

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
Appellant Case No. 2022-001224

Palmetto Construction Group,

Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward

Appellants.

APPELLANTS' PETITION FOR REHEARING

NOW COMES the Appellants, Restoration Specialists,, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, by and through their undersigned counsel, who respectfully petition this Court pursuant to Rule 221 of the South Carolina Appellate Court Rules to rehear a single issue in this case and reconsider its opinion regarding the entry of judgment against Mark and Lynette Ward individually on the breach of contract damages considering the legal authorities and points discussed below that Appellants believe that this Court overlooked or misapprehended.

In support of this petition, the Appellants, Restoration Specialists, LLC, Reuben Mark Ward and Lynette Pennington Ward submit the following:

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INTRODUCTION

Opinion No. 6083 was filed by the South Carolina Court of Appeals on August 14, 2024. Regarding the entry of judgment against Mark and Lynnette Ward individually on the breach of contract damages, the Court found that under the two-issue rule¹, it was required to affirm the breach of contract damages award against Mark and Lynnette Ward individually.

LAW/ANALYSIS

This Court should grant rehearing and reconsider its opinion regarding the entry of judgment against Mark and Lynette Ward individually on the breach of contract damages considering the following legal authorities and points that Appellants believe that this Court overlooked or misapprehended:

1. Breach of contract was not pled by Respondent against Mark and Lynnette Ward individually and the judgment against Mark and Lynnette Ward individually on the breach of contract damages is fatally defective; accordingly, the “two-issue” rule does not apply.

Respondent’s cause of action for “breach of agreements” was alleged only against Appellant Restoration Specialists, LLC. (R. pp. 47-8). A judgment must be in accord with the pleadings of the party in whose favor it is rendered, or it is fatally defective. *Blackburn and Co., Inc. v. Dudley*, 289 S.C. 415, 418, 338 S.E.2d 151, 153 (1985) (citing *Brockington v. Lynch*, 119 S.C. 273, 112 S.E. 94 (1922) (holding there can be no recovery upon a cause of action that is in substance variant from that which is pleaded by the plaintiff.”). Furthermore, a plaintiff may not have the benefit of the “two issue” rule where an issue submitted to the jury is not included in the pleadings. *Id.*

In this non-jury action with the master sitting as the trier of fact, the judgment included an award from the master for breach of contract damages against Mark and Lynnette Ward individually. A claim for breach of contract damages against the Wards individually was not pled in Respondent’s Complaint. Thus, the portion of the master’s judgment awarding such damages is fatally defective and Respondent is not entitled to the benefit of the “two-issue” rule. *Id.*

¹ *Graves v. Horry-Georgetown Tech. Col.*, 391 S.C. 1, 8, 704 S.E.2d 350,354 (Ct. App. 2010).

2. Since Appellants appealed the Master’s Order dated August 1, 2022 in its entirety, the two-issue rule does not apply.

In its decision, the Court cited *Graves v. Horry County* for the proposition that “[u]nder the two-issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the *appellant appeals all grounds*” (*emphasis added*). Appellants appealed the Master’s Order dated August 1, 2022 in its entirety, thereby appealing all grounds (procedural and substantive) contained therein. *See* Notice of Appeal. (R. pp. 569-570).

3. Since Appellants did argue the procedural grounds (as well as substantive grounds) in their briefs, the two-issue rule does not apply.

In its decision, the Court opined that “Appellants make no mention of the procedural grounds in their argument.” On this basis, the Court relied upon the “two-issue” rule and affirmed the fatally defective judgment awarding breach of contract damages against Mark and Lynnette Ward individually. In the Section entitled **Statement of the Case – C. Damages Hearing** of Appellant’s Reply Brief and in response to Respondent’s allegations that “Appellants moved to reconsider all of the Master’s February 2022 orders (Motions to Reconsider), but never sent copies of the motions to the trial court, as required by Rule 59(g)”, Appellants argued, *inter alia*, that its Motion to Reconsider was filed electronically, thereby providing the Court with a copy upon filing. *See also* R. p. 456 for electronic filing date stamp. SCRCP 53 and notes thereto provide that once a case is referred, a master-in-equity shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter, including, scheduling of the time and place of all hearings to the master. In fact, the master’s office in Charleston County includes a staff attorney as a Scheduling & Roster Clerk. (R. pp. 1013-4).

August 29, 2024

s/ A. Bright Ariail

A. Bright Ariail
SC Bar #69570
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412
(843) 814-8805

Warren W. Ariail
SC Bar #6514
Ariail Law Firm, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412
(843) 406-7528

Attorneys for Appellants

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PROOF OF SERVICE

I certify that I have served Appellants' Petition for Rehearing on Palmetto Construction Group by emailing a .pdf copy of the same to its counsel of record, on this 29st day of August, 2024, addressed to the recipient attorney's primary e-mail address listed in the South Carolina Attorney Information System as shown below:

Jann G. Rannik
Epting & Rannik, LLC
46A State Street
Charleston, South Carolina 29401
jgr@epting-law.com

Michelle N. Endemann
497 St. Andrews Blvd.
Charleston, SC 29407
mendemann@clarksonwalsh.com

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s/ A. Bright Ariail
A. Bright Ariail
SC Bar #69570
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412
(843) 814-8805
Attorney for Appellants