

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Edward W. Miller, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2023-001367

Ironwork Productions, LLC,.....Respondent-Petitioner,

v.

Bobcat of Greenville, LLC, and Bobcat Company, Inc.,.....Petitioners-Respondents,

**IRONWORK PRODUCTIONS, LLC'S RETURN TO PETITION FOR WRIT OF
CERTIORARI OF BOBCAT OF GREENVILLE, LLC**

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QUESTIONS PRESENTED

1. **DID THE COURT OF APPEALS APPLY A PROPER STANDARD OF REVIEW AND APPROPRIATELY REVERSE THE CIRCUIT COURT'S ORDER DISMISSING IRONWORK'S COMPLAINT AS AGAINST BOBCAT OF GREENVILLE, LLC?**
2. **DID THE COURT OF APPEALS ACT PROPERLY IN CONSIDERING IRONWORK'S ARGUMENT THAT DISMISSAL SHOULD NOT APPLY TO BOBCAT OF GREENVILLE?**
3. **DID THE COURT OF APPEALS PROPERLY CONSIDER IRONWORK'S APPEAL, EVEN IF IRONWORK FAILED TO SERVE ITS MOTION PURSUANT TO RULE 59(g)?**

STATEMENT OF THE CASE

On or about November 30, 2017, Ironwork Productions, LLC (“Ironwork”) purchased a Bobcat T870 Compact Track which failed to perform as warranted, resulting in significant damages to Ironwork.¹ (R. p. 12.) Accordingly, Ironwork retained attorney E. Delane Rosemond and, on August 29, 2018, filed a lawsuit to recover its damages against Respondents Bobcat of Greenville, LLC and Bobcat Company, Inc. (R. pp. 10-16.) Both Defendants answered and provided their proper identifications—Respondent Bobcat of Greenville, LLC as Acme Operations, LLC d/b/a Bobcat of Greenville (“Bobcat”) and Respondent Bobcat Company, Inc. as Clark Equipment Company d/b/a Bobcat Company (“CEC”). (R. pp. 17-28.)

On January 25, 2019, CEC served its first set of discovery requests upon Mr. Rosemond. (R. p. 29-48.) After not receiving the responses to its requests, on March 18, 2019, CEC filed a motion to compel, which was set for a hearing on April 3, 2019. (R. p. 139.) On the evening of April 2, 2019, Mr. Rosemond emailed extensive discovery responses to CEC’s counsel, who

¹ Ironwork’s legal name is Ironworx Productions, LLC. Ironwork’s former counsel spelled its name incorrectly in the caption of this case.

informed the court that the motion to compel had been resolved and that a hearing was no longer needed. (R. p. 139.)

Over a month later, on May 16, 2019, CEC sent a deficiency letter to Mr. Rosemond requesting that the April 2, 2019 responses be “clarified or supplemented” and asking, among other things, that the document production be provided in color rather than black and white so that certain color coding could be distinguished. (R. p. 141-46.) With this correspondence CEC also served CEC’s second set of discovery requests upon Ironwork. (R. p. 147-61.) That same day, Mr. Rosemond responded, “Thanks for the letter. I will work on this next week.” (R. p. 163.) In the same email, Mr. Rosemond copied a staff member and instructed her to set up a meeting between him and Ironwork. (R. p. 163.)

After not receiving responses to the deficiency letter and the second set of discovery requests, on August 15, 2019, CEC filed a “Motion for Sanctions and to Compel Discovery Responses.” (R. p. 52.) The hearing for this motion took place on October 1, 2019, before the Honorable Edward W. Miller. (R. p. 634.) Neither Bobcat’s counsel nor Mr. Rosemond appeared at the hearing. (R. p. 634.) CEC’s counsel argued that dismissal was appropriate because the “case has been pending for thirteen months . . . [, and] every time [CEC has] served discovery [CEC] get[s] nothing.” (R. p. 634-36.) In explaining why CEC cancelled the hearing regarding its first motion to compel, CEC’s counsel admitted that Ironwork had provided responses to CEC’s first set of discovery but claimed that they were “not even close to what we asked for.” (R. p. 638.) The Court granted the motion to compel and instructed CEC’s counsel to draft an order providing that unless Ironwork fully complied with CEC’s discovery requests, the Complaint would be dismissed. (R. p. 638.)

Later that day, counsel for CEC emailed a proposed order to Judge Miller's chambers and copied counsel of record. (R. p. 419.) The order stated that CEC "asserted in its Motion that Plaintiff has exercised bad faith and a gross indifference to the rights of CEC" and commanded Ironwork to fully respond to "all outstanding requests set forth in CEC's May 16, 2019, deficiency letter and May 16, 2019, second set of discovery requests with [sic] ten (10) days of receipt of entry of this Order. If Plaintiff fails to respond as ordered herein, Plaintiff's Complaint in this lawsuit shall be dismissed." (R. pp. 1, 417 (emphasis added).) Mr. Rosemond replied all to this email with the proposed order, saying, "The proposal is fine with me." (R. p. 419.) Presumably because Bobcat had no interest in this dispute, Bobcat's counsel did not respond to either email.

That same day, Mr. Rosemond's office filed a certificate of service showing that Ironwork's "Answers to Interrogatories and Response to Request for Production" were served upon counsel for Bobcat and CEC. (R. p. 656.) As CEC's counsel later admitted, on October 2, 2019, CEC received by Federal Express delivery discovery responses from Ironwork, including color copies of Ironwork's document production, as requested. (R. p. 184-86.) However, Mr. Rosemond failed to provide separate responses to CEC's second set of discovery requests or a letter responding to CEC's deficiency letter. The responses served by Mr. Rosemond's office on October 1, 2019, included April 2, 2019 responses to discovery requests from Bobcat. (R. pp. 422-41.) These responses are the first reference in the record to any discovery exchanged between Bobcat and Ironwork. There is no record that Bobcat ever sent a deficiency letter, filed a motion to compel, or otherwise voiced any complaint regarding Ironwork's discovery responses.

On October 18, 2019, CEC filed a Notice of Noncompliance purporting to show that Ironwork failed to comply with the October 1, 2019 order and requesting for the first time that

Ironwork’s “Complaint be dismissed with prejudice.” (R. pp. 661-62.) The Notice of Noncompliance did not specify dismissal of the Complaint as against both CEC and Bobcat. (R. pp. 661-62.) CEC also emailed the Notice of Noncompliance to Judge Miller’s chambers, copying opposing counsel. (R. p. 657.) Counsel for Bobcat replied all to the email and—for the first time—“join[ed] in the request . . . to dismiss the complaint.” (R. p. 659.)

On October 21, 2019, the Court requested that CEC’s counsel draft an order of dismissal. (R. p. 665.) The Court did not request that the draft order include dismissal of the Complaint as against Bobcat. (R. p. 665.) On October 24, 2019, Mr. Rosemond replied all to the email chain and addressed CEC’s counsel: “Jay - I sent you the plaintiff’s answer to interrogatories and request for production the day after the hearing. Have you not received anything from my office since the hearing?” (R. p. 668.) CEC’s counsel responded that the documents received were photocopies of prior production from Ironwork. (R. p. 672.)

The following day, on October 25, 2019, the Court issued an order dismissing Ironwork’s Complaint with prejudice “as to all defendants”—even though the October 1, 2019 order did not specify dismissal with prejudice, much less dismissal as to Bobcat. (R. pp. 4-5.) The Court did not conduct a hearing, request supplemental briefing, or offer an opportunity for Ironwork to defend against the dismissal or explain its position.

Meanwhile, Ironwork’s owner had become frustrated because Mr. Rosemond would not respond to his multiple attempts to communicate with him. (R. p. 169.) Ironwork’s owner had not heard from Mr. Rosemond for several months. (R. p. 645, lines 13-25.) He did not know that there was any ongoing discovery dispute or that Ironwork had failed to provide documents or responses requested by CEC. (R. p. 169-70.) In late October 2019, Ironwork contacted its present counsel,

Tonnsen Bach, LLC, about taking over its case. (R. pp. 169-70; R. p. 645, lines 13-16.) During this telephone call, Tonnsen Bach's office staff searched the case on the public index, discovered the October 25, 2019 order dismissing the case with prejudice, and informed Ironwork of the order of dismissal. (R. p. 170.)

Ironwork did not know about the dismissal or about the events leading to the dismissal, including:

- 1) CEC's deficiency letter;
- 2) CEC's August 15, 2019 Motion to Compel and for Sanctions;
- 3) The October 1, 2019 hearing or Mr. Rosemond's failure to appear at the hearing;
- 4) The October 1, 2019 order requiring further discovery responses in ten days;
- 5) Mr. Rosemond's consent to the October 1, 2019 order;
- 6) The October 18, 2019 Notice of Noncompliance; or
- 7) The October 25, 2019 order dismissing Ironwork's case with prejudice.

(R. p. 169-70.)

The same day that Ironwork learned of the dismissal, it retained Tonnsen Bach. (R. p. 170.) On November 4, 2019, Ironwork's new counsel timely filed a Motion to Reconsider, Amend, or Alter Judgment pursuant to Rules 59 and 60, SCRCPC, informing the Court of Ironwork's ignorance of the prior discovery deficiencies and prior orders and promising that "if permitted to proceed with its case, [Ironwork] will promptly and diligently comply with the court's order compelling discovery responses." (R. pp. 166-67.) Ironwork also offered to pay CEC's counsel's attorney's fees and costs. (R. p. 648, line 2-3.)

On November 5, 2019, Mr. Rosemond—without communicating with Ironwork—also filed Plaintiff’s Motion for Reconsideration pursuant to Rules 59 and 60, SCRCF. (R. p. 172.) In this motion, Mr. Rosemond expressed his surprise at the dismissal with prejudice, pointing out that over one year remained in the statute of limitations period, and noted that Bobcat should remain as a Defendant because CEC was the party that filed the motion to compel, not Bobcat. (R. pp. 173-74.) In addition, he explained that “[he] believed he had complied with the said Order. Plaintiff heard nothing from either defendant that it considered the response deficient until October 18, 2019.” (R. p. 174.) He informed the Court that, when responding to the October 1, 2019 order compelling production, his staff made a mistake in re-sending old discovery answers; however, he supplemented these responses so that “CEC has everything that the Plaintiff has in its possession.” (R. pp. 174-77.)² Although CEC filed a response in opposition to the motions, Bobcat did not. (R. p. 179.)

The Court heard the motions to reconsider on November 16, 2021. (R. p. 641.) During the hearing, current counsel for Ironwork noted that CEC, not Bobcat, filed the motion to compel and that Bobcat had “no outstanding discovery. . . [,] had not filed a motion to compel[, and had not] sought an order of dismissal for failure to comply with any discovery.” (R. p. 649.) Accordingly, Ironwork asked that the court allow the case to go forward against Bobcat. (R. p. 649.) Unlike the prior hearing, Bobcat’s counsel appeared at this hearing. (R. p. 652.) Bobcat did not respond to the argument that there should be no dismissal against it because it had no discovery dispute with Ironwork. (R. p. 653.) Rather, Bobcat argued only that the October 25, 2019 order should stand

² On March 10, 2022, this Court suspended Mr. Rosemond from the practice of law in this state indefinitely. *In re Edward Delane Rosemond*, 438 S.C. 23, 881 S.E.2d 765 (2022). This suspension was unrelated to this lawsuit.

because Ironwork apparently did not serve the motion to reconsider upon the judge. (R. p. 653.) In reply, Ironwork’s counsel noted that the trial court could still consider the motion and asked that the court do so on the merits and not a mere procedural technicality. (R. p. 653.)

The trial court “accept[ed] the blame for the hearing not being set” and, after considering the merits, issued an order on November 19, 2021, denying the motion. (R. pp. 7-8, 654.) On December 14, 2021, Ironwork filed and served its Notice of Appeal, appealing the October 25, 2019 order dismissing the Complaint with prejudice and the November 19, 2021 order denying the motions to reconsider. (R. pp. 680-83.)

On June 21, 2023, the South Carolina Court of Appeals filed its Opinion. (Opinion No. 2021-001461.) The Court of Appeals first held that because the trial court considered the merits of Ironwork’s motions to reconsider, failure to comply with Rule 59(g) did not preclude Ironwork’s appeal. (Opinion ¶ 1.) The Court of Appeals also upheld dismissal against CEC but reversed dismissal against Bobcat. (Opinion ¶¶ 2-3.) In reversing the dismissal against Bobcat, the Court of Appeals specified that the trial court “lacked ‘reasonable factual support’ for dismissal” and noted that the “October 1 order resulted from a motion for sanctions and to compel discovery filed by CEC, not Bobcat,” that “Bobcat did not join that motion or attend the October 1 hearing,” that the October 1 “order stating the complaint would be dismissed if Ironwork failed to comply references only CEC’s discovery requests and Ironwork’s dilatory conduct toward CEC,” and that Bobcat only “belatedly and informally joined CEC’s request for dismissal” without ever claiming a discovery deficiency or explaining how Ironwork could have “acted in bad faith or with gross indifference to Bobcat’s rights.” (Opinion ¶ 3 (citations omitted).)

Ironwork and Bobcat filed petitions for rehearing, and on August 17, 2023, the Court of Appeals denied the petitions. On August 29, 2023, Bobcat filed a petition for writ of certiorari, and on September 18, 2023, Ironwork filed its petition for writ of certiorari. This return to Bobcat’s petition follows.

STANDARD OF REVIEW

Upon finding that a circuit court abused its discretion in imposing sanctions, the appellate court should alter or reverse the circuit court’s order. *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 327 S.E.2d 679, 681 (Ct. App. 1997) (citations omitted). “An abuse of discretion may be found when the appellant shows that the conclusion reached by the circuit court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law.” *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 456-57, 814 S.E.2d 643, 656 (Ct. App. 2018) (citing *Karppi*, 327 S.C. at 542, 489 S.E.2d at 681)).

ARGUMENT

I. THE COURT OF APPEALS APPLIED A PROPER STANDARD OF REVIEW AND APPROPRIATELY REVERSED THE CIRCUIT COURT’S ORDER DISMISSING IRONWORK’S COMPLAINT AS AGAINST BOBCAT OF GREENVILLE, LLC

In its petition, Bobcat ignores the primary reason for the Court of Appeals’s reversal, as set forth in the Opinion: because “the circuit court’s order lacked ‘reasonable factual support’ for dismissal” as required by South Carolina precedent. (Opinion ¶ 3.) According to South Carolina law, an appropriate sanction must be narrowly aimed at the specific misconduct of the party sanctioned—“In other words, the sanction should be a rifle-shot, not a shotgun blast.” *Balloon Plantation, Inc. v. Head Balloons, Inc.* 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990) (emphasis added). Further, a sanction must be reasonable and not go “beyond the necessities of

the situation to foreclose a decision on the merits.” *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997) (citing *Balloon Plantation*, 303 S.C. at 154, 399 S.E.2d at 440 (Ct. App. 1990)).

In *Karppi*, the plaintiff sued Ogden Teck, Inc. and Greenville Terrazzo Co., Inc. (“Terrazzo”). *Id.* at 540, 489 S.E.2d at 680. Ogden Teck filed a cross-claim against Terrazzo as well as a counterclaim against the plaintiff. *Id.* After finding that Ogden Teck “willfully and intentionally failed to comply with” the trial court’s discovery order, the court struck Ogden Teck’s answer, counterclaim, and cross-claim and ordered that it be found in default. *Id.* at 542, 489 S.E.2d at 681.

On appeal, the Court of Appeals found that the trial court abused its discretion because complete dismissal of Ogden Teck’s pleadings was “unduly harsh” and “not limited in scope with regard to the violation [of Ogden Teck] of the court’s order.” *Id.* at 542-43, 489 S.E.2d at 681-82. The Court of Appeals repeated the standard that a sanction must be narrowly aimed and that if it results in dismissal, such dismissal should be reasonably necessary. *Id.* at 543, 489 S.E.2d at 682 (citations omitted). Moreover, “[b]efore invoking this severe remedy [of dismissal], the trial court should determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants.” *Id.* at 543, 489 S.E.2d at 682 (citations omitted). The Court of Appeals held that the lower court failed to “properly tailor its sanction to address the specific violation committed by Ogden Teck vis-à-vis [the movant].” *Id.* The Court explained:

In striking Ogden Teck's pleadings in their entirety, including its cross-claim against Terrazzo, the trial court went beyond what was reasonably necessary to redress the wrong that was committed by Ogden Teck. There is no evidence in the record that Terrazzo's rights of discovery have been violated by Ogden Teck. Neither has Terrazzo moved for any relief due to any alleged misconduct by or on behalf of Ogden Teck. **Dismissal of Ogden Teck's potentially meritorious cross-**

claim against Terrazzo serves no one's interest but Terrazzo's. Terrazzo's discovery rights are simply not the discovery rights that the trial court was properly protecting by imposing the sanction in this case, and it was an abuse of the court's discretion to attempt to do so in this instance.

Id. at 543-44, 489 S.E.2d at 682 (emphasis added). In other words, Terrazzo “received a windfall due to the overbreadth of the trial court’s sanction, because Terrazzo was **wholly removed from the instant discovery dispute.**” *Id.* at 544, 489 S.E.2d at 682. The Court of Appeals also noted that striking Ogden Teck’s pleadings removed one of Terrazzo’s potential defenses and, thus, created prejudice for Terrazzo rather than only Ogden Teck. *Id.* at 544, 489 S.E.2d at 682-83. The Court concluded that the dismissal “was not commensurate with Ogden Teck’s disobedience” and that a more narrowly tailored sanction “would have sufficed to protect [the movant’s] rights while adequately punishing the wrongdoing of Ogden Teck.” *Id.* at 545, 489 S.E.2d at 683.

In its Opinion here, the Court of Appeals cited *Griffin Grading & Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198-99, 511 S.E.2d 716, 719 (Ct. App. 1999), which repeated the standard listed in *Karppi*: a sanction should be “aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of the case.” *Id.* at 198, 511 S.E.2d at 719 (citing *Balloon Plantation*, 202 S.C. at 154, 399 S.E.2d at 440). In that two-party case, the defendant willfully disobeyed four orders of the trial court and, even after being sanctioned to pay attorney’s fees, continued refusing to produce relevant materials to the plaintiff. *Id.* at 195-98, 511 S.E.2d at 717-18. As a sanction for its pattern of willful disobedience and discovery abuse, the trial court struck the defendant’s answer and ordered it to pay additional attorneys’ fees. *Id.* at 198, 511 S.E.2d at 718.

On appeal, the Court of Appeals affirmed, noting that dismissal as a sanction “is harsh medicine that should not be administered lightly” and that, to warrant dismissal, “**the moving**

party must show bad faith, willful disobedience or gross indifference to **its** rights.” *Id.* at 198-99, 511 S.E.2d at 719 (emphasis added). The Court of Appeals rehearsed the defendant’s willful behavior toward the movant and the court, found that the trial court gave a “detailed account” of the defendant’s failure to respond to the movant’s requests, and concluded, “If there was ever a case where striking a party’s pleading was an appropriate sanction, it is this case” *Id.* at 198-99, 511 S.E.2d at 719.

Here, there is no evidence warranting dismissal against Bobcat, as required by South Carolina precedent. First, dismissal against Bobcat was hardly a targeted “rifle-shot” because there is no record of any discovery dispute between Ironwork and Bobcat. The record shows no deficiency letter, motion to compel, or other hint at a complaint from Bobcat relating to Ironwork’s discovery responses. Bobcat asserted no misconduct by Ironwork in its email to the court and offered no evidence or other support for dismissal in its oral argument at the hearing regarding Ironwork’s motion to reconsider. Rather, the only reference in the record to discovery between Bobcat and Ironwork is that Ironwork served responses to Bobcat’s discovery requests. (R. pp. 422-613.)

Dismissal of the Complaint against Bobcat is strikingly similar to dismissal of Ogden Teck’s cross-claim against Terrazzo in *Karppi* because both went beyond what was reasonably necessary to redress any alleged misconduct:

- (1) Like Ogden Teck, there is no evidence that Ironwork violated Bobcat’s rights of discovery;
- (2) Like Terrazzo, Bobcat never moved for relief “due to any alleged misconduct by” Ironwork;

(3) Dismissal of Ironwork’s claim against Bobcat “serves no one’s interest but [Bobcat’s]”;
and

(5) Bobcat’s “discovery rights are simply not the discovery rights that the trial court was properly protecting by imposing the sanction in this case.”

Id. at 543-44, 489 S.E.2d at 682. Ultimately, Bobcat, like Terrazzo, received a “windfall” as a result of the trial court’s order. *Id.* at 544, 489 S.E.2d at 682.

This case also poses a contrast to *Griffin*, where dismissal was upheld. Unlike the defendant in *Griffin*, there is no evidence that Ironwork demonstrated any “bad faith, willful disobedience or gross indifference to [Bobcat’s] rights,” nor is the record “full of multiple, egregious discovery abuses that blocked [Bobcat’s] attempts to conduct meaningful discovery.” *Griffin Grading*, 334 S.C. at 198-99, 511 S.E.2d at 719. Furthermore, the trial court did not support dismissal of the Complaint against Bobcat by providing a “detailed account” of any failure by Ironwork to provide responses to Bobcat’s requests—presumably because there is no record of such failure.

At one point in its petition, Bobcat asserts that, had Ironwork provided appropriate responses to CEC’s discovery requests, Bobcat may have been able to use those responses in its defense. (Petition 14.) Of course, the cross-claim defendant in *Karppi* could have asserted the same argument, but the Court of Appeals still found dismissal of the cross-claim erroneous. Moreover, Bobcat never made this argument to the trial court—in a motion, in its email to the Court, or at the hearing for Ironwork’s motion to reconsider. The argument is also meritless. If Bobcat were truly concerned about not receiving Ironwork’s responses to CEC’s requests, it could have sent supplemental requests to Ironwork.

Finally, Bobcat attempts to distinguish *Karppi* by referring to the fact that the sanction in *Karppi* prejudiced a party other than the wrongdoer. (Petition 13 (discussing *Griffin Grading*, a two-party case, and its reference to *Karppi* and the effect of the sanction in *Karppi* upon other parties).) However, focusing on this point in *Karppi* to the exclusion of the remainder of the opinion ignores the bulk of the *Karppi* court’s discussion, outlined above.

In sum, the trial court failed to follow South Carolina precedent by failing to narrowly tailor the sanction to the alleged misconduct and going past the necessities of the situation to foreclose a decision on the merits of Ironwork’s case against Bobcat. This error severely prejudiced Ironwork by preventing it from pursuing its case against Bobcat. Accordingly, the Court of Appeals acted appropriately in reversing this abuse of discretion.

II. THE COURT OF APPEALS ACTED PROPERLY IN CONSIDERING IRONWORK’S ARGUMENT THAT DISMISSAL SHOULD NOT APPLY TO BOBCAT OF GREENVILLE

In its petition, Bobcat claims that the Court of Appeals should have upheld dismissal of the Complaint against Bobcat because Ironwork allegedly did not separately argue against dismissal as to Bobcat until the motions to reconsider and, thus, waived its argument as to Bobcat. This argument is erroneous for three reasons. First, Bobcat attempts to make a distinction between Ironwork’s arguments regarding dismissal as to Bobcat and CEC where there is none. Ironwork has consistently argued that dismissal of its Complaint was unduly harsh because the actions of Mr. Rosemond should be considered apart from those of Ironwork and because a sanction should be “aimed at the specific misconduct” at issue, should be imposed to protect the integrity of discovery, and, when invoked as a dismissal, should require a finding of intentional misconduct. (*E.g.*, R. p. 645, line 13–p. 648, line 19; R. p. 653, line 21–p. 654, line 5.) These principles apply

equally to CEC as to Bobcat and mandate reversal of the dismissal of Ironwork’s Complaint against both Defendants—especially, as the Court of Appeals found, against Bobcat considering the marked lack of evidence of any alleged “specific misconduct” against Bobcat.

Ironwork has also repeatedly argued that it lacked opportunity to respond to the Notice of Noncompliance (to which Bobcat joined in the “request” to dismiss Ironwork’s Complaint) before entry of the October 25, 2019 order dismissing the Complaint as to both Defendants. Again, this lack of opportunity to respond is especially true of Bobcat, which merely “join[ed] in the request” to dismiss the Complaint after CEC filed its Notice of Noncompliance, never provided grounds for joining in CEC’s request, and otherwise never moved for dismissal. (R. p. 659.) Accordingly, Bobcat’s attempt at distinction is meritless.

Second, Ironwork’s motions to reconsider were made pursuant to Rules 59 and 60, SCRC. Rule 60, SCRC, specifically provides for moving for relief in circumstances where the grounds were unknown prior to entry of a final order.³ Third, Bobcat never raised this argument before the trial court, and the Court of Appeals properly declined to consider it on appeal. *I’on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000) (“[T]he respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is *likely* to ignore it.” (emphasis added)).

³ In its brief before the Court of Appeals, Bobcat argued that Ironwork somehow waived an argument regarding the timeliness of its motion pursuant to Rule 60 by not referencing it in Ironwork’s initial brief. (Final Resp. Brief of Bobcat 20 n.6.) However, Ironwork had no reason to make an argument regarding Rule 60 in its initial brief because timeliness of the motions to reconsider was not ruled upon by the trial court.

III. THE COURT OF APPEALS PROPERLY CONSIDERED IRONWORK'S APPEAL, EVEN IF IRONWORK FAILED TO SERVE ITS MOTION PURSUANT TO RULE 59(g)

Finally, Bobcat argues that this Court should again overlook South Carolina precedent and add service of a motion to reconsider pursuant to Rule 59(g) as a jurisdictional requirement before a judge can consider the motion. But the South Carolina Court of Appeals has repeatedly held that a judge can proceed to consider a Rule 59 motion despite failure to serve the motion. *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 585, 819 S.E.2d 142, 145 (Ct. App. 2018); *Lee v. Lee*, No. 2014-UP-322, 2014 WL 3943772, at *1 n.1 (Ct. App. Aug. 13, 2014) (unpublished); *Coon v. Coon*, 356 S.C. 342, 346, 588 S.E.2d 624, 626 (Ct. App. Sept. 22, 2003); *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002); *see also Jones v. State*, 382 S.C. 589, 594, 677 S.E.2d 20, 22 (2009) *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (discussing South Carolina Supreme Court's evaluation of merits of State's appeal despite PCR judge's dismissal of State's motion for reconsideration for failure to comply with Rule 59(g)).

Bobcat also ignores the reasoning behind our precedent's refusal to make Rule 59(g) a jurisdictional requirement. As the Court of Appeals stated in *Gallagher v. Evert*, the notes to Rule 59 show that Subsection (g) was added in 1998 "to help insure that the judge is promptly **notified** that the motion has been filed." *Gallagher*, 353 S.C. at 63, 577 S.E.2d at 219 (citing Rule 59, SCRPC, note (1998)) (emphasis added). The *Gallagher* court continued, "There is no indication that the failure to transmit a copy of the motion to the circuit court affects the tolling provision of Rule 203(b)(1), SCACR." *Id.* at 63, 577 S.E.2d at 219. Specifically, Rule 203(b)(1), SCACR, provides: "When a timely . . . motion to alter or amend the judgment (Rules 52 and 59, SCRPC), . . . **has been made**, the time for appeal for all parties shall be stayed and shall run from receipt of

written notice of entry of the order granting or denying such motion.” Rule 203(b)(1), SCACR. The rule refers to when the motion “has been made”—not when a copy has been served to the judge. *Id.* Accordingly, the Court of Appeals properly considered Ironwork’s appeal, and Bobcat’s petition should be denied.

CONCLUSION

For the reasons stated herein, Respondent-Petitioner Ironwork Productions, LLC respectfully requests that this Court deny the Petition for Writ of Certiorari of Petitioner-Respondent Bobcat of Greenville, LLC.

Respectfully submitted,

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