

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM YORK COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Daniel D. Hall, Circuit Court Judge

Opinion No. 2024-UP-281 (S.C. Ct. App. Filed July 31, 2024)

Eastwood Construction Partners, LLC and
Eastwood Development Corporation,

Appellants,

v.

GHD Brooks Creek, a North Carolina Limited Liability Company; AF-Brooks Creek, LLC, a North Carolina Limited Liability Company; GHD Rivers Falls, LLC, a North Carolina Limited Liability Company; AF-River Falls, LLC, a North Carolina Limited Liability Company; GreenHawk Corporation, Inc.; and TRI Pointe Homes, Inc.

Respondents.

RESPONDENTS' RETURN BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. STATEMENT OF THE CASE.....	1
II. STATEMENT OF UNDISPUTED FACTS	3
III. STANDARD OF REVIEW	6
IV. ARGUMENT	6
A. The Court of Appeals correctly concluded that no genuine issue of material fact existed concerning the creation of an enforceable contract because Appellants admitted that no contract existed and the parties did not agree on lot prices.	7
B. The Court of Appeals correctly concluded that takedown schedule was a material term of any alleged contract for the sale of the properties.....	10
C. The Court of Appeals’ holding that no joint venture existed does not create a conflict with this Court’s precedent.	11
D. The Court of Appeals’ conclusion that the Circuit Court did not abuse its discretion does not conflict with this Court’s precedent.....	13
V. CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Anderson v. Hall</i> , 155 S.C. 320, 152 S.E. 521 (1930)	9
<i>Bayle v. S.C. Dept. of Transp.</i> , 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....	14
<i>Dawkins v. Fields</i> , 354 S.S. 58, 580 S.E.2d 433 (2003).....	14
<i>Eastwood Const. Partners, LLC v. GHD Brooks Creek</i> , No. 2022-290, 2024 WL 3595536 (S.C. Ct. App. July 31, 2024).....	passim
<i>Edens v. Laurel Hill, Inc.</i> , 271 S.C. 360, 247 S.E.2d 434 (1978)	8, 9
<i>Ellis v. Taylor</i> , 316 S.C. 245, 449 S.E.2d 487 (1994).....	8
<i>Fleming v. Rose</i> , 350 S.C. 488, 567 S.E.2d 857 (2002)	7, 8, 11, 12
<i>Lanham v. Blue Cross & Blue Shield of South Carolina, Inc.</i> , 349 S.C. 356, 563 S.E.2d 331 (2002)	13, 14
<i>McPeters v. Yeargin Const. Co., Inc.</i> , 290 S.C. 327, 350 S.E.2d 208 (S.C. Ct. App. 1986).....	9
<i>N. Am. Rescue Prods., Inc. v. Richardson</i> 411 S.C. 371, 769 S.E.2d 237 (2015)	9
<i>Speed v. Speed</i> , 213 S.C. 401, 49 S.E.2d 588 (1948)	10, 11
<i>Stephens v. Stephens</i> , 213 S.C. 525, 50 S.E.2d 577 (1948)	12
<i>Tiger, Inc. v. Fisher Agro, Inc.</i> , 301 S.C. 229, 391 S.E.2d 538 (1989)	12
<i>Trident Const. Co. v. Austin Co.</i> , 272 F. Supp. 2d 566 (D.S.C. 2003).....	9

Welling v. Crosland,
129 S.C. 127, 123 S.E.2d 776 (1924) 12

Weston v. Kim's Dollar Store,
399 S.C. 303, 731 S.E.2d 864 (2012) 8

Rule

S.C. App. Ct. R. 242(b)..... 6

I. STATEMENT OF THE CASE

Appellants Eastwood Construction Partners, LLC (“Eastwood Construction”) and Eastwood Development Corporation (“Eastwood Development”)¹ commenced this action in July 2020, almost six years after Eastwood *Development* assigned to GreenHawk² its contracts to purchase two separate tracts of land in York County, South Carolina known as “Brooks Creek” and “River Falls.” (R. pp. 142-78). In their initial Complaint, Appellants claimed that GreenHawk breached separate contracts to sell lots within two subdivisions known as Brooks Creek and River Falls to Eastwood *Construction*. (*Id.*). As a result of these alleged breaches, Appellants sought from the Circuit Court an order of specific performance as well as an award of actual and exemplary damages. (*Id.*). Appellants attached to their initial Complaint a *lis pendens* that they had filed against each subdivision tract in June 2020. (*Id.*).

As the litigation proceeded, Appellants amended their Complaint several times. Appellants’ First Amended Complaint added TRI Pointe, the party that ultimately purchased Brooks Creek, as a defendant. (R. pp. 114-21). Appellants’ Third Amended Complaint, the operative pleading in this action, added a claim contending that GreenHawk breached duties owed to Appellants due to an alleged partnership or joint venture that existed between Appellants and GreenHawk. (R. pp. 71-83).

In late 2021, following voluminous document exchanges between the parties and a series of depositions, GreenHawk and TRI Pointe each filed motions for partial summary judgment seeking dismissal of Appellants’ claims for specific performance and all claims directly affecting

¹ Eastwood Construction and Eastwood Development are *separate* entities. Appellants’ brief repeatedly fails to distinguish between the two entities, referring to them collectively as “Eastwood.”

² The term “GreenHawk” is used in this brief to refer collectively to all of the Respondents except TRI Pointe Homes, Inc. (“TRI Pointe”).

title to Brooks Creek and River Falls. (R. pp. 892-94, 936-37). Appellants opposed each motion, arguing mainly that they did not have sufficient discovery and that the record as developed showed a genuine dispute of material fact as to the existence of a contract. (R. pp. 328-359).

The Circuit Court granted Respondents' motions in written Orders that rested on several grounds. (R. pp. 22-39). First, the trial court concluded, the alleged contracts for the sale of Brooks Creek and River Falls to Eastwood Construction were unenforceable because the parties had left material terms open for further negotiation. (R. pp. 24-30). Second, the court held any such contracts would be barred by the Statute of Frauds. (R. pp. 27-30, 36-38). Third, the evidence did not support Appellants' allegations that Appellants and Greenhawk were partners or joint venturers. (R. p. 25). Finally, the trial court concluded, because none of Appellants' remaining claims affected title to the properties, the *lis pendens* on the properties should be cancelled. (R. pp. 22-30, 32-38).

Appellants timely moved that the Circuit Court reconsider both of its summary judgment orders—motions that the Circuit Court denied. (R. pp. 16-21). Appellants then timely filed notices of appeal of the Circuit Court's orders. (R. pp. 179-91, 1387-88).

Following Appellants' appeal, Respondents asked the Circuit Court to lift the automatic stay and cancel the notices of *lis pendens* encumbering the subject properties—a motion that was granted by Order dated April 18, 2022. Appellants then petitioned both the Court of Appeals and this Court to reverse the Circuit Court's order lifting the automatic stay and cancelling the *lis pendens*, but those petitions were denied.

Thereafter, the Court of Appeals held oral argument and affirmed the Circuit Court's orders in an unpublished opinion. Specifically, the Court of Appeals held that (1) there was not a meeting of the minds as to the essential elements of a contract; (2) Appellants and Greenhawk were not

joint venturers; and (3) Appellants did not demonstrate that further discovery would uncover additional, relevant evidence that would create a genuine dispute of material fact. *Eastwood Const. Partners, LLC v. GHD Brooks Creek*, No. 2022-290, 2024 WL 3595536 (S.C. Ct. App. July 31, 2024).

Appellants moved for rehearing, which was denied on October 8, 2024. Appellants then filed their Petition for Writ of Certiorari on November 7, 2024.

II. STATEMENT OF UNDISPUTED FACTS

This action arises out of a failed negotiation for the sale of two parcels of land in York County, South Carolina. (*See R.* pp. 23-24). The material facts of the case are both uncomplicated and undisputed.

As a land developer, GreenHawk purchases raw land and contracts for residential and commercial construction improvements. (*Id.*). Although Eastwood Development and Eastwood Construction share common ownership, they are separate entities. (*R.* pp. 1199:1-1200:6). Like GreenHawk, Eastwood Development develops land for construction improvements, whereas Eastwood Construction is a home builder. (*See id.*).

In or about 2013, Eastwood Development identified two separate parcels of land in York County that would become the location for the Brooks Creek and River Falls planned subdivisions. (*R.* p. 23). Eastwood Development entered into contracts to purchase these parcels from third parties. (*Id.*). Prior to closing on the parcels, Eastwood Development assigned its purchase contracts to GreenHawk, and GreenHawk entities instead purchased the parcels. (*Id.*). The actual purchasers of the tracts were AF-Brooks Creek, LLC and AF-River Falls, LLC, which were GreenHawk affiliates formed for the specific purpose of purchasing the Brooks Creek and River Falls parcels. (*R.* p. 23, nn. 3-4).

It is undisputed that, when Eastwood Development assigned its purchase contracts for Brooks Creek and River Falls to GreenHawk, it was Appellants' "general understanding" that GreenHawk entities would incur the costs of developing the property. (*See, e.g.*, R. p. 1303, DT p. 27:5-13;³ p. 1103:1-8; p. 1104:10-13; p. 23). To do so, GreenHawk entities would follow-up from initial steps taken by Eastwood Development and build two separate subdivisions. (*Id.*).

It was also the parties' "general understanding" that after GreenHawk's development, the parties would attempt to negotiate the terms for Eastwood Construction's purchase of the lots in River Falls and Brooks Creek. (R. p. 23). In particular, with respect to Brooks Creek, Eastwood Construction's representative testified that GreenHawk and Eastwood would have to engage in further negotiations to "come up with a specific agreement on lot price," a "specific agreement on a takedown schedule" and the deposit to be paid by Eastwood Construction. (R. p. 1304, DT p. 30:10-16, 17-24; *id.* at DT p. 31:10-15). That same representative testified in his individual capacity that lot price and takedown schedule were "going to be two essential terms of any lot purchase agreement" with GreenHawk. (R. p. 1225:8-13).

As Appellants' representatives have admitted time and again, Eastwood Construction and GreenHawk were never able to agree on the material terms of a contract for Eastwood Construction to purchase lots in Brooks Creek or River Falls. Appellants' fatal admissions on this point are exhaustively set forth in GreenHawk's and TRI Pointe's briefs in support of their respective motions for partial summary judgment. (R. pp. 360-64; pp. 453-62). The Circuit Court relied on "this substantial amount of [undisputed] evidence" when granting GreenHawk's and TRI Pointe's motions. (*See* R. pp. 24-25). In particular:

³ The transcript that was included in the Record for the 30(b)(6) Deposition of Joe Polite contains four deposition transcript pages on each individual Record page. In an effort to avoid confusion, citations to that transcript will include both the Record page number ("p.") as well as the deposition transcript page number ("DT p.").

- On October 18, 2016, Eastwood Construction’s Vice-President for Land Joe Polite sent an email to Allen Nason, Eastwood Construction’s in-house counsel, saying “[r]emember how just yesterday you were teaching me the importance of having a contract for lots when transferring or assigning property to a developer? It hit me last night VERY hard that that was not done with Greenhawk on 3 properties that I know: River Falls, Brooks Springs, and Kanata.” (R. p. 1253) (emphasis in original).
- On October 26, 2016, Polite wrote another email to Clark Stewart, Eastwood Construction’s owner, saying that “we are exposed on the pricing of [the River Falls and Brooks Creek] projects since there was never a contract put into place with Greenhawk when we assigned them these properties.” (R. p. 1252).
- Just 23 days before Appellants filed their initial Complaint in this action, Polite admitted in an email to a GreenHawk representative that “there was never a ratified contract for the repurchase of the lots” in Brooks Creek. (R. p. 1265).⁴
- Polite confirmed in his May 2021 deposition that Eastwood Construction and GreenHawk would have had to agree on a lot price and takedown schedule for Brooks Creek and River Falls, which were “two essential terms of any lot purchase agreement.” (R. p. 1224:1-25; p. 1225:8-1226:15).
- Polite confirmed in his October 2021 deposition as Eastwood Construction’s 30(b)(6) representative that, as of the date of his deposition, there had been no agreement between Appellants and GreenHawk with respect to the Brooks Creek lot price, takedown schedule, or deposit amount. (R. p. 1302, DT p. 23:14-25:5). He admitted during the same deposition, that, if Eastwood Construction prevails in this action, “a lot price is still going to have to be determined.” (R. p. 1306, DT p. 38:2-14).
- Polite admitted in his 30(b)(6) deposition that no agreement exists between Eastwood and GreenHawk to purchase River Falls in its semi-finished state. (R. p. 1320, DT p. 94:7-17). He further confirmed that Eastwood Construction has never made an offer for River Falls outside of settlement discussions associated with this lawsuit. (R. p. 1321, DT p. 98:25-99:8).

After an agreement with Eastwood Construction failed to materialize, GreenHawk eventually contracted to sell Brooks Creek to TRI Pointe and River Falls to non-party Taylor Morrison Homes. (R. p. 24, n.5).

⁴ Tellingly, in this email, Polite asks only for reimbursement of Eastwood Construction’s pre-development expenses and makes no mention of any alleged right to purchase the Brooks Creek tract from GreenHawk. Only after GreenHawk rejected Polite’s reimbursement demand did Eastwood Construction claim—in this lawsuit—an entitlement to specific performance.

III. STANDARD OF REVIEW

A writ of *certiorari* is not a matter of right, but of judicial discretion, and will be granted only where there are special and important reasons. S.C. App. Ct. R. 242(b). Although the Appellate Court Rules do not specifically define what are “special and important” reasons, the following factors “indicate the character of reasons which will be considered”: (1) there is a novel question of law; (2) there is a dissent in the Court of Appeals; (3) the decision of the Court of Appeals is in conflict with a prior decision of this Court; (4) substantial constitutional issues are directly involved; and (5) a federal question is included in the Court of Appeals’ decision that is in conflict with a prior decision of the United States Supreme Court. *Id.*

IV. ARGUMENT

Having failed to convince either the Circuit Court or the Court of Appeals to overlook the repeated admissions of their own representatives that no enforceable contract existed for the sale of the Brooks Creek and River Falls subdivisions, Appellants now bring that futile effort to this Court. Appellants do not—because they cannot—claim that *certiorari* is warranted here because this case presents a novel question of law, a substantial constitutional question, a conflict with federal law, or a split decision from the Court of Appeals. Instead, Appellants claim only that the Court of Appeals erroneously applied South Carolina’s well-established summary judgment and discovery standards in a way that conflicts with this Court’s precedent.

Appellants are mistaken. The Court of Appeals correctly noted that “Eastwood’s documents, emails and the testimony of its employees Joe Dority and Joe Polite show that Eastwood did not have a contract with Greenhawk.” *Eastwood Const. Partners, supra*, 2024 WL 3595536, at *2. Likewise, citing and relying on this Court’s precedent, the Court of Appeals properly accepted the testimony of Appellants’ own representative that a takedown schedule for the subdivision lots was an essential term of any contract that had not been agreed upon. *Id.* at *3-

4. Again relying on undisputed testimony and citing precedent from this Court, the Court of Appeals held that the parties were not joint venturers because, among other things, they did not intend to share in the profits and expenses of the enterprise. *Id.* at *4-5. And finally, the Court of Appeals soundly concluded that Appellants were not entitled to take an additional deposition because (i) Appellants offered no good reason for not having taken the deposition during the year and a half that the case had been pending prior to the summary judgment hearing and (ii) further discovery was unnecessary in light of the admissions of Appellants' own representatives that no contract existed. *Id.* at *5.

In short, the Court of Appeals applied South Carolina's well-established summary judgment and discovery standards in a manner routinely applied by our courts to cases in which facts are undisputed and in which parties have had ample time to complete discovery prior to a summary judgment hearing. Appellants' disagreement with the Court of Appeals' straightforward application of those standards is just that—a disagreement. It does not constitute a “special and important” reason justifying a writ of *certiorari*.

A. The Court of Appeals correctly concluded that no genuine issue of material fact existed concerning the creation of an enforceable contract because Appellants admitted that no contract existed and the parties did not agree on lot prices.

Appellants first argue that the Court of Appeals created a conflict with this Court's precedent by not properly considering the evidence and inferences in the light most favorable to Appellants when determining whether the parties had agreed on lot prices. (Cert. Pet. 7-12 (citing *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002))). To the contrary, however, the Court of Appeals both acknowledged and applied this standard, accepting the writings and testimony of Appellants' own representatives that no contract between the parties existed because lot price had not been determined.

The Court of Appeals expressly acknowledged its obligation to “construe all ambiguities, conclusions, and inferences arising from the evidence against” Respondents. *Eastwood Const. Partners, supra*, 2024 WL 3595536, at *1 (quoting *Weston v. Kim's Dollar Store*, 399 S.C. 303, 308, 731 S.E.2d 864, 866 (2012)). Appellants agree that this is the right standard. (Cert. Pet. 12 (“the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party) (quoting *Fleming*, 350 S.C. at 493, 567 S.E.2d at 860)). They argue only that the Court of Appeals applied that standard incorrectly.

Appellants are wrong. This Court’s precedent makes clear that an enforceable contract requires the parties to agree to all essential terms, which include price, time, and place. *E.g., Edens v. Laurel Hill, Inc.*, 271 S.C. 360, 364, 247 S.E.2d 434, 436 (1978) (“Some terms are considered indispensable to a binding contract. Among these are price, time and place.”) When negotiating parties leave such essential terms open for future agreement, the contract is void for indefiniteness. *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994).

As the Court of Appeals observed, Appellants’ own testimony and documents show that no enforceable contract for the subject property ever existed. *Eastwood Const. Partners, supra*, 2024 WL 3595536, at *3. In particular, Appellants’ representative Joe Polite repeatedly admitted, both when testifying in his individual capacity and as Eastwood Construction’s corporate designee, that Eastwood Construction and GreenHawk never reached agreement on all material terms for the sale of lots in Brooks Creek or River Falls. Polite conceded that “further negotiations and discussions” were required to determine the specific price Eastwood Construction would pay for the lots and the deposit that it would pay toward the lots. (R. p. 1304, DT p. 30:10-31:21; p. 1225:8-13; p. 1237:2-13). Polite also admitted that these and other material terms of the contract

were to be agreed to *in the future*, once GreenHawk had a better idea of its development costs. (R. p. 1203:6-11; p. 1204:9-22).

This sort of “agreement to agree”—which leaves material terms open for future agreement and determination—is precisely the sort of arrangement that South Carolina courts have time and again recognized as unenforceable. *See, e.g. Anderson v. Hall*, 155 S.C. 320, 152 S.E. 521 (1930) (finding a contract unenforceable because it was too “indefinite and uncertain”); *Trident Const. Co. v. Austin Co.*, 272 F. Supp. 2d 566, 575 (D.S.C. 2003) (“[a]greements to agree do not amount to a contract in South Carolina.” (citations omitted); *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (“Provisions which are essentially agreements to agree in the future have no legal effect.”). Like the agreements found unenforceable in these cases, the allegedly “clear” agreements for a GreenHawk affiliate to sell Brooks Creek and River Falls to Eastwood Construction is void for indefiniteness.

Undaunted by this undisputed testimony, Appellants contend that the parties reached a definite agreement that lot prices would be calculated so that GreenHawk would receive a 20% return. (Cert. Pet. 8). In support of this argument, Appellants point to deposition testimony and certain “pro formas” discussed by the parties which, they say, show a projected rate of return “near” 20%. (Cert. Pet. 10).

To be sure, a contract need not establish a definite price for real property if the contract sets forth a *definite method* for ascertaining price. *McPeters v. Yeargin Const. Co., Inc.*, 290 S.C. 327, 331, 350 S.E.2d 208, 211 (S.C. Ct. App. 1986) (citing *Edens, supra*) (emphasis added). But as the Court of Appeals concluded, the testimony and documents cited by Respondents in support of their “20% return” argument does not give rise to a genuine issue of material fact as to whether such a “definite method” was agreed to by the parties. GreenHawk’s representative testified only

that GreenHawk “[t]ypically . . . [tried] to get sort of a 20 percent IRR number. Some were more . . . Some were less.” (R. p. 958, at 55:6-56:20). The Court of Appeals correctly characterized this and other deposition testimony cited by GreenHawk as reflecting only a “discussion” about a method for determining lot price—not a definite agreement. *Eastwood Const. Partners, supra*, 2024 WL 3595536, at *3.

The two pro formas cited by Appellants similarly offer no support for their alleged contract. Appellants’ evidentiary deficiency on this score is best indicated by their own description of the pro formas, which, they say, show “a projected [return] *near* 20% for both Properties.” (Cert. Pet. 10 (citing R. pp. 1018-1028, 1033) (emphasis added)). Pro formas with a projected return of only *near* 20% do not provide evidence of a *definite* method for ascertaining the price for the properties. Indeed, the two pro formas do not even reflect the same figure. One document indicates a projected return of 20.2%, while the other indicates 16.4%. (R. pp. 1018-1028; 1033).

For the foregoing reasons, the Court of Appeals properly applied the summary judgment standard and concluded that no genuine issue of material fact existed as to whether the parties had agreed to a definite price for the subject parcels.

B. The Court of Appeals correctly concluded that takedown schedule was a material term of any alleged contract for the sale of the properties.

Citing *Speed v. Speed*, 213 S.C. 401, 49 S.E.2d 588 (1948), Appellants next contend that the Court of Appeals created a conflict with this Court’s precedent by holding that a lot takedown schedule was an essential term of any contract between GreenHawk and Eastwood Construction for the sale the subject tracts. (Cert. Pet. 13-15). Appellants’ argument, however, incorporates a limitation into *Speed* that was not part of this Court’s opinion.

Citing *Speed*, Appellants unequivocally declare that “the timing of a property sale is not, as a matter of law, an essential term.” (Cert. Pet. 13). That is not what this Court said in *Speed*,

however. The full sentence from this Court’s opinion in *Speed* is: “The general rule, however, sustained by many authorities, is that time is not of the essence of a contract to convey land *unless made so by its terms expressly, or by implication from the nature of the subject matter, the object of the contract, or the situation or conduct of the parties.*” 213 S.C. at 412, 49 S.E.2d at 593 (italics added). In other words, it is not an inflexible rule that time is never of the essence in a land sales contract (as Appellants contend), only that it is a *presumption* that can be displaced by numerous other circumstances, one of which is the understanding of the parties.

As the Court of Appeals observed, Eastwood Construction’s Joe Polite acknowledged that a lot takedown schedule was an “essential term” of any agreement between the parties for the sale of the properties. (R. pp. 1225:8-1226:15), cited at *Eastwood Const. Partners, supra*, 2024 WL 3595536, at *3-4. Mr. Polite also testified that the parties never agreed to a takedown schedule for either property. (R. p. 1224:1-25; R. p. 1302, DT p. 24:15-20). In light of Mr. Polite’s unequivocal concession that the parties considered the lot takedown schedule to be an essential material term, the Court of Appeals’ acceptance of that concession is entirely consistent with this Court’s holding in *Speed*. Appellants’ contention to the contrary should be rejected.⁵

C. The Court of Appeals’ holding that no joint venture existed does not create a conflict with this Court’s precedent.

Appellants’ third argument challenges the Court of Appeals’ holding that there exists no genuine issue of material fact concerning the existence of a joint venture between GreenHawk and Eastwood. (Cert. Pet. 15-17). Appellants characterize the Court of Appeals’ decision on this point as being in conflict with this Court’s precedent in *Fleming*, which requires a court to review the

⁵ Appellants attempt to support their argument about the immateriality of takedown schedules with observations about the governmental approval process for subdivision plats. (Cert. Pet. 14). As evidenced by Appellants’ lack of citation for these observations, they are not part of the record and should not be considered.

evidence and all reasonable inferences in the light most favorable to the non-movant when ruling on a motion for summary judgment. (Cert Pet. 17 (citing *Fleming* 350 S.C. 488, 567 S.E.2d at 860)).

Appellants' argument fails for two reasons. First, Appellants again ask this Court to reverse a lower court's application of summary judgment standards simply because Appellants disagree with the outcome, not because that disagreement rises to the level of a "special and important reason" warranting *certiorari*. Second, the undisputed evidence demonstrates that GreenHawk and Appellants were not engaged in a joint venture because they had no right to control one another, nor did they have a duty to share in profits and losses.

As this Court and as the Court of Appeals have acknowledged, a joint venture is a species of partnership. *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 238, 391 S.E.2d 538, 543 (1989) ("Relations among joint venturers are governed by partnership law."); *Welling v. Crosland*, 129 S.C. 127, 141, 123 S.E.2d 776, 781 (1924) ("Practically the only difference between a 'joint adventure' and a 'partnership' is that a partnership is ordinarily for the transaction of a general business of a particular kind, while a joint adventure relates to a single transaction."); *Eastwood Const. Partners, supra*, 2024 WL 3595536, at *4 (citing *Tiger* and *Welling*. Two factors critical to determining whether a partnership (and, thus, a joint venture) exists are sharing of profits of losses and equal control of the business. *Stephens v. Stephens*, 213 S.C. 525, 532, 50 S.E.2d 577, 580 (1948).

Here, as the Court of Appeals concluded, the record unequivocally shows that Appellants and GreenHawk did not have a right to control each other and did not share in the profits and losses of the enterprise. The lack of equal control is evidenced by Appellants' continual efforts to get GreenHawk to agree to a written contract for the transfer of the properties. (*See* R. p. 1253 ("Do

you have any record of these transfers and is there any way we can *regain control of these properties?*") (emphasis added); R. p. 1252 ("Guys, we are exposed on the pricing of these projects since there was never a contract put into place with GreenHawk when we assigned them these properties.")). If the parties had a mutual right to control one another, Appellants would not have needed to "regain control" of the properties.

Moreover, undisputed testimony from Appellants' representatives proves that there was no joint profit or loss agreement between Appellants and GreenHawk. (*See, e.g.*, R. p. 1242:5-12 (admitting that there is no joint profit or loss agreement between Eastwood and GreenHawk); R. p. 1308, DT p. 48:3-8 ("Q: Was there an agreement in principle that Eastwood is going to share a profit and loss on both River Falls and Brooks Creek? A: *We were not anticipating sharing the profit with Greenhawk.*") (emphasis added); R. p. 1312, DT p. 65:2-7 ("Q: Was there any prior deal, to your knowledge, in which there was an agreement to share the net profit or loss on the project? A: Not to my knowledge.")). Without the ability to control one another and a duty to share in the profits and losses, the parties cannot be joint venturers.

D. The Court of Appeals' conclusion that the Circuit Court did not abuse its discretion does not conflict with this Court's precedent.

Finally, Appellants argue that the Court of Appeals "misapprehended the facts" on Appellants' argument that they should have been permitted to take further discovery prior to the entry of summary judgment. (*See* Cert Pet. 17-20). This argument fails for at least three reasons.

First, Appellants have failed to identify a conflict between the Court of Appeals' opinion and this Court's precedent on this issue. Appellants contend that the Court of Appeals' opinion conflicts with this Court's holding in *Lanham v. Blue Cross & Blue Shield of South Carolina, Inc.*, 349 S.C. 356, 563 S.E.2d 331 (2002). (Cert. Pet. 17-20). *Lanham* stands only for the well-settled principle, however, that Rule 56(f) prohibits entry of summary judgment until the non-movant

“has had a full and fair opportunity to complete discovery.” *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334. However, as Appellants concede, a non-movant can succeed on a Rule 56(f) argument only when it demonstrates that it is likely that further discovery will uncover additional relevant evidence and that the party is not “merely engaged in a fishing expedition.” *Dawkins v. Fields*, 354 S.S. 58, 69, 580 S.E.2d 433, 439 (2003).

The Court of Appeals acknowledged and heeded these principles. *Eastwood Const. Partners*, 2024 WL 3595536, at *5 (quoting *Dawkins*, 354 S.C. at 69, 580 S.E.2d at 439). The Court of Appeals concluded that Appellants failed to show that further discovery would uncover additional, relevant evidence because Appellants’ own representatives, emails, and documents showed that the parties never agreed to the essential, material terms of a contract. *Id.* at *5. Once again, Appellants’ mere disagreement with the Court of Appeals’ decision does not give rise to a conflict with this Court’s precedent or otherwise constitute a “special and important reason” justifying *certiorari*.

Second, Appellants misapprehend the role of the appellate courts in reviewing discovery orders. When the Court of Appeals is faced with an argument regarding discovery, its role is limited to determining whether the trial court committed an abuse of discretion. *Bayle v. S.C. Dept. of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001) (holding that trial court did not abuse its discretion before refusing plea for additional discovery before ruling on summary judgment motion). Appellants’ misunderstanding of the limited scope of review on this issue is apparent in its insistence that the Court of Appeals “misapprehended the facts” on Appellants’ discovery arguments. (Cert. Pet. 17-19). What Appellants ignore is that the Court of Appeals’ review on discovery issues is limited to determining whether the Circuit Court abused its discretion in declining to permit more discovery. Appellants’ generalized complaints about the information

they believe they were entitled to pursue fail to present a special and important reason meriting this Court's review.

Finally, even assuming that this Court should consider the merits of Appellants' argument, Appellants are wrong on the merits. According to Appellants, the "Court of Appeals misapprehended the facts about discovery" because (1) the evidence showed there was a pricing mechanism for the properties; (2) Appellants did not get to depose⁶ and fully inspect the records of GreenHawk's president; and (3) Appellants purportedly did not learn about the importance of GreenHawk's president until August 2021. (Cert. Pet. 18-20).

Yet, the evidence shows that further discovery would have made no difference. Appellants' arguments all fall flat because, as the lower courts correctly recognized, no amount of additional discovery from GreenHawk could cure the repeated fatal admissions by Appellants' depositions that pepper the record. The Circuit Court acted well within its discretion when it determined that Appellants were not entitled to additional discovery prior to granting partial summary judgment, and the Court of Appeals created no conflict with this Court's precedent when it affirmed the trial court's exercise of its discretion.

V. CONCLUSION

Because Appellants have failed to identify special and important reasons as to why this Court should exercise its discretion to review the Court of Appeals' opinion, Appellants' petition should be denied.

⁶ Nothing prohibited Appellants from deposing GreenHawk's president. They chose instead to notice the depositions of other witnesses.

Respectfully Submitted this 9th day of December, 2024.

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