

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

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James O. Spence, Master-In-Equity Judge

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SC Court of Appeals

Case No. 2011-CP-32-01781

Appellant Case No. 2015-002048

Charles E. Strickland, III, Latisha D. Strickland, and Justin R. Dillon.....Appellants,

v.

Marjorie E. Temple.....Respondent

FINAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal.....	1
Statement of the Case	1
Facts	1
Arguments	
I. The Master-in-Equity Erred in Failing to Award Attorney Fees Which Were Specifically Provided for in the Parties' Contract in the Event of an Action to Enforce its Provisions, Including Termination. Attorney Fees are Recoverable in an Action for Injunctive Relief if There is a Contract or Statute Which Permits Recovery.....	4
II. The Master Impaired the Parties' Contract by Finding That Plaintiffs Were Entitled to Attorney Fees But Did Not Award Them in Conjunction with Terminating the Contract Because They Could Only Be Awarded as Part of the Debt, and Not as a Separate Damage Award. This Finding Violates the South Carolina and United States Constitutions	8
III. The Master Erred in Failing to Grant Rule 11 Sanctions and Attorney Fees Against the Defendant and Her Counsel Because There Were No Good Grounds for Bringing and Litigating the Defenses and Counterclaims of Fraud, Misrepresentation, Rescission, Unconscionability, and Unfair Trade Practices. The Circuit Court Found That There Was No Basis in Fact or Law for Bringing These Claims. Therefore Sanctions Should Have Been Entered	10
A. The Standard of Review.....	10
B. The Plaintiffs Are Entitled to Recover From Counsel All of Their Attorney Fees and Costs As a Sanction For Frivolous Litigation	11

IV. The Master Failed to Make Sufficient Findings of Fact to Enable the Appellate Court to Ascertain What the Basis Was For Denying Rule 11 Sanctions.....14

Conclusion 16

TABLE OF AUTHORITIES

CASES

Atkinson v. Atkinson, 279 S.C. 454, 309 S.E.2d 14 (S.C.App., 1983)..... 7

Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989).....5,7

Blumberg v. Nealco, Inc., 310 S.C. 492,493,427 S.E.2d 659,660 (1993)..... 5

Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961) 5

Ex parte Gregory, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50 (2008).....13

Federal Land Bank of Columbia v. Garrison, 185 S.C. 255,193 S.E. 308,311 (1937).....9

Glasscock v. Glasscock, 403 S.E.2d 313 (S.C. 1991).....7

Hegler v. Gulf Ins. Co., 270 S.C. 548, 243 S.E.2d 443 (1978).....5

Holmes v. Haynsworth, Sinkler & Boyd, 408 S.C. 620, 760 S. E.2d 399 (2014)... 10

Lewis v. Premium Investment Corp., 351 S.C. 167 (2002), 568 S.E2d 36 7

Mathis v. Brown & Brown of S. Carolina, Inc., 389 S.C. 299,320,698 S.E.2d 773, 784 (2010) 15

Nienow v. Nienow, 268 S.C. 161,232 S.E.2d 504 (1977) 7

Seabrook Island Property Owner's Association v. Berger, 365 S.C. 234,616 S.E.2d 431 (2005).....5,7

Stokes-Craven v. Robison, No. 27572 (S.C. filed Sept. 9, 2015) 10

STATUTES

S.C. Code Ann. § 14-3-320 (Supp. 2012) 10

OTHER AUTHORITIES

Rule 1.5, RPC, Rule 407, SCACR 6

Rule 11, SCRCPP 10, 11

Rule 1, SCRCPP 16

Rule 3.1, RPC, Rule 407, SCACR 14

S.C. Const. Art. I, § 4 8

U.S. Const. Art. I, § 10 9

Statement of Issues

- I. Did the Master-In-Equity Err in Failing to Award Attorney Fees to the Plaintiffs When the Contract Provided for Recovery of Attorney Fees for Enforcement of the Contract and Attorney Fees are Recoverable in an Action for Injunctive Relief if Allowed by the Contract?**

- II. Did the Master Impair the Parties' Contract When He Found the Plaintiffs Were Entitled to Attorney Fees But Did Not Award Them in Conjunction with Terminating the Contract in Violation of the South Carolina and U. S. Constitutions?**

- III. Did the Master Err in Failing to Grant Rule 11 Sanctions Against the Defendant and her Counsel Because There Were No Good Grounds for Bringing and Litigating the Defenses and Counterclaims of Fraud, Misrepresentation, Rescission, Unconscionability, and Unfair Trade Practices and the Circuit Court Found No Basis in Fact or Law for These Claims?**

- IV. Did the Master Err in Failing to Make Sufficient Findings of Fact and Conclusions of Law to Enable the Appellate Court to Ascertain What the Basis was for Denying Rule 11 Sanctions Against the Defendant and her Counsel?**

Statement of the Case

This is an appeal from an order of the Master in Equity for Lexington County denying the Appellant's Motion for Rule 11 Sanctions and Request for Attorney Fees after the court terminated the Respondent's interest in an installment land sale contract (Bond for Title). The master found that the Respondent, Marjorie

Temple, had no equitable interest in the property based upon her concession and agreement that no equity existed.

The Appellant, Charles Strickland, et al, filed this action on May 11, 2011 in the Circuit Court of Lexington County seeking foreclosure of a Bond for Title or installment land sale contract (hereafter the Agreement) or, in the alternative, termination of the Agreement and any equitable interest Temple may have had in the property. Strickland also requested attorney fees and costs in the pleadings.

Temple served an Answer, Counterclaim and Third Party Complaint on July 26, 2011, alleging defenses and causes of action for unconscionability, rescission, negligent misrepresentation, fraud and unfair trade practices.¹ Temple alleged in the counterclaims and defenses that Strickland had failed to disclose the existence of a dam and pond on the property, as well as the fact that a portion of the property was in a wetlands, despite the fact that all of these matters were disclosed in writing in the Agreement, which Temple acknowledged she read. In addition, she walked and viewed the property prior to purchasing it.

The circuit court issued an order granting summary judgment on May 20, 2013 as to all of Temple's counterclaims and defenses, and referred the underlying breach of contract action to the master in equity for purpose of determining

¹ The matters raised in the Third Party Complaint are not at issue in this appeal.

whether Temple had any equitable interest in the property and for final judgment.

The Court signed an Order of Reference on May 23, 2013.

Strickland filed a Motion for Rule 11 Sanctions and Attorney Fees on April 17, 2014 on the basis that Temple's counterclaims were filed in bad faith; that there were no good grounds to bring the claims; and that the circuit court found there was no basis in fact or law to support the allegations.

The master issued a final order without a hearing on August 5, 2014 terminating the Agreement and any alleged equitable interest in the property, which consisted of a mobile home and lot, on the grounds that Temple conceded there was no equity the property and that the contract had been breached. The master further ordered that Temple vacate the property by August 29, 2014 and reserved for determination the issue of attorney fees and costs in his final order.

Strickland requested attorney fees and costs in the amount of \$19,236.82 under the Agreement and Rule 11, SCRCP from Temple and her counsel. He also sought a monetary fine.

The master heard Strickland's Motion for Rule 11 Sanctions and Request for Attorney Fees on December 11, 2014 and issued an order denying the requested relief on June 4, 2015 from which Strickland appeals. The Court's Order was entered on June 15, 2015 and thereafter Strickland filed a timely Motion To Alter Judgment of the Court's Denying of Attorney's Fees and Rule 11 Sanctions

pursuant to Rule 59 (e), SCRCP. The master issued an Order Denying the Rule 59 (e) motion on September 1, 2015, written notice of which was received on September 16, 2015.

Strickland filed Notice of Appeal on September 28, 2015.

Argument

- I. The Master-in-Equity Erred in Failing to Award Attorney Fees Which Were Specifically Provided for in the Parties' Contract in the Event of an Action to Enforce its Provisions, Including Termination. Attorney Fees are Recoverable in an Action for Injunctive Relief if There is a Contract or Statute Which Permits Recovery.**

Strickland and Temple entered into a legally binding Agreement, which provided, among other things that:

Purchaser agrees to pay all costs and expenses, including reasonable attorney fees incurred by the Seller in terminating Purchaser's rights under this Agreement or claims to the property or in enforcing any or all terms of this Agreement, and in appropriate judicial proceedings, if any are initiated to establish (sic) or maintain Seller's right, title to, and possession of said property after breach by the Purchaser.
(Agreement at p. 6) (emphasis added)

The Complaint in this action sought foreclosure of the property or, in the alternative, termination of the contract and possession of the property. (See Complaint at p. 3; R. p. 36) Strickland also prayed for a determination of attorney fees and costs. (Id. at p. 3; R. p. 36) The master accepted Temple's concession that she had no equity in the property, found that the contract had been breached, and that

Strickland was entitled to termination of the contract. (See Final Order Terminating Conditional Sales Agreement and Bond for Title of August 5, 2014; R. p. 22)

The master found that attorney fees in this case could only be awarded, as they are in a mortgage foreclosure, as part of the debt and not as a separate award (Order of June 4, 2015, p. 4; R. p. 22). This was error because Strickland elected the remedy of termination and possession and Strickland's right to attorney fees under the contract was not only for foreclosure, but also termination. Thus, Strickland has a contractual right to attorney fees, which the master erred in failing to award.

Where a court grants injunctive relief and there is a corresponding contractual right to attorney fees, they are recoverable as a matter of law. *Seabrook Island Property Owner's Association v. Berger*, 365 S.C. 234, 616 S.E.2d 431 (2005) (holding where trial court awarded attorney fees in conjunction with enforcement of residential covenants and restrictions that it did not abuse its discretion in awarding attorney fees and that the attorney fees were contractual in nature under the restrictive covenants) The same analysis applies here.

The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993) (citing *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d

296 (1989); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548,243 S.E.2d 443 (1978); *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961)). "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." *Seabrook Island Property Owners' Ass'n v. Berger*, supra.

In this case, the Agreement specifically allows for the recovery of attorney fees and costs. "Purchaser agrees to pay all of Seller's reasonable attorneys' fees and court costs incurred by the Seller in her (Sic) enforcement of the contract. See Agreement at p. 4. And so, there is no dispute that Strickland had a legal basis for asserting a claim to attorney fees. The only issue for the court was the reasonableness of those fees. And the master found the fees to be reasonable. Strickland claimed attorney fees and costs in the amount of \$19,236.82. Included in the amount of costs were filing costs, service costs for subpoenas, costs for depositions, and the like.

Strickland submits the fees sought are entirely reasonable as this litigation has been unnecessarily been drawn out by Temple and her attorneys while she remained in the property- "rent free." Strickland's counsel wrote the defense attorneys early in the litigation on two occasions and requested that defense counsel drop the counterclaims for fraud and unfair trade practices. (Motion for Attorney Fees and Sanctions at p. 2, par. 4; R. p. 262) Defense counsel and/or the defendant refused.

The Court should, and indeed must, examine the following factors in making an award of attorney fees.

The South Carolina Rules of Professional Responsibility govern in part the factors to be considered. Rule 407, SCACR, 1.5 of the Rules of Professional Conduct, contains the factors that must be considered in an award of attorney fees. The following cases also set forth these factors. See *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) ; *Nienow v. Nienow*, 268 S.C. 161, 232 S.E.2d 504 (1977) and *Atkinson v. Atkinson*, 279 S.C. 454, 309 S.E.2d 14 (S.C.App., 1983), and *Glasscock v. Glasscock*, 403 S.E.2d 313 (S.C. 1991) concerning the factors and criteria which should be considered in the setting of attorney's fees, which include in the discretion of the court, the amount of fees, the court's file, the court's knowledge of the litigation between the parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, whether the fee is fixed or contingent, the professional standing of counsel, the fees customarily charged in this area for similar legal services, and the amount of time spent.

The master examined all of these factors and found that the fees and costs were reasonable. (Order of June 4, 2015 at p. 4; R. p. 22)

While the underlying action was equitable in nature as an action to terminate the contract, Strickland's claim to attorney fees is a matter of law. *Lewis v.*

Premium Investment Corp., 351 S.C. 167 (2002), 568 S.E2d 361 (2002) and *Seabrook Island Property Owner's Ass'n v. Berger*, supra. Because the master erred as a matter of law in his determination that attorney fees were only recoverable as a part of the debt, this Court should reverse the decision and require an entry of judgment in the amount of attorney fees and costs requested.

II. The Master Impaired the Parties' Contract by Finding That Plaintiffs Were Entitled to Attorney Fees But Did Not Award Them in Conjunction with Terminating the Contract Because They Could Only Be Awarded as Part of the Debt, and Not as a Separate Damage Award. This Finding Violates the South Carolina and United States Constitutions.

Both the South Carolina and the U. S. Constitutions prohibit a court from impairing a private legal contractual arrangement between parties. Art. I. § 4 of the South Carolina Constitution provides in pertinent part that:

No bill of attainder, ex post facto law, **law impairing the obligation of contracts... shall be passed**, and no conviction shall work a corruption of blood or forfeiture of estate.

S.C. Const. Art. I, § 4 (emphasis added)

The South Carolina Supreme Court has explained the importance of privately binding legal contracts and the constitutional prohibition against impairment of these obligations:

In speaking of the constitutional provision forbidding the enactment of any law impairing the obligation of a contract, in *Martin v. Saye*, 147 S.C. 433, 145 S.E. 186, 191, the court said: "The obligation of a contract consists in

its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract in favor of one party, to the injury of the other; hence any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act on the remedy, is directly obnoxious to the provisions of the Constitution.' *McCracken v. Hayward*, 2 How. [608] 612, 11 L.Ed. 397.'The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of the change which the law effects in it. **Any deviation from its terms, by postponing or accelerating the performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation.'**"

Federal Land Bank of Columbia v. Garrison, 185 S.C. 255, 193 S.E. 308, 311 (1937) (emphasis added)

The master's refusal to award attorney fees for termination of the contract impairs the parties' legally enforceable obligations and violates the S.C. Constitution.

Likewise, Art. I § 10 of the U. S. Constitution prohibits any law impairing the obligation of contract. It states in part:

No state shall... pass any law impairing the obligation of contracts, or grant any title of nobility.

The master equated the Agreement in this case - an installment land sale contract - to be equivalent to a "poor man's mortgage." (Order of June 4, 2015 at p. 4; R. p. 22) This analogy, however, does not permit the alteration or disregarding of the parties' contractual obligations pertaining to enforcement or termination. In *Garrison*, the S.C. Supreme Court held that an act passed during the Great Depression to provide relief from large deficiency judgments could not alter the terms of a mortgage which had been executed prior to passage of the law.

The master's order of June 4, 2015 denying Strickland's prayer for attorney fees, which is consistent with the terms of the contract between the parties, violates the U.S. and South Carolina Constitutions and it should be reversed.

III. The Master Erred in Failing to Grant Rule 11 Sanctions and Attorney Fees Against the Defendant and Her Counsel Because There Were No Good Grounds for Bringing and Litigating the Defenses and Counterclaims of Fraud, Misrepresentation, Rescission, Unconscionability, and Unfair Trade Practices. The Circuit Court Found That There Was No Basis in Fact or Law for Bringing These Claims. Therefore Sanctions Should Have Been Entered.

A. The Standard of Review

The award of attorney fees or sanctions under Rule 11, SCRPC [or refusal to award them] is a matter sounding in equity and this Court may take its own view of the evidence in deciding whether or not sanctions are appropriate. *Holmes v. Haynsworth, Sinkler & Boyd*, 408 S.C. 620, 760 S. E.2d 399 (2014) *overruled on other grounds by Stokes-Craven v. Robison*, No. 27572 (S.C. filed Sept. 9, 2015),

citing *Father v. S.C. Department of Social Services*, 353 S.C. 254, 578 S.E.2d 11 (2003). *See also*, S.C. Code Ann. § 14-3-320 (Supp. 2012). However, the abuse of discretion standard does play a role in the appellate review process of a sanctions award where the appellate court agrees with the trial courts findings of fact and the court will review the decision to award sanctions under an abuse of discretion standard, as well as the terms. (Id., 760 S.E.2d at 410)

B. The Plaintiffs Are Entitled to Recover From Counsel All of Their Attorney Fees and Costs as a Sanction for Frivolous Litigation.

As the Court can see from an examination of facts in this case, the record on appeal, as well as the detailed findings of the circuit court in its Order Granting Summary Judgment as to All of the Defendant's Counterclaims and Defenses of May 14, 2013, this litigation was unnecessarily protracted by defense counsel's failure to reasonably investigate the facts of the case as it pertains to the claims of fraud, unfair trade practices, negligent misrepresentation, and unconscionability. Plaintiffs' counsel wrote to defense counsel twice advising them if these claims were not withdrawn, a motion for sanctions would be filed under the Rule 11.

Rule 11 provides in part as follows: "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay."

A clear reading of the Circuit Court's Order Granting Summary Judgment of May 14, 2013 indicates that the defendant did not have good grounds to assert claims of fraud, misrepresentation, rescission, unfair trade practices or unconscionability. Ms. Temple is an educated woman who read and initialed the contract in this case and, if she had paid attention would, or did see, that the contract specifically disclosed the existence of the pond and the dam on the property. She and her defense counsel's continued insistence on litigating claims which had no basis in fact or law and which were not supported by good grounds are sufficient reason for this Court to enter an award of attorney fees and costs, as well as other appropriate sanctions, and to reverse the master's decision which denied this relief. The failure of the master to grant sanctions in this case, on these facts, was an abuse of discretion and should be reversed.

Moreover, defense counsel are educated and seasoned members of the bar, who, had they read the Agreement, could have, and no doubt did, see what the Defendant herself should have seen, which is that the dam, pond and wetlands were clearly disclosed in writing. Additionally, Plaintiffs' counsel brought to defense counsel's attention the lack of good grounds in writing in the two letters attached to the Rule 11 Motion. Any reasonable investigation into the facts would have revealed what the contents of the Agreement did reveal: the property had a dam and pond on the premises which were disclosed in writing and were in plain

view. The Defendant had also been given a plat showing that a portion of the property was in wetlands. However, despite all of Plaintiffs' counsel's efforts, Defendant's counsel persisted with frivolous claims.

The case law provides:

Under Rule 11(a), SCRPC, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *Id.* A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed. *Id.*

Ex parte Gregory, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50 (2008)

For the above reasons, this Court should reverse the master's Order of June 4, 2015 which denied sanctions and enter an award which it deems appropriate, to include the attorney fees and costs, which the master found to be reasonable, or in an amount this Court finds appropriate in accordance with its view of the facts. In the alternative, the Court should remand this matter to the master with instructions to enter appropriate sanctions.

IV. The Master Failed to Make Sufficient Findings of Fact to Enable the Appellate Court to Ascertain What the Basis Was for Denying Rule 11 Sanctions.

The master's Order Denying Rule 11 Sanctions and Request for Attorneys Fees fails to address in any meaningful way what facts supported the assertion of Defendant's claims for fraud, negligent misrepresentation, rescission, unconscionability and unfair trade practices. Rather, the master's order discusses the nature of the business relationship, and associated risks of entering into such a "business decision." (Order of June 4, 2015 at p. 5; R. p. 23) The master discusses a litany of issues -not facts- including the "risk of non-payment," decisions regarding discovery, the tactical decision to file discovery or wait until the hearing, motions, scheduling conflicts, continuances, and the like to "best serve [the client's] case." (Id., p. 5) Nowhere does the master make any findings of fact regarding the grounds for the claims of fraud, misrepresentation, and unfair trade practices. While the master suggests it could have been malpractice not to assert these claims, there is no evidence in the record to support such an inference. Rather, when the record is examined, it only supports the opposite conclusion, which is that the counterclaims and defenses asserted by Temple and her counsel were without merit or evidentiary support and could only have been filed in bad faith. There were no good grounds for filing these claims, which is essentially what the circuit court found when it granted summary judgment, noting that there was " no

basis in law or in fact" for bringing these claims. (Order Granting Summary Judgment of May 14, 2013 at p. 11; R. p. 13)

Indeed, the master in his order acknowledges an attorney must have a basis in law and fact to file a claim, citing SCACR 407, Rule 3.1, which states in pertinent part that: "A lawyer shall not bring or defend a proceeding or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Rule 3.1, RPC, Rule 407, SCACR. However, the master does not address in any fashion what grounds the Defendant Temple and her counsel had for making her claims. Indeed there were no good grounds.

It is axiomatic that a court must make sufficient findings of fact for an appellate court to conduct an adequate review. The Supreme Court has noted:

The requirement for appropriately detailed findings "is designed ... to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system." *Id.* at 132, 568 S.E.2d at 343, citing *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (N.C.1980). A lower court is not required to set out findings on all the myriad factual questions arising in a particular case, but the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below. *Id.*

Mathis v. Brown & Brown of S. Carolina, Inc., 389 S.C. 299, 320, 698 S.E.2d 773, 784 (2010)

Rule 11 and the premise upon which it is based, which is that good grounds must exist for an attorney or a party to file a lawsuit, including a counterclaim, do

not exist in a vacuum. While good legal strategy and the obligation to represent a client zealously within the bounds of the law is the obligation of every lawyer, the filing of meritless claims is not. The facts in this case demonstrate only one reasonable inference. There was no basis in law or in fact to support the claims made by Temple and her lawyers, as found by the circuit court.

Rule 1 of the South Carolina Rules of Civil Procedure requires that the Rules be interpreted "to secure the just, speedy and inexpensive determination of every action." This Court should take its own view of the facts and reach the conclusion in this case that sanctions must be imposed in this instance to protect parties from frivolous claims. At a minimum, the Court should remand with instructions to address what facts allegedly supported the bringing of Temple's claims of fraud and the like. There are none in the record, as the Court will see.

V. Conclusion

Because the master erred as a matter of law in failing to award attorney fees in his Order of June 4, 2015 and because his Order denying recovery of attorney fees violates the South Carolina and U. S. Constitutions, this Court should reverse the decision of the master-in equity with instructions to enter judgment in the amount of the attorney fees and costs requested. Additionally, the Court should find from its own examination of the record and the evidence that Temple and her counsel violated Rule 11, SCRPC and that an award of sanctions should issue in an

amount commensurate with the attorney fees and costs requested, together with a fine for filing and continuing to litigate frivolous claims. At a minimum the Court should remand and require the master to make appropriate findings of fact and conclusions of law.

July 5, 2018

Respectfully Submitted,



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