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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2022-001587

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315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, ... Respondents/Appellants,

v.

Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PBLH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, ... Appellants/Respondents.

PETITION FOR REHEARING

Appellants/Respondents ("Palmetto Bluff"), pursuant to Rule 221(a), SCACR, respectfully submit this Petition for Rehearing. Rehearing is appropriate here because this Court's decision overlooks and/or misapprehends multiple points of fact and law, proper consideration of which would have led to reversal of the circuit court's order denying arbitration. *See* Rule 221(a), SCACR.

BACKGROUND

Respondents/Appellants ("Plaintiffs") are a small group of property owners in the Palmetto Bluff premier residential/resort community. It is undisputed that Plaintiffs had an abundance of choice in deciding whether to purchase homes in this award-winning community. Plaintiffs do not contend that vacation homes, second homes, or luxury homes are necessities, and Palmetto Bluff is far from the only developer of luxury homes in the Lowcountry and other desirable coastal areas. Many Plaintiffs are out-of-state purchasers who bought their properties for commercial investment and/or who have transferred title to their limited liability companies or other closely held entities.

In purchasing a property from Palmetto Bluff, the owner executes a Palmetto Bluff Club Membership Agreement that contains an arbitration agreement. Additionally, the Club operates pursuant to the Membership Plan, which also contains an arbitration agreement. The core text of both arbitration agreements is identical, and provides:

> [A]ny and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement [or "Membership Plan"], including, but not limited to, the breach or alleged breach of this Membership Agreement [or "Membership Plan"], shall be resolved by mandatory arbitration **in accordance with the Commercial Arbitration Rules of the**

> **American Arbitration Association (the "Rules") then in effect** . . . **applying the substantive laws of South Carolina**.

(R. 376; 524 (emphasis added).) Each Membership Agreement also states that each member acknowledges receipt of the Membership Plan and agrees to be bound by all of its respective terms and conditions, as they may be amended from time to time. (R. 375 (Agreement § V).)

Plaintiffs' properties are all located in the designated area for short-term rentals, and their dissatisfaction with lack of short-term renter access to Club amenities drives the multiple claims asserted in their complaint. Plaintiffs' claims thus arise directly from the documents containing the arbitration agreements that Plaintiffs now seek to avoid.

On July 24, 2024, this Court issued its Order affirming circuit court's summary judgment ruling that relieved Plaintiffs' from their contractual agreements to arbitrate these disputes. First, the Court held "[a]s a threshold matter" that because the arbitration agreements call for application of "the substantive laws of South Carolina," the South Carolina Uniform Arbitration Act[1] controlled to the exclusion of the Federal Arbitration Act.[2] (Slip. Op. at 5.) Second, and following from its holding that the SCUAA applied rather than the FAA, the Court held that even though the arbitration clauses incorporated the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), and even though such rules delegate to the arbitrator questions of the existence and validity of the agreement to arbitrate, South Carolina law requires that a court determine the

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[1] S.C. Code Ann. §§ 15-48-10 to -240 ("SCUAA").

[2] 14 U.S.C. §§ 1-16 ("FAA").

validity of the arbitration clauses. (Slip Op. at 5-7.) Third, the Court affirmed the circuit court's determination that the arbitration clauses are unconscionable. (Slip Op. at 7-11.) In reaching this conclusion, this Court held that Plaintiffs—undeniably sophisticated purchasers of luxury homes, several operated as short-term rental properties—lacked choice or bargaining power just like the average buyer of an ordinary primary residence from a large national tract developer. The Court then held that the terms of the arbitration clauses are unconscionable because (1) language outside the arbitration clause allows for "unilateral modification" of the parties' contracts; and (2) the arbitration clauses prohibit an award of trebled damages. The Court did not consider the severability of the purportedly unconscionable terms.

In light of its determination that the arbitration clauses are unconscionable, the Court did not reach the remaining issues raised by Palmetto Bluff in support of reversal.[3]

ARGUMENT

I. The Court's Application of the SCUAA Violates Settled Rules of Contract Construction

The Circuit Court ruled that the SCUAA applied on the grounds that "[t]he development of real property does not involve interstate commerce." (R. 6 (Order at 6).) The parties' appellate briefs argued this issue at length. In particular, Palmetto Bluff explained:

> [T]his case . . . turns on Plaintiffs' claims that various Palmetto Bluff governing documents are being used to restrict access to Palmetto Bluff Club amenities by short-term renters. The renters include persons from outside South Carolina, as Plaintiffs market their

[3] The Court dismissed Plaintiffs' cross-appeal of the Circuit Court's denial of their motion for summary judgment. (Slip Op. at 11.)

> properties to renters nationwide . . . . Plaintiffs complain, not about their real estate purchases, but about how the Club's operation hurts their rental businesses. The eight out-of-state Plaintiffs show that the Club serves out-of-state customers, and thus its operation involves interstate commerce.

(Final Appellants' Br. of Appellants-Respondents, at 13-14 (record references & case citations omitted).) Neither Palmetto Bluff nor Plaintiffs ever argued, either before the Circuit Court or in their appellate briefs, that the arbitration agreements' reference to "the substantive laws of South Carolina" mandated application of the SCUAA rather than the FAA. (Slip Op. at 5.) This issue was raised for the first time by the Court during oral argument.

The Court should grant rehearing because its holding that the reference to "the substantive laws of South Carolina" mandates application of the SCUAA to the exclusion of the FAA is contrary to binding precedent of the South Carolina Supreme Court and the United States Supreme Court.

"Unless the parties have contracted to the contrary, the FAA applies in Federal or State Court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). "Parties are free to enter into a contract providing for arbitration under rules established by state law rather than rules established by the FAA," but such an intention must be expressed in the contractual language. *Id.* at 538 n.2, 542 S.E.2d at 353 n.2; *see Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019) (arbitration is a matter of contract).

Importantly, "[g]eneric choice of law provisions cannot be used to incorporate into

an arbitration agreement a state law which would be preempted by the FAA." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 593, 553 S.E2d 110, 116 (2001). As support for this rule, the Supreme Court relied on its prior decision in *Osteen v. T.E. Cuttino Construction Co.*, 315 S.C. 422, 434 S.E.2d 281 (1993). *Osteen* deserves careful scrutiny, as the Supreme Court considered materially identical circumstances to this case but reached the opposite result.

In *Osteen*, the parties' arbitration agreement required arbitration pursuant to the AAA's Construction Industry Arbitration Rules and also provided that the contract "shall be governed by the law of the place where the Project is located." *Id.* at 423-24, 434 S.E.2d at 282. The Osteens contended that this general choice-of-law provision required application of the SCUAA, and therefore the arbitration agreement was invalid because it did not meet the SCUAA's notice requirements, which otherwise would have been preempted by the less-stringent requirements of the FAA. *See id.* at 424-25, 434 S.E.2d at 282-83. Our Supreme Court rejected this argument, reasoning as follows:

> In the contract before us, [the choice-of-law provision] and [the arbitration clause] create an ambiguity when read together. These two provisions may be construed as either (1) requiring the arbitrators to apply South Carolina law to disputes arising under the contract, or (2) encompassing state substantive and arbitration law to the exclusion of the FAA.
>
> A court must construe an ambiguous contract in a manner that gives effect to all of its provisions, if the court reasonably may do so. . . . In accordance with these principles, we hold that the "arbitration" clause . . . comprises the parties' agreement to submit their disputes to arbitration. We further hold that the "governing law" provision . . . indicates the parties' agreement to have the validity and construction of the contract determined by arbitrators according to the substantive law "of the place where the Project is located."

Id. at 427, 434 S.E.2d at 284. On this basis, the Court concluded that the FAA, rather than

the SCUAA, controlled as to questions of the validity of the arbitration agreement. *See id.*

Osteen is on all fours with the United States Supreme Court's subsequent decision in *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1993), which also involved a contract containing an arbitration provision and a general choice-of-law provision, which in *Mastrobuono* called for the application of New York law. Contrary to the FAA, New York law prohibits arbitrators (but not courts) from awarding punitive damages. Thus, in *Mastrobuono*—just as in *Osteen* and in this case—the core question was whether this general choice-of-law provision expressed the parties' intention to have state arbitration law, rather than the FAA, control the scope of the arbitration award. *See id.* at 59. Just as our Supreme Court did in *Osteen*, the *Mastrobuono* Court rejected this proposition, reasoning that "[a]t most, the choice-of-law clause introduces an ambiguity into an arbitration agreement that would otherwise allow punitive damages awards," and such ambiguities must be resolved in favor of arbitration. *Id.* at 62. The Court also relied on the rule of contract construction "that a document should be read to give effect to all its provisions and to render them consistent with each other." *Id.* at 63. The *Osteen* Court likewise applied this principle. *See Osteen*, 315 S.C. at 427, 434 S.E.2d at 284.

Although the facts here are materially indistinguishable from the facts of *Osteen* and *Mastrobuono*, this Court reached the opposite result, relying on *Volt Information Sciences v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989). *Volt* is distinguishable, however. Unlike in *Mastrobuono*, *Osteen*, and this case, it appears the choice-of-law provision and arbitration agreement were in separate parts of the *Volt*, so there was not the same ambiguity in *Volt* as there was in *Mastrobuono* and *Osteen*, where

the arbitration agreement itself provided for both non-state arbitration rules and application of state law. Moreover, the arbitration agreements here specify application of only the "*substantive* laws of South Carolina"—making it even more clear that state *procedural* rules on arbitration do not apply. *See Osteen*, 315 S.C. at 427, 434 S.E.2d at 284 (distinguishing between "state substantive law and arbitration law").

Accordingly, rehearing is warranted so that the Court can reconsider its analysis in light of the controlling decisions in *Osteen* and *Mastrobuono*.

In light of its decision that the parties had contracted for application of the SCUAA, the Court did not reach the question of whether the contracts involved interstate commerce. As explained at length in Palmetto Bluff's opening and reply briefs, the dispute here centers on Plaintiffs' participation in the nationwide market for short-term rentals, an activity that clearly occurs in interstate commerce. *See* Final Appellants' Br. of Appellants-Respondents, at 13-17; Final Reply Br. of Appellants-Respondents, at 3-5.

II. The Arbitration Agreements' Delegation Clause Precluded the Circuit Court from Ruling on Arbitrability

Rehearing should also be granted as to this Court's ruling that "the question of the arbitration agreement's existence was properly before the circuit court because disputes about *contract formation* (such as unconscionability) are reserved for the courts." (Slip Op. at 5 (emphasis in original).) The Court correctly recognized that "parties can delegate questions of arbitrability," including "whether an arbitration agreement is valid," and that the AAA Commercial Arbitration Rules explicitly provide for this. (Slip Op. at 5-6.) Nevertheless, the Court ruled that arbitrability must be decided by the circuit court. (Slip

Op. at 6.)

The Court's refusal to enforce the delegation of this issue contravenes Supreme Court authority on the point. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 65, 67–68 (2019). If the AAA Rules conflict with South Carolina law, the FAA resolves the conflict in favor of Rule R-7. *See Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). The FAA allows parties to agree to have an arbitrator decide "whether the parties have agreed to arbitrate," *Henry Schein*, 586 U.S. at 67–68, including through the "delegation provision" in the AAA rules. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 72 (2010); *Terminix Int'l Co., LLP v. Palmer Ranch Ltd. P'ship*, 432 F.3d 1327, 1332 (11th Cir. 2005). Moreover, when the parties have agreed to delegate unconscionability to the arbitrator, a court must "treat [the delegation provision] as valid … and must enforce it" unless the party claiming unconscionability "challenged the delegation provision specifically." *Rent-A-Center*, 561 U.S. at 72. Here, Plaintiffs did not specifically challenge the delegation provisions.

The Court's ruling contravenes not only the foregoing cases, but also cannot be reconciled with the decisions the Court itself cites. For example, the Court relied on *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2 663 (2007). (Slip Op. at 6.) But *Simpson* clearly recognizes that arbitrability is a question for the court *only if the parties have not provided otherwise*, as they did here. *Id.* at 23, 644 S.E.2d at 667 (quoting *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118). Moreover, the Court's ruling is contrary to its own recent decision holding that the court "retains the right and duty to determine whether the delegation is valid and enforceable" only "as long as the party resisting arbitration

has made a direct and discreet challenge to the validity and enforceability of the delegation clause specifically, rather than the arbitration agreement as a whole." *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). Again, Plaintiffs did not specifically challenge the delegation clause. The question of arbitrability should be decided by the arbitrator.

III. The Arbitration Agreements Are Not Unconscionable

The Court should also grant rehearing as to its holding that the arbitration agreements are unconscionable because (1) Plaintiffs lacked meaningful choice in accepting the arbitration agreement; and (2) the terms of the arbitration agreements are oppressive and one-sided. (Slip Op. at 7-11.) As to lack of meaningful choice, the Court's reasoning fails to account for the facts of this case, which are that Plaintiffs are sophisticated purchasers of optional luxury homes (not primary residences), some of which are used as investments in the short-term rental business. As to the purported oppressiveness and one-sidedness of the arbitration terms, the Court failed to recognize that any improper term in the arbitration agreements can simply be severed, thereby preserving the parties' contractual agreement to arbitrate their disputes.

A. Plaintiffs Had a Meaningful Choice

Determining whether an arbitration agreement is tainted by an absence of meaningful choice is fact- and context-specific. *See Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 755 (2022) ("A determination of whether a contract is unconscionable depends upon all the facts and circumstances of the case.") Critically, in deciding whether an absence of meaningful choice taints a contract term, courts must

consider *all* of the facts and circumstances, including "the parties' relative sophistication." *Id.* at 613, 879 S.E.2d at 775 (emphasis added).

Contrary to the case-by-case determination required by *Damico*, this Court simply and uncritically applied the *general* proposition that a buyer of new residential construction "is *normally* in an unequal bargaining position as against the seller." *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 50, 790 S.E.2d 1, 4 (2016) (emphasis added). The Court failed to give effect to the undisputable and uncontested reality that Plaintiffs are not typical purchasers of a primary residence. They are, as the Court acknowledged, "wealthy purchasers of secondary homes." (Slip Op. at 8.) Indeed, Plaintiffs do not dispute their own sophistication or the supporting evidence in the record. Moreover, the properties at issue in *Damico* were primary homes, lived in by the plaintiffs, who were all individuals. *See* First Am. Compl., *Damico v. Lennar Carolinas, LLC*, No. 2014-CP-08-02424, 2015 WL 13780350 (S.C. Com. Pl. Nov. 23, 2015). In contrast, the homes at issue here are luxury second homes, often for out-of-state purchasers, often held by limited liability companies, and often purchased as investments for rental business. Indeed, some Plaintiffs had previously bought property in Palmetto Bluff.

The *Damico* court could have adopted a blanket rule that purchasers of new residential construction are *always* in an inferior bargaining position *vis-à-vis* the seller, but it did not. It merely recognized that the typical home buyer is "normally" in an unequal bargaining position. By not adopting a blanket rule, the *Damico* Court necessarily recognized that not all home buyers are "typical." Some, like Plaintiffs here, operate with a high level of sophistication and choice. *Damico* requires this Court to consider and give

effect to these differences. Rehearing is necessary so the Court can conduct this analysis.

B. The Arbitration Agreements Are Neither Oppressive Nor One-Sided

Rehearing is also, or alternatively, necessary as to the Court's ruling that the terms of the arbitration agreements are oppressive and one-sided.[4] The Court's conclusion that the arbitration agreements are rendered unconscionable by the provision allowing for unilateral modification of the contract and by the provision precluding an award of treble damages. (Slip Op. at 8-10.) Rehearing should be granted as to both of these determinations.

As to unilateral modification, the Court misapprehended the applicable law. Multiple courts have held that a provision allowing one party the unilateral right to amend a contract does not invalidate an arbitration provision where the right to amend is not contained within, or specific to, the arbitration provision itself. *See Hill v. Peoplesoft USA, Inc.*, 412 F.3d 540, 544 (4th Cir. 2005); *Hicks v. Brookdale Senior Living Communities, Inc.*, 2018 WL 4560591, at *4 (D.S.C. Mar. 13, 2018).

The Court recognized this principle, including by citing *Peoplesoft*, but then disregarded it, holding that "although the language permitting unilateral modification to the contract is located outside the arbitration clause itself, it is not located in a *separate policy*." (Slip Op. at 9 (emphasis added).) The Court also tried to tie the modification

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[4] If the Court determines on reconsideration that Plaintiffs had the ability to exercise meaningful choice, it would be unnecessary to reconsider the question of whether the terms are oppressive and one-sided. By the same token, if on rehearing the Court agrees that the terms are not oppressive and one-sided, it need not reconsider whether Plaintiffs had a meaningful choice.

provision to the arbitration agreements by noting that the clause regarding modification states that it applies to "the documents in which the arbitration agreement is located." (*Id.*)

The Court's reasoning on this point is contrary to established law. "Most courts hold that companies can unilaterally amend any procedural term if the underlying contract includes a change-of-terms clause." David Horton, *The Shadow Terms: Contract Procedure And Unilateral Amendments*, 57 UCLA L. Rev. 605, 649 (2010). Among these is the North Carolina Supreme Court, which recently held that "traditional modification analysis which requires mutual assent and consideration does not apply to changes stemming from a valid unilateral change-of-terms provision in an existing contract"; rather, actual unilateral changes are valid so long as they "reasonably relate back to the universe of terms discussed and anticipated in the original contract" and thus comply with the obligation of good faith and fair dealing. *Canteen v. Charlotte Metro. Credit Union*, 386 N.C. 18, 23, 28, 900 S.E.2d 890, 894 898 (2024). *Canteen* specifically rejected the argument, adopted by Court here, that the mere presence of a unilateral modification provision renders a contract illusory. *Id.* at 26–27, 900 S.E.2d at 897; *see also Tompkins v. 23andMe, Inc.*, 840 F.3d 1016, 1032 (9th Cir. 2016) (noting that "the implied covenant of good faith and fair dealing prevents a party from exercising its rights under a unilateral modification clause in a way that would make it unconscionable").

Thus, if (contrary to the weight of authority) the mere presence of a unilateral amendment provision can invalidate an agreement at all, it cannot invalidate an arbitration agreement unless the unilateral modification clause is within the arbitration

agreement itself, or at the very least is specific to the arbitration clause. For example, in *Coady v. Nationwide Motor Sales Corp.*, 32 F.4th 288 (4th Cir. 2022), the court found the requisite specificity where the modification provision appeared in an acknowledgement form, and the arbitration agreement explicitly referenced the acknowledgement form. *See id.* at 290, 292. Here, unlike in *Coady* or the other cases cited by the Court, the provision allowing for unilateral amendment does not reference the arbitration agreements, nor do the arbitration agreements reference the provision allowing for unilateral amendment. Thus, the circumstances that would tie the two provisions together are simply absent, and it was error for the Court to determine that the unilateral modification provision rendered the arbitration agreements unconscionable.

Next, rehearing is warranted with respect to the limitation on remedies, first, because the Court failed to apply case law recognizing that until the arbitrator is called to interpret and apply remedy limitations in an arbitration agreement, the outcome is uncertain and "the proper course is to compel arbitration." *Rowe v. AT&T, Inc.*, 2014 WL 172510, at *11 (D.S.C. Jan. 15, 2014). *Rowe* considered *and rejected* the same argument Plaintiffs here made and that this Court erroneously accepted. The proper course was for the arbitrator to address, in the first instance, the scope of the available remedies.

Apart from this, rehearing on this issue is also warranted because the Court failed to consider whether the limitation on remedies, to the extent it might render the arbitration agreements unconscionable, could be severed and the remainder of the agreements enforced. It is well settled that a court may sever an unconscionable provision from an arbitration clause, even if the arbitration clause does not contain a severability

provision. *See Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 370, 887 S.E.2d 534, 542 (Ct. App. 2022). The strong federal policy favoring arbitration suggests that where severance is possible, it should be employed to preserve the parties' agreement to arbitrate. Too, as noted, the Community Charter itself contemplates severance when necessary to comport with South Carolina law. **Cite to come.**

IV. The Court's Decision Undermines the Federal Policy Favoring Enforcement of Valid Arbitration Agreements and Denigrates the Parties' Right to Contract as They See Fit

Last, but by no means least, rehearing is necessary because the Court's reasoning and decision evince precisely the kind of hostility to, and suspicion of, arbitration that the FAA was meant to overcome and that South Carolina courts have long since abandoned. *See, e.g.*, *Doe*, 430 S.C. at 616, 846 S.E.2d at 881 (recognizing that the purpose of the FAA was to "revers[e] the judicial hostility against arbitration"); *Munoz*, 343 S.C. at 540-41, 542 S.E.2d at 364 (recognizing "liberal policy favoring arbitration").

Plaintiffs purchased their Palmetto Bluff properties with their eyes wide open and of their own free choice. None of the Plaintiffs *had* to purchase a home (or, in the case of some Plaintiffs, more than one home) in Palmetto Bluff—they could have chosen not to purchase a luxury residence, or to purchase from another developer, in another community in South Carolina or elsewhere. Those Plaintiffs who purchased their properties as investments for short-term rentals had every incentive to review and understand the terms of Club membership and dispute resolution. And, it is undisputed that Plaintiffs are wealthy individuals with much greater sophistication than the typical buyer of a primary residence.

V. On Rehearing, the Court Should Reverse the Circuit Court and Remand with Instructions to Enter an Order Compelling Arbitration

As a result of its holding that the arbitration agreements are unconscionable and unenforceable, the Court did not reach a number of issues raised by Palmetto Bluff on appeal, including without limitation its arguments as to why all Plaintiffs should be bound to arbitrate their disputes with Palmetto Bluff. Palmetto Bluff expressly preserves, and does not waive, all issues and arguments presented in its briefs that were not reached by the Court in its Opinion.

CONCLUSION

For the reasons set forth above, Palmetto Bluff respectfully requests rehearing of the Court's Opinion of July 24, 2024.

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Respectfully submitted,

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PROOF OF SERVICE

I certify that I served the foregoing **Petition for Rehearing** on Respondents/Appellants by emailing a copy of the same to the following counsel of record for Respondents/Appellants using the primary email address listed in the Attorney Information System.

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