

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
J. Mark Hayes, II, Circuit Court Judge

Case No. 2019-CP-46-00051

---

Appellate Case No. 2023-001103

---

Daniel P. Cedrone and Poly-Tech Industrial, Inc.,.....Respondents,

v.

Composite Resources, Inc.,.....Appellant.

---

**Respondents’ Return in Opposition to Appellant’s Motion for Leave to Supplement Record on Appeal and File Amended Final Reply Brief**

---

Pursuant to Rule 240(e), SCACR, Respondents, through undersigned counsel, submit Respondents’ Return in Opposition (“**Opposition**”) to Appellant’s Motion for Leave to Supplement Record on Appeal and File Amended Final Reply Brief (“**Motion to Supplement**”).

Appellant's Motion to Supplement should be substantively denied because it relates to a matter that is not properly before this Court and which was not preserved for appeal.

Respondents obtained summary judgment as to Appellant's obligation to fulfill the terms of the unambiguous 2005 Sales Representative Agreement (“**Agreement**”) with regard to commission and vendor payments owed to Respondents as set forth in the “four corners” of the Agreement. Under South Carolina law, a trial court is obligated to interpret an unambiguous contract within the four corners of the agreement as a matter of law, without reference to external

or subsequent parole information. After Appellant filed a motion for reconsideration under Rule 59(e), SCRCPC, it filed supplemental parole information to its pending Rule 59(e) motion, and alternatively sought modification of the prior summary judgment order under the trial court authority pursuant to Rule 54(b), SCRCPC, to modify any non-certified/final order prior to trial/final judgment.

In Business Court Judge Hayes's June 8, 2023 order denying the Rule 59(e) motion for reconsideration (“**Order Denying Motion for Reconsideration**”), he notes that the Reply was filed and considered by him.

“On November 15, 2022, Defendant filed a Supplement in Support of Motion to Reconsider, Clarify, Alter, or Amend Order Granting Plaintiffs’ Motion for Partial Summary Judgment (the “Supplement”) [ROA 933]. Plaintiffs filed their Opposition to the Supplement on November 22, 2022, and Defendant filed a Reply [invoking Rule 54(b) revision authority] on December 5, 2022.” [Motion to Supplement, Ex. A, p. 4] (emphasis added).

ROA 41.

However, the points mentioned in the Reply did not merit inclusion in the Order Denying Motion for Reconsideration [ROA 41-43], and Business Court Judge Hayes makes no mention of Rule 54(b), SCRCPC, or the modification discretion reserved to a trial court. Further confirming that the Order Denying Motion for Reconsideration does not relate to any relief sought by Appellant under rule 54(b), is the express statement by Business Court Judge Hayes that the order "hereby denies the Motion for Reconsideration." [ROA 41]. The Motion for Reconsideration [ROA 686] was brought only pursuant to Rule 59(e) and Rule 52 (Rule 52 allows a motion for amendment to be made "with a timely motion for a new trial" under Rule 59).

The only conclusion to be drawn from a review of the Order Denying Motion for Reconsideration [ROA 41-43] is that the Business Court’s order simply does not address the Rule

54(b) issue that is the focus of Appellant's Motion to Supplement currently before this Court. Appellant made no effort to seek clarification of the Order Denying Motion for Reconsideration to make it reflect some determination by the Business Court with regard to the Rule 54(b) issue which Appellant would now like to raise before this Court.

For an appellant to appeal the failure of a lower court to exercise its broad discretion under Rule 54(b) to modify an order before judgment, the lower court's failure to exercise its broad discretion in an appellant's favor would have to be specifically addressed in an order, and also be certified by the lower court as "final" pursuant to Rule 54. Neither occurred in this case. *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 393 S.E.2d 176, 177 (1990) (“The process of directing entry of judgment on one or more but less than all claims under Rule 54(b) will be referred to as certification.”); *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 576, 698 S.E.2d 856, 860 (Ct. App. 2010) (“Appellate courts should not delve into the realm of reviewing decisions that may be altered by the trial judge. *See, e.g., State v. Glenn*, 285 S.C. 384, 385, 330 S.E.2d 285, 285–86 (1985) (finding appellate review speculative when the trial judge is free to alter his ruling.)”).

Equally unsurmountable is Appellant's failure to preserve the Rule 54(b) modification issues for appellate review. *Holman v. S.C. Educ. Lottery Comm'n*, 441 S.C. 18, 30, 891 S.E.2d 701, 707 (Ct. App. 2023), *reh'g denied* (Sept. 22, 2023) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit court] to be preserved for appellate review.”) (emphasis added) (internal citation omitted).

Moreover,

Even assuming Trustgard sufficiently raised judicial estoppel to the circuit court, the circuit court did not rule on the issue. Accordingly, the issue of judicial estoppel is not preserved for our review on appeal. *See Caldwell*, 402 S.C. at 576-77, 741 S.E.2d at 589 (“[When] an issue has not been ruled upon by the trial [court] nor raised in a post-trial motion, such issue may not be considered on

appeal.” (quoting *Pelican Bldg. Ctrs. of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993)); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (“If the losing party has raised an issue [to] the [trial] court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.”).

*Ex parte Trustgard Ins. Co.*, No. 2019-001506, 2023 WL 5944276, at \*8 (S.C. Ct. App. Sept. 13, 2023); see also Jean Hoefer Toal, et al., *Appellate Practice in South Carolina* 55–60 (2002). Granting leave would be futile because it does not resolve the failure to preserve the issue for appeal. Footnote No. 52 relates to a purely legal proposition that may or may not be correct. Thus, the purpose of the supplementation is not to establish whether that legal proposition is correct, but rather, just to mark that it was raised to the Business Court. As noted above, raising it is insufficient since Appellant failed to preserve it for appeal, and therefore the Motion to Supplement should be denied as futile.

In addition, procedurally Appellant's Motion to Supplement should be denied. The vague reference in footnote number 52 of the brief, as set forth in the snippet on page 2 of the Motion to Supplement, merely references "Reply ISO Supp. at 4-8." This is not defined in Appellant's briefs or in its designation of matters. In this Motion to Supplement, which was filed after all briefing was finalized, all designation of matters were finalized, and the Record on Appeal was created and filed, this vague and undated reference is connected to the specific document attached to this Motion to Supplement that Appellant now seeks to add to the record.

One of the principals of appellate procedure in South Carolina is the need for definite closure as to the filings and arguments to promote efficient and effective appellate review. For example, Rule 211(a), SCACR requires a party to file a certification that it has made no changes to the brief other than correcting typographical errors, misspellings and supplying references to

the compiled Record on Appeal. See also, Rule 211(b)(2), SCACR (“No other changes may be made.”). Rule 208(b)(7), SCACR regarding supplemental citations, also supports finality. For example, even when "pertinent and significant authorities come to the attention of a party," the party is only authorized to state the legal authority, its connection and the page number in the brief to which it relates ("without argument").

For the forgoing reasons, the Court should deny Appellant’s request for leave to supplement the Record on Appeal.

Respectfully submitted,

*/s/ Keith D. Munson*

Keith D. Munson

S.C. Bar No. 13400

**RIMÓN P.C.**

220 North Main Street, Suite 500

Greenville, SC 29601

Tel: (864) 420-3426

Fax: (864) 249-7111

[keith.munson@rimonlaw.com](mailto:keith.munson@rimonlaw.com)

**WOMBLE BOND DICKINSON**

Michael Montecalvo

Womble Bond Dickinson (US) LLP

One West Fourth Street

Winston-Salem, NC 27101

Tel: (336) 721-3770

[michael.montecalvo@wbd-us.com](mailto:michael.montecalvo@wbd-us.com)

*Admitted Pro Hac Vice*

*Attorneys for Respondents Daniel P.*

*Cedrone and Poly-Tech Industrial, Inc.*

February 9, 2024

**RECEIVED**

**Feb 09 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
J. Mark Hayes, II, Circuit Court Judge

Case No. 2019-CP-46-00051

Appellate Case No. 2023-001103

Daniel P. Cedrone and Poly-Tech Industrial, Inc.,.....Respondents,

v.

Composite Resources, Inc.,.....Appellant.

**PROOF OF SERVICE**

I certify that a true copy of Respondents' Return in Opposition to Appellant's Motion for Leave to Supplement Record on Appeal and File Amended Final Reply Brief has been served on the following, this 9th day of February, 2024, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262(c)(3), SCACR, and *RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022)*, S.C. Sup. Ct. Order dated May 6, 2022.

Counsel served: John B. White, Jr. (S.C. Bar No. 5996)  
Marghretta H. Shisko (S.C. Bar No. 100106)  
Griffin L. Lynch (S.C. Bar No. 72518)  
Christopher Jones (S.C. Bar No. 101265)  
291 S. Pine Street  
P.O. Box 2465 (29304)  
Spartanburg, SC 29302  
(864) 594-5988  
jwhite@johnbwhitelaw.com

mshisko@johnbwhitelaw.com  
glynch@johnbwhitelaw.com  
cjones@johnbwhitelaw.com

William Y. Klett, III  
Paul D. Harrill  
P.O. Box 11390  
Columbia, SC 29211  
(803) 799-9800  
wklett@burr.com  
pharrill@burr.com

Michael Kaeske  
1301 W. 25th St Ste 406  
Austin, TX 78705  
(512) 366-7300  
mikekaeske@gmail.com

Jeremy C. Martin  
2101 Cedar Springs Rd. Ste. 1540  
Dallas, TX 75201  
(214) 488-5021  
jmartin@martinappeals.com

Respectfully submitted,

/s/ Keith D. Munson  
Keith D. Munson (S.C. Bar No. 13400)  
**RIMÓN P.C.**  
220 North Main Street, Suite 500  
Greenville, SC 29601  
(864) 249-7111  
keith.munson@rimonlaw.com

**WOMBLE BOND DICKINSON**  
Michael Montecalvo  
Womble Bond Dickinson (US) LLP  
One West Fourth Street  
Winston-Salem, NC 27101  
(336) 721-3770  
michael.montecalvo@wbd-us.com  
Admitted Pro Hac Vice

*Attorneys for Respondents*  
*Daniel P. Cedrone and Poly-Tech*  
*Industrial, Inc.*

February 9, 2024

## Mayra Ivette Medina

---

**From:** Mayra Ivette Medina  
**Sent:** Friday, February 9, 2024 3:51 PM  
**To:** Chris Jones; John B. White, Jr.; Marghretta Shisko; Griffin Lynch; Klett III, William; Harrill, Paul; Michael Kaeske; Jeremy Martin  
**Cc:** Keith Munson; 'Montecalvo, Michael'; Mayra Ivette Medina; nrice@johnbwhitelaw.com  
**Subject:** Cedrone v. CRI (2023-001103) - Respondents' Return in Opposition to Appellant's Motion for Leave to Supplement Record on Appeal and File Amended Final Reply Brief  
**Attachments:** Cedrone v. Composite\_Respondents Return to Appellants Motion to Supplement ROA and Final Brief\_ 2.9.2024.pdf

Dear Counsel,

Attached for service upon you please find Respondents' Return in Opposition to Appellant's Motion for Leave to Supplement Record on Appeal and File Amended Final Reply Brief in *Daniel P. Cedrone and Poly-Tech Industrial, Inc. v. Composite Resources, Inc.*, Appellate Case No. 2023-001103, which we are filing with the Court of Appeals today.

Thank you,

---

**Mayra Ivette Medina** | Litigation Practice Assistant

**RIMÔN PC**

+1 917.781.2028 | [mayra.medina@rimonlaw.com](mailto:mayra.medina@rimonlaw.com)  
100 Park Avenue 16th Floor, New York, NY 10017

[www.rimonlaw.com](http://www.rimonlaw.com) | [See Our International Offices](#) | [Read Our Insights](#)

Connect on [LinkedIn](#) | Like us on [Facebook](#)

*This e-mail is sent by a law firm and contains information that may be confidential or privileged. If you have received this communication in error, please reply to the sender (only) and then please delete this message from your inbox as well as any copies. Thank you.*