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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2016-CP-10-01833
Appellate Case No. 2021-001055

Andrew and Kimberly McIntire,

Appellants,

v.

Seaquest Development Company, Inc.; Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co., Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; and New South Construction Supply, LLC,

Defendants,

AND

Seaquest Development Company, Inc.,

Third-Party Plaintiff/Appellant,

v.

Architectural Products of Charleston, LLC; and Sealtight of South Carolina, LLC,

Third-Party Defendants,

Of which Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co., Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; and New South Construction Supply, LLC are

Respondents.

RESPONDENTS' RETURN TO PETITION FOR REHEARING

July 31, 2023

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SUMMARY

Appellant Seaquest Development Company, Inc. (hereinafter "Seaquest") has not shown any point that was overlooked or misapprehended in this Court's Opinion. Accordingly, Seaquest's Petition for Rehearing should be denied.

BACKGROUND

This is an appeal from a Joint Motion for Clarification filed by Seaquest and the plaintiffs, Andrew and Kimberly McIntire. Seaquest insists that Respondents remained parties after this case was dismissed in full. (See R. pp. 3-14.) The McIntires appealed from the Order dismissing the case ("Dismissal Order"), but Respondents were not timely or properly served with that appeal.[1] In that first appeal ("First Appeal"), this Court reversed and remanded the case for arbitration. McIntire v. Seaquest Dev. Co., Inc., Op. No. 2019-UP-413 (Ct. App. filed Dec. 31, 2019) (unpublished disposition). There is no arbitration agreement applicable to Respondents in this action.

Two months after remittitur, the Joint Motion for Clarification at issue was filed. The trial court ruled that the dismissal of Respondents was law of the case, and that no procedural mechanism exists for entertaining the requested "clarification," which was effectively a request to reinstate Respondents as parties. (R. pp. 29-41.)

Seaquest and the McIntires then filed the present appeal. The McIntires' appeal has been dismissed. On May 31, 2023, this Court affirmed the trial court's ruling, finding that the dismissal of the claims against Respondents is law of the case because it was not raised in the First Appeal. Seaquest petitioned for rehearing of that decision.

[1] The procedural history is detailed in Respondents' Final Brief, which is incorporated herein. Accordingly, this Return only notes the key points.

STANDARD OF REVIEW[2]

The purpose of a petition for rehearing is "to aid the court in deciding correctly the case heard by it." Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234, 238 (1933). The petition must "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 564 S.E.12d 322, 322 (2001) (quoting Jean H. Toal, Shahin Vafai, & Robert Muckenfuss, Appellate Practice in South Carolina 309 (1999)). Petitions for rehearing are rarely granted, and those that merely "'rehash' . . . what the losing party has said before" are subject to summary dismissal. Arnold, 167 S.E. at 238. "A party may not raise an issue for the first time in a petition for rehearing." Herron v. Century BMW, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011).

ARGUMENT

Petitioner Seaquest has the burden of stating with particularity the points it believes this Court overlooked or misapprehended. Seaquest has not met that burden, as its Petition contains a mere rehash of its arguments on appeal.

This Court correctly held that the First Appeal could not and did not address—much less reverse—the dismissal as to Respondents. That conclusion is the only legally sound one from the facts, among others, that the Respondents were not timely and properly served with the Notice of

[2] The standard of review recited in Seaquest's Petition for Rehearing is the standard for briefing the merits of the appeal, not the standard for petitions for rehearing.

Appeal (of the First Appeal) and were not joined as parties to that appeal.[3] This Court's mandate after the First Appeal—that the case be submitted to arbitration—is inconsistent with any argument that Respondents remain parties to this case because Respondents are not subject to any arbitration agreement relating to this case.

A simple resolution of this matter comes from the notion that "all parties to the action in the lower court whose interest may be adversely affected by the decision of the appellate court are necessary parties to the appeal." 15 S.C. Jur. Appeal and Error § 31 (May 2023 Update) (citing Spanish Wells Prop. Owners Ass'n, Inc. v. Bd. of Adjustment of the Town of Hilton Head Island, 295 S.C. 67, 367 S.E.2d 160 (1988)). Petitioner would have this Court rule that (1) Respondents were not necessary parties to the First Appeal; and (2) this Court's decision in the First Appeal reversed a dismissal as to Respondents. Both cannot be simultaneously true, and as long as at least one is false, Former Chief Justice Toal's dismissal still stands as to Respondents.

I. The law-of-the-case doctrine was properly applied.

The law-of-the-case doctrine precludes parties from raising not only issues that were raised and rejected in a prior final order, but also issues that were not raised, but could have been. Judy v. Martin, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009). Once the ruling as to Respondents became law of the case, jurisdiction is lacking to revoke, vacate, overrule, or reverse it. C.I.T. Corp. v. Corley, 196 S.C. 339, 13 S.E.2d 440, 442 (1941). This Court has no jurisdiction to modify the Order of Dismissal concerning the claims against Respondents in this second appeal.

Seaquest's argument that Judge McCoy's application of the law-of-the-case doctrine was improper because no claims were "litigated" is unavailing. In the first place, that argument is not properly preserved for appeal. Appellants did not file a Rule 59(e) motion raising that issue to

[3] Respondent Sealtight of South Carolina, LLC ("Sealtight"), a third-party defendant, was not even included on the caption of the First Appeal.

Judge McCoy and giving her the opportunity to address it.[4] "An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court." In re Michael H., 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004); Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Because the trial court was not provided the opportunity to resolve this issue before it was presented to this appellate Court, it is not preserved.

Furthermore, Seaquest's argument lacks merit. Respondents showed in their merits briefing that "relitigation" is not a requirement for applicability of the doctrine of law of the case. (Respdt. Final Br., p. 21.) Collateral estoppel is dependent upon an issue having been actually litigated and directly decided in a prior proceeding. Pye v. Aycock, 325 S.C. 426, 436, 480 S.E.2d 455, 459 (Ct. App. 1997). But that is a red herring because collateral estoppel is not at issue in this appeal.

This Court's Opinion, which is quoted in the Petition for Rehearing, cited several cases that applied the law-of-the-case doctrine without using the word "relitigate." (Pet. for Rehearing, p. 7.) See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case."); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 398, 593 S.E.2d 183, 189 (Ct. App. 2004) ("Any unappealed portion of the trial court's judgment is the law of the case, and must therefore be affirmed."); C.I.T., 196 S.C. at 343 13 S.E.2d at 442 (holding that an unappealed order becomes the law of the case and the circuit court is "wholly without power or jurisdiction to revoke, vacate, overrule or reverse the same").

[4] The referenced Order is the one on appeal in the present proceeding, not the Order dismissing the case that was the subject of the First Appeal.

The applicability of the law-of-the-case doctrine is not dependent upon the issue in question having been litigated in a prior proceeding. It is solely a function of the matter having been decided in a prior order that has become final.

The law-of-the-case doctrine binds parties that have an opportunity to appeal a ruling even when they do not take advantage of that opportunity. In Flexon v. PHC-Jasper, Inc., 399 S.C. 83, 731 S.E.2d 1 (Ct. App. 2012), this Court affirmed the denial of a motion to compel arbitration filed by one defendant (Coastal). Another defendant (Lifepoint) withdrew its motion to compel arbitration and took the deposition of a key witness. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 568, 776 S.E.2d 397, 401 (Ct. App. 2015). Lifepoint then filed a renewed motion to compel arbitration based on newly-discovered evidence. Id. This Court held that Lifepoint was bound by the law of the case established in Coastal's appeal. Id. at 576, 776 S.E.2d at 406.

As the trial judge, the former Chief Justice ruled that the case be dismissed. That ruling was not appealed with respect to the claims against Respondents as Respondents were never made parties to the First Appeal. Therefore, that dismissal became law of the case as to Respondents.

Seaquest seeks to evade the applicability of the law-of-the-case doctrine by a second argument that it could not have appealed the order of dismissal because Seaquest was not aggrieved by it. Seaquest's contention cannot stand. In the first place, this argument was not raised to and ruled upon by the trial court to preserve it for this appeal. (R. pp. 29-41.) Issue preservation is a fundamental component of appellate practice, and "one cannot present and try a case on one theory and then attack the result below by presenting another theory on appeal." Kennedy, 349 S.C. at 532-33, 564 S.E.2d at 323.

In the alternative this Court finds the issue was preserved, Seaquest's point—that it could not have appealed the order of dismissal—was addressed in the merits briefing. (Seaquest Final

Br., pp. 9-10; Respdt. Final Br., pp. 22-23.) Seaquest now contends that "there can be no *unappealed* ruling where there is no *appealable* ruling to begin with." (Pet. for Rehearing, p. 12.) That argument, while creative, is merely a rehash of arguments previously made and therefore not a proper subject for a rehearing.

Moreover, Seaquest's argument fails on the merits. This Court has held that a defendant may appeal the dismissal of a co-defendant when the dismissal of the co-defendant would affect the appealing defendant's liability exposure. Shaw v. City of Charleston, 351 S.C. 32, 40, 567 S.E.2d 530, 534 (Ct. App. 2002). In Shaw, this Court cited cases from Georgia and Florida in reaching that conclusion. Id. at 38-39, 567 S.E.2d at 533. Under Florida law, "a defendant has a right to appeal a judgment exonerating a co-defendant as against the plaintiff, because the finding of non-liability to the plaintiff determines any contribution and/or indemnity claims between the alleged tortfeasors on the merits." Benton Inv. Co., Inc. v. Wal-Mart Stores, Inc., 704 So.2d 130, 132 (Fla. Dist. Ct. App. 1997). "[A] codefendant in a tort action, not only may, but must, oppose a judgment relieving a codefendant of liability, or lose any future right to contribution from that codefendant." Id. Under Georgia law, a co-defendant "has standing to appeal the grant of summary judgment to another co-defendant against whom he asserts a right of contribution . . . regardless of whether the appellant has actually filed a cross-claim for contribution." Comanche Constr. Inc. of Ga. v. Dep't of Transp., 272 Ga. App. 766, 767-68, 613 S.E.2d 158, 161 (Ct. App. 2005). See also 4 C.J.S. Appeal and Error § 254 (May 2023 Update) (recognizing that "a defendant may appeal where the parties are joint tortfeasors and the finding in the codefendant's favor affects a right to contribution or indemnity).

Seaquest's cross-claims and third-party claims against Respondents are derivative of the McIntires' claims against Seaquest. (R. p. 70 ("If Seaquest is compelled to pay damages for any

reason in this matter, it alleges that any liability it has for the damages would be an imputation of liability upon it as a result of the wrongful acts or omissions committed by [Respondents]."); R. p. 78 (same as to Respondent Sealtight).) Seaquest was an aggrieved party for purposes of its contingent claims when the McIntires filed their appeal.[5]

When the McIntires failed to appeal the dismissal of Respondents, Seaquest did not timely act to preserve its cross-claims and third-party claims. At that point, Seaquest had several options. It could have filed a cross-appeal arguing that, in the alternative the trial court erred in dismissing Seaquest, it also erred in dismissing Seaquest's claims against Respondents. Seaquest could have filed a motion to dismiss the McIntires' appeal for failure to join indispensable parties. See 15 S.C. Jur. Appeal and Error § 31; Spanish Wells, 295 S.C. 67, 367 S.E.2d 160. Seaquest could also have filed a motion for clarification in the First Appeal, just as it subsequently did in the trial court upon remand. Arnold, 167 S.E. at 238. Respondents' position is succinctly encapsulated in the words of counsel for one of them, Andy Lacour, at the hearing: "If the GC didn't want their cross-claims dismissed, they could have brought it up one way or the other." (R. p. 426.)

Appellate courts have authority to ascertain whether all necessary parties to the appeal have been joined. 4 C.J.S. Appeal and Error § 353 (May 2023 Update). Objections to the lack of joinder of parties to an appeal may be waived by a general appearance. 4 C.J.S. Appeal and Error § 358 (May 2023 Update).

Issues not raised in an intermediate appeal cannot be considered in a subsequent appeal. Steele v. Self Serve, Inc., 335 S.C. 323, 328, 516 S.E.2d 674, 677 (Ct. App. 1999); Rogers v. State, 358 S.C. 266, 269-70, 594 S.E.2d 278, 279-80 (Ct. App. 2004); City of Columbia v. Ervin, 330

[5] Though this argument applies to all Respondents, it applies even more so to Respondent Sealtight as the only claims against Sealtight were Seaquest's third-party claims.

S.C. 516, 519-20, 500 S.E.2d 483, 485 (1998). Even if the effect of the McIntires' failure to join Respondents to the First Appeal initially escaped Seaquest's notice, it became apparent when the dismissal of Seaquest was reversed. Seaquest contends in this appeal that the Dismissal Order was appealed in its entirety. (Pet. for Rehearing, p. 15.) Yet when this Court reversed that Order, Seaquest did not file a petition for rehearing bringing the effect of this Court's ruling upon Respondents to this Court's attention. Seaquest did not seek review from the Supreme Court. Therefore, Seaquest's failure to raise the effect of the reversal of the dismissal of its cross-claims and third-party claims in the First Appeal barred Seaquest from raising that issue after remittitur.

Seaquest argues out of one side of its mouth that the Dismissal Order was appealed in its entirety. (Pet. for Reharing, p. 15.) At the same time, Seaquest contends that its cross-claims and third-party claims were untouched by the First Appeal. The dismissal of the claims against Respondents was a proper subject of the First Appeal, but it was not raised in that proceeding. It is now final.

Seaquest is attempting to litigate this case piecemeal. Suppose Respondents had filed cross-claims or third-party claims. Some cases involve fourth-party claims. Would this Court entertain successive appeals for each set of claims?

II. The McIntires' arguments all rehash arguments addressed in the merits briefing.

Seaquest adopted the McIntires' arguments in this appeal. These arguments were fully addressed in the merits briefing. They cannot support a petition for rehearing. Seaquest's argument that these issues were overlooked or misapprehended merely because they were not directly addressed in this Court's Opinion would allow an appeal to be reheard on nearly every occasion in which this Court issues a memorandum opinion. As discussed above, the ruling on the law-of-the-case issue is dispositive of the entire appeal.

A. The automatic stay did not preserve Seaquest's claims against Respondents.

Under Rule 241(a), SCACR, matters decided in an order on appeal are automatically stayed during the pendency of the appeal. The problem for Seaquest is that it did not act to preserve its cross-claims and third-party claims against Respondents until after the conclusion of the First Appeal. The trial court ruling dismissing the case was not appealed as to Respondents, and therefore became law of the case, as discussed above. Respondents correctly argued that even if the automatic stay extended to the entire case, it did not determine the trial court's jurisdiction after the appeal. (Respdt.'s Final. Br., p. 19.)

B. Reversal of the Dismissal on one issue affecting only Seaquest did not vacate the dismissal of the claims against Respondents.

Seaquest's argument that reversal of the Dismissal Order restored the entire case to its original posture seeks to pit one circuit court judge against another. This Court has found a similar directive by a trial judge unavailing. See Flexon, 413 S.C. at 577, 776 S.E.2d at 406. Seaquest ignored Respondents' demonstration that under the two-issue rule, any unappealed portion of the order becomes law of the case. Atlantic Coast Builders, 398 S.C. at 328, 730 S.E.2d at 284. Seaquest's argument is merely a rehash of those previously made and cannot support a rehearing. Kennedy, 349 S.C. at 532-33, 564 S.E.2d at 323.

The general rule is that a reversal does not affect the rights of parties who were not joined to an appeal. Baum v. Helman, 528 So.2d 63 (Fla. Dist. Ct. App. 1988); 5 C.J.S. Appeal and Error § 1128 (May 2023 Update). "Where a cause is reversed or remanded, it returns to the trial court as if it had never been decided, *save only for the settled law of the case*." 5 C.J.S. Appeal and Error § 1149 (May 2023 Update) (emphasis added). Seaquest's perfunctory argument cannot overcome these rules.

C. All issues in the Dismissal Order were not appealed.

Seaquest's argument that the Dismissal Order was appealed in its entirety ignores not only Respondents' briefing, but also the on-point rulings by both Judge McCoy and this Court. Judge McCoy ruled that the dismissal of the claims against Respondents was not appealed. (R. p. 33.) Moreover, this Court affirmed that ruling based its opinion on the law-of-the-case doctrine.

Seaquest must come up with something that this Court overlooked or misapprehended to prevail in its Petition. Yet it merely reiterates what has been argued before—that the McIntires' Notice of Appeal recites intent to appeal the entire Dismissal Order. Seaquest has no answer for the fact that Respondents were not timely or properly served in the First Appeal, thus preventing this Court from acquiring jurisdiction over the dismissal of the claims against Respondents.[6] An appeal cannot adjudicate the rights of non-parties to the appellate proceeding. 4 C.J.S. Appeal and Error § 355 (May 2023 Update).

Furthermore, it is unclear how this argument advances Seaquest's position. If the entire Dismissal Order was appealed in the First Appeal, then Seaquest should have contested the dismissal of its claims against Respondents in that appeal.

D. The lack of a separate ruling as to Respondents does not affect applicability of the law-of-the-case doctrine or change the result.

The argument that there was no separate holding concerning the Respondents in the Order of Dismissal was fully rebutted in the merits briefing. In the first place, the argument is short, conclusory, and without supporting authority, and therefore should be deemed abandoned. First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding that mere

[6] That Respondents were not parties to the First Appeal also can be easily determined by the caption of the First Appeal, which listed Seaquest as the only respondent, or the fact that none of the Respondents' counsel were listed as counsel of record in the orders denying rehearing and *certiorari*. (R. pp. 15, 21-24).

allegations of error without arguments and supporting authority are insufficient to support an appeal); Cole v. S.C. Elec. & Gas, Inc., 355 S.C. 183, 196, 584 S.E.2d 405, 412 (Ct. App. 2003), aff'd as modified, 362 S.C. 445, 608 S.E.2d 859 (2005) ("Short, conclusory arguments unsupported by authority are deemed abandoned."). Furthermore, the Order of Dismissal reflects the Former Chief Justice's considered decision to dismiss the Subcontractor Defendants pursuant to the Right to Cure Act along with Seaquest. (R. p. 436, part (3).) To preserve an argument that the relief exceeded what was requested, reconsideration or clarification should have been sought by a timely motion. Fryer v. S.C. L. Enf't Div., 369 S.C. 395, 399, 631 S.E.2d 918, 920 (Ct. App. 2006). Seaquest failed to overcome these arguments or identify any reason for believing this Court misapprehended or overlooked anything on this issue.

E. The argument that Seaquest was the only proper respondent to the First Appeal lacks merit.

The contention that Seaquest was the only proper respondent to the First Appeal is also short, conclusory, and without supporting authority. It should also be deemed abandoned. First Sav. Bank, 314 S.C. at 363, 444 S.E.2d at 514. Cole, 355 S.C. at 196, 584 S.E.2d at 412.

The law does not support Seaquest's position. All parties to an action whose interests may be adversely affected by the decision of the appellate court are necessary parties to an appeal. Watkins v. Fannin, 278 S.W.3d 637, 640 (Ky. Ct. App. 2009); 15 S.C. Jur. Appeal and Error § 31; Spanish Wells, 295 S.C. 67, 367 S.E.2d 160. Once again, Seaquest failed to raise anything that would entitle it to a rehearing.

F. The Subcontractor Defendants were not timely served with the Notice of Appeal.

The argument that Respondents were served with the Notice of Appeal is disingenuous. Respondents contended that they were not *timely and properly* served. (Respdt. Final Br., p. 18.) Seaquest offers nothing to substantiate the position that this Court acquired jurisdiction over

Respondents in the First Appeal. Seaquest did not identify anything that was overlooked or misapprehended.

G. The relief sought in the motion for clarification was improper.

The trial court found that "there is no procedural mechanism which affords Plaintiffs and Seaquest the right to request clarification of an order almost four years after it was issued." (R. p. 36.) That finding is unassailable.

Seaquest seeks to circumvent that problem by arguing that trial courts generally have authority to entertain motions for clarification. Specifically, Seaquest asked the trial court "to advise, in the wake of the McIntires' appeal of the Dismissal Order and this Court's reversal of the same, whether Respondents remained parties to this action." The circuit court never indicated it lacked the authority to do that. In fact, the court provided that clarification by ruling that Respondents are no longer parties. (R. p. 40.)

What Seaquest failed to do is provide authority empowering a court to reinstate Respondents as defendants years after the case against them was dismissed. That remains true upon review of Seaquest's Petition for Rehearing.

H. The trial court did not recover jurisdiction over Respondents upon remittitur of the First Appeal.

Seaquest cited no authority to support its argument that the trial court obtained jurisdiction over Respondents after remittitur of the First Appeal. It should also be deemed abandoned. First Sav. Bank, 314 S.C. at 363, 444 S.E.2d at 514. Cole, 355 S.C. at 196, 584 S.E.2d at 412. Moreover, Respondents extensively briefed their position that the trial court cannot exceed the mandate upon remand. (Respdt. Final Br., pp. 13-15, 20.) Seaquest fails to even mention the cited on-point authorities, much less demonstrate why they are not controlling. Seaquest's argument

that its requested "clarification" was not inconsistent with this Court's mandate ignores the effect of the law-of-the-case doctrine. (See Seaquest Final Reply Br., pp. 1-4.)

It would be different if the trial court had not dismissed the case. If the trial court had merely denied the motion to compel arbitration, the trial court would have retained jurisdiction over Seaquest's cross-claims and third-party claims. But the dismissal of the entire case did not affect only the claims against Seaquest—it necessarily also included Seaquest's claims against Respondents. The dismissal as to all parties other than Seaquest became final when it was not appealed, and the trial court could not "recover" jurisdiction of those claims merely because the McIntires' claims against Seaquest were appealed.

CONCLUSION

The effect of the Order of Dismissal on the claims against Respondents was not raised until after the conclusion of the First Appeal. After the trial court dismissed the case, this Court never acquired jurisdiction over Respondents because the 2017 Notice of Appeal was not properly and timely served on them. This Court's mandate that the case be submitted to arbitration demonstrates that the claims against Respondents did not survive the First Appeal because Respondents are not subject to arbitration. In light of the limited mandate on remand, Judge McCoy correctly ruled that she lacked jurisdiction to reinstate Respondents as parties.

Respondents request that the Court affirm for the reasons set forth above, and for any ground appearing in the Record pursuant to Rule 220(c), SCACR. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000).

Respectfully submitted,

July 31, 2023

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Appellants,

v.

Seaquest Development Company, Inc.; Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co., Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; and New South Construction Supply, LLC,

Defendants,

AND

Seaquest Development Company, Inc.,

Third-Party Plaintiff/Appellant,

v.

Architectural Products of Charleston, LLC; and Sealtight of South Carolina, LLC,

Third-Party Defendants,

Of which Red Bay Constructors Corp.; Benzenberg Custom Cabinets, Inc.; Jonathan Marshall Construction; Coastal Window & Door Center of Charleston, LLC; Carolina Window & Millwork, LLC n/k/a Carolina Window & Millwork-Omni Glass Industries, LLC; Southcoast Exteriors, Inc.; Michael Casteen d/b/a Michigan Prestain Co.; Coastal Plumbing & Gas, LLC; Foam Insulation Co., Inc.; Jerry Comer d/b/a Jerry's Tile & Marble, LLC; Lowcountry Fireplaces, Inc.; Carolina Pest Solutions, Inc.; and New South Construction Supply, LLC are

Respondents.

PROOF OF SERVICE

I certify that I have served Respondents' Return to Appellant's Petition for Rehearing on all parties set out below by electronic mail on July 31, 2023.

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