

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable J. Derham Cole

Christian Wienands, Charlotte Muxlow, and Gregory MuxlowAppellants,

v.

South Wind Ranch, Ronald Hakala, and Ashley BlackRespondent.

Appellate Case No. 2023-000081

PETITION FOR REHEARING

Pursuant to SCACR Rule 221(a), the appellants respectfully move for rehearing or *en banc* review so the ruling of the Court of Appeals may be corrected to adhere to existing law, or in the alternative, so the ruling may be clarified.

The Court of Appeals' ruling conflicts with *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) and SCRCP 56 because the appellants supported their claims with a plethora of evidence. The ruling ignores the many genuine issues of material fact and all of the evidence submitted by the appellants. The appellant respectfully submits that the ruling should be changed and that the lower court's decision should be reversed.

The appellants alleged that the appellees breached the contract at issue, and supported that claim with evidence, including screenshots showing the appellants' breach, sworn testimony, and other evidence. That evidence was more than enough to show genuine issues of material fact as to who breached the contract first and whether the contract was rendered impossible. The appellants

also alleged that the appellees used the Pandemic for financial gain and to unilaterally increase prices, essentially gouging the appellants. When taken as true, those allegations allow the appellants to recover from the appellees, and the appellees have a right under the South Carolina Constitution and the United States Constitution¹ to have their case decided by a jury. To rob the appellants of any recourse whatsoever robs the appellant of Due Process.

The ruling states “The South Wind Ranch Contract provides, ‘All deposits are non-refundable (except Security Deposit) & any balance due must be paid 30 days prior to the scheduled event or the event may not be held.’ Similarly, the Ashley Black Contract provides, ‘If event is canceled, no portion of the fees paid to Consultant will be returned.’” The ruling ignores that the appellants alleged the appellants first breached the contracts at issue and that the appellees did not do what the appellants paid them to do. The appellants alleged and supported with evidence that they paid for a wedding for a certain number of people, that the Pandemic made that impossible, and that the appellees breached the contract by using the Pandemic as an excuse to unilaterally increasing – nearly doubling – the price, which violated the contract. The fact questions presented by those allegations and evidence are for a jury to decide, and entry of summary judgment violates Article I, Sec. 14 of the South Carolina Constitution, SCRCP 56, and *Kitchen Planners* and its progeny.

The ruling also conflicts with *Butler v. Travelers Home & Marine Ins. Co.*, 433 S.C. 360, 366-67, 858 S.E.2d 407, 410 (2021) (“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions ...”). It cannot be argued that the appellants intended to pay for half of a wedding for a certain number of guests and then be subject to arbitrary and bad-faith price hikes after a global pandemic made the agreed-to wedding impossible, necessitating

¹ Although the Seventh Amendment has never been fully incorporated against the States, it clearly provides a right to a jury trial in both state and federal courts, should be incorporated, and the appellants preserve this issue for further appellate review.

rescheduling. Either way, the parties' intention as shown by the contracts and all the evidence submitted is a fact question for a jury.

The Court's ruling also ignores that the appellants set out in their brief that a breach of contract accompanied by fraudulent act claim encompasses a breach of contract claim. The breach of contract accompanied by fraudulent act claim was supported with sworn testimony, screenshots of text messages, and a verified complaint². When this evidence is viewed in the light most favorable to the appellants, the appellants are able to recover from the appellees because the appellees breached the contract between the parties with the use of fraud and unfair practice, and summary judgment should not have been granted.

In short, the appellants respectfully submit that the Court's ruling ignores the fact that all of the appellants' claims were supported by voluminous evidence, including sworn testimony, and the fact that the appellants were entitled to a favorable view of that evidence and to have every inference in their favor. There is simply a genuine dispute over who the breaching party is and whether the appellees breached the contract accompanied by fraud, as alleged in the complaint and supported with evidence.

Finally, the Court of Appeals' holding that since the grant of summary judgment was affirmed, the appellants' "arguments regarding their entitlement to a jury trial is without merit" does not square with the law or the either of the applicable constitutional rights to a jury trial. If the trial court granted summary judgment in spite of the existence of genuine issues of fact issues and evidence supporting them as alleged, then there is a constitutional violation which deprived the

² The evidence submitted to the Trial Court and included in the Record on Appeal supports all of the appellants' causes of action, and was enough to show fact questions as to any one of them. The SCUTPA claim was especially bolstered by the evidence, and should have proceeded to a jury pursuant to the authority cited above.

appellants of their right to a jury trial. The appellants rights under S.C. Const. art. 1, §14 and U.S. Const. amend. VII were violated, and the appellants respectfully request that the ruling be altered or amended, and this case sent back to the Trial Court for a trial by jury.

Conclusion

The appellant respectfully requests that the Court of Appeals alter its ruling and reverse the Trial Court's decision, have an oral argument, or hear the case *en banc*. In the alternative, the appellants requests that the Court of Appeals' ruling clarify its ruling to address the reasons summary judgment was appropriate in the presence of many disputed facts and much evidence supporting the appellants' claims. In an abundance of caution, the appellants incorporate by reference and preserve for appellate review and any petition for certiorari, all arguments made in the Trial Court and in the Court of Appeals. The appellants rely on the law and authority cited herein, cited in briefs filed with the Court, and other authority which may be applicable moving forward.

Respectfully submitted,

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SC Court of Appeals

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Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Christian Wienands, Charlotte Muxlow, and Gregory

Muxlow,.....Appellants,

v.

South Wind Ranch, Ronald Hakala, and Ashley Black,Respondents.

Appellate Case No. 2023-000081

PROOF OF SERVICE

I certify that on this date, May 8, 2024, I filed the foregoing Petition for Rehearing with the South Carolina Court of Appeals via electronic filing, to ctappfilings@sccourts.org. A copy was also served on Respondents via electronic service, addressed to the attorney of record below by the CM/ECF system:

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