffs against the above named Defendants for the specific performance of a contract of sale dated October 12, 2012, on the below described real estate:

All that certain piece, parcel, or lot of land, situate, lying and being near Jedburg, Dorchester County, South Carolina, being shown and designated as Tract B containing 8.006 acres, more or less, and being delineated on a plat entitled "Plat showing the subdivision of property owned by Estate of St. ClairA Knight, III, located near Jedburg, Dorchester county, South Carolina" dated August 7, 1997, prepared by Ashley Surveying, Inc. and recorded in the RMC Office for Dorchester County in Plat book J-26. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This being a portion of the property conveyed to the Estate of St. Clair A. Knight, III, under the Last Will and Testament of St. Clair Ainsley Knight, III, by Catherine H. Knight, Personal Representative, as filed in Horry County Probate Court Case No. 97-ES-26-152.

TMS Number 128-00-00-090

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire
Attorney for Plaintiff
P. O. Box 40578
Charleston, SC 29423
(843) 760-0220

North Charleston, SC
January 11. 2012

Joseph K. Qualey

From: Rick Willis [rwillisteam@gmail.com]
Sent: Wednesday, January 16, 2013 8:27 PM
To: Joseph K. Qualey
Subject: Re: FW: Ferro
Attachments: Ferro Buttemut.pdf

Joe,

The 10:00 a.m. meeting on Friday will consist of Tommy and Lorraine Ferr (owners of 788 E. Buttemut) and the individuals who want to purchase the property. (Not the ones in litigation.)

The sellers want these other people to purchase and they are prepared to have you litigate the lis pendens if needed to be able to purchase the property (Les Pendens was filed yesterday...copy attached.)

All partics want to hear first hand if you believe they can win if you litigate.

Please be prepared to have any and all parties sign whatever documents necessary to allow all parties to meet you and hear your advice and council.

I will be paying your fee so let me know if you want me to pay in advance for this meeting.

Rick
843-327-3017

On Tue, Jan 15, 2013 at 9:09 AM, Joseph K. Qualey <joequaley@qlawfirm.com> wrote:

Mr Ferro we discussed this matter on thursday and you indicated you were moving forward to secure another Contract and that you did not

intend to sell to the present Buyers.

I told you that their atty may file a Lis Pendens to attempt to stop any such sale .

Pls see attached Lis Pendens which was in fact filed.

Sincerely,

Joe Qualey

Joseph K. Qualey
23 Broad Street
Charleston, SC 29401
O: 843-577-3434
F: 843-577-2241
C: 843-693-3434
joequaley@qlawfirm.com

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From: Lorraine Ferro <lbferro3200@gmail.com>
To: "firegirl0926@yahoo.com" <firegirl0926@yahoo.com>
Sent: Wednesday, September 10, 2014, 1:43:15 PM EDT
Subject: Judge Chellis

Hi Molly,
I'm not sure if John Massalon let you know but the Judge is not going to consider anything we sent him! He is only going to consider the lawyers responses. It seems like he has made a decision already, but just wants to go over their exhibit list for a final once-over. Very disappointing, plus there is another delay with David being sick.

We still haven't recovered from the whole KY debacle. I thought for sure we would be done with this by now.

Thank you,
Lorraine

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP- 18-987
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**LIS PENDENS**
	)	
Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

FILED-RECORDED
2017 JUN 12 AM 11:43
CLERK OF COURT
DORCHESTER COUNTY

Notice is hereby given that action 2017-CP-_____, has been commenced and is pending in this Court upon complaint of the above named Plaintiff against the Defendants for Constructive Trust and Quiet Title of the below described real property:

All that certain piece, parcel, or lot of land, situate, lying and being near Jedburg. Dorchester County, South Carolina, being shown and designated as Tract B1 containing 6.006 acres, more or less, and being delineated on a plat entitled "Owned by Thomas M. and Lorraine B. Ferro", dated November 20, 2012, prepared by Ashley Surveying, Inc., and recorded in the RMC Office for Dorchester County in Plat Book (L-195). Said lot having such size, shape, dimensions, etc., as will more fully appear by reference to said plat.

TMS Number 128-00-00-090

Molly M. Morphew, pro se

Molly M. Morphew, pro se
788 E. Butternut Rd.
Summerville, SC 29483
843-514-7299

June 11, 2017
Summerville, South Carolina

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY
MASTER-IN-EQUITY

Stephen Dudek and Doreen Cross,
Respondents,

vs. CASE NO. 2013-CP-18-00183

Thomas M. Ferro and Lorraine B. Ferro,
Defendants.

And

Molly M. Morphew,
Plaintiff,

vs.

Stephen Dudek, Doreen Cross,
Thomas Ferro and Lorraine Ferro,
Defendants.

BEFORE THE HONORABLE JAMES E. CHELLIS

DATE: June 12, 2017

TIME: 9:00 AM

LOCATION: DORCHESTER COUNTY COURTHOUSE
ST. GEORGE, SOUTH CAROLINA

REPORTED BY: ANNE BOULEY MEYER, RPR
CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM
Office@clark-associates.com

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APPEARANCES

ON BEHALF OF RESPONDENTS:

SMITH & CLOSSER
BY: STEVEN L. SMITH
7455 Cross County Road
North Charleston, SC 29418

ON BEHALF OF PLAINTIFF:

MOLLY M. MORPHEW
IN PROPER PERSON

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EXHIBITS

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ALL EXHIBITS RETAINED BY THE DORCHESTER COUNTY CLERK OF COURT.

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THE COURT: We are here today on Dudek cross-motion for a rule to show cause why Molly Morphew should not be held in contempt of court for failure to abide by a court order that I entered on April the 3rd, amended by my court order dated May the 17th.

Mr. Smith.

MR. SMITH: Your Honor, although if you notice, the motion is titled Notice of Motion on Motion for Rule to Show Cause, Ejectment and Attorney's fees.

THE COURT: Yes.

MR. SMITH: What we really want is the ejectment part. We want her out pursuant to this Court's order.

The contempt, the rule to show cause, honestly, I know you -- probably, if you order an ejectment, you're going to not hold her in contempt; you're going to allow the contempt to be purged if she just gets out.

I mean, that's all we want. We don't want Ms. Morphew to do anything except leave us alone and get out of the house we bought. So what we are asking this Court to do is to issue an order of ejectment pursuant to

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your previous order that she needs to leave.

I tried to get it resolved earlier in a meeting with her, but I don't think that's going to happen.

You have to understand, we did not buy this house with a tenant in place. When we signed the original contract in 2011 or '12 -- I read her memo -- 2011 or '12 whenever -- I think 2012 when the contract was signed, there was no tenant.

Ms. Morphew wasn't even in the picture at the time. She was a back-up contract at that point. We didn't buy the house with a tenant in place.

Then if you look at the closing which occurred, what, a week-and-a-half ago, a couple Fridays ago, we didn't buy it -- we didn't close with a tenant in place. We closed pursuant to your order, which ordered her to be out.

So at no point did we buy a house that had a tenant in it, and therefore, we are subject to some lease. We signed a contract with no tenant. We closed pursuant to a Court order that ordered her to be out.

The fact that she is there doesn't

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mean that she gets to stay just because she is there in violation of a contract and in violation of a Court order.

Your Honor, what we are asking for today, we are asking that she be ejected immediately, because she has had plenty of time to get out. As a matter of fact, at the hearing that we had -- I'm losing track of the number of hearings.

Let me also say that one of the things that you do when you refer a case to a Master is you send it to a judge who retains jurisdiction to hear everything. And you don't have to rehash everything, because you know as much about the case as we do.

You ordered the closing; the closing occurred. You ordered her to be out; she's out. That's why you don't have to keep informing the Court of what's happening.

Also, with a pro se person, I understand that you're more lenient. Our supreme court has said you are to be more lenient with a pro se person; however, you are not supposed to be lenient to the point where you are causing damage to another party. And that's what's

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occurring now.

We are paying a mortgage on a house that we thought she would be gone, and we are still living somewhere else that we are having to pay for also. So we are getting double-hit just because Ms. Morphew wants to do whatever she is doing. And it's just dragging on and on and on, and it's causing my client damage.

What we are asking for is an ejectment of Ms. Morphew pursuant to your April 17th order. The April -- I'm sorry -- April 3rd order. The May 17th order didn't change any of that; it only dealt with attorneys' fees. The April 3rd order is the one that asks her to leave. And that wasn't questioned or anything else.

Then Ms. Morphew files something that I still am not really sure what it was. It wasn't a motion to reconsider. As a matter of fact, she even said on numerous times -- I don't want to put a number on it, because then next thing you know I'm getting accused of overstating it -- numerous times during that hearing that she wasn't up to moving. She didn't file a motion.

THE COURT: Well, I've already

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decided that was a Rule 59(e) motion. So you may not interpret it that way. Ms. Morphew may not have to interpreted it that way or thought she was doing that, but that's the only way, after an order has been entered, in my view, given the status of the case at that time, that I could review what she raised in the so-called answer.

MR. SMITH: But the April 3rd order is the one that told her to leave.

THE COURT: Absolutely. Let's be clear. The April 3rd order is the one -- the May 17th order did not amend or change in any way my directive and my order for her to vacate the property on or before the closing of the property that Cross and Dudek would achieve.

MR. SMITH: That's correct.

THE COURT: I'm not concerned about the -- and I stated that, not only in the findings, but also in the order itself. So I'm clear, Mr. Smith, that we are talking about the directive that Ms. Morphew was to vacate the property on or before the closing.

MR. SMITH: That's correct. And that's the April 3rd order. That's the order I'm seeking to enforce.

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THE COURT: I'm clear on that.
Thank you.
MR. SMITH: So I'm asking that she be ejected pursuant to the April 3rd order and that we be awarded attorney's fees -- under this Court's equitable powers, that we be awarded attorney's fees for the last few motions that we have had. Not for the stuff beforehand, but since her refusal to leave that property pursuant to that order.
Because you've asked us to, we have provided a court reporter even for that motion. We have got $1,200 in court reporter fees. We ask that that be reimbursed also.
I have an affidavit of additional attorney's fees plus costs that I would like to present to the Court at this time.
THE COURT: Sure.
MR. SMITH: At least deal only with --
THE COURT: Please mark that Dudek cross-motion, Exhibit 1.
(Exhibit No. 1 was marked for identification.)
THE COURT: All right. You've

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given me an opening statement, Mr. Smith, and you've submitted an affidavit of attorney's fees.
I'm going to give Ms. Morphew an opportunity for an opening statement only -- that's all I want is an opening statement -- and then I'm going to make a decision on whether or not I convert, sua sponte, your motion into a rule to show cause why she shouldn't be held in contempt of this Court.
MR. SMITH: That's what I was going to get to. I was going to ask you to do it sua sponte. The only two questions are: Did you close, and did you leave.
THE COURT: I understand. But you're going to need to -- if I get to that point, then I'm leaning significantly in favor of doing that. But I'm -- just based on what you said, I need to hear from her further.
MR. SMITH: All right.
THE COURT: We will need some evidentiary information. I need some evidence. I just can't have Counsel's argument on that.
MR. SMITH: I understand. We have got witnesses here.
Thank you, Your Honor.

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THE COURT: Ms. Morphew, please give me an opening response to Mr. Smith's position is really what I want to hear.
MS. MORPHEW: All right. First of all -- first of all, on the April 3rd order, I was under the impression, filed an answer, a hearing was scheduled for May 12th to hear that answer, and I was working under the impression of what I had agreed on during that March 27th hearing, until that was ruled on.
Furthermore -- which meant that my contention about being able to get proof of financing, or some sort of proof of financing, for what I asked for so that I felt comfortable that everything was aboveboard.
Second of all, I hadn't heard anything about a closing until just a couple days -- I mean, two days before closing. This is the scheduled closing, and here's your notice.
Now, I may have known -- or known that maybe it's coming up, but it's a maybe; it's tentative; it could have been a problem. Because the first closing was canceled because they had to get new --
THE COURT: Ms. Morphew, excuse

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me --
MS. MORPHEW: I just want to --
THE COURT: No. Wait a minute. I just want to know what your -- your contention is that is what?
MS. MORPHEW: My contention is that I'm working under the impression of something opposite of what I was trying to tell you.
The Ferros gave me a notice before the closing saying that there's a closing taking place tomorrow. And if it closes -- which I wasn't even sure that they would -- the buyers would contact me about the rent.
Now, they had not canceled my lease. I'm still thinking I'm a renter, and I'm still trying to resolve everything else. And the time for appeal still hasn't done [sic] for the other order -- for the order of April 3rd or even of the May 17th -- so I'm sitting here working under the impression that I'm still a leaser because it had not been canceled.
Now, thinking that you're closing a house without a tenant in it is different than knowing you're closing without a house [sic]. They had the option of not closing if there was a

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tenant in it. And by signing those papers, that waived any right to not have any tenant or whatever contingency they had for it.

That lease automatically transfers over, and I was waiting for that.

THE COURT: Okay. So here's what I got. You've got one point is that you want to raise failure of notice. Is that the issue that you're trying to tell me about? Failure to be notified of the closing?

MS. MORPHEW: Yes.

THE COURT: The second issue is that once the closing occurred, you became a tenant and are no longer subject to this Court's order; is that right?

MS. MORPHEW: And that's all the correspondence I got. Yes, sir.

THE COURT: Anything else? Any other point that you want to raise?

MS. MORPHEW: Yes. That I never received -- and I guess in order to be held in contempt, there has got to be proof that I actually refused to get out of the house by their inquiries.

But I never got any type of inquiry

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to get out of the house until I received the contempt charge.

THE COURT: All right. So your third contention is that you have not been told to get out of the house? Is that the contention?

The third defense is?

MS. MORPHEW: I have not been -- the defendants have not even -- actually, nobody really did, except for inquiries of the real estate agent asking me two days before when I planned to, and I said as soon as possible. I have not refused to get out.

THE COURT: So you are claiming you haven't refused to get out. Okay.

Any other point that you are going to raise?

MS. MORPHEW: Yes.

THE COURT: What?

MS. MORPHEW: The hearing for the rule -- or the order to show contempt was dissolved, but -- I don't know if I'm allowed to do this.

I want to bring up a point of something that happened at my house before the hearing that I have a big contention with. It

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seems like the defendants here went and filed a complaint to the sheriff's department to evict me.

And the sheriff showed up at my house -- of course I was not there; my daughter was there and, thank goodness, Mr. Brown was there -- to -- actually to throw me off of the property.

But instead, he went to the house up front first and told the gentleman in there that -- first, when he opened the door, the first thing he said was, you have to leave the premises now. And he said, excuse me? He goes, the owner said that you have to -- you have refused to vacate, and you have to vacate the premises now.

And he said, who? Molly? And he goes, no, not them. And it was very confusing. And they were very, very distressed and -- and --

THE COURT: All right. Hold on a second. I just want the defense. The defense to this --

MS. MORPHEW: Well, I would like to bring that up.

THE COURT: Well, what is the basis? What is it you're bringing up?

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MS. MORPHEW: It's-- again, it's -- I'm not getting any communication; there is nothing there. And all I feel like is that I'm being harassed instead of communicated with.

And actually, I contend that my rights to -- on this order to get proof of financing -- and closing is not what I've asked for -- was reasonable. And we could settle this. I mean, they could settle it so easily by providing me the GFE.

And if there is nothing to hide, then why don't they produce it? It would be simple.

THE COURT: All right. I just want the -- I really -- you're giving me some sort of elaborate testimony. I want to just know what your defenses are going to be.

So one is: Not being notified of the closing date?

MS. MORPHEW: Yes. Not being notified of the proper -- to leave the prem -- time to leave the premises.

THE COURT: Not being -- notice of the time to leave.

All right. Second?

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MS. MORPHEW: That I have a lease agreement that has not been terminated.

THE COURT: Lease. You think you're a lessee now.

MS. MORPHEW: Yes.

THE COURT: Third?

MS. MORPHEW: Bad faith and unfair dealings all along.

THE COURT: I haven't heard that before. That's a different element.

MS. MORPHEW: Well, bad faith by not communicating and just filing a contempt charge without --

THE COURT: Well then that's part of the time to leave. All right. Lease.

Third was something to do with an eviction served on you by the sheriff or something. It didn't get to you; it went to somebody else?

MS. MORPHEW: Well, no, it didn't get to me; it went to somebody else. But the sheriff -- well, he had no order or no anything to actually come to --

THE COURT: Well, he didn't show up to your property; he showed up to somebody else's

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property.

MS. MORPHEW: He actually did show up. They told him that was the other house. I was not there.

THE COURT: The sheriff. And I think you had one other point. I'm struggling to remember exactly what it was.

Would you read that back to me, Madam Court Reporter? There was the failure to give her information about when they were going to close -- or when to leave; that she's now a tenant; and then there was a third point.

(The record was read back by the reporter.)

MS. MORPHEW: Actually, Mr. Smith did tell me that two days -- through Wednesday, two days before the closing, the scheduled closing, that I needed to vacate the property.

And I replied to him that -- to please provide me the proof of financing per the order. I am under the impression that that court order -- since number 13 specifically says that I asked for it and that it was a reasonable request, that I was going to get it.

Or else, I don't even understand

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why it was in there if that was not allowing me that.

THE COURT: Okay. Do you have anything -- there are four issues that you are raising. I want to know if there is any other issue.

MS. MORPHEW: All in all, that put together, I mean, it could be an issue as to the abuse of the process.

THE COURT: Abuse of process.

All right. Thank you, Ms. Morphew.

Mr. Smith

MR. SMITH: Just a brief --

THE COURT: Let me say this: Based on what I have heard, based on the motion that you filed, Mr. Smith, and based on the admission, basically, by Ms. Morphew that she still resides in the house, I am going to sua sponte issue at this time a rule for Ms. Morphew to show me cause why she should not be held in contempt of this Court for failing to leave the property on or before the closing.

Specifically my order of May -- or excuse me -- April 3rd, I'm going to read from it. Specifically my order entered April 3rd

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states, in paragraph 8 I believe it is: Morphew, as the current tenant of the property, is ordered to vacate the property on or before the closing date, which will be provided to her by the parties or their counsel.

All right. Secondly, I want to reiterate, my May 17th order states on page 8, paragraph 12: Each of the 11 remaining grounds Morphew and Ferro assert in the joint answer have no merit. In short, all of the remaining terms of the April 3rd, 2017, order remain in full force.

Then again, under my conclusions of law, paragraph number 3: All remaining claims of the Morphew and Ferros for alteration or amendment of the April 3rd, 2017, order are denied. Except as modified herein, the April 3rd, 2017, order remains.

That's on page 9 of the order. And then under the provisions for, that I order in that case, paragraph number 5: Ordered, adjudged, and decreed that the order setting the closing schedule and awarding attorney's fees on April 3rd is altered and amended only as specifically set forth above.

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Paragraph 6 provides: It is ordered, adjudged, and decreed that all remaining claims set out in the joint answer to alter or amend the April 3rd order are hereby denied.

All right. Clearly, from my order of April 17th -- I mean May 17th, the April 3rd order is still in effect as to the provision number 8, which I first published.

Mr. Smith, I'd like to hear from you on any facts that you have that she is in contempt of this Court.

MR. SMITH: Your Honor, as she stated at the very end -- I was pulling out the e-mail to show her -- you've got to understand, the Ferros' agent and Ms. Morphew's agent are one and the same.

THE COURT: Thank you. I understand that.

MR. SMITH: So, of course, knowledge to an agent is knowledge to the principal.

He knew what was going on. The Wednesday before the closing, I finally got confirmation. We tried for a while to get confirmation that the owner, in fact, was going

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to show up on Friday at 2:00 at Mark Weeks' office.

Finally -- the agents were really dealing with the closing, because I felt like that was their thing to do: set it up and get it done. However, Mr. Willis wasn't responding. So on Wednesday, I sent him a direct e-mail because he had asked us to deal through him, by the way, and not to contact people directly. There is an e-mail to that effect.

So I e-mailed him on Wednesday, and I said, are the Ferros going to show up Friday -- it's one -- my thing is probably one or two sentences long. Are the Ferros going to show up on Friday to close this house?

And he sent me back three letters, POA, which means power of attorney. So I took it to mean that they weren't, in fact, showing up themselves on Friday, that they were going to be there by power of attorney.

Within nine minutes of receiving that e-mail-- I took that as a confirmation that, in fact, it was going to happen on Friday. Within nine minutes, I sent Ms. Morphew an e-mail that said, the closing is going to occur Friday

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at 2:00. We just received confirmation nine minutes ago.

Now, I noticed that when I sent it, the little timer on the thing had clicked over to ten minutes. So by the time I sent it, it was, in fact, ten minutes. But within nine minutes of receiving confirmation from Ferro and her own agent that, in fact, the closing was occurring, I sent her notice.

We weren't holding back. We tried to get it scheduled for a while; we just weren't getting a confirmation. We have subpoenaed Mr. Willis' files in the other matter. And I found an e-mail where he says to our agent, Ms. Morphew isn't communicating with me anymore, when it came to the closing time.

But that doesn't have anything to do one way or the other. We provided her notice as soon as we received -- I mean, nine minutes from receiving confirmation of the closing from a dual agent.

We provided her notice. We asked her to leave. We have asked her to leave; I mean, that's no secret. In this court we've asked her to leave at closing. We asked this

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Court to issue an order ordering it.

I mean, for her to say that we didn't expect her to leave at closing is total nonsense. It's been contained -- I mean, I have argued it the whole time: we don't want a tenant; we want the house. And this Court issued an order.

For her to sit there and say, I didn't know I had to be out when it closed, is just nonsense. I mean, it's in a written order.

We have closed. We closed at the time we gave her the notice. We have expected her to obey, just like anybody would. You would expect anyone to obey a court order saying, you are to be out on or before. And she's not out; she's still there.

The police matter on Monday, I got a call from your office; I knew nothing about it. Cheryl called me and said, your clients are at the police office. I wish they hadn't done that, but that has nothing to do with any of this.

She needs to be out. The two questions that this Court needs to ask are: Did the closing take place Friday at 2:00 as scheduled? Yes. Ms. Morphew, are you out? It's

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that simple. And that's what I would ask.

I think we need to take testimony, ask those two questions, and then the Court, sua sponte -- which is what I was talking about with that is why you get one judge to retain jurisdiction; they know what's going on; you don't have to reargue everything and re-prove everything. That's why you ask them to retain jurisdiction.

I would ask this Court, sua sponte, to issue an order ordering her for an ejectment, which is on the motion I filed, plus hold her in contempt. Honestly, hold her in contempt if she fails to abide by that ejectment.

I'm not a guy that throws people in jail. I think I'm a live and let live. I think she needs to pay their expenses that have been incurred. I think she needs to pay the court reporter bill -- that you've asked us to obtain, but they're going to bill us, and then go from there.

THE COURT: I have -- if I didn't, let me make it clear. I am issuing a sua sponte order for her to show cause why she shouldn't be held in contempt. And as to the ejectment issue,

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we will reach that through the -- basically through the contempt rule.

Because I need to hear -- if I do order her in contempt of court, one method by which she could purge herself is to remove herself from the property.

So what I'd like to do is have -- Mr. Smith, since this has been issued sua sponte now, do you want to present some evidence from your clients?

I need some evidence. I cannot just have argument.

MR. SMITH: I understand. I will ask Doreen Cross, please.

MS. CROSS: Your Honor --

THE COURT: Ms. Cross, come on up here, please.

MS. CROSS: Well, I did prepare a statement.

THE COURT: No comments, please. I know you are bursting at the seams to talk, but let's wait until you get under oath.

I want you to raise your right hand for me.

Do you solemnly swear or affirm

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that you will tell the truth?

MS. CROSS: I do.

THE COURT: Please have a seat and answer any questions Mr. Smith has.

DOREEN CROSS,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SMITH:

Q. Good morning, Ms. Cross. You are the plaintiff in this action, correct?

A. Yes, sir.

Q. And you did enter into a contract with the Ferros to purchase the property that is subject to this action?

A. Yes, sir.

Q. Pursuant to that contract, and pursuant to this Court's various orders, did you close that -- or what date did you close that property on?

A. We closed that property on June 2nd, 2017, at 2:00 PM.

Q. And was that when it was originally scheduled? Not originally, but within the week

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before?

A. Yes. The week before. But we had additional time scheduled.

Q. And you saw my e-mail to Ms. Morphew giving her notice within nine minutes of receiving confirmation from the seller --

A. I did see that e-mail.

Q. -- that they were, in fact, going to close the property on Friday?

A. I did see that e-mail.

MR. SMITH: I don't have any other questions, Your Honor.

THE COURT: All right.

Ms. Morphew, do you have any questions?

MS. MORPHEW: I would like to have some. Yes, sir.

THE COURT: You need to ask them.

MS. MORPHEW: If can give me a moment to think. I was not expecting to ask questions of a witness.

THE COURT: Well, I will give you a moment.

MS. MORPHEW: Yes, I do.

THE COURT: All right.

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That's close enough.

EXAMINATION

BY MS. MORPHEW:

Q. Have you given me --

MR. SMITH: I'm not going to be able to hear.

THE COURT: Ms. Morphew, you have somewhat of a soft voice, but you need to project it. Otherwise I'm going to send you back to your desk and we'll have you use the microphone.

Which would you like?

MS. MORPHEW: I will use the microphone, if that's okay.

Can you hear me better with that?

THE COURT: I don't know. I would like to try it. Your voice is very soft. I'm not sure if it's because you're nervous or you don't project your voice.

Is the green light on?

MS. MORPHEW: No.

THE COURT: Sheriff, will you make sure her light is on?

MS. MORPHEW: I just pushed the button.

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THE SHERIFF: It's on.

THE COURT: Ms. Morphew, I'll give you the ability -- you may sit down while you have your questions.

MS. MORPHEW: Thank you, sir.

THE COURT: Put the microphone in front of you so you can be heard.

MS. MORPHEW: Your Honor, I have never done this before. So forgive me.

THE COURT: You're representing yourself. Let's go.

MS. MORPHEW: Okay.

BY MS. MORPHEW:

Q. Ms. Cross, do you feel that I have been asked -- I mean, been --

MS. MORPHEW: I'm sorry, Your Honor.

Q. Is there any particular reason why you will not provide me with a GFE?

MR. SMITH: Your Honor, I object to that question. It's just not relevant.

THE COURT: Sustained. Next question.

MS. MORPHEW: Your Honor, I had asked for that for a hearing, and it was agreed

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upon, and then it was reversed at the next hearing. And I feel like it's very relevant.

THE COURT: Well, I find that the question is irrelevant to the proceedings today.

MS. MORPHEW: Yes, sir.

BY MS. MORPHEW:

Q. Ms. Cross, do you feel like you've given me proper communication to vacating the property given the -- given who -- you know, that me being a plaintiff in this case, and the fact of the -- I don't want to say this wrong.

Do you feel you have given me proper notice and communication as to me vacating the premises?

A. 100 percent.

THE COURT: Next question.

MS. MORPHEW: That's it, Your Honor.

THE COURT: No further questions from Ms. Morphew.

I have a couple of questions.

EXAMINATION

BY THE COURT:

Q. Ms. Cross, when you use the term we in

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your answers to Mr. Smith's questioning, who is the we?

A. Stephen and I.

Q. Stephen Dudek?

A. Dudek.

Q. So you and Mr. Dudek closed the property on June the 2nd, 2017?

A. Correct.

Q. Did you pay over the entire purchase price at that closing to the closing attorney?

A. I'm not really sure how to interpret that. We had a down payment, and the entire --

Q. Wait a minute. Okay. Did you complete the purchase by paying over money to the Ferros?

A. Yes, sir.

Q. Okay. And the way that happened was you handed the check to a lawyer, he escrowed the check, and then the proceeds of that escrow were distributed to Mr. Ferro -- Mr. and Ms. Ferro -- I think he was the only one on the title to the property -- but to the Ferros in exchange for you get a deed for the property.

Did you receive a deed?

A. Yes.

Q. Okay. So now, did you also have to get

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a mortgage on the property that you acquired by purchasing from Mr. Ferro for the total sum of $303,000, which was then -- various and sundry deductions were taken from that amount of money and ultimately resulted in a net proceeds being paid to Mr. Ferro, correct?

A. Correct. The amount -- the full amount was not 303,000 --

Q. I understand that.

A. Okay. Yes.

Q. That's the gross purchase price. And then out of that, you had lots of costs and expenses and so forth that ultimately come out.

A. Yes, Your Honor.

Q. But you paid over the net -- eventually the net proceeds got to Mr. Ferro; you got a deed. And I want to know if in the course of that closing, did you sign a note to a bank?

A. Yes, sir, I did.

Q. To finance the purchase of the property; is that right?

A. Yes, sir, I did.

Q. And did you give that bank, or lending institution, a mortgage on that property?

A. Yes, sir.

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Q. Okay. What is the -- if you know, do you know how much money you pay for -- what the payments are on the note that you signed to borrow the money? What is the note? The principal and interest of the note?

A. It's around $1,600 a month.

Q. Now, does that $1,600 include the taxes and the insurance for purposes -- prorated over the term of a year? This is including the taxes and insurance?

A. Yes, Your Honor, it does.

Q. So within the $1,600 a month, you will be paying taxes and insurance?

A. Yes, Your Honor.

Q. All right. Now, when you closed on June the 2nd, did your closing attorney charge you some prepaid interest to the end of the month of June? Do you remember?

Did you have to pay prepaid interest, or did they back out of the month's interest of June the two days that you did not occupy the property?

A. I understand we prepaid.

Q. You prepaid the interest?

A. Yes, sir.

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Q. So it was like 28 days of interest; is that correct?

In other words, what is the first date that you will owe your payment? Is it June -- is it July the 2nd or is it August the 2nd?

A. It's August 1st.

Q. August 1st is your first payment?

A. Yes, Your Honor.

Q. So that would indicate that you prepaid interest through the month of June so that in July -- in August your payment will be the interest accrual during the month of July and the principal balance due August 1; is that correct?

A. Yes, Your Honor.

Q. All right. Do you remember, by any chance, what the per diem interest -- what your prepaid interest was?

A. Prepaid interest?

Q. That's the interest from June the 2nd through June 30th. Do you remember approximately how much that was?

A. I have no idea, Your Honor.

Q. Do you remember how much money you borrowed?

A. $242,000.

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Q. Do you know what the interest rate is?

A. It's 4.25 percent.

Q. Do you know if your interest is calculated on a 360- or 365-day period?

A. I don't. No, Your Honor.

Q. Okay. Who is your lender?

A. It is South State.

Q. South State, which was formerly First Federal of South Carolina, right?

A. That's correct.

Q. Do you know how much the taxes for -- you probably -- did they calculate taxes based on the 6 percent interest that the Ferros undoubtedly paid?

A. I do know that they did, Your Honor.

Q. They did it on the 6 percent as opposed to the 4 percent?

A. They did it on the 6 percent.

Q. Have you, since the closing, applied for a residential rate on the --

A. No, Your Honor, I haven't. I was told by the closing attorney that it would take about a month for everything to get filed and to wait that long before I filed for it.

Q. So you are paying taxes at 6 percent.

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And the insurance, do you know what your annual insurance rate is?
A. I know that it's in escrow.
Q. You escrow it each month. Do you know how much you escrow each month for insurance?
A. I did not bring that paperwork with me either, I believe. The total amount was --
Q. All right. You didn't bring the paperwork. Do you have a closing statement with you, by any chance?
A. No, Your Honor.
Q. All right.
THE COURT: Mr. Smith, I'm going to allow you to supplement the record with a closing statement from the June 2nd, 2017, closing between Dudek, Cross, and Ferro.
MR. SMITH: I will do that, Your Honor.
THE COURT: Thank you.
BY THE COURT:
Q. All right. Ms. Cross, have you and Mr. Dudek entered the property yet? Taken possession of the property yet?
A. No, Your Honor, we have not. We asked the sheriff's deputy to verify that there was

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still occupants, and that's as far as we went.
The sheriff's deputy asked us not to enter the property. And he stated that he had been to the house a year prior. And that he thought it was in our best interest not to go to the house.
Q. So when you say -- the answer to my question was that you are not in possession of the property; is that correct?
A. I am not in possession of the property. I have not been to the property since we closed on it.
Q. Okay. Did you go to the property and --
A. I have never been to the property since we closed.
Q. Since the closing. Now, where do you currently live?
A. I live about a mile, as the crow flies, from this property. I live in --
Q. Do you have an address?
What's the address?
A. 236 Cady Drive.
Q. 2368?
A. 236 Cady, C-A-D-Y, Drive.
Q. You're in Pine Hill --

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A. I am in Pine Hill Acres.
Q. Okay. And how much is your monthly payment for that property?
Do you still own that property?
A. I do own that property, and my monthly payment is approximately $840.
Q. Does that include taxes and insurance?
A. It does.
Q. Who resides in that property with you?
A. Stephen Dudek and myself.
Q. Okay. Do you carry utility? Do you have a utility bill there or are you on well?
A. No. I have utility bills.
Q. What are your utility bills there approximately?
Let's start with water.
A. I don't actually pay these bills. It's part of Stephen and I's agreement that he pays those bills, and I pay the mortgage. So I don't even really look at them.
Q. All right. Then what we can do is have Mr. Dudek answer those questions.
And you don't carry that?
A. I do not; that is not my responsibility.
Q. You don't pay the carrying charges aside

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from the mortgage; is that correct?
A. That's correct.
Q. All right. Ms. Dudek, tell me in your own -- how much do you feel like -- how much do you -- let me put it this way: What is the value to you of not being in possession of the property on -- in possession of the property that you purchased from the Ferros?
What is your -- what do you feel you have been denied, and can you place any value on that?
A. Yes, Your Honor. Since we have been going through this, and in the last six months -- I had migraines earlier, and they have come back to me, and I have not been able to shake those.
But the reason for that is that we cannot move forward, and we cannot move back. My property on Cady Drive, I was in the process, when we were purchasing Butternut, of renovating it.
And after we won the court case in June of 2014, I went out and I purchased some large furniture for the house. I had no place to put it, so it is in my house. I had purchased other items that were going to go to Butternut.

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My house is a storage unit. I cannot -- I want to replace the floor; I can't replace the floor, because I have to get this stuff out. And so I have been in limbo. I am at the point where I have got possessions inside of a CRX container.

I became a grandmother --

Q. How much did you pay for the CRX container?

A. 2,500 I believe. We also have storage units.

Q. Where do you have storage units?

A. On Butternut Road.

Q. How much do you pay for those?

A. $144 a month.

Q. Okay. Was the CRX container purchased for the purpose of holding the --

A. Yes, Your Honor.

Q. -- furniture that you purchased for this Butternut Road property?

A. I actually have multiples. But one of them was, yes.

Q. One was. And that was $2,500?

A. $2,500.

Q. Do you plan on renting the Cady Drive property?

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A. Yes. Possibly to my daughter.

Q. Well, I need something more than possibilities. I need to know what your intentions with the Cady Drive property are after you -- if you were in possession of Butternut, what would Cady Drive -- aside from being renovated, what would your intentions -- what are your intentions with regard to that property?

A. My daughter became a mother recently. She lives in an apartment with her husband. And she wants to have a place for the child to go in the yard. And so we are talking now about her coming out there and renting that from me. And she wants to do that.

Whether she stays there, I don't know. If she changes her mind, I really don't know. But that's the intention right now. Otherwise, I could possibly sell Cady.

Q. So you did not have a firm intention as to Cady Drive on the date of the sale what you were going to do with it?

A. Well, back then, my ex-husband had terminal cancer.

Q. Hold on. You misunderstood my question. It was unartfully addressed to you.

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My question is this: On June 2nd, 2017, did you have a firm understanding of what you intended to do with Cady Drive were you to take possession of the property on June the 2nd on Butternut?

A. My real estate -- excuse me. My bank asked that specific question, and I prepared a document for them that it would either be to rent it -- to renovate and rent or to sell it, depending on the market at that time.

Q. Okay. How much money were you intending to spend on renovation?

A. For Cady?

Q. Yes.

A. About 40,000.

Q. Is the Cady Drive property a mobile home?

A. It is not.

Q. Is it a stick-built home?

A. This is a stick-built home. It's on an acre of land. I have lived there for 33 years. I have tons of blueberries. The lot is very nicely landscaped.

Q. All right.

THE COURT: At this time, I'm

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completed with her; I've heard enough.

What I'd like to know, Mr. Smith, do you intend to call Mr. Dudek?

MR. SMITH: I don't, Your Honor. But if you would like to ask him questions --

THE COURT: I would like to ask him some questions. But before we go there, I'm going to ask -- do you have any questions of Ms. Cross, Mr. Smith, in response to my questions?

MR. SMITH: I have none, Your Honor.

THE COURT: Ms. Morphew, do you have any questions in response to my questions of Ms. Cross?

MS. MORPHEW: Yes, sir.

THE COURT: All right. Please ask them.

EXAMINATION

BY MS. MORPHEW:

Q. Ms. Cross, during the June 2nd closing, did you order Mr. Dudek or your representatives to discuss with Mr. Willis or the sellers the tenancy -- my tenancy within the house?

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A. Yes, we did.
Q. Could you please tell the Court what was discussed?
A. Mr. Willis stated that you had not been answering his e-mails and that he wasn't able to get in contact with you. And he felt fairly certain that you would still be in the house.
Q. Did Mr. Willis present any like e-mail to that fact, or is it just a statement?
A. It was a statement. We didn't pass e-mails around.
MS. MORPHEW: For the record, it was Ms. Ferro.
THE COURT: You can ask a question, but you cannot make a speech.
MS. MORPHEW: My apologies, Your Honor.
BY MS. MORPHEW:
Q. When you purchased the property and you signed for the closing, were you aware that I was still in tenancy?
A. I absolutely was not. That's why I sent a sheriff's deputy to find out. And whenever he arrived, no one answered the door. Just dogs were barking inside.

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But he did say he had been in the home before, and it looked like that there was less furniture in there than there was before. And he said he had been in there on the inside of the home on a gun-related or an arms-related call.
Q. I think that that was the 786 --
THE COURT: Ms. Morphew, I am going to tell you one more time. You cannot make a speech while you're asking questions. All right? You can ask her a question in response to her answer, but you can't make a speech about it.
A. He didn't clarify the big house.
THE COURT: Question?
BY MS. MORPHEW:
Q. So when you closed -- again, the question is: When you closed, Mr. Willis had stated that I was probably still in there. Wouldn't that indicate to you before you signed those papers that I was still in tenancy?
A. It was one more way I could see that you would try to stop us from closing. That's all it was to me; one more way.
Q. And you feel that because I was not in attendance that that was -- that I'm to blame?
A. You were not in attendance to what?

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Q. The closing.
A. No. I did not see that you belonged at my closing. You belong out my house, but not at my closing.
Q. Did you or Mr. Dudek or your representative contact me after it closed, or any time after it closed, to verify I was on the --
A. You would have to ask them that. I don't know.
Q. No. I meant, did you notify me?
A. I absolutely did not.
Q. Did you --
A. I'm not going to put myself in a position where you can try to pull -- hold something against me in court. I'm not going to do it. That's why I have an attorney.
Q. Do you know if your attorney contacted me?
A. I do not. You can ask him.
MS. MORPHEW: Do I need to have Mr. Smith?
THE COURT: Her answer to your question is that she doesn't know if Mr. Smith contacted you. However, in earlier comments she did state that she received an e-mail from

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Mr. Smith that was timed nine to ten minutes after he received information from Mr. Willis that they would close on June 2nd, POA.
THE WITNESS: I believe Ms. Morphew's question was after the closing.
THE COURT: So after the closing, you did not.
THE WITNESS: I did not.
THE COURT: You didn't, and you're not aware of Mr. Smith's notification?
THE WITNESS: Not to my knowledge.
THE COURT: Are you aware of the notice of the filing of the motion?
Were you aware that Mr. Wheeler or Mr. Smith was filing the notice of motion to hold her in contempt for failing to remove herself from the property?
THE WITNESS: Yes, Your Honor, I was.
THE COURT: So, would that not be your notice or your notification to Ms. Morphew, through your attorney, that she was continuing to stay in the house?
THE WITNESS: Yes. You can look at it that way.

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THE COURT: All right.
Next question, Ms. Morphew.
MS. MORPHEW: That's all I have.
MR. SMITH: I have just one more question, Your Honor.
THE COURT: Yes, sir.

EXAMINATION

BY MR. SMITH:
Q. Isn't it your understanding that Mr. Willis is, in fact, both Ms. Ferro and Ms. Morphew's agent?
A. It is my understanding.
MR. SMITH: I don't have any other questions, Your Honor.
MS. MORPHEW: Your Honor, may I ask you a question, please?
THE COURT: Is it a motion of some sort or what? I mean, I'm not sure -- I mean, it's improper to ask me a question during the proceedings.
Do you have a motion that you'd like to make?
MS. MORPHEW: I'm just very confused.

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THE COURT: All right. Well, at this time, I'm going to let Ms. Cross sit down.
I'd like to call Mr. Dudek, himself, to the stand.
Raise your right hand, sir. Do you solemnly swear or affirm to tell the truth today?
MR. DUDEK: Yes, sir.
THE COURT: You are under oath. Please have a seat.

EXAMINATION

BY MR. SMITH:
Q. I have a couple of questions regarding the Cady property.
A. Sure, sir.
Q. Ms. Cross indicated that y'all have an arrangement; she pays the mortgage, and you pay the utilities?
A. Yes, sir.
Q. Can you run down for me the cost of your utilities at the Cady Drive property?
A. Okay. Most all mine come as automatic drafts, so I don't monitor them that much. But the water is about $35 a month.
Q. Okay. Hold one. Water is 35.

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A. Sewer is about 25 -- excuse me. Strike that. Water is 35 a month. Sewer is about 45; they changed the rates on me a while back. The electric bill is auto draft. And that is one of those that they balance it over the year, so it's about between 200 and 250 a month.
Q. Would you agree to $225 a month?
A. Yes, sir.
Q. All right. $225 a month.
A. Cable bill is 144. Telephone bill is $30 a month.
Q. Is that a landline?
A. Yes, sir.
Q. $130 a month?
A. No. No. No. Internet and cable, the cable bill. The TV and internet combined, from Spectrum now, is about $144 a month for the internet, the TV and the cable -- the cable.
Q. Internet, cable 144.
A. Yes, sir.
Q. What about a telephone? Do you have a landline?
A. Yes, sir. About $30 a month.
Q. All right. Do you have any other recurring expenses for carrying the property?

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A. I have a cell phone bill.
Q. Well, that's not part of the property?
A. No.
MS. CROSS: ADT.
Q. Do you have a security --
A. Oh, ADT. It's about $30 a month, sir. And besides the grocery, yeah, that's it.
Q. The telephone bill and the ADT bill are not combined on the same --
A. No, sir. None of those are combined. No, sir, they're separate.
Q. Now, Mr. Dudek, can you put a value on the inability to possess the -- I'm looking for a value to compensate you for the inability to possess the Butternut Road property that you purchased from the Ferros.
A. You want a dollar value?
Q. I want a dollar value.
A. Explain to me. Like, an inconvenience fee or pain and suffering or --
Q. Well, how much -- if I were to compensate you for not being in possession of that property, how much should I compensate you on a per-day basis?
Aside from -- let me just put -- aside

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from the mortgage and interest that you are paying, aside from the -- you know, you're not having to pay utilities there; is that correct?

A. Correct.

Q. You are not paying any utilities, so we're not counting any of those, but taxes and insurance. So it's interest, taxes, and insurance that you've paid for, or are paying for, on Butternut.

A. Yes, sir.

Q. Aside from those items, is there a number, a value, a monetary statement, that you can make to me that would say, Judge Chellis, this will compensate me and Ms. Cross for failing to have possession of our property?

A. 200 a day.

Q. $200 a day.

A. And you said, like, not including all the expenses?

Q. That's right.

A. Okay.

THE COURT: All right.

Mr. Smith, do you have any questions?

MR. SMITH: I have none, Your

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Honor.

THE COURT: Ms. Morphew, do you have any questions?

MS. MORPHEW: I'd like to make a motion.

THE COURT: All right. Well, make a motion.

MS. MORPHEW: I'd like to make a motion to object to the attorney's fees, costs and things, because I'm under the impression that I was still a tenant. And I got that from both Rick Willis and the Ferros in an e-mail the day before.

Now, since I had no communications --

THE COURT: Ms. Morphew, hold on a second, ma'am. We have gone through two witnesses. You have yet to make your testimony. All right?

I'm going to rule that motion out of order. And if you want to speak to those issues when you testify, I will be happy to have you speak to those issues. But it's really an improper motion, because it's part of your responsive reply to Mr. -- a return to

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Mr. Smith's motion --

MS. MORPHEW: Yes, sir.

THE COURT: -- based on points that you listed earlier as to what your defenses were going to be. Okay?

MS. MORPHEW: Yes, sir.

THE COURT: All right.

Any questions for Mr. Dudek?

MS. MORPHEW: No, sir.

THE COURT: All right.

Thank you, Mr. Dudek.

THE WITNESS: Thank you, sir.

THE COURT: Mr. Smith, do you have anything further?

MR. SMITH: I have nothing further, Your Honor.

THE COURT: All right.

Ms. Morphew, I'm going to ask you to come up here, because you are now under a rule to show cause why you shouldn't be held in contempt of my court.

If I haven't already done so today, I'm going to place you under oath again. You really would be under oath from all previous hearings anyway.

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But raise your right hand for me.

Do you solemnly swear to tell the truth today?

MS. MORPHEW: Yes.

THE COURT: All right. Have a seat.

Ms. Morphew, the floor is yours. The seat in which you are sitting is yours. You can speak to me about why you should not be held in contempt of court.

EXAMINATION

MS. MORPHEW: Well, Your Honor, I really felt like I was a tenant as of the day before the closing, and I was going to be contacted and to -- that the closing took place, they were now my new landlords, and they would want me out or however that worked.

I received a notice from Ms. Ferro, and that same -- similar communication from Mr. Willis. When he asked me when I planned to vacate, I said as soon as possible and that I was waiting for notice -- I mean, either for the closing or the proof of financing that I had asked for; that's still been my contention.

And I really felt, honestly, that I -- that that order, because of number 13 in the

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May 17th order, addressed that. It was -- and because of today's hearing, I feel like that the order was a little bit ambiguous.

Whereas in one sentence it said everything else would stay the same, but in the very next paragraph it addressed it saying that that was a reasonable request and that the bench even suggested to give some sort of proof of financing, is what I asked, but the other four items were denied.

So it was --

THE COURT: So you're shifting now from the points that you gave me earlier to another defense.

MS. MORPHEW: No, sir.

THE COURT: What does this fall under that you are testifying to now?

MS. MORPHEW: My understanding of the court order of why I have not vacated. And there's two reasons: One is I was waiting to receive that, which I thought I was going to get the proof of financing. And the other, which I asked for from Mr. Smith when he told me to vacate per the court order, and my response was, then please provide the proof of financing per

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the court order, which he did not respond.

And then the very next day I get a thing from the Ferros and with Rick Willis saying that they would contact me about the rent. And that Mr. Willis was going to contact me about a walk-through prior to closing, which he never did contact me.

I was in contact with Ms. Ferro and Mr. Ferro the whole week in which they were relaying information to the agent.

THE COURT: Ms. Morphew, let's take it up one at a time.

You are raising paragraph 13 of my May 17th order.

MS. MORPHEW: Yes, sir.

THE COURT: I'm going to publish that paragraph for the record. Okay?

MS. MORPHEW: Yes, sir.

THE COURT: So we know exactly what we are talking about.

MS. MORPHEW: Yes, sir.

THE COURT: Paragraph 13, May 17th order. Specifically, Morphew requested proof of financing from Dudek/Cross before she would be required to move from the Ferros' property.

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At the hearing she demanded she receive five items: A good faith estimate, proof of financing, the HUD-1 closing statement, the Dudek/Cross loan application, and the contract.

At the Dudek/Cross motion hearing to set a closing schedule, proof of approved financing was a fair request, though she did not have any legal right to this under the terms of the Ferro-Dudek-Cross contract.

On April -- the April 3rd, 2017, order did specifically address granting a right to approve financing; although the Court suggested from the bench that some evidence of the Dudek/Cross's approved financing should be given to her.

Morphew's demand for four additional items -- matters to which she has no right -- 46 days after the April 3rd, 2017, order, when Dudek/Cross canceled a closing because they had agreed not to close within 45 days to give her ample time to relocate, now raise the inference that she is an obstructionist who seeks to derail the Ferro's real estate sale to Dudek/Cross.

She took the risk of moving into

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the property during pending litigation. She must now accept the risk that her contentions were misplaced.

Do you understand that now?

MS. MORPHEW: I understand that I was allowed to be given some sort of proof of financing.

THE COURT: No. I said in this paragraph 13 you had no legal right to. It was a reasonable request back in April, but in May -- but in May, after they had already scheduled a closing in which they then canceled because you threw your hands up and said, oh, I haven't had my notice, Mr. Smith advised his clients not to close on that date and reschedule it.

Now, when they told you they were ready to close and then you objected because you hadn't been given the full 45 days, but only, what, 44 days I think it was, they canceled the closing.

MS. MORPHEW: Two days.

THE COURT: No. 44 days was the May 2nd closing. They were scheduled to close, and you pitched a fit about that because you hadn't been given 45 days, and therefore, they

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canceled their closing to reschedule it.
I'm telling you in paragraph 13 that your actions, the way you have conducted yourself since the filing of the appeal to the Court's decision, your failure to get out of that property knowing full well the court of appeals has affirmed my earlier order that you had no right to this property, that the Dudek/Cross contract was enforceable, and yet today, June 12th, you are still occupying the property on Butternut Road; isn't that correct?
MS. MORPHEW: Your Honor, I did not contend that.
THE COURT: I'm asking you: Are you still in the property?
MS. MORPHEW: I'm still in the property, but I have not refused to get off.
Furthermore, I have to make an objection that the May 3rd was not canceled. I have proof in an e-mail where it was not canceled because of me. I did not ever say that I didn't get my 45 days and I'm raising my hands.
It was Ms. Ferro who said that the closing could not take place because the damages were not ruled on, which had everything to do

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with the closing papers and what they would be receiving back. It had nothing to do with me.
Furthermore, Mr. Smith testified at the hearing that he said the reason they couldn't close on May 3rd is because they had to get a new closing attorney because of a title search that came back.
So between those two, it had nothing to do with me. And I never raised my hands saying I wasn't going to get off or that I said -- or that it was canceled. There is no communication where it said that it was canceled. It was only the testimony of Mr. Smith that it was canceled because of me.
I have e-mails to prove all these items. It had nothing to do with me. It came from Ms. Ferro, who requested it to be rescheduled.
THE COURT: Do you have those e-mails with you?
MS. MORPHEW: Yes, sir. It's attached to the answer that I filed.
THE COURT: Okay. I will review that.
MS. MORPHEW: And also is the

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e-mail from Ms. Ferro saying that, as a renter, that the new purchasers will be getting in contact with me for the rent if it closes; plus me saying I will get out ASAP as soon as I know what's going on.
I will be honest; I'm very, very -- was very, very confused about which direction I'm supposed to take besides just getting out.
And I also -- Your Honor, I have probable cause to be questioning. I know that the Court ruled and the appellate court ruled that they had a valid, enforceable contract. But I have irrefutable proof from First Federal, and I have a complaint out there for the very fact from fraud.
THE COURT: All right. Ms. --
MS. MORPHEW: So I'm just saying that that is a very valid reason why I am concerned. And I want to follow the rules, and I want to make sure I don't lose any rights. So I'm -- .
THE COURT: Okay.
MS. MORPHEW: I thought I was -- first I couldn't get out; then I was a tenant; then if there was a closing; then there was no

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closing. It's very confusing. And I know that they want me out, but because I have claim to this property --
THE COURT: Ms. Morphew --
MS. MORPHEW: And I will get out. It's not a problem.
THE COURT: -- let me tell you something: You do not have a claim to this property.
By my order in June of 2014, the original order that was appealed, I specifically ruled that upon the closing of the real estate transaction between Morphew -- between Ferro, Dudek and Cross, your contract would be dissolved or canceled and that you no longer have a contract with the Ferros.
And that's part of my order -- if you want to go back and reread it -- but I specifically made that decision because I knew that if your contract was remain -- remained on the property, it would create a cloud to the title that the Dudeks and Crosses would acquire.
So I specifically made that finding in that order. I haven't read that order in almost three years, and I can specifically

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remember that point because I have -- when I practiced law, I had to deal with that kind of thing all the time.

You had a contract that would have been a lien against the property, a cloud against the property, because they had actual notice of it. And my order at that time was that upon the closing, immediately upon the closing when that transaction occurred, your contract was canceled, null and void.

End of story as to your interest in that property.

Now, Ms. Morphew, you have stated repeatedly today, and in earlier conversations we've had in this courtroom, that you would vacate the property immediately, or as soon as possible, when you were notified of the closing.

June the 2nd was ten days ago. Have you vacated the property?

MS. MORPHEW: No, sir.

THE COURT: All right. Give me some reason why you are still located in -- you're still occupying the property that belongs to Mr. Dudek and Ms. Cross?

MS. MORPHEW: I thought I was a

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tenant, and I received a contempt order. So before I do anything -- I don't want to lose any rights -- I wanted to have the hearing. And also, I really do believe that I have a lease still that overrides everything.

If they close on the property knowing I was still there, and my lease -- the sellers have not terminated my lease -- it does get transferred.

THE COURT: Well, here's the problem with your thinking, Ms. Morphew. You have been involved in ligation for over four years on this property.

MS. MORPHEW: Yes, sir.

THE COURT: You are well aware of the fact that I entered an order that directed the Ferro-Dudek-Cross contract to be specifically performed. You are well aware -- is that true?

MS. MORPHEW: Yes, sir.

THE COURT: And are you well aware that the court of appeals affirmed my decision?

MS. MORPHEW: Yes, sir.

THE COURT: All right. That affirmed decision came down on January 17th, or so, I think it was; is that correct?

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MS. MORPHEW: February 17th.

THE COURT: February 17th. You read that decision on or about that date; is that correct?

MS. MORPHEW: Yes, sir.

THE COURT: And did you also know that the -- that on that date, your decision -- my decision had been affirmed, that you were ordered that upon the closing of the property between Dudek and Cross and Ferro, you no longer have any rights.

Did you not understand that?

MS. MORPHEW: Yes, sir.

THE COURT: Are you telling me you didn't understand that?

MS. MORPHEW: No, I understood that.

THE COURT: Okay.

Anything else you want to add, Ms. Morphew, as to why I shouldn't hold you in contempt of my order? Specifically that April 3rd, 2017, paragraph number eight.

MS. MORPHEW: Well, the answer to that order, that hadn't been filed yet, was filed after the order was filed. And we had a 59(e)

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motion. Yes, I understand that.

But I have been acting under the whole thing that I -- for my contention that I have been asking for proof of financing for the specific performance.

THE COURT: And I dispelled --

MS. MORPHEW: Yes, sir.

THE COURT: I took care of that on the April 17th -- the March 17th -- excuse me -- the May 17th --

MS. MORPHEW: But you agreed for it --

THE COURT: Hold on a second, please.

MS. MORPHEW: I'm sorry. Yes, sir.

THE COURT: Strike March and April, I meant May 17th.

All right. Now, you knew that I had told you you had no legal right to that in the May 17th order. And I also -- you understood in the May 17th order that I said that none of the provisions of the April 3rd order are amended, except as specifically set forth in this order; correct? Do you understand that?

That's what that order says,

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doesn't it?

MS. MORPHEW: I still think that number 13 gave me that right to have that.

THE COURT: Well --

MS. MORPHEW: I really honestly do. I don't understand why it was in there if there was --

THE COURT: Because I wanted to make a point, Ms. Morphew, that -- this is the point of setting out that paragraph: Morphew's demand for four additional items -- which were matters to which she has no right -- 46 days after the April 3rd, 2017, order, when Dudek/Cross canceled their closing because they had not agreed to close within -- because they had agreed not to close within 45 days to give her ample time to relocate.

Ample time to relocate. 45 days from the April 3rd order. In that order you were ordered to leave the property as soon as they closed. So you should have had that in your mind all along to get out of there.

And then I made -- so I went through all of this because I wanted you to know that I think you are an obstructionist. And your

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actions speak a lot louder than your words. Because I think all along you have planned, you have plotted, you have taken every effort that you can, to deny Ms. Cross and Mr. Dudek the right to occupy a property that they now own.

And the finding that I made in paragraph 13 is just that: that you are an obstructionist. And you are seeking, in my opinion, my findings -- I have the right to make the findings of fact; that's my duty here -- based on your actions, I have found that your actions indicate that you have sought all along to derail the Ferro and Dudek/Cross closing.

You took the risk of entering that property while there was a contract pending. You have -- and now you must bear that burden of having now -- now to understand that your -- your thinking, all of what was filled in your head by -- maybe Mr. Willis; I don't know who it was -- has been misplaced.

I can tell you this; let me make this clear: You had an outstanding -- one of the best lawyers in Charleston, South Carolina represent you in the trial of this case. He could not have done a better job for you;

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however, the facts of this case simply did not support your position.

Now, when a lawyer -- and, you know, I practiced law for 36, 37 years before I took the bench. When a lawyer gets an order that he has been -- that his request -- that he has failed in his attempt for his client, I am sure that he had a long conversation with you.

That the -- the words and comments of which I don't know specifically what they were, but I am fairly certain that he would have said, you have a right to appeal this decision. And if you want me to appeal it, it's going to cost X number of dollars for me to take on the appeal. It's going to cost money to do that.

I feel fairly certain that he would have said, this is a pretty well-drafted order, it's going to be very difficult to overturn because most of the decision is based on the judge's discretion.

And for that reason, or whatever reason, you -- he filed the notice of intent to appeal for you. But for some reason, after the filing of that notice, you and he decided to part ways and you decided you were going to represent

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yourself in the appeal.

So now what's happened, Ms. Morphew, is you are so subjectively invested in this case, you cannot see the forest for the trees. And I am so -- I am so beside -- I mean, I am really at a point where I cannot believe you have taken this case to this extreme.

I told you -- I told you from the bench on the 59(e) motion hearing, I told you that day, you need to vacate this property now. I told you that. And yet June 2nd, nearly six, seven weeks later -- four weeks later -- I guess it was about month ago -- you're still occupying the property. Why haven't you left?

It defies my understanding, honestly.

All right. Do you have any other comments, Ms. Morphew, as to why you should not be held in contempt of this Court?

MS. MORPHEW: Your Honor, I'm not an obstructionist. I did not prevent the closing. I promised even in a hearing I would not do it, and I did not do it. I really didn't.

And I'm not preventing anything. I'm just making sure that I don't waive rights

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and that I'm following what I was told and what I really thought that the order said.

THE COURT: Well, why haven't you followed my instructions, the legal --

MS. MORPHEW: Because I really thought that your order said that I deserved a right to number one. All four, no; but one of them I did. Honestly.

And I could bring in witnesses that I said, no, I'm allowed to get this. I really honestly did.

And then I have a lease, and I really thought -- because there is -- Mr. Willis was no longer my agent after the closing, and the Ferros were no longer my tenants [sic]. So I wasn't totally expecting them, but I was expecting the defendants to contact me.

And not in a contempt order, just in a normal thing. And I really honestly said that I will vacate the premises. But communication was very important to me.

THE COURT: June the 2nd was ten days ago. Why haven't you vacated the property?

MS. MORPHEW: Because I got a motion for contempt, and I don't want to do

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anything that would waive my right. If I move right now, it could just -- I don't know all the rules. I am pro se, and I have been working very hard to try to understand it.

But in these hearings, I want to know -- that I really think that I had a right. And I don't want to be held in contempt. And I wanted to say what I had to say and what I really honestly understand it to be.

I am not saying no. I was never asked by them, or never communicated with, never contacted, never saying, here's the lease, here's not the lease, here's -- nothing, except for a contempt order.

THE COURT: All right.

MS. MORPHEW: So I don't know how it works.

THE COURT: Ms. Morphew, let me make it specifically clear to you right now.

MS. MORPHEW: Yes, sir.

THE COURT: I do not find any of that testimony credible.

MS. MORPHEW: What is that, Your Honor?

THE COURT: Because I don't believe

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you.

MS. MORPHEW: Your Honor, I took an oath, and I actually --

THE COURT: I don't believe what you stated. Do you understand that?

MS. MORPHEW: Is it because I'm pro se?

THE COURT: No. No. I am -- I do not believe that you did not know you had to leave the property on the date of closing. And I am certain, I am positive, that I told you at the last hearing on the Rule 59(e) motion, I told you to vacate that property now.

MS. MORPHEW: And I thought the sellers and the agents and all of them, and the defendants, Dudek and Cross --

THE COURT: Ms. Morphew, do you understand that I control this courtroom?

MS. MORPHEW: Yes, sir. But they didn't --

THE COURT: Do you understand that what I say has more authority over what you say or what Mr. Smith says?

MS. MORPHEW: I really thought they agreed on something outside the court.

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THE COURT: I don't know about that. I'm telling you --

MS. MORPHEW: Well, I have got e-mails. And she is pro se in this. And always they received that notice. I don't understand why I would think anything different.

THE COURT: Well, that's because you don't want to hear it.

MS. MORPHEW: No, Your Honor. It's confusing. It's a cross between law and what I'm supposed to do, and what is happening with a pro se party and another party who is represented.

THE COURT: Okay. Well --

MS. MORPHEW: I had no communication. I was not involved in any e-mails except for like three or four. That was it. And it was, hey, there's closing, and this is two days before. And I'm like, well.

I got an e-mail on the 24th from Mr. Smith. I was notified -- not notified, but I was copied -- where it said that they're still trying to schedule a closing, but they do not know when it will be.

So it's still -- and it was very

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important to me to have the closing.
THE COURT: Do you have those e-mails?
MS. MORPHEW: It costs a lot to move out with what I've got.
THE COURT: Do you have --
MS. MORPHEW: And it was -- for me to know that a closing -- and even the day before, if a closing takes place.
THE COURT: Okay. Ms. Morphew, do you have any of those e-mails that you want to submit into evidence before I go on?
MS. MORPHEW: Actually, they're on the answer.
THE COURT: They're on the answer?
MS. MORPHEW: Yes, sir.
THE COURT: I don't have those e-mails to be on the answer. They didn't occur until June -- at the earliest, June the 1st or May 31st.
MR. SMITH: She is talking about the answer to the motion.
THE COURT: I understand that. But, I mean, she is saying she didn't get notice of the closing until two days before, which was

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your e-mail, Mr. Smith, that you sent her within nine to ten minutes of having Mr. Willis give you a cryptic message stating POA -- which most lawyers could understand what that stands for -- it's certainly not communicative, and it speaks wildly of the bad faith -- in my opinion, the bad faith of the buyer -- of the sellers, in this case, and Ms. Morphew, who happen to champion the same cause.
And the court of appeals even actually quoted that language from the -- they didn't quote it, but they made that part of their findings in the opinion. That they acknowledged that Ferros and Crosses -- Ferros and Morphew were championing the same cause.
I can tell you why. I know exactly why that happened. Because you had one real estate agent who was going to recoup about 10- to 12,000 more in commissions if you purchased the property rather than if the Cross/Dudeks did.
I did that calculation. I didn't make it a finding of fact in my order because there was no testimony to that effect. But as soon as I heard that Mr. Willis was the same agent for you and the same agent for

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Mr. and Ms. Ferro, you can do the calculations, and you can see exactly why Mr. Willis was advising you to go forward, or whatever he was trying to tell you to do, and it was all to better his -- in my opinion, to better his income.
You have been caught in a trap. And the trap has got you now in serious trouble.
MS. MORPHEW: Well, Mr. Smith stated previously that there was an e-mail where -- I guess I don't know about this e-mail -- where it quote me -- correct me if I'm wrong, Mr. Smith -- but there's an e-mail where Rick Willis said not to speak to the parties directly.
So -- and he's -- and until the closing, I guess he was representing me. But I'm pro se in this.
So this is where the balance between, as Your Honor said, being a dual agent and me being pro se, that I specifically requested I be copied on all e-mails, even a couple weeks before, because I needed to know where everything was and to make sure that I was being communicated with and understood where

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everything stood.
But if there was e-mails saying that they weren't to communicate with me directly and only through the agents, I don't understand how I can be found at fault for thinking one thing. It's like -- and not knowing anything else but what I'm getting in e-mails.
I mean, not once was I -- besides Mr. Willis making a statement, and the Ferros making their statements, and then I get a contempt charge, I don't -- what happened between them and who signed what and how the closing went down, I have no idea. I still don't have any idea.
I have not had any communications except for Mr. Willis, an offhand thing, because he's no longer my agent. But I don't -- how am I expected to understand and to -- when I'm being pulled in two different directions and not being communicated with directly.
I mean, I understand your order, Your Honor.
THE COURT: Ms. Morphew, there's a very simple answer to that: You are pro se.
MS. MORPHEW: I asked for

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information. I asked to be copied.
THE COURT: Ms. Morphew, you know, you are pro se. So whatever you've got is what you got because you're pro se.
MS. MORPHEW: Am I discriminated against because I'm pro se?
THE COURT: No, ma'am. It's just you don't have -- you didn't have a representative, a legal representative. You had a real estate agent. That has nothing to do with, and has no authority in this courtroom. None.
MS. MORPHEW: But Mr. Smith would have known that, correct? Then why would he agree to not communicating with me directly?
THE COURT: He did communicate to you. You --
MS. MORPHEW: Two days before saying that he -- because he was required to give me notice, because the Ferros told him in an e-mail on Monday that he needed to provide notice because they -- they didn't even have notice. She didn't even have notice. She said she just got it.
THE COURT: Ms. Morphew, I'm going

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to repeat it one more time.
MS. MORPHEW: Okay.
THE COURT: At the hearing that was conducted that resulted in the order dated May 17th, I think that hearing was about seven days before -- let's see what time here. The motion hearing -- that hearing was scheduled for -- I think it was May the 7th or May the 6th. Let's say May the 6th.
Do you have any other date? Or was it May the 7th; do you remember?
MS. MORPHEW: When it was scheduled?
THE COURT: When it was heard.
MS. MORPHEW: There was a March 27th, and then the 59(e) motion was on May 12th.
THE COURT: Okay. On May the 12th.
On May the 12th, one more time, I told you to vacate the property.
Do you recall that?
MS. MORPHEW: Yes, sir.
THE COURT: Okay.
MS. MORPHEW: And I feel very confused with the order.

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THE COURT: Ms. Morphew --
MS. MORPHEW: I really felt like it said something different.
THE COURT: -- please don't give me a speech. You answered my question; I don't need any more. You answered my question.
Ms. Morphew, you had notified my office that you were scheduled to be on vacation this weak; is that correct?
MS. MORPHEW: Yes, sir.
THE COURT: And where was your scheduled vacation to take place?
MS. MORPHEW: North Carolina.
THE COURT: Where in North Carolina?
MS. MORPHEW: Jacksonville, North Carolina.
THE COURT: What is in Jacksonville, North Carolina?
MS. MORPHEW: My mother. She has terminal cancer.
THE COURT: All right. Well --
MS. MORPHEW: But I'm available if you need me.
THE COURT: Yeah. Because what I'm

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going to do is I'm going to -- I am going to find you in contempt of court. I am going to order that you vacate this property by 9:00 AM on June the 16th. That is Friday morning, June the 16th, 9:00 AM.
I am going to order the -- I'm going to order that you pay a compensatory fine to Ms. Cross and Mr. Dudek which consists of a loss of their rights to possess the property from June the 2nd until June the 16th at the rate of $200 a day, plus you've got to pay $509 for the cost of their utilities for the month of June on the Cady Drive property.
Plus I'm going to charge you with the total amount of interest that they will have paid from June the 2nd to June the 16th, interest on the current balance of their loan, which is 230.
Would you calculate this for me, please?
$242,000 at the rate of 4.25 percent on a 360-day per month -- 360-day year. And multiply that per diem times 12 -- 14. Per diem times 14, please.
THE CLERK: 394.52.

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THE COURT: $394.52?
THE CLERK: Yes, sir. $28.18 per day.
THE COURT: $28.18 per day. The loss of occupancy for 14 days is $2,800.
Mr. Smith is entitled to recovery of attorney's fees pursuant to the doctrine of indemnification, and I need to look at his affidavit. I don't think I have it.
MR. SMITH: Your Honor, on the attorney's fees, the court reporter should be reduced from 1,200 to 900. One of the appearances was three just for the first one. The bills were sent to the Dudeks. So this is the third, there should be three.
THE COURT: So I have attorney's fees -- let's do the costs first. Costs in the amount of $1,340?
MR. SMITH: That's correct, Your Honor. That should reduced by $300.
THE COURT: Okay. So it's $1,040?
MR. SMITH: That's correct.
THE COURT: Costs. Attorney's fees, 1,925.
Mr. Smith, do those attorney's fees

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include today's hearing?
MR. SMITH: That's correct, Your Honor.
THE COURT: Okay. By my calculations, Ms. Morphew, I'm going to order you in contempt, civil contempt, with a compensatory fine to be paid to Ms. Dudek -- excuse me -- Ms. Cross and Mr. Dudek. Are y'all married? Is it Dudek and Dudek now?
It's Cross and Dudek, right? Okay.
To Dudek and Cross, a compensatory fine of $6,583.52. I'm also going to confine you to the Dorchester County jail for a period of 30 days beginning June the 15th. You will report to the jail if you have not vacated the property by June the 14th.
MS. MORPHEW: I have a sick mother and a daughter that I'm the sole --
THE COURT: Ms. Morphew, did you hear what I said? I'm confining you to jail for a period of 30 days beginning June the 15th.
You can purge your jail sentence by being out of the property on or before June 14th at 9:00 AM. Which means this: That if you leave the property and get all of your possessions out,

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and you get it all out of there, every bit of it, and yourself out of that property on or before June 14th at 9:00 AM in the morning, you will have purged your confinement.
That means that you hold the keys to your confinement.
MS. MORPHEW: I understand.
THE COURT: Do you understand that?
MS. MORPHEW: I do understand that.
THE COURT: All right. If you fail to vacate that property, you are to report to the Dorchester County jail at -- let's do it this way: I'm going to have you report to the Dorchester County jail on June the 14th at 12:00 noon.
If you fail to report, I will have the sheriff's office from Dorchester County find you and put you in that jail for a period of 30 days.
Now, Ms. Morphew, you'll have 10 days -- no. Let's do it this way: You'll have until June the 14th at 9:00 AM to pay the civil fine, the compensatory fine that I have awarded to Ms. Cross and Mr. Dudek.
So that we are clear, if the fine

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is not paid and you are not vacated from the property by June the 14th at 9:00 AM, you will report to the jail because you have failed to purge your contempt.
Do you understand that? At 12:00 on June the 14th, you better be at the Dorchester County jailhouse or else -- on Deming Way or else I will have the sheriff come after you. I will issue a bench warrant for your arrest.
MS. MORPHEW: Vacating the premises isn't a problem, but I don't have the money to pay and vacate for -- I put --
THE COURT: You better find it. You said you had enough money to buy this house.
MS. MORPHEW: That's making a payment every month.
THE COURT: No, ma'am.
MS. MORPHEW: I don't have $6,000 --
THE COURT: You had a down payment that you had to make that was somewhere in the 10 to 20 percent range of close to 290 -- almost $300,000. So if you had that down payment to close on this property, you should have six-thousand-some-odd dollars left that I fined

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you. Or else your credibility is even diminishing more.

MS. MORPHEW: I'm sorry, Your Honor. My down payment was only like $5,000.

THE COURT: Did you have any money in escrow?

MS. MORPHEW: No, sir.

THE COURT: You didn't pay any escrow?

MS. MORPHEW: I did, but --

THE COURT: Mr. Willis has it?

MS. MORPHEW: Not any longer.

THE COURT: He gave it back to you?

MS. MORPHEW: To the Ferros.

THE COURT: Why did he give it to the Ferros?

MS. MORPHEW: For their loss.

THE COURT: Well, I don't know why he would do that. But there again, you failed to have representation, so you're paying for your naivete, if you want to call it that, at best, or your ignorance at worst.

Okay. Mr. Smith, do you have any questions?

MR. SMITH: None, Your Honor.

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THE COURT: All right.

Ms. Morphew, do you have any questions?

MS. MORPHEW: No, Your Honor.

THE COURT: I will do my best to have a written order by the end of the week. I have got a full day today. I'm not sure what we have planned for tomorrow, but I should have a completed order of it.

You have four days to get out of that property. If you don't leave, you will report to the Dorchester County sheriff at 12:00 on June the 14th, and you have four days to pay the $6,583.52. And if you don't pay that --

THE CLERK: You said June 14th. I think it's June 16th.

THE COURT: I mean the 16th. I'm sorry. I apologize. June 16th.

And if you haven't been able to take care of that, I will have the sheriff's department -- if you don't voluntarily appear, I will have the sheriff's department pick you up under a bench warrant that I will issue on that date.

All right. Do you have anything else, Ms. Morphew?

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MS. MORPHEW: No, sir.

MR. SMITH: Your Honor, if I could. I just want to clarify the times, because we switched from the 16th to the 14th.

THE COURT: Yes.

MR. SMITH: She is to vacate by June the 16th at 9:00 AM.

THE COURT: June the 16th at 9:00 AM.

MR. SMITH: If she fails to pay both the civil contempt amount of $6,583.52 and vacate the property by June 16th, at 12:00, she is to report to Dorchester County.

THE COURT: Jail, right.

MR. SMITH: I just wanted to make sure, because we had switched to the 14th.

THE COURT: That's right. When I said the 14th, I meant the 16th. I had four days in my head.

Let me make another point clear. That if she has failed to vacate on or before June the 16th at 9:00 AM, I will direct the sheriff of Dorchester County to forcibly eject her from the property, so that we will have her ejected and all of her property placed on the

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side of the road so that the Crosses and the Dudeks can make their -- can take possession of the property on that date.

I do have one question that I'm going to answer, Mr. Smith. And my order, Ms. Morphew, may vary slightly from what I just directed verbally. I need to double-check the rules on the civil contempt as to whether or not I can order the purging of the contempt by payment of a civil fine.

I don't think I can give you choice, though. You have to pay the civil fine irrespective. If you don't pay the civil fine and elect to do the 30 days' time in the Dorchester County jail, I will -- I'm not sure if I can make you do that in lieu of not paying the fine.

In other words, you are going to still have that fine pending when you leave. If you choose jail, you are still going to have pay the fine. You are not going to be -- that fine is going to stay in place.

But if we have to forcibly eject you from the property, you will go into jail for a period of 30 days. Your furniture, fix --

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furnishings, everything will be removed from that property and placed on the side of the road by June -- sometime on June the 14th.

MR. SMITH: June 16th.

THE COURT: June 16th. Excuse me. I apologize. June 16th.

So you can't purge the fine by serving the jail sentence. The jail sentence will be for purposes of my -- the inherent power that I have and must exercise when parties fail to obey the Court's orders. It's imperative that our -- that parties to lawsuits abide by orders of the Court.

And the failure to do so affects the administration of justice in ways that you cannot imagine right now, Ms. Morphew. But if I make an order and a party doesn't abide by it, then what's the next party going to do if not abide by the next order?

So it has to be a means by which we, as judges, can enforce rules that we make, or orders that we enter, and your failures in this case to abide by what I have directed you to do on a number of occasions is mystifying. But nonetheless, I will rectify it through my

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contempt order.

That concludes the hearing. Thank you very much. I appreciate your attendance.

Ms. Morphew, good luck to you. I hope we don't have to send out a bench warrant for your arrest.

MR. SMITH: Thank you, Your Honor.

(The hearing was concluded at 10:53 AM.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, Anne Bouley Meyer, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the witnesses in the foregoing hearing were by The Court duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said hearing was taken at the time and location therein stated; that the testimony of the witnesses and all objections made at the time of the hearing were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; and that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the hearing.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on 26th day of November, 2017 at Charleston, Charleston County, South Carolina.

Anne Bouley Meyer
NCRA
REGISTERED PROFESSIONAL REPORTER
My Commission expires
February 5, 2023

State of South Carolina)	In the Court
)	Of Common Pleas
County of Dorchester)	Case No.: 2017-CP-18-00987
)	
Molly M. Morphew,)	
)	
Plaintiff,)	
vs.)	Transcript of Record
)	
Stephen Dudek,)	
)	
Defendant.)	
)	

November 3, 2017

St. George, South Carolina

BEFORE:

The Honorable Diane Goodstein, Judge

APPEARANCES:

Molly M. Morphew, Pro se
Plaintiff

Samuel Wheeler, Esquire
Attorney for the Defendants

ALSO PRESENT:

Stephen Dudek

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EXHIBITS

NO. DESCRIPTION	ID	EVDS.
NONE		

Thereupon, the following proceedings were had,

THE CLERK: Next up we have 2017-CP-18-987. The case is Molly M. Morphew versus Stephen Dudek. We have defendant's motion to dismiss complaint as well as motion to dismiss action.

THE COURT: Okay. Great.

MR. WHEELER: Your Honor, Sam Wheeler on behalf of the defendants.

THE COURT: All right. Mr. Wheeler. Now, which cases are we hearing today?

MR. WHEELER: We are hearing 2017-CP-18-987.

THE COURT: Okay. All right. Okay. Mr. Wheeler, is this your motion?

MR. WHEELER: Yes, Your Honor.

THE COURT: All right. I'm listening to you.

MR. WHEELER: All right. Thank you very much. If there was some confusion about which cases we're here on it's because there's currently three pending in Dorchester County brought by Ms. Morphew.

THE COURT: Okay.

MR. WHEELER: We are here hoping to dismiss the third case. I don't expect you to have any understanding of the kind of history of this so I'm gonna walk through it a little bit.

THE COURT: Okay.

MR. WHEELER: I'll try not to eat up too much time but this is a pretty tortured history between these set of parties so...

THE COURT: Okay.

MR. WHEELER: Most of these cases or all of them arise out of a separate sales contracts for a home, purchase of a home in Dorchester County. One contract Ms. Morphew entered into with the sellers, the other my clients entered into with the sellers. Ultimately a dispute arose in 2013. They both filed actions for specific performance to determine who was going to get this house in Dorchester County.

Ultimately in 2014 Judge Chellis awarded my clients specific performance and the case was thereafter appealed by Ms. Morphew and the sellers. The Court of Appeals came down and upheld the decision and remanded it back down for further proceedings to close on the property. Before the Court of Appeals actually remanded down, Ms. Morphew filed a second action which I'm gonna call case two alleging - it's 63 pages long. She's moved to amend and provided a proposed complaint which is 93 pages long.

Essentially there's 18 or so causes of action alleging fraud and a variety of things she takes issue with how case one played out whether it's because of things my clients did or whether the court did something,

and if you read the complaint in this case, specifically paragraphs 9 and 10, you get a feeling for what she's really upset about overall and if you will indulge me I'm going to quote these two paragraphs.

THE COURT: This is case two here?

MR. WHEELER: This is case three, Your Honor.

THE COURT: All right. Okay. You're gonna read me something from case two?

MR. WHEELER: Case one, Your Honor.

THE COURT: You're reading me something from case one.

MR. WHEELER: Yes. And I'm sorry. I'm trying to like make it --

THE COURT: That's okay.

MR. WHEELER: -- as easy as possible.

THE COURT: That's all right.

MR. WHEELER: It's a long history here. So she alleges in this case referring to case one and referring to Judge Chellis and I guess assumedly the Court of Appeals she says that due to defendant's unlawful acts or fraudulent misrepresentation the judge was influenced to make an uninformed ruling. The judiciary machinery was prevented from performing and the court itself was defiled. Through the court in the prior proceeding itself may have been unknowingly fooled to make an

unlawful or uninformed ruling who was presented with recently found evidence of fraud on his court who then chose to turn a blind eye at the expense of justice and violating the due process clause of the United States Constitution inferring partiality towards the defendants by rewarding them for their unlawful actions.

Okay. We're talking about, putting aside the blatant disrespect for both Judge Chellis and the Court of Appeals and the process, we're talking about a sales contract for a home that my clients won. She's upset about it and every time she gets an unfavorable ruling she either appeals or files a new action. So while we were waiting on the second - while we were waiting on the appeal to come down in case one she files the second case.

The second case the main defendants are again my clients in addition to virtually everyone that touched the real estate transaction in case one including our agents, my clients' former attorney, the closing attorneys which I don't have any idea what they could have done wrong but be all that as it may we have another case where she's alleged fraud by everybody and fraud on the court. So she now has a case that's been decided on appeal, a second case filed in 2016 which is currently pending where she's alleged fraud in case one.

Okay. So the Court of Appeals comes down. Judge Chellis awards - tells us we need to go to closing. My clients closed. She then refuses to get out of the house. Judge Chellis has to issue a contempt order telling her she needs to get out by a certain date or the Sheriff is going to come get her out. The day he makes that ruling she files this case, case three and she's asked for some sort of equitable possession of the house. She's saying I'm still in possession of the house. It should be mine.

Well, that would have been brought in the first case. That's possession. That's specific performance. If you're claiming legal title or equitable title, you have that opportunity in case one. Her other two causes of action are for fraud and abuse of process.

Okay. You have case two pending where you could theoretically bring those things. Same parties, same issues, same everything. Now we have this case sitting out here that's serving utterly no purpose other than continuing to obstruct and cost my clients a lot of money and they have hired an attorney and we are doing our best to navigate this thing but this is costing them tens of thousands of dollars because at this point she has not been checked. She just files new actions or new appeals to continue the process because she cannot get over the

fact that she lost case one. And I'm really not trying to argue or be strong here but this is, there's a lot of frustration on this side of the table.

So what we have in case two which is where she's alleged all this fraud and everything, Judge Jefferson has already dismissed all the claims against my client except for one which is an intentional infliction of emotional distress. It was a somewhat weird ruling but I understand how that claim survived I guess at the end. But so she - she did away with all, you know, 18 cause of action for fraud and everything, abuse of process and all these things.

THE COURT: And that was in case number two?

MR. WHEELER: That was case number two. Yes, Your Honor.

THE COURT: Okay. So the only cause of action that remains in case number two is intentional infliction of emotional distress?

MR. WHEELER: Yes, Your Honor. She thereafter filed a motion to amend her complaint in case two and filed a 93 page proposed complaint bringing back all of the claims against us. At some point that motion, she withdrew that motion. I'm not entirely certain why. Now that case has been sitting there a year. We were up here last week on a motion to compel because we don't have

discovery answers. We're trying to figure out what's what and who's who and make sense of the whole thing.

So I think we have a status conference coming up in that case to determine where we're going with it because we had a very long complaint that made allegations against a lot of people, a variety of partial dismissals and most of them went our way favorably with one claim remaining against us but then we have this amended complaint sitting out there but we don't really know what that's about. So that case is pending and it's pending between same parties, same issue. As far as I can tell it's over the house. It's - there's - She's upset because she lost the house in case number one and in every complaint she will file the complaint and the sales contract whether it's her sales contract or our sales contract. She keeps referring back to the sales contract and it's just - she just can't get beyond that she lost case one.

So we have, if we're trying to count this, we have three cases. One is somewhat done though she has two appeals in case one. She's appealed the order telling her she needs to get out of the house and the order ordering us sanctions in the amount of $7000.00 after she did not get out of the house. She's got two appeals that have been consolidated in the South Carolina Court of

Appeals after they already decided the main issue which was my clients get specific performance. Three appeals. Three cases at varying stages and we're here on this one that I can't tell you why it's serving any purpose other than to harass my clients. And it's extremely frustrating because she has a venue. She has a voice and this is her third, fourth bite at the apple she's trying to get here.

THE COURT: Okay.

MR. WHEELER: So if you're actually looking at her complaint, again, I apologize for taking up so much time here, if you actually look at her claims in this case she has claim number one that says she's entitled to possess the property and if you actually look at that she says I have been leasing this property. I'm in possession of it. Well, she's not anymore. She's been removed by a court order. So it's somewhat moot. But if it's not moot, it's most certainly barred by res judicata from case one which the Court of Appeals affirmed which she then put an end to. She didn't take it up to the Supreme Court. She ended it.

The other two complaints are for fraud and abuse of process. Well, if you read that roughly 150 pages of complaints in case number two, all you're gonna see is allegations of fraud and abuse of process. So she's got

the venue over there. Again, I don't know why we're here with this case and that's the basis for our motion to dismiss whether it's a 12(B)(6) under res judicata or 12(B)(8) at least with her two separate, or second and third claims because she does, in fact, have a pending motion and I know it's rarely granted and I get it but if you were going to grant it, this is the case because there is quite literally numerous venues for her to pursue her claims.

THE COURT: Thank you, Mr. Wheeler.

MR. WHEELER: Thank you.

THE COURT: Yes, ma'am.

MS. MORPHEW: Thank you, Your Honor. Molly Morphew pro se.

THE COURT: Yes, ma'am.

MS. MORPHEW: First, all right, the first case. Okay, I'm not made out to exactly the way it is. And I am fighting for my right. That is true. But my right in more of the first case was not the same cause of action, not the same defendants. The defendants were Thomas Ferros, the sellers, for breach of contract, specific performance and damages against them, not Dudek, his clients. And the only thing that they were in the complaint was for is that they were preventing me from closing. I had a closing date and that they filed a

lawsuit on lis pendens to prevent me from closing and that was the thing I had against them. The issue was, and it's even in the order, was whether or not the Ferros breached my contract and if I had a valid contract and they were saying that they didn't not because they didn't do what they were supposed to but not - that it was in a timely manner.

Well, after the trial and after everything, I came across some evidence that shows that -- Specific performance has specific, you know, protocol and guidelines and it calls for that you have to have a valid contract and you have to be ready, able and willing to close at all times. It wasn't the question that they didn't get it during that trial so that wasn't adjudicated but afterward I found out that they were actually denied lending because they never completed their application, though there's many - I've got all kinds of evidence. I'm just gonna go real quick through this.

They had all kinds of evidence stating that, they testified they had secured financing. They had their loan officer say it in there. They produced documents that obviously were forged because their loan officer said that was not hers and it came from his clients and it was all skewed. There was all kinds of things. But

the judge, because we didn't have any information that they didn't get denied, that wasn't until way afterwards, we assumed they had, we were just saying they didn't get it in a timely fashion and everybody said they had.

Well, after I came across this information, lots of it in these files and some from Mr. Dudek's files, that they hadn't even applied for financing until after and then never even completed an application and were denied financing, but they told the judge and everybody else that they had secured it and they presented evidence that was false, you know, like a document and so --

THE COURT: Did you make - did you make a motion for a new trial? There's something called a Rule 60 and a Rule 59 motion. Did you make a motion pursuant to those rules?

MS. MORPHEW: That -- I didn't discover that evidence until I took it over after appeal but it was after a year and I know that there's a stipulation after a year for it so I couldn't do it. But I also know under that rule that a separate action is allowed - is not - is allowed under that rule, too, which I brought as a separate action for fraud on the court.

THE COURT: Is that case number two?

MS. MORPHEW: Yes, ma'am.

THE COURT: And that one has been dismissed?

MS. MORPHEW: Nope. No, ma'am.

THE COURT: Except for the cause of intentional infliction of emotional distress?

MS. MORPHEW: There's - there's an action with ten defendants and some of them, on some of them and some of them not and there's the real estate agent, the company, the chief counsel for the real estate agent, you know, the bank, the lending officer and a lot of it was fraud actually found out in testimony, documents presented in court were incorrect and then afterwards, and if you put it all together, I looked at it, it's more of a conspiracy to commit fraud because they knew it beforehand that they didn't have it but they told everybody they did. They told, even before they applied for financing I have emails where they're saying, you know, hey, you better get this done or we're gonna lose it and, you know, Ms. Cross is going, oh, my real estate agent is biting nails.

Well, she goes to court saying nope. Everything's fine. We applied perfectly. And then even in another hearing for the other case she said that they were not denied right to the judge.

THE COURT: Okay. But I guess these -- What I'm trying to ascertain --

MS. MORPHEW: Right. Is these people.

THE COURT: -- against these folks your cause of action is for intentional infliction of emotional distress in case number two?

MS. MORPHEW: Yes, ma'am.

THE COURT: Okay.

MS. MORPHEW: And then there was -- But I'm also amending my complaint because most of the deficiencies in it were caused by as the judge pointed out whereby some of the actions that I brought were criminal actions and couldn't be brought in the civil court so I had to remove all those and so she dismissed some of those but she says it can be brought into a criminal court but not this one so a lot of them were done with that. A lot of them I was saying, claiming like Rule 11 which you can't bring under that civil action so I had to remove all those. I would say that a third, almost half were more that than anything else. But I'm gonna have to amend that complaint and I did it and I filed it but we never went to a hearing whether they were going to allow it or not because I withdrew it because of all these other things that are happening that I want to put in there.

THE COURT: Okay. So I just want to be clear. Cause of action number two against these defendants, what remains today is the cause of action for intentional infliction of emotional distress?

MS. MORPHEW: Yes, ma'am.

THE COURT: All right. Now let's move to this one.

MS. MORPHEW: Okay. Now, this one was filed and as I understand constructive trust really all it is is me laying claim to property through a constructive trust complaint saying that I have rights and I have - not that they don't have rights. I'm not saying. It's not that. It's that I have to prove that I have legal rights to a piece of property and that's what this one is for saying that I actually have legal rights. I have proof that I was the only one so far that has a legal claim to that property and I'm also saying here that they knew that I have that legal claim.

They knew that I was accusing them of fraud but they still went ahead and purchased the property under those means and still have not -- I have asked honestly for the information because I know specific performance. I asked for their proof of financing for the other one. I said I would drop everything if they could show that they were allowed to do specific performance in the very beginning and it wasn't a frivolous suit and that my proof is showing it's a frivolous suit and that they were not allowed to do that and that unfortunately the lower court judge, he was presented with that information before he

even made his order and he refused to acknowledge it or look at it before he even made the order before it even went on appeal. But that was from the sellers. I didn't do that; that there was - that they were denied lending and so I just pulled up these documents that they filed with the courts. And so I see all of this, too. And it's not that I'm trying to cause harm or harass. I'm really not. I'm just trying to defend myself, that I purchased this - I had a contract. I had a closing date. They never had a closing date.

THE COURT: But that's been decided. The Court of Appeals decided all of that.

MS. MORPHEW: Well, decided on it but my new case is -- Because I know fraud. If you discover fraud, and it can be after it's decided, you can bring that in a separate action and within three years which I did and I can prove that there was fraud. Now, I wouldn't have known there was fraud --

THE COURT: Now, this case though is one on --

MS. MORPHEW: Constructive trust.

THE COURT: -- constructive trust.

MS. MORPHEW: But I'm just saying this because they are mentioning all these other cases, too, and bringing it up because I understand we're here just for constructive trust. We're saying I have a legal claim to

it and why. I'm also showing the court that they - that I have above and beyond -- Is it constructive trust? There can be ten people claiming it but the person who has the most legal right or can show that they have the most legal right is what counts. I'm not supposed to tell - defend anybody else or say that they don't. I just have to - the burden of proof is on me to prove that I do have more.

So in this constructive trust I'm saying that I do have still a right. I had a right. I had possession. Obviously I don't anymore and that I have a right and that that's what I would like to be determined; that if I have the legal, the equitable right above and beyond Mr. Dudek and Ms. Cross regardless of what happened in the past. I mean, this can be 20 years later I understand that you lay claim to a piece of property. And then I'm just also saying that they actually knew about me and knew about my claim and still went forward and purchased the property. Whether that's...

THE COURT: Okay.

MS. MORPHEW: And this -- And this does -- And like I said, this constructive trust isn't -- For the 12(B)(6) they also didn't state in either one of them with particularity so I'm not quite sure how to defend. I mean, it's just making a statement under the rule but not

giving any kind of facts or causes to prove, you know, that I'm wrong so... But then I go on to say that also that it's not only that but my case from 12(B)(6) states plenty of facts that I would think the court would find plausible just on the complaint itself on its face that it would be worth looking at.

And then on the 12(B)(8) we state that it was the same parties, the same case, the same issues. But the prior case that they refer to which is the first case, not the second case, because that hasn't even been adjudicated yet, only the prior case has so the second case has nothing to do with this, that it was adjudicated was only - was with - my contesting this is that it was a breach of contract with the sellers, not them, and that they only prevented me from closing because they were supposed to -- I was a backup contract and they were supposed to sign the release before I could close and they failed to do it and I was trying to, you know, proving that I had the contract and that they didn't get it in a timely manner which made their breach. That was the case before.

So it's not the same people that I had and it's not even the same cause of action. This is a constructive trust saying that I have the only valid right to it whether it's through the contract or -- Well, just

through the contract. Because not only did I have possession of the property but I had a closing date. I had financing secured and everything which they did not. They did not even have financing secured. They applied for financing after the contract expired which made it - even the bank. I have documentation from the bank saying that it was invalid unless they had a signed contract extension addendum which they never provided. They required that the day they applied and they never provided it to me.

None of this was presented or given to the judge or -- And even the discovery. In the discovery the lending file was asked for, the folders numerous times and the bank said there were no such people at the bank until the defendant came into the trial and then the bank officer's there defending them saying yes. They did get financing. Yes. They - but it was the sellers that stopped them from closing. So it's two, three - two separate things here from the past one.

THE COURT: All right. Bear with me for just a second. I understand your position. Your position is that there was a seller of a house and you - these folks entered into a contract. You entered into a contract and you believe that you are the person that should have been the successful bidder for the house; is that correct?

MS. MORPHEW: Yes, ma'am.

THE COURT: All right. And that is the precise issue that went before Judge Chellis and has gone up to the Court of Appeals, correct?

MS. MORPHEW: Well, the issue was that the sellers breached their contract with me because they failed to, we failed to close --

THE COURT: Okay.

MS. MORPHEW: -- even though I had this already.

THE COURT: Right. But all of that went up to the Court of Appeals, right?

MS. MORPHEW: No. A contempt is on appeal and then there's a motion for a closing order that's on appeal.

THE COURT: Okay. Got all of that. But the Court of Appeals on the merits of the underlying cause of action made the determination that the rightful buyers were the defendants in this case, correct?

MS. MORPHEW: I think so.

THE COURT: All right. And that's been to the Court of Appeals?

MS. MORPHEW: Yes, ma'am.

THE COURT: All right. And so your cause of action today is that you believe that the ultimate people that the Court of Appeals said were the buyers, Mr. Dudek and Ms. Cross, they come out of the Court of Appeals as being

the rightful buyers and your position today in this litigation is that they actually are holding the house in constructive trust for you?

MS. MORPHEW: If I can prove -- It's - it's not that - that they are holding it willingly and - and --

THE COURT: It doesn't have to be very willingly --

MS. MORPHEW: I know.

THE COURT: -- that people are holding things in constructive trust. But that's your position that they are actually holding this house for you in constructive trust? Yes? No?

MS. MORPHEW: Yes. They should be. Yes.

THE COURT: Well, either you think they are or they are not. What do you think? Do you think they are?

MS. MORPHEW: Yes.

THE COURT: Okay. Why?

MS. MORPHEW: Because I - I have a legal claim to it and even though, even if they --

THE COURT: Your legal claim would be to the seller, the person who was selling it, right? In other words, that's the person that you say breached the contract with you, right?

MS. MORPHEW: In the initial one.

THE COURT: Right.

MS. MORPHEW: But in the - but now that they have

purchased the house they are now the owners of the house.

THE COURT: Right. Because of the Court of Appeals' decision.

MS. MORPHEW: Yes, ma'am.

THE COURT: And so they don't have a relationship with you because your relationship was with the seller, right?

MS. MORPHEW: Yes, ma'am.

THE COURT: And there were two people vying to buy this house, correct?

MS. MORPHEW: Yes, ma'am.

THE COURT: All right. These people, the Court of Appeals - the Court of Appeals said they win, right?

MS. MORPHEW: Yes, ma'am.

THE COURT: Okay. So but you don't have a direct relationship with these people.

MS. MORPHEW: Under constructive trust it could be if I go out and if someone else lays a claim to it or I know anybody else that lays a claim to it, I have to put them down as defendants also. If somebody --

THE COURT: But you don't have a claim against them to this property.

MS. MORPHEW: Under constructive trust?

THE COURT: Right.

MS. MORPHEW: It's -- You have -- The defendants are the people who are laying claim or have claim to the property only. It's not --

THE COURT: The Court of Appeals said that they own the property. They had the right to buy the property.

MS. MORPHEW: And this is what I'm contesting, that they did not have the right and that I had the legal right to it under constructive trust.

THE COURT: Then that's your fraud cause of action, that there was fraud committed on the court.

MS. MORPHEW: Yes.

THE COURT: There was fraud --

MS. MORPHEW: That - that fraud, that they got an uninformed ruling and I'm asking for damages, not the property in that one.

THE COURT: But that's not in this cause of action.

MS. MORPHEW: Right.

THE COURT: This is a constructive trust.

MS. MORPHEW: Constructive trust. Yes, ma'am. This is just saying that I would like the court to determine whether my legal claim is valid and whether it is above and beyond their legal claim regardless of what the Supreme Court says.

THE COURT: Yeah. But you have only sued these people.

MS. MORPHEW: There's nobody -- I did a public search. There's nobody else laying claim to the property and so --

THE COURT: Well, they got - but their claim to the property is ultimately given to them by the Court of Appeals.

MS. MORPHEW: But their claim to the property is through their sales contract.

THE COURT: Right.

MS. MORPHEW: Right. That I'm saying is not valid.

THE COURT: You already did that. You did that. That's been to the Court of Appeals.

MS. MORPHEW: No. No. No. No. We never contested whether it was valid or not. That was never an issue. We never had an issue whether they even secured financing. It was when they secured it.

THE COURT: That's got nothing to do with you directly. That might have something to do with the seller. That might have something to do based on your theory with the court. It's got nothing to do with you. In other words, if there's fraud on the court arguably, then that can be undone. I don't -- I would be surprised if it was and then it was raised, based on what you're telling me it was raised before the master in equity, then went up to the Court of Appeals and they made a

decision. But if there was fraud committed, fraud was committed on one of two people, the owner or the court based on what you're telling me. You know, you had a second position so if they lost it, you got it as I understand it, correct?

MS. MORPHEW: In the prior case? I've got to make sure I understand.

THE COURT: Sure.

MS. MORPHEW: I'm sorry.

THE COURT: Of course. Of course. You had a backup contract you told me.

MS. MORPHEW: Right. Right. And my claim was whether they were liable to sign that release so I could close, legally liable.

THE COURT: It's been decided by the Court of Appeals.

MS. MORPHEW: No. That was never -- No. That was - that was what was -- My case was dismissed because --

THE COURT: Okay.

MS. MORPHEW: -- because they never even adjudicated whether that or not. They just said that the sellers caused their breach. But they said that the sellers caused the breach which they didn't which I found out they didn't because whatever breach that they say that the sellers caused was moot if they never even applied

for financing until after the contract was final.

THE COURT: I know you're hung up on the financing.

MS. MORPHEW: I am.

THE COURT: The problem is that was raised, based on what you have said, that was raised as I understand it before Judge Chellis. All that went up to the Court of Appeals, correct?

MS. MORPHEW: Whether they -- Well, it wasn't whether they had financing or not. This is my thing. Now I'm saying they never did. Even -- They told them that they did. They produced evidence that they did.

THE COURT: Right.

MS. MORPHEW: There was no way to, for any of us to say no or you didn't or to even question it when you've got five people and they present evidence. It was afterwards I get this documentation that shows that they didn't even meet the requirements of specific performance and that's why I brought this in my fraud thing, not what -- The appeal thing was whether they were right or wrong. I said that they didn't - the sellers never breached. The sellers even had -- Well, it was a combined thing. A combined appeal and it was a combined case. So we said that the sellers never breached. We don't understand why the lower court even thought they breached but then we find out that it would be moot even now. I find that it

would be even moot now whether they breached or not because if you don't do - in order to get specific performance you have to be ready, willing, able, you have to perform your full contract in order to do it. Well, they were denied lending before they even filed for specific --

THE COURT: But that's in the other action.

MS. MORPHEW: Right.

THE COURT: Right.

MS. MORPHEW: But I -- This is what - this is what now I found out that that was the case.

THE COURT: When you found that out, here's what has to happen. Within the context of that case when that is ascertained you have to do what is called move for a new trial on the basis of newly discovered evidence.

MS. MORPHEW: Well, I couldn't do it. It was expired when I discovered it.

THE COURT: My concern is is that earlier you said that these items, this information was presented to Judge Chellis and you don't think he gave it the attention that he should have given it and then there was a decision that was rendered. That decision went up to the Court of Appeals and the Court of Appeals has ruled as they have.

Irrespective of that, irrespective of that, your discovery is in the other case. Not - it doesn't give

you rise to a constructive trust. It just doesn't. Because the obligation -- See, you've got a seller. The seller gives two contracts. You have a backup contract. Y'all litigated, do whatever you do, you have litigation, it goes up, the Court of Appeals has made a determination who won. Who won. These people won.

At this point I gather they're trying to close. They haven't been allowed to close for whatever reason. That's on appeal. That's all in the other case and I gather if they're not allowed to close because you say there's fraud on the court, that there's fraud everywhere. In the event that by virtue of that the Court of Appeals chooses to undue its decision, then I guess you're still holding the second contract.

The problem is is that these people do not have a relationship with you. You have a relationship with the seller and they have a relationship with the seller. Y'all don't have a relationship. You don't have a contract with these people and I'm having difficulty figuring out how they hold a piece of property in trust for you. You see what I'm saying? I'm having trouble. I'm thinking about it. Let me hear from you. Yes, sir, Mr. Wheeler.

MR. WHEELER: Just to clarify, Your Honor, we have closed. It was remanded. Judge Chellis put us on a

closing schedule and that gave rise -- She still wouldn't get out of the house and remove her property.

THE COURT: Do they have title?

MR. WHEELER: We have title. It's closed and I don't really, legally I don't know how you have a constructive trust claim if the Court of Appeals has already said we are, in fact, the legal title holder. How do you have anything hanging onto this property?

THE COURT: Well, she doesn't have a -- I guess what I'm having difficulty understanding is she does not have a relationship with your clients.

MR. WHEELER: Has never had a relationship.

THE COURT: She doesn't. She has a relationship with the seller and she may have a suit against the seller if she's been wronged by the seller. I'm not getting into that. I'm not suggesting because I don't know. I don't know the procedure obviously that clearly. I don't see in this circumstances where she has a relationship. You're looking at a fiduciary relationship or a relationship of trust and coupled with some sort of fraud and that's never existed as I understand it from anybody between this plaintiff and your client.

MR. WHEELER: And I don't know to my res judicata argument if you're claiming some sort of equitable possession which specific performance is an equitable

remedy and you're trying to get title, I get it. These are things that you should have brought in that action or should have brought to your point under a Rule (6)(B) motion and if you have fraud, the rule that it's got to be brought within a year, that's for certain things. If there's fraud on the court or fraud, I think you can bring it quote "in a reasonable amount of time." I have seen decisions where ten years is reasonable depending on the level of fraud and when you discover evidence.

So you have a res judicata thing out there that says you could have brought these in this other action and you still could bring them in this other action. And now you have a second action where you are, in fact, arguing fraud and abuse of process and all these things, Rule 11 and rules of ethics that she's not bound by and you really don't generate cause of action but there's still a pending action. All that's left against us is an IIED claim but she has a motion to amend pending. So she still has a venue for those.

So we've got this third case that is serving no purpose and the timing of it, the timing of filing should really give rise to what she's really doing. It was filed the day that Judge Chellis came down with the contempt order. And to quote Judge Chellis, I realize she comes off very innocent. He says her actions quote

"raised the inference that she is an obstructionist who seeks to derail the real estate sale to the Dudeks and Cross." Judge Chellis has figured it out. She can get in front of another judge and start to argue the same things but ultimately the claims are the same.

THE COURT: Be that as it may, I don't see -- I'm having trouble -- I'm just having trouble --

MR. WHEELER: Neither do I, Your Honor.

THE COURT: -- making it a constructive cause of action.

MS. MORPHEW: Your Honor.

THE COURT: Yes, ma'am?

MS. MORPHEW: We keep bringing up this contempt and we're here for constructive trust but I would just like to please say something about that. I had evidence and I even answered Judge Chellis where they - they gave me permission - he gave me permission to -- I said, all I ask for is 45 days notice to vacate the house. 45 days notice of a closing date so that I had time to get out of the house. I never once said I wasn't going to get out. I even told them that and if they closed before that time, I would pay daily rate until I was out and I would not stop them from me trying to get out. But I requested that I have proper notice of that and I requested, the other thing I requested was proof of the financing per,

because we were still within the same instance of that case, proof of the financing so that - the prior thing so we - for specific performance. Never - no one has ever gotten that. No one. There's not one evidence of it.

The judge never asked me. He said that was fair. They agreed to it in that hearing. No one said -- They said, yep. You can have 30. And he thanked me for the layout. I said all I wanted was 45 days, 30 days notice. 15 days. Make sure I'm to get out and 30 days notice of the closing and then 15 days after so that I can make sure that, you know. But I will be out as soon as possible. I promised him that.

We went to a hearing six weeks later and I said, well, Your Honor, and I made a motion to get that information right there in the court and he denied me and said that information is moot to this case. And I said, well, it's not moot. It's about specific performance. You're saying that they couldn't -- You ruled that they had specific performance because they did have a contract and they were ready, able and willing. I'm telling you they don't. Here's my information. I even gave it to him. They were denied lending.

Ms. Cross stood up and said, no. We did have lending. So I'm like, well, how can you do a closing? So I said you told me I could have this and this and

this. I said in this last -- I even got it in transcripts. And he says I changed my mind. And I said, well, how can you change? I mean, on what kind of justification? You know? Because he changed his mind. So I said, well, okay. I said but --

THE COURT: So that's what you have on appeal?

MS. MORPHEW: Well, kind -- Yes.

THE COURT: Okay.

MS. MORPHEW: And then what happened was I got notice of a closing two days before the closing took place. I was not in any emails for like a week and a half. There was no closing set at all until they said closing will take place on Friday. This is a Wednesday now. And I went whoa. And so I answered back and I said please provide proof of financing because that's, you know, he said that was good. Well, he said then the sellers who were negotiating closing and all of that came back to - the day before, the next day and said, Ms. Morphew, if the closing takes place, then, and this is the other pro se litigants, the buyers will get in touch with you about your lease and the rent and I said okay.

So I'm like okay. So I'm waiting for that. Didn't even know a closing took place on Friday. No one told me. No one informed me. No emails. No nothing.

Monday or Sunday, late Sunday I call the Ferros and

say, was there a closing at all? Can somebody please tell me what's going on so I know what's going on? And they said yes. And so and the next thing on Monday, Monday afternoon I get a thing for a motion, an order to show cause and contempt to not follow an order. I'm going, whoa. Whoa. I'm really confused here.

First, I haven't gotten notice of -- I didn't get, you know, even in the State of South Carolina an eviction you get 30 days to get out and that's why I was asking just give me 30 days so I can find a place. Because of everything what happened beforehand and because I had been in the house for a while, I was like that would just be proper. I didn't think it was unfair.

But then the judge says, well, you know, and then I see this motion to show cause and I'm like, whoa. Wait a second here, you know. I haven't even gotten any - any - any eviction or, you know, your tenancy is over with. I'm now a tenant. As of Friday I'm now a tenant. I've never received any type of notice saying that that I needed from the sellers. And the judge said, well, this is an order. He said you didn't follow my order. I said, but during the whole time there wasn't even a closing date since this order months, you know a few months ago there was never a closing date and then all of a sudden there's a closing date and I'm given two days

before the closing.

And then there's an if it closes because I heard there was -- I got an email saying they were questioning whether they wanted to close on a house with the tenant still in it because that can make it kind of iffy because now I become their tenant if nothing else.

So I go, I go to this hearing for the order to show cause and it was really bad. And - and getting into this other one and I --

THE COURT: Now I'm getting way more information than I need.

MS. MORPHEW: Okay. I'm sorry. So then I get evicted and he gave me three days to get out or else I would be arrested and my child would be put in child custody. Of course, now me, when you mention my child and child custody, that - that was it. And he said you will be arrested and you had to be out by 9:00. Well, believe me, I was out by 9:00 and I took everything I possibly could take. Not None of the Ferros stuff that was in the attic but all my stuff except for some stuff which I didn't have time to come back for. Hours and hours. I've got proof. I worked my -- Because I didn't want to be arrested. But I did tell the judge during this thing that, I said this is kind of - his order was ambiguous because on one hand he said you have to be out

on or before closing and that yes, it was fair that I asked --

THE COURT: And that's what you've got on appeal --

MS. MORPHEW: Yes, ma'am.

THE COURT: -- right? All right.

MS. MORPHEW: So I'm just saying that the contempt thing is really like -- I mean, I'm not doing -- I didn't do anything on purpose but I did tell him I didn't get out of the house immediately except for like two weeks. The closing took place on the 2nd and we had this hearing like two weeks later, I said because I didn't want to waive my rights because if I had left the house, who knows what kind of rights I could have waived saying, well, you all left it so you agreed. So I said, well, no. The order said that I could have this and this and he said no. I said this and this. And I said, well, this is ambiguous. So I'm just defending myself for contempt.

THE COURT: I understood.

MS. MORPHEW: I really misunderstood, Your Honor.

THE COURT. I understand. I understand.

MS. MORPHEW: I'm so sorry.

MR. WHEELER: I don't think any of that has anything to do with what we're here about today.

THE COURT: Well, I'm going to ask for an order.

I'm going to ask that you prepare an order. I do not believe this is, that a cause of action under these circumstances for constructive trust can survive. It doesn't mean, does not mean that there are not avenues. Doesn't mean that if there has been fraud committed on the court that that cannot be brought in the other cases that have, as I understand it, have existed and there are rules that provide that if there has, in fact, been fraud committed on the court, that those allegations can be handled but be handled properly and in the correct case rather than in some sort of collateral attack.

This is not a cause of action constructive trust. These matters have been litigated. If, again if there has been fraud committed on the court, they ought to be brought properly in the case where the fraud on the court occurred. There is no fiduciary relationship. There is no relationship of trust. There is no contractual relationship between the parties. And I find that none of the elements of constructive trust can be met or are met in this instance and that would be the order of the court. Draft up an order for me please, sir.

MR. WHEELER: Thank you, Your Honor.

MS. MORPHEW: May I say something?

THE COURT: Yes, ma'am.

MS. MORPHEW: If the trial was combined or

consolidated, two cases were consolidated, doesn't that bring some type of relation --

THE COURT: No.

MS. MORPHEW: -- to the parties?

THE COURT: No, ma'am. It doesn't.

MS. MORPHEW: Thank you.

THE COURT: Thank you. Not necessarily. All right. Thank you.

WHEREUPON, THE HEARING WAS CONCLUDED.

CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 3rd day of November, 2017.

I FURTHER CERTIFY that the forgoing 39 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 5th day of June, 2018.

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2018-000507

Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross Respondents.

CERTIFICATE

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other materials, or matter that was not presented to the lower court or any such matter not relevant to the Appeal.

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843) 514-7299

August 23, 2018