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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

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2023-001431
Charleston County Case No. 2019-CP-10-02894

Roi Tan Enterprises LLC,	Respondent,
v.	
Akim Anastopoulo and Anastopoulo Law Firm, LLC	Appellants.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. THE LOWER COURT PROPERLY GRANTED RESPONDENT'S MOTION TO STRIKE DEMAND FOR JURY TRIAL.

II. THE LOWER COURT PROPERLY GRANTED RESPONDENT'S MOTION FOR RULE TO SHOW CAUSE.

III. THE LOWER COURT PROPERLY DISMISSED RESPONDENT'S RULE 59, SCRCP MOTION TO ALTER OR AMEND THE ORDER.

STATEMENT OF THE CASE

Respondent Roi-Tan Enterprises, LLC (hereafter the "Respondent") filed its Summons & Complaint in the underlying lawsuit on May 31, 2019, making no demand for a jury trial and asserting causes of action arising from the breach of a commercial lease agreement and guaranty by Akim Anastopoulo. (R. pp.11-82). Akim Anastopoulo filed a Rule 12(b)(7), SCRCP motion to dismiss asserting the failure to name Anastopoulo Law Firm, LLC as a necessary party. By Order dated January 15, 2020, the Court denied the motion to dismiss but required Anastopoulo Law Firm, LLC to be added as a necessary party pursuant to Rule 19, SCRCP. Respondent filed its Amended Summons & Complaint on January 16, 2020. (R. pp. 83-150). Akim Anastopoulo and Anastopoulo Law Firm, LLC (hereafter collectively the "Appellants" and individually "Appellant Anastopoulo" and "Appellant Law Firm") respectively filed their Answer, Counterclaims, and demand for jury trial on January 30, 2020. (R. pp.151-159).

On April 5, 2022, Respondent filed a motion to compel against Appellants due to the failure of Appellants to produce documents and damages information identified during the deposition testimony of Anastopoulo and of Roy Willey, as Rule 30(b)(6), SCRCP designee for Anastopoulo Law Firm, as existing but not produced in discovery responses. (R. pp. 160-161). Following a hearing on Respondent's Motion to Compel, the Lower Court issued an Order Granting Respondent's Motion to Compel on October 28, 2022 (hereafter the "Order to Compel"). (R. pp. 1-4). Thereafter, on February 7, 2023, Respondent filed its Motion for Rule to Show Cause (hereafter the "Motion to Show Cause") due to Appellants' failure to produce the discovery and damages information as mandated by the Order to Compel. (R. pp. 165-173).

On December 5, 2022, Respondent filed its Motion to Strike Appellants' Demand for Jury Trial (hereafter the "Motion to Strike"). (R. pp. 162-164). Prior to a hearing on

Respondent's Motion to Strike and Motion to Show Cause, Respondent filed and served its supporting Memorandum of Law in Support of its Motion to Strike and Motion to Show Cause on May 25, 2023, in advance of the hearing on May 30, 2023. (R. pp. 174-280). On May 30, 2023, the Lower Court convened the hearing on Respondent's Motion to Show Cause and Motion to Strike. At the hearing, the Lower Court took the Motions under consideration and provided Appellants with fifteen (15) days to supplement discovery responses to provide complete information on alleged damages claimed for counterclaims or the counterclaims would be stricken for failure to comply with the Order to Compel. (R. p. 317, lines 3-10).

Thereafter, on the last day of the period provided by the Lower Court for Appellants to produce complete information on damages claimed in its Counterclaims, counsel for Appellants sent an e-mail to counsel for Respondent that included only three screen-shot attachments purporting to show ledger entries for eleven check numbers/charges or credit card charges and nothing else. (R. pp.336-344). Importantly, Appellants produced no cancelled checks, credit card statements, invoices, estimates, work orders, material charges, e-mails to substantiate the ledger entries provided in the screen-shots. Furthermore, Appellants failed to identify any additional witnesses despite several entities/individuals being implicated as having knowledge of issues based on the ledger entries. After receiving Appellants' e-mail dated June 14, 2023, counsel for Respondent informed the Lower Court of the information provided by Appellants and of Respondent's objections to the insufficiency of the response, and counsel for Appellants provided an explanation in response thereto. (R. pp. 345-353). Thereafter by e-mails dated June 28, 2023, counsel for Appellants and Respondent confirmed to the Lower Court that no further hearing or legal memoranda were required prior to the Lower Court issuing its ruling on Respondent's Motion to Show Cause and Motion to Strike. (R. p. 354).

On August 15, 2023, the Lower Court issued the Order granting Respondent's Motion to Strike and Motion for Rule to Show Cause (hereafter the "Order"). (R. pp. 5-7). Appellants received written notice of the entry of the Order on August 15, 2023. Appellants then filed a Rule 59, SCRCP Motion to Alter or Amend the Order on August 28, 2023, after the Order had already converted to a final judgment. (R. pp. 285-291). By Order dated September 1, 2023, the Lower Court issued an Order denying Appellants' Motion to Alter or Amend the Order (hereafter the "Order- Rule 59, SCRCP") for failure to file the motion within the time provided for in Rule 59(e), SCRCP. (R. pp. 8-10).

Appellants filed the Notice of Appeal on September 8, 2023 from the Order and Order-Rule 59, SCRCP. Appellants filed the Initial Brief of Appellant on November 2, 2023.

STANDARD OF REVIEW

I. STANDARD OF REVIEW: MOTION FOR RULE TO SHOW CAUSE

The selection of a sanction for discovery violations is within the trial court's discretion. *Griffin Grading v. Tire Service Equipment*, 334 S.C. 193, 511 S.E.2d 716 (Ct.App. 1999). The appeal court will not interfere with that decision unless the trial court abused its discretion. *Id*. An abuse of discretion may be found where the appellant shows that the conclusion reached by trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. *Id*.

If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment. *Id*. When the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly; therefore, the 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 a case. *Id*. Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction. *Id*. In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. *Id*.

II. STANDARD OF REVIEW: MOTION TO STRIKE DEMAND FOR JURY TRIAL

In South Carolina, a party may waive the right to a jury trial by contract. *Beach Company v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct.App. 2002). Such a waiver must be

strictly construed as the right to trial by jury is a substantial right; however, terms in a contract provision must be construed using their plain, ordinary and popular meaning. *Id*. A person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it. *Wachovia Bank v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014). Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. *Id*. Whether a party is entitled to a jury trial is a question of law. *Snow v. Smith*, 416 S.C. 72, 784 S.E.2d 242 (Ct.App. 2016).

III. STANDARD OF REVIEW: RULE 59, SCRCP MOTION TO ALTER OR AMEND THE ORDER

Rule 59(e), SCRCP provides that a motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order. *Rule 59, SCRCP*. The South Carolina Supreme Court has held and affirmed that the ten-day limit for serving a Rule 59(e) motion is an absolute deadline." *Overland, Inc. v. Nance*, 423 S.C. 253, 815 S.E.2d 431 (2018). A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion. *Id*. The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment. *Id*.

STATEMENT OF FACTS

I. STATEMENT OF FACTS: MOTION FOR RULE TO SHOW CAUSE

The Rule 30(b)(6), SCRCP designee for Appellant Law Firm testified at its depositions in the underlying lawsuit that Appellant Law Firm was in possession of but had failed to identify or produce the following voluminous information and documents in response to Respondent's Interrogatories and Requests for Production:

1) Complete information concerning any and all damages claimed by Appellants in their Counterclaims;

2) Complete information concerning attorney's fees and costs claimed by Appellants related to this lawsuit;

3) All omitted attachments to e-mails produced in discovery by Appellants;

4) Records of payments and communications with Trident Construction and all attachments to e-mails;

5) E-mails with Trinity Partner and Jonathan Calder concerning the Cigar Factory lease and upfit, occupancy, and abandonment of Suite 304;

6) All emails, records, documents, and bills concerning the Cigar Factory lease and upfit, occupancy, and abandonment of Suite 304;

7) Documents, e-mails, schematics, design documents, plans, invoices, and payment records concerning between Defendant and McMillan Pazdan Smith Architecture.; and,

8) All emails to and from the Appellant Anastopoulo concerning the subject matter of this litigation.

(R. pp. 324-325).

Despite identifying the undisclosed and unproduced documents and information at its deposition, Appellants refused to produce the supplemental information and documents as required by Rule 33, SCRCP and Rule 34, SCRCP, thereby forcing Respondent to file a Motion to Compel on April 5, 2022. (R. pp. 160-161). Following a hearing, the Lower Court granted

the Order to Compel and ordered Appellants to provide all information identified by Appellant Anastopoulo and Appellant Law Firm. (R. pp. 1-4). The Order to Compel ordered Appellants to provide the supplemental information identified at the deposition within fourteen days from the date of the Order due to underlying lawsuit being subject to trial given its position on the trial roster for Charleston County Circuit Court. *Id.*

Thereafter, well after the time provided for in the Order to Compel for Appellant to provide the supplemental information and documents had expired, Appellants identified and produced 621 e-mails and documents which had not been produced in their Responses to Requests for Production. Additionally, Appellants supplemented their Answers to Interrogatories to state that Appellants had incurred $151,110.75 for relocation expenses and $20,000.00 for attorney's fees/costs, with no documentation of any kind or affidavit of attorney's fees to support how such alleged damages were derived or to enable Respondent to evaluate the alleged damages and conduct sufficient discovery to defend against fairly significant monetary damages at trial. (R. p. 173).

Importantly, counsel for Respondent communicated with counsel for the Appellants on two separate occasions concerning the inadequacy of the supplemental information provided prior to filing Appellants' Motion to Show Cause. First, in an e-mail dated January 3, 2023**,** counsel for Respondent wrote the following to counsel for Appellants:

> I am following up on your e-mail and supplemental production below to request that Defendants produce all documents related to the relocation expenses identified as Supplemental Answer to Interrogatory No. 5. Please provide all documentation used to derive the alleged claim for damages by January 9, 2023 to avoid a motion for rule to show cause for failure to comply with the terms of the Order to Compel.

(R. pp. 333-334).

Second, in an e-mail dated January 13, 2023, counsel for Respondent wrote the following to counsel for Appellants:

> Please be advised that I will be filing a motion for rule to show cause on January 16, 2023 related to the Rule 11 SCRCP consultation I provided on January 3, 2023, to which I have received no response. I would like to avoid having to file such a motion but will have no other option if counsel refuses to respond to my e-mail and/or to provide the requested information/documents.

(R. p. 335).

Despite attempts by counsel for Respondent to resolve the issues, Appellants failed to provide any supplemental information or documents in response to counsel's Rule 11, SCRCP consultations and good faith attempts to avoid filing the Motion to Show Cause.

At the hearing on May 30, 2023, the Lower Court was provided a complete recitation of the above factual information and applicable law in Respondent's Memorandum of Law in Support of Motion to Show Cause. (R. pp. 174-280). At the hearing, Counsel for Respondent specifically argued to the Lower Court that the alleged damages numbers provided by Appellants, without any backup documentation, were essentially meaningless and placed Respondent in the position of having to defend against counterclaims seeking more than $170,000 in alleged damages at trial without knowing what they were based on, who made the charges, who provided services or materials, or how the amounts were derived. (R. p. 312, line 22 – p. 314, line 23). At the hearing, the Lower Court specifically considered the advanced stage of discovery, Appellants' failure to comply with the Order to Compel, Appellants' failure to supplement discovery responses and document production, efforts by counsel for Respondent to resolve the issues prior to filing the Motion to Show Cause, and that the underlying lawsuit was up for trial imminently in order to weigh the conduct of Appellants and to determine the effect of

Appellants' failure to comply with the Order to Compel and continued refusal to produce information and documentation supporting its Counterclaims for damages against Respondent. (R. p. 312, line 22 – p. 317, line 10).

Furthermore, at the hearing on May 30, 2023, counsel for Appellants told the Lower Court that when I have asked my clients what information exists, "I was told we've given them everything we've got." (R. p. 315, lines 7-9). However, when the Lower Court asked, "where do you come up with the numbers" supplemented in discovery as counterclaim damages, counsel for Appellants answered, "your honor, I don't have a good answer for that." (R. p. 315, lines 10-13). The Lower Court further asked, "well, what are y'all going to ask the jury for, some random number?" Counsel responded, "no, your honor", and the Lower Court stated, "it's got to be based on something." (R. p.316, lines 4-8).

After hearing arguments and taking into consideration the supporting memoranda of law filed by Appellants and Respondent and made a part of the record, the Lower Court stated, "all right, he has 15 days from today's date to provide any and all information related to relocation or any damages that they have incurred. If at the close of 15 days, he has not provided either A, the information, B, or a sworn affidavit indicating that he does not have that information, then I'm going to strike his counterclaims." (R. p. 317, lines 3-10).

After being granted fifteen days by the Lower Court to supplement with full damages information and documents and with explicit warning that its Counterclaims might be stricken, counsel for Appellants emailed three screen shots showing eleven check numbers or credit card charges as its supplemental discovery response and nothing else. (R. pp. 336-344). Appellants failed to identify or produce any of the checks or credit card statements or the supporting invoices, estimates, work orders, material charges; furthermore, Appellants failed to identify any

additional witnesses implicated in the transactions referenced in the screen-shots. Furthermore, counsel for Respondent never provided an affidavit of attorney's fees and costs to provide support for its alleged claim for $20,000 in attorney's fees and costs.

Essentially and throughout the pendency of this lawsuit, Appellants have exhibited a persistent and intentional refusal to comply with the discovery rules in the South Carolina Rules of Civil Procedure, to refuse to comply with the Order to Compel, and to provide even the most basic and essential information for damages to be claimed at trial despite being warned at a hearing on the Motion to Show Cause of having its counterclaims stricken. Respondent has been prejudiced throughout in having to incur significant legal fees and costs, in being unable to evaluate the Counterclaims asserted against it, and by having the trial of the underlying lawsuit delayed repeatedly due to Appellants' persistent and intentional violations of the South Carolina Rules of Civil Procedure.

II. STATEMENT OF FACTS: MOTION TO STRIKE DEMAND FOR JURY TRIAL

Appellant Law Firm entered into a Retail Lease Agreement dated November 1, 2016 (hereafter the "Lease Agreement") with Respondent for the lease of commercial office space in the Cigar Factory on East Bay Street in Charleston, South Carolina, and Appellant Anastopoulo entered into a Guaranty of Lease (hereafter the "Guaranty") to secure payment and performance of the Lease Agreement. (R. pp. 19-58).

Appellant Law Firm and Appellant Anastopoulo expressly waived their rights to a jury trial pursuant to the terms and conditions of the Lease Agreement and the Guaranty of Lease. Specifically, Article 25.10 of the Lease Agreement provides the following:

> Article 25.10 Waiver of Right to Jury Trial or Permissive Counterclaims. Landlord and Tenant each hereby waives any and all right to trial by jury in any action, proceeding or counterclaim with respect to any matter arising out of or in any way connected

> to with this Lease, the Premises, the Property, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Premises, or any claim of injury or damage.

(R. p. 328).

Furthermore, Article 20 of the Guaranty of Lease provides the following:

> GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER IT OR LANDLORD AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN ANY WAY RELATED TO THIS GUARANTY.

(R. 329).

At his deposition, Appellant Anastopoulo testified that he signed the Lease Agreement and the Guaranty of Lease and intended to be bound by their terms and conditions. (R. 326-327). At the hearing on the Motion to Strike on May 30, 2023, counsel for Respondent presented evidence to the Lower Court of the waiver of jury trial provisions in both the Lease Agreement and Guaranty. (R. p. 317, line 15 – p. 318, line 5). At the hearing, counsel for Respondent established to the Lower Court the legal standard for construing a waiver of jury trial provisions and that Appellants did not and could not dispute that the Lease Agreement was properly executed and enforceable. (R. p. 318, line 22 – p.319, line 3). Furthermore, at the hearing, counsel for Appellants stated "yes, there was a waiver in our 25.10 of the contract, the Lease Agreement there is a waiver." (R. p. 319, lines 20-22).

ARGUMENT

I. ARGUMENT: THE LOWER COURT PROPERLY GRANTED RESPONDENT'S MOTION FOR RULE TO SHOW CAUSE.

Respondent can demonstrate no abuse of discretion by the Lower Court in its Order granting Respondent's Motion to Show Cause. The record establishes Appellants' persistent misconduct during the course of discovery in the underlying lawsuit and provides ample evidence that Appellants acted in bad faith, willful disobedience or gross indifference to the rights of Respondent. As such, the Lower Court properly exercised it discretion to dismiss Appellants' Counterclaims as a sanction for the persistent and serious discovery violations committed by Appellants throughout the pendency of the underlying lawsuit. The Lower Court properly exercised its discretion to levy a monetary sanction against Appellants due to the costs incurred by Respondent to require Appellants to comply with their obligations under Rules 33 and 34, SCRCP and the Order to Compel due to the additional burden and expenses placed on Respondent.

Prior to exercising its discretion to strike Appellants' Counterclaims, the Lower Court specifically took into consideration the reasonable factual support that Appellants had failed to comply with the Order to Compel by failing to provide full and complete information concerning the damages claimed in its Counterclaims. The Lower Court specifically considered the repeated attempts made by counsel for Respondent to confer with Appellants in a good faith attempt to have Appellants provide complete damages information prior to filing the Motion to Show Cause and also counsel for Respondent's reluctance to file the Motion to Show Cause. The Lower Court considered Appellants' persistent refusal to provide complete damages information as required by the Order to Compel. The Lower Court further considered that Respondent was

forced to file a Motion to Show Cause to compel production of essential discovery identifying the damages claimed by Appellants despite the fact that the underlying lawsuit had been pending for several years and was imminently subject to trial. The Lower Court clearly understood and focused in on the inability of Appellants to explain at the hearing how Appellants had calculated or derived their alleged damages claims totaling $170,000. In fact, at the hearing, the Lower Court established that counsel for Appellants could not even identify how Appellants had come up with its numbers of $150,000 for relocation expenses and $20,000 for attorney's fees and costs.

Furthermore, prior to exercising its discretion to strike Appellants' Counterclaims, the Lower Court considered the inadequate supplemental damages information with no documentary support provided by Appellants after the fifteen day period provided at the hearing for Appellants to avoid having its Counterclaims stricken. The Lower Court further considered the posture of the underlying lawsuit as being imminently subject to trial and the resulting prejudice to Respondent to have to defend against more than $170,000 in alleged damages without having any meaningful opportunity to evaluate the claimed damages, to conduct discovery concerning the alleged damages, and to develop defenses thereto prior to trial- which is one of the most basic purposes of the rules of discovery.

Appellants' persistent misconduct during the course of discovery in the underlying lawsuit clearly demonstrates that Appellants acted in bad faith, willful disobedience or gross indifference to the rights of Respondent in denying Respondent a meaningful opportunity to develop the most basic understanding of Appellants' claim for in excess of $170,000 in damages. As established by the record, the Lower Court did not rush to exercise its discretion to strike Appellants' Counterclaims; rather, the Lower Court provided ample time for Appellants to

properly identify and produce complete information in support of their claim for damages. Appellants knew their Counterclaims would be stricken if they failed to supplement with complete damages information, and Appellants knowingly chose to provide almost meaningless information with no documentary support. As such, the Lower Court properly exercised its discretion to strike Appellants' Counterclaims given their demonstrated bad faith, willful disobedience or gross indifference to the rights of Respondent and the Orders of the Lower Court during the course of discovery and pendency of the underlying lawsuit.

II. ARGUMENT: THE LOWER COURT PROPERLY GRANTED RESPONDENT'S MOTION TO STRIKE DEMAND FOR JURY TRIAL.

The Lower Court properly granted Respondent's Motion to Strike by the Order dated August 15, 2023, because there is no dispute that Appellants waived all rights to a jury trial pursuant to the express contractual waiver provisions in the Lease Agreement and Guaranty. Appellants can point to no error of law by the Lower Court.

In the Order, the Lower Court specifically states that it considered arguments of counsel at the hearing and the memoranda of law filed by Appellants and Respondent in reaching its decision. At the hearing on May 20, 2023, the Lower Court took into consideration the arguments of counsel and was presented with evidence of Appellants' own deposition testimony admitting that the Lease Agreement and Guaranty were properly executed and enforceable and that Appellants signed specific and express contractual waivers of their rights to a jury trial.

Specifically, at the hearing, Respondent presented clear evidence to the Lower Court of the waiver of jury trial provisions in both the Lease Agreement and Guaranty. Respondent further made a record of the applicable legal standard for construing waiver of jury trial provisions and of the fact that Appellants did not and could not dispute that the Lease Agreement

was properly executed and enforceable. The record establishes that Appellants do not deny that they signed the express contractual waivers of their rights to a jury trial because there is no factual or legal basis to do so. At his deposition, Appellant Anastopoulo testified that he signed the Lease Agreement and the Guaranty of Lease and intended to be bound by their terms and conditions. At the hearing on May 20, 2023, counsel for Appellants conceded that Article 25.10 of the Lease Agreement provided for a waiver of Appellants' right to demand a jury trial. Finally, Appellants presented no evidence and have offered no argument that Article 25.10 of the Lease Agreement or Article 20 of the Guaranty were ambiguous which would require extrinsic evidence to understand their meaning or for the Lower Court to interpret them as a matter of law.

Because the record clearly establishes that the Appellants knowingly, voluntarily, and admittedly waived their rights to a jury trial, the Appellants are forced to put forth legal theories without merit to attempt to attempt to nullify their express waivers of their right to a jury trial. For example, in the Initial Brief of Appellant, Appellants misconstrue the holding in *Wachovia Bank, N.A v. Blackburn*, 407 S.C. 321, 755 S.E.2d (2014), to state a party may not waive the right to a jury trial for compulsory counterclaims; however, the ruling in that case specifically affirms and allows the waiver of a right to a jury trial for compulsory counterclaims in a matter involving a note and a guaranty, which documents and facts are analogous to the waivers by Appellants in this matter. As such, Appellants' argument and reliance on *Wachovia Bank, N.A v. Blackburn* is without merit to demonstrate an error of law but rather supports the decision of the Lower Court and arguments of Respondent.

Furthermore, Appellants seem to argue that the inclusion of a demand for a jury trial in a pleading somehow negates the express contractual waivers of the right to a jury trial contained in the Lease Agreement and Guaranty. Appellants can cite no factual or legal support for its

argument because none exists as that would render the plain language of the contract meaningless and disregard the reality that waivers of right to jury trials must generally and of necessity be raised by motion to strike a demand for jury trial asserted in a pleading asserted by a litigant in direct contradiction to an express contractual waiver- as is the case in this matter.

Appellants can identify no error of law in the decision of the Lower Court to strike Appellants' demand for a jury trial based on the express language in the waiver provisions contained in the Lease Agreement and Guaranty. As such, in reaching its decision to strike Appellants' demand for a jury trial, the Lower Court correctly applied the facts and arguments of record to the controlling law set forth in *Beach Company v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct.App. 2002).

III. ARGUMENT: THE LOWER COURT PROPERLY DISMISSED RESPONDENT'S RULE 59, SCRCP MOTION TO ALTER OR AMEND THE ORDER.

On August 15, 2023, the Lower Court issued an Order granting Respondent's Motion to Strike Demand for Jury Trial and granting Plaintiff's Motion for Rule to Show Cause, and sanctioning the Defendants the sum of $2,500. (R. pp. 5-7). Appellants and Respondent received written notice of the entry of the Order on August 15, 2023. (R. p. 7). Appellants filed their Rule 59, SCRCP Motion to Alter or Amend Judgment on August 28, 2023- or thirteen days from the date of notice of entry of the Order. (R. pp.285-291). As such, due to a simple error in counting legal time on a calendar, Appellants failed to file the Motion to Alter or Amend Judgment within ten days of receipt of written notice of entry of the Order as required by Rule 59(e), SCRCP. Due to Defendants' failure to timely file the Motion to Alter or Amend, the Order converted to a final judgment and is not subject to Defendants' Motion to Alter or Amend, and the Motion to Alter or Amend should be dismissed.

CONCLUSION

For the above-stated reasons, Respondent respectfully requests that the Court dismiss the appeal, affirm the decision of the lower court, and award Respondent its costs in this matter.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the Final Brief of the Respondent complies with Rule 211(b), SCACR.

/s/ Arthur C. Pelzer

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