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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

JOE M. CROSBY, MASTER-IN-EQUITY

APPELLATE CASE NO.: 2020-000597

CRM OF THE CAROLINAS, LLC,

APPELLANT,

v.

TREVOR W. STEEL,

RESPONDENT.

RESPONDENT'S
PETITION FOR REHEARING

July 11, 2024

S/Roger P. Giardino
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Attorney for Respondent

**.PETITION FOR REHEARING WITH SUGGESTION
FOR REHEARING EN BANC**

Pursuant to Rules 219 and 221, SCACR, Trevor W. Steel, Respondent (hereinafter "Steel") hereby petitions this Court for rehearing, and suggests rehearing *en banc*, of its decision in CRM of the Carolinas, LLC, Appellant, v. Trevor W. Steel, Respondent, Unpublished Opinion No. 2024-UP-226 (June 26, 2024), order reversing and remanding this Court's previous order, Unpublished Opinion No. 2023-UP-178 (May 11, 2023). This Petition for Rehearing should be granted as this Court overlooked or misapprehended material points of law and/or facts.

Respondent respectfully requests this Court rehear and reconsider its Unpublished Opinion No. 2024-UP-226. In so requesting, Respondent acknowledges and appreciates this Court's attention to this important matter. Respondent seeks rehearing and reconsideration as to this Court's conclusion that the Master-in-Equity erred in denying Appellant's request for damages and attorney's fees. For the above reasons and those set forth more fully below, this Court should grant this petition for Rehearing, vacate its prior order, 2024-UP-226, and conduct rehearing proceedings.

STANDARD OF REVIEW

"On appeal from an action at law tried without a jury, the appellate court's standard of review extends only to the corrections of errors of law." *Frampton v. S.C. Dep't of Transp.*, 406 S.C. 377, 752 S.E.2d 269, 273-74 (Ct.App. 2014); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 85-86, 221 S.E.2d 773, 775 (1976). The factual findings of the trial judge will not be disturbed "unless a review of the record discloses there is no evidence which reasonably supports [its] findings." *Id.* The rule is the same whether the judge's findings are made with or without, a

reference. The judge's findings are equivalent to a jury's findings in a law action. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) citing Chapman v. Allstate Ins. Co., 263 S.C. 565, 211 S.E.2d 876 (1974).

**THE MASTER-IN-EQUITY ENTERTAINED AND WEIGHED THE PARTIES
ARGUMENTS AND ALL THE EVIDENCE PRESENTED AT TRIAL AND THEN
CORRECTLY RULED ON THIS MATTER WHEN PRESENTED WITH AMBIGUOUS
TERMS OF THE PARTIES MULTIPLE AGREEMENTS**

In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action. Chapman v. Allstate Ins. Co., 263 S.C. 565, 211 S.E.2d 876 (1974). Appellant contends that the employment contract, November 10, 2016 Addendum and March 3, 2017 Addendum are unambiguous. The mere fact that the three documents attempt to alter the classification of the \$50,0000.00 payment three times in a four-month window, coupled with the undisputed fact that the subsequent variations were not supported by consideration clearly illustrates otherwise. Appellant relied on Wallace v. Day, 390 S.C. 69, 700 S.E.2d 446 (S.C. App. 2010). The crux of CRM's legal argument hung on, "when the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court." Wallace, 700 S.E.2d at 449 (citing Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App. 1997). Appellant reliance on such failed when Appellant asserted the following conflicting contention: "the trial court committed an error of law in finding that Steel did not intend to pay the money back if he

was not employed with CRM for three years, or in finding the change in classification of the payment, even if it did change, somehow alleviated his contractual promise.”

When interpreting a contract, a court must ascertain and give effect to the intention of the parties. *Chan v. Thompson*, 302 S.C. 285, 289, 395 S.E.2d 731, 734 (Ct.App.1990). To determine the intention of the parties, the court “must first look at the language of the contract....” *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court. *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997). Whether an ambiguity exists [390 S.C. 75] in the language of a contract is also a question of law. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001).

“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.” *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302. “The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe.” *Pee Dee*, 381 S.C. at 242, 672 S.E.2d at 803. “Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties.” *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 303. “The determination of the parties' intent is then a question of fact.” *Id.* (emphasis added). The Respondent respectfully submits that this Court's decision to reverse and remand is itself ambiguous when attempting to set forth the parties entered into an unambiguous agreement that the parties subsequently modified twice.

The fact that the parties executed three different documents, all containing different terms drafted wholly by the Appellant, in a relatively short period of time is ample evidence to establish the agreement between the parties was ambiguous. Appellant argument that the agreement

between the parties is unambiguous is disingenuous when CRM fails to offer any semblance of an explanation as to why the language drafted by CRM differs between the two addenda and why the March 3, 2017 Addendum fails to include the identical “repayment language” contained in the November 10, 2016. Therefore, the trial court correctly determined the issues presented and properly ruled in favor of Respondent.

CONCLUSION

For the reasons set forth above, in Respondent’s Final Brief with its supporting exhibits, this Court should grant rehearing or rehearing *en banc* in this matter, and vacate its order reversing and remanding its prior Order dated June 26, 2024.

Respectfully submitted,

Giardino Law Firm LLC

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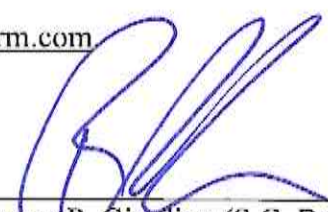
TREVOR W. STEEL,

RESPONDENT.

CERTIFICATE OF SERVICE

I certify that I have served Respondent's Petition for Rehearing on CRM of the Carolinas, LLC by depositing a copy of it in the United States Mail, postage prepaid, and emailing a copy to the primary email address listed in the Attorney Information System on July 11, 2024 to Appellant's attorney of record, J. Clay Hopkins, Hopkins Law Firm, LLC, 171 Church Street, Suite 160, Charleston, SC 29401 and Hopkins Law Firm, PO Box 1885, (12019 Ocean Highway) Pawleys Island, SC 29858, clay@hopkinsfirm.com

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SC Court of Appeals

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Admitted in: NY, DC, SC,
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Certified SC Family & Probate
Court Mediator

July 11, 2024

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

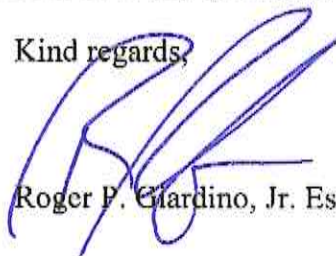
Re: CRM of the Carolinas, LLC v. Trevor W. Steel
Appellate Case No. 2020-000597

Dear Honorable Kitchings:

Enclosed please find this firm's check in the amount of \$50.00 for the filing fee for Respondent's Petition for Rehearing, which was electronically filed with the Court on July 11, 2024.

Please do not hesitate to contact me if you should have any questions.

Kind regards,



Roger P. Giardino, Jr. Esq.

cc: Joseph Clay Hopkins, Esquire
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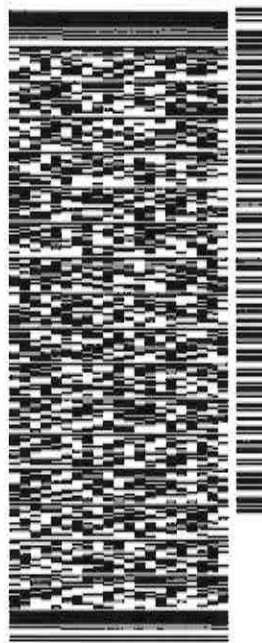
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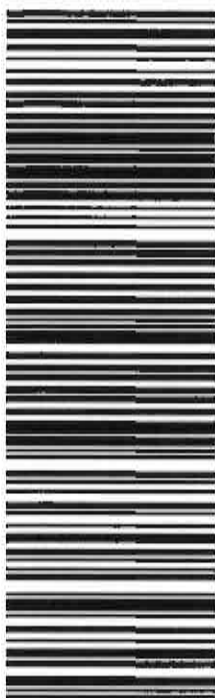
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