

**RECEIVED**

**Jul 11 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

---

Case No. 2019-CP-18-689  
Appellate Case No. 2020-000077

---

The Shops at Wescott, LLC, Respondent,

v.

Sake House IV, Inc. d/b/a Sake House IV Appellants.  
and Lei Jiang,

---

REPLY BRIEF OF APPELLANTS

---

Evan A. Smith (SCB#100991)  
Evan Smith Law Firm, LLC  
P.O. Box 976  
Charleston, SC 29402  
843-804-8550  
Attorney for Appellants

**TABLE OF CONTENTS**

Argument in Reply .....2, 3

    RESPONDENT’S INITIAL BRIEF CONTAINS STATEMENTS WHICH ONLY  
    BOLSTER THE SHORTCOMINGS RELATED TO THE TRIAL COURT’S  
    RULING.....2

    RESPONDENT IMPROPERLY AND INCORRECTLY APPLIED CASE LAW AND  
    APPELLATE COURT RULES IN SUPPORT OF ITS ARGUMENT.....3

## ARGUMENT IN REPLY

RESPONDENT'S INITIAL BRIEF CONTAINS STATEMENTS WHICH ONLY BOLSTER THE SHORTCOMINGS RELATED TO THE TRIAL COURT'S RULING.

The Appellants would be remiss if they did not briefly address the factual statements set forth in Respondent's initial brief which only serve to bolster the argument set forth in Appellants' brief related to Respondent's shortcomings at trial related to certain facts. As the Respondent properly sets forth in its initial brief, "Appellants must show that there was not enough evidence to reasonably support the court's findings of fact. *Townes Associated, Ltd.*, 266 S.C. at 81, at 221 S.E.2d 733 (1976).

Regarding the mitigation efforts apparently made by Shops at Wescott through Mr. Aiken, Respondent is not inaccurate as it relates to the facts highlighted in Respondent initial brief. Rather, the facts set forth further support the Appellant's position that Mr. Aiken's testimony was not sufficient to support a finding that he properly mitigated his damages. It is true that Mr. Aiken testified that he brought potential tenants to view the unit, marketed the vacancy to commercial brokers that specialize in restauranters, that his marketing effort was "100 percent" and that he would not handle it any differently than any other space, among other testimony (Hr'g Tr. 37:9-43:7 and Hr'g Tr. 74:6-14). However, it is also true that he did not put forth any supporting evidence of these efforts to go along with his testimony. Therefore, the absence of supporting evidence greatly reduces the ability of the trier of fact to determine whether Shops at Westcott acted reasonably to mitigate their damages. The same analysis and retort are necessary as it relates to the work that Shops at Wescott alleges was reasonable and necessary upon Sake House IV vacating the commercial space. Appellant believes that the record demonstrates a critical lack of supporting evidence put forth by Respondent.

RESPONDENT IMPROPERLY AND INCORRECTLY APPLIED CASE LAW AND APPELLATE COURT RULES IN SUPPORT OF ITS ARGUMENT.

Respondent cites *Frampton v. S.C. Dep't of Natural Res.*, 432 S.C. 247, 851 S.E.2d 714 (2020) multiple times in its initial brief (Respondent's Br. 5-7) to support its argument. However, the supposedly supporting case law is entirely contained in the dissenting opinion of case. *Frampton*, 432 S.C. at 266, 851 SE.2d at 733. As such, the supporting case law should not be considered in this matter.

Additionally, Respondent cites Rule 207(b)(1)(B), (D), SCACR to support its argument that "failure to argue is an abandonment of the issue and precludes consideration on appeal. (Respondent's Br. 5) Rule 207, SCACR entirely pertains to "Transcript of Proceeding" and does not have anything to do with "failure to argue" as used by Respondents. Finally, Respondent cites Rule 210(b), SCACR to support the same "failure to argue" argument (Respondent's Br. 5). Rule 210(b) SCACR relates to Time for Filing and does not pertain to contents whereas Rule 210(c), SCACR states that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210, SCACR is cited for "failure to argue is an abandonment" but Rule 210, SCACR states "**(h) Review Limited to Record on Appeal.** Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."

July 11, 2022

s/Evan A. Smith  
Evan A. Smith (SCB#100991)  
Evan Smith Law Firm, LLC  
P.O. Box 976  
Charleston, SC 29402  
843-804-8550  
Attorney for Appellants

RECEIVED

Jul 11 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2019-CP-18-689  
Appellate Case No. 2020-000077

The Shops at Wescott, LLC, Respondent,

v.

Sake House IV, Inc. d/b/a Sake House IV Appellants.  
and Lei Jiang,

PROOF OF SERVICE

The undersigned hereby certifies that he served counsel for the Respondent, The Shops at Wescott, LLC, through their attorney, C. Brandon Belger, with a copy of the *Reply Brief of Appellants* by e-mail to the following address on July 11, 2022.

C. Brandon Belger  
brandon@kmlawsc.com

July 11, 2022.

s/ Evan A. Smith  
Evan A. Smith

**RECEIVED**

**Jul 11 2022**

**SC Court of Appeals**



July 11, 2022

**Via E-Mail**

Honorable Jenny A. Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211  
ctappfilings@sccourts.org

Re: The Shops at Wescott, LLC v. Sake House IV, Inc. d/b/a Sake House IV and Lei  
Jiang  
Case No.: Appellate Case No. 2020-000077; 2019-CP-18-689

Dear Ms. Kitchings:

Enclosed please find the *Reply Brief of Appellants* in the above-referenced case. We have also enclosed the Proof of Service of the same.

Thank you for your assistance in this matter.

Respectfully,

s/Evan A. Smith

Evan A. Smith

Enclosures (as stated)  
cc: C. Brandon Belger, Esq.