

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Durham Cole, Circuit Court Judge

Appellate Case No. 2023-000081

Christian Wienands, Charlotte Muxlow, and
Gregory Muxlow,Appellants,

v.

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel submits that, upon information and belief, he has preserved the issues discussed herein for appeal and that he timely filed a petition for rehearing after the Court of Appeals issued an opinion in this case.

QUESTIONS PRESENTED

- I. Whether Petitioners were deprived of their constitutional right to a trial by jury.
- II. Whether the Trial Court erred in granting summary judgment notwithstanding Petitioners' submission of voluminous evidence showed that fact questions central to the case existed.

STATEMENT OF THE CASE

In 2019, Petitioners entered into a contract with and paid a deposit to Respondents for Respondents to host a wedding for Petitioners to accommodate approximately 200 guests. Shortly thereafter, Coronavirus and government mandates made the wedding impossible for the date planned and governed by the contract. When Petitioners discussed a later date with Respondents, Respondents breached material terms of the contract by nearly doubling the agreed-to price. Because Respondents materially breached the contract with a significant unilateral price increase that was not part of the agreement between the parties, Petitioners requested a refund of their deposit. Respondents refused to return the deposit, despite the fact that Respondents breached the agreement between the parties.

Because Respondents breached the contract at issue and retained money that Petitioners paid pursuant to that contract, Petitioners filed suit in the Greenville County Court of Common Pleas for breach of contract accompanied by a fraudulent act, violation of the South Carolina Unfair Trade Practices Act, quantum meruit, and negligence. Respondents moved to dismiss, arguing that Petitioners may *only* file a breach of contract claim. The trial court rightly denied that motion because Petitioners stated all the elements of their causes of action and provided

voluminous facts supporting those causes of action. Respondents then filed a motion for summary judgment, again arguing Petitioners may only pursue a breach of contract claim. Petitioners submitted and relied on entire deposition transcripts, substantial text message correspondence between the parties, and factual allegations in their verified complaint to rebut the motion for summary judgment.

Notwithstanding Petitioners' evidence – including hundreds of pages of sworn testimony by multiple witnesses, text messages, and a verified complaint – which rebutted the motion and supported Petitioners' claims, the Trial Court granted summary judgment. Petitioners timely filed a SCRCP 59(e) motion to preserve issues for appeal, which was denied. Petitioners then timely filed a notice of appeal, and the Court of Appeals affirmed the Trial Court's grant of summary judgment. Petitioners timely filed a Petition for Rehearing, which was denied. Petitioners now petition this Court for certiorari because the grant of summary judgment clearly violates the law as defined in *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) and SCRCP 56, and it robs Petitioners of their constitutional right to a jury trial.

FACTUAL BACKGROUND

In 2019, Petitioners visited South Wind Ranch, toured the venue, met with staff, and paid a deposit for a wedding to host approximately 200 guests. Petitioners later agreed to pay additional fees to Ashley Black, who works closely with South Wind, in exchange for her wedding planning services. Between the date Petitioners paid the deposit and the date of the planned event, the South Carolina government restricted the number of persons allowed at gatherings – including weddings – and implemented COVID-19 mandates that made Petitioners' wedding impossible.¹ Petitioners

¹ Petitioners originally planned to have a wedding with over 150 people, including at least ten of Charlotte Muxlow's closest relatives from Germany. All of this was understood between the parties before the making of the contract, and South Wind was fully aware that the contracted-for price was for a wedding to include many people, including many from Germany. Because

contacted South Wind Ranch to determine how and when the event they paid for would be rescheduled. Black acknowledged the necessity of moving the event since it could not be held due to government restrictions and told Petitioners that she would provide them with new dates. Petitioners attempted to contact Black multiple times over the following weeks but were unable to reach her. When Petitioners were finally able to speak with Black, she told them that South Wind Ranch had unilaterally doubled the price that Petitioners had agreed to pay and had partially paid.

This came as a surprise to Petitioners because they had bargained for and agreed on a price for a wedding to accommodate 200 guests, many of whom had to travel from Germany. It did not make sense that because government mandates and international travel restrictions made it impossible to have the wedding on the original date that Respondents could nearly double the price of the wedding. Petitioners told Respondents that Petitioners had already partially paid an agreed-to price and tried to resolve the issue with Respondents. Respondents refused to resolve the issue, doubled down on their justification for the unilateral breach and price increase, and made a veiled threat to Petitioners by referring to Petitioners' "legal team."

Left with no other options, and having already spent time and money in reliance on Respondents' assurances and promises, Petitioners filed suit against Respondents for breach of contract accompanied by fraudulent act, unlawful retention of money paid despite failure to render services paid for, and attempts to profit from the pandemic with a unilateral price increase for an event already partially paid for but made impossible by government shut-downs and mandates.

South Wind's fraud and breach forced Charlotte and Gregory to have a make-shift wedding in a national forest without any of Charlotte's family from Germany. Respondents have argued that the wedding was not impossible. It is important to note that Petitioners entered into an agreement with Respondents *for the purpose* of having a large wedding with Charlotte's family from Germany. Once Respondents received Petitioners' money, they refused to provide the contracted-for services and instead used the pandemic to profiteer and unilaterally raise the contracted-for price by several thousand dollars.

Respondents filed a motion to dismiss and argued that Petitioners must bring a breach of contract claim against Respondents instead of the causes of action pleaded in Petitioners' complaint.² The Trial Court denied the motion and allowed all Petitioners' claims to proceed. After Petitioners gathered evidence supporting their claims, Respondents moved for summary judgment, again arguing that Petitioners could only bring a cause of action for breach of contract.

Petitioners submitted significant evidence, including entire deposition transcripts and text messages, to support their claims and to rebut Respondents' motion.³ This evidence far surpassed the threshold to illustrate the existence of a fact question for a jury and to survive a summary judgment motion. Petitioners also pointed the Trial Court's attention to a notarized verification of the complaint, which affirms the allegations of the complaint under oath.

Although the Trial Court had already denied a motion to dismiss based on the same argument, the Trial Court granted Respondents' dispositive motion,⁴ notwithstanding all the evidence submitted by Petitioners. Petitioners timely filed a motion to alter or amend the judgment, which the Trial Court denied. Petitioners timely filed an appeal, and the Court of Appeals affirmed

² Petitioners brought a claim for breach of contract accompanied by a fraudulent act, which necessarily includes a breach of contract claim. If Respondents' argument were correct, every breach of contract accompanied by fraudulent act claim would be dismissed and breach of contract accompanied by fraudulent act would not exist as a cause of action. Similarly, many SCUTPA claims involve breaches of contracts, as trade practice necessarily include sales of goods and services. If SCUTPA claims were subject to dismissal every time a contract was arguably involved, SCUTPA would not exist as a cause of action.

³ The email to the Court, transcripts, and text messages are incorporated by reference herein, will be included within the Record on Appeal, and all provide more than a scintilla of evidence supporting the appellants' claims.

⁴ Petitioners acknowledge that the standard for granting a SCRCP 12 motion is different than the standard for granting a SCRCP 56 motion and includes this information to point out that both of Respondents' motions were based upon their position that Petitioners were required to bring a simple breach of contract claim, which is necessarily contained within a breach of contract accompanied by a fraudulent act claim.

the Trial Court's entry of summary judgment without oral argument. Petitioners' Petition for Rehearing was denied. This timely Petition for Certiorari follows.

ARGUMENT

“The right of trial by jury shall be preserved inviolate...” S.C. Const. art. 1, §14.⁵ “The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.” Rule 38 SCRPC. “All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.” South Carolina Const. § 9.

I. The Supreme Court should grant certiorari because the trial court disregarded entire deposition transcripts, a verified complaint, and documentary evidence, all of which that conflict with, rebut, and refute the evidence Respondents submitted in support of their summary judgment motion.

The circuit court's ruling conflicts with *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) and SCRPC 56 because, if the evidence submitted by Petitioners is taken as true, Respondents breached their agreements with Petitioners, the breaches were accompanied by fraudulent acts, Petitioners were damaged as a proximate result, and Petitioners may recover from Respondents. Petitioners gathered and submitted a wealth of evidence rebutting

⁵ The United States Constitution guarantees Petitioners the right to have a jury determine who breached the contract and other factual issues in this case. Although the Seventh Amendment has never been incorporated against the States, it was clearly intended to guarantee jury trials in all courts because there is no limitation to federal court contained in the Amendment. Federal courts had not been fully created when the Amendment was written, which means most controversies were not litigated in federal court at the time of the drafting of the Amendment, so it does not make sense that the Seventh Amendment jury trial guarantee would only apply to cases filed in federal court. Petitioners preserve this issue for review by the United States Supreme Court.

Respondents' summary judgment motion, and the law requires that Petitioners' evidence be submitted to and weighed by a jury.

Petitioners submitted evidence that Respondents misled them with statements in the making of the contract at issue and that Respondents unilaterally increased the agreed-to price after an unforeseen event – the COVID-19 Pandemic – made it quite literally *impossible* to have a wedding for 200 people, many of whom had to travel from Germany. (Hakala Dep. – R. p. 73, lines 2-9; Black Dep. - R. p. 138, lines 13-22; R. p. 139, lines 16-25; R. p. 18, lines 10-25, R. p. 141, lines 1-4; R. p. 147, lines 13-19). In Paragraph 13 of their verified complaint, Petitioners state that they “relied on statements and assurances made by the defendants and booked the venue for a wedding date.” (R. p. 19, ¶ 13). In Paragraph 17, Petitioners allege that they “relied on Black’s assurances” and Respondents’ confirmation that “they would be allowed to reschedule and that there were many potential dates.” (R. p. 12, ¶ 17). In Paragraph 35, Petitioners state that Respondents “attempted to manufacture a self-serving record with emails,” which contained falsehoods related to Petitioners’ willingness and effort to reschedule the wedding date. (R. p. 24, ¶ 35). Ashley Black’s false statements about the possibility of rescheduling and her work to secure alternate dates is described in Paragraphs 17 through 35 of the verified complaint. (R. pp. 19-24, ¶¶13-35).

Petitioners established, through evidence that was submitted to the Trial Court, that Ron Hakala is engaged in a business that affects commerce and members of the public and is capable of repetition. (Ronald Hakala Deposition Transcript - R. p. 84, lines 8-14; R. p. 84, lines 5-7; R. p. 91, lines 3-6; R. p. 104, lines 4-15; R. p. 109, lines 11-22; Ashley Black Deposition Transcript – R. p. 133, lines 14-17; R. p. 169, lines 18-25). Petitioners also showed through evidence submitted to the Trial Court – text correspondence with Petitioners and Petitioners’ own verified complaint – that Respondents violated the Act, used deception, and nearly doubled the price of a wedding,

unilaterally and in bad faith, all of which damaged Petitioners. The Trial Court should have denied Respondents' summary judgment motion because Petitioners' evidence, taken as true, means Respondents breached a contract with accompanying fraudulent conduct and damaged Petitioners with unfair and deceptive business practices.

The circuit court ignored issues of material fact created by the conflicting evidence submitted by the parties, including, but not limited to:

- whether Respondents misled Petitioners in the inducement of the agreements at issue;
- whether Respondents unilaterally increased the price of an already-agreed to and partially paid-for service;
- whether Respondents were allowed to unilaterally increase the price when unilateral increases are not covered or addressed in the contract at issue, which was drafted by Respondent South Wind Ranch;
- whether Respondents attempted to use the COVID-19 Pandemic to profit from consumers and breach contracts as part of a general business practice;
- whether the wedding to accommodate 200 guests was rendered impossible after the government prohibited gatherings of that size during the date of the planned event; and
- whether Ashley Black unreasonably delayed organizing new dates for a wedding.

Each of these issues of material fact must be weighed by a jury, and it was improper for the Trial Court to determine the issues of fact instead of the jury.

Petitioners supported their claims with evidence, including screenshots showing Respondents' breach, and sworn testimony. Petitioners' verified complaint *alone* should have been

sufficient to survive Respondents' motion for summary judgment.⁶ "A verified complaint is an acceptable substitute for an affidavit at the summary judgment phase as long as the pleading satisfies Rule 56(e)." *Dawkins v. Fields*, 345 S.C. 58, 67, 580 S.E.2d 433, 438 (2003); *See also, Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 471, 570 S.E.2d 197, 203 (2002) ("[t]he facts contained in a verified complaint operate as a substitute for an opposing affidavit for summary judgment when the facts contained in the verified complaint are based on personal knowledge).

Because Petitioners submitted evidence to rebut Respondents' summary judgment motion and submitted a verified complaint, the Trial Court should have denied the motion.⁷ "Summary judgment is proper only when it is clear that 'there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Koester v. Carolina Rental Center, Inc.*, 443 S.E. 2d 392, 384 (1994) citing *Hamilton v. Miller*, 301 S.C. 45, 47, 389 S.E.2d 652, 653 (1990). Petitioners alleged that Respondents used the Pandemic as an excuse to unilaterally increase prices, essentially price-gouging Petitioners, and supported those allegations with the evidence contained in the Record on Appeal (emails from Respondents telling Petitioners that Respondents are unilaterally increasing the price of the service). The Trial Court sat in the place of the jury when it decided those factual issues, which is improper, not only under SCRC

⁶ Although the complaint's caption does not read as a verified complaint, Petitioners submitted a verification via letter to the Court. A clocked copy of that verification is contained within the Record on Appeal. (R. p. 27).

⁷ Even if Respondents were correct that Petitioners were required to proceed on a breach of contract claim, the circuit court should not have usurped the jury's role in deciding fact questions about mutual assent, performance, and breach and instead should have allowed Petitioners to amend the complaint. (Pursuant to Rule 15(a) SCRC, "leave to amend shall be freely given "when justice so requires." SCRC.) Instead, the circuit court improperly made factual determinations of whether there was fraud in the making of the contract, who breached the contract, whether retention of money paid for something that later became impossible was allowed, and other fact questions that must be answered only by a jury.

56(c) and the case law interpreting the rule, but also under the South Carolina Constitution and the United States Constitution.⁸

The Trial Court found that, “[t]he 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 problem with this conclusion is that Respondents’ substantial unilateral increase of the price after the deposit was made was not part of any bargained-for exchange, and Petitioners submitted evidence – indeed proof – that Respondents unilaterally and substantially increased the price in breach of the contract between the parties. A jury must weigh the evidence submitted by Petitioners that Respondents breached the agreement between the parties and that wedding for 200 people including German residents was impossible during the Pandemic. This Court should grant certiorari so that a jury may weigh that evidence as required by the law.

The emergent, unambiguous fact question is whether the parties to the contract intended for one party to have the ability to unilaterally alter material terms of the contract. South Carolina law requires that a jury, not a judge, “...ascertain and give legal effect to the parties’ intentions.” *Butler v. Travelers Home & Marine Ins. Co.*, 433 S.C. 360, 366-67, 858 S.E.2d 407, 410 (2021). The Trial Court’s 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 genuinely argued that Petitioners *intended* to pay for half of a wedding to accommodate 200 people and then be subject

⁸ Although the Seventh Amendment has never been fully incorporated as to the States, it clearly provides a right to a jury trial in both state and federal courts and should be incorporated. Petitioners preserve this issue for further appellate review.

to arbitrary and bad-faith price hikes after a global pandemic made the agreed-to wedding impossible. Further, what the parties intended, as shown by the contracts and all the evidence submitted, is a fact question for a jury. The four corners of the document drafted by Respondents certainly does not grant them authority to double the price of a wedding because an unforeseeable global event necessarily delayed the event. At a minimum, Petitioners are entitled to an inference that they did not intend to give Respondents the power to nearly double the price of the agreed-to price on a whim. “[E]vidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” *Pye v. Estate of Fox*, 633 S.E.2d 505 (Sup. Ct. 2006); *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004). “If triable issues exist, those issues must go to the jury.” *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct.App.2005).

In reviewing the Trial Court’s decision, the Court of Appeals found that Petitioners’ “arguments regarding their entitlement to a jury trial is without merit.” Petitioners respectfully submit that this language does not square with the requirement that is bolstered and reaffirmed in case after case that the jury alone is the judge of facts and inferences. *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006) (reversing an award of summary judgment and stating “the evidence is susceptible to more than one reasonable inference, and therefore should be submitted to the jury.”); *Callawassie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022) (stating as to a motion for summary judgment, “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.”) *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994): (stating “On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party.”) The Trial Court granted, and the Court of Appeals affirmed, Respondents’ motion for summary judgment in spite

of significant evidence that demonstrates the existence of genuine issues of fact, which our Constitution **requires** to be determined by a jury. S.C. Const. art. 1, §14.

Simply put, Petitioners rebutted Respondents' summary judgment motion with ample sworn testimonial evidence, a verified pleading, and correspondence with Respondents that, at a minimum, demonstrate that the facts decided by the Trial Court are in dispute. The Trial Court invaded the function of the jury when it decided the factual issues of whether a breach occurred, who committed the breach, and whether the breach was justified. Petitioners alleged breach by Respondents and supported the allegation with evidence, which the Trial Court disregarded. Petitioners' allegations and the evidence which conflict with and rebut Respondents' motion created genuine fact questions for a jury to decide. The entry of summary judgment violated Article I, Sec. 14 of the South Carolina Constitution, SCRPC 56, *Kitchen Planners*, and its progeny. Petitioners respectfully submit the Supreme Court should grant certiorari to correct the error.

II. The Supreme Court should grant certiorari because dismissal of Petitioners' case violates the constitutional requirement that a jury determine the factual disputes created by conflicting evidence submitted by the parties.

The South Carolina Constitution requires that the right to a jury trial for civil cases be preserved "inviolable." S.C. Const. art. 1, §14. See also, SCRPC 38(a). This language bolsters the already unambiguous language of the United States Constitution, which reads "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..." U.S. Const. amend. VII.⁹ Petitioners have a right to a jury trial for both their

⁹ Although the Seventh Amendment has not been fully incorporated against the States, it clearly guarantees the right to a jury trial in all cases where the amount in controversy exceeds twenty dollars in all state and federal courts. See *Pelfrey v. Bank of Greer*, 270 S.C. 691, 244 S.E.2d 315 (1978). There is no language in the Seventh Amendment that limits the right to a jury trial. At the time the Seventh Amendment was drafted, most controversies were not heard in federal courts, which had not yet been constitutionally created. Because the right is so important that it appears

common law causes of action and their statutory cause of action under the South Carolina Unfair Trade Practices Act. The United States Supreme Court has “...considered the applicability of the constitutional right to a jury trial in actions enforcing statutory rights ‘as a matter too obvious to be doubted.’” *Curtis v. Loether*, 415 U.S. 189 (1974) (quoting *Parsons v. Bedford*, 3 Pet. 433 (1830)). See also *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962) and *Hepner v. United States*, 213 U.S. 103 (1909)).

Petitioners completely lost their right to a jury trial under the constitutions of South Carolina and the United States because the Trial Court, instead of a jury, decided all the fact questions related to their case. In doing so, the Trial Court also denied Petitioners’ right to Due Process in having a fair trial decided by a jury of their peers. See *Smith v. Phillips*, 455 U.S. 209 (1982). Both the South Carolina Constitution and the United States Constitution require that Petitioners be allowed to have the fact questions raised by their verified complaint, sworn testimonial evidence, and documentary evidence – including correspondence between the parties about the contracts and breaches at issue – determined by a jury. Viewing the allegations of the verified complaint in a light most favorable to Petitioners, Respondents engaged in deceptive business practices, engaged in fraud in making and then breaching a contract, and unfairly benefited at Petitioners’ expense by retaining money paid for a service made impossible by government restrictions and a global pandemic. Petitioners had the right to have those questions of fact determined by a jury. The Trial Court denied Petitioners their constitutional rights by improperly making factual determinations.¹⁰

in both the Bill of Rights and the body of the United States Constitution, and because the Framers clearly intended the guarantee to extend to all courts, Petitioners have preserved this issue for review by this Court and the United States Supreme Court.

¹⁰ The Trial Court also violated Petitioners’ rights under the Equal Protection clause because it treated them differently than similarly situated litigants who are afforded their constitutional right to a jury trial and allowed to proceed with their claims.

CONCLUSION

Because the Trial Court ignored all of Petitioners' evidence and decided central fact questions in dismissing the case, it violated the requirement under South Carolina law that genuine issues of material fact be determined by a jury. The Trial Court also violated the constitutional requirement that Petitioners' right to have a jury decide their case be preserved, inviolate. Petitioners therefore respectfully request the Supreme Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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