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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas The Honorable Bently D. Price, Circuit Court Judge

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Appellant Case No. 2024-001197
Civil Action Case No. 2022-CP-23-05339

John M. Hornbeck, III ……Respondent

v.

Milton A. Gatlin …….. Appellant

INITIAL BRIEF OF RESPONDENT

Respectfully submitted,

s/ Wendell L. Hawkins
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March 27th, 2025
Greenville, South Carolina

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COUNTER-STATEMENT OF THE CASE

On or about July 31, 2017, Plaintiff, Milton Gatlin ("Gatlin") entered into a contract with Custom Castles Roofing and Construction, Inc. ("CC") to replace a roof and the siding of Gatlin's house located at 105 Silver Pine Ct. Greer, SC 29650 (the "Contract"). The repairs were necessitated by a hail storm and the damage was covered by the homeowner's insurance policy. The parties agreed that the cost of the repairs would be $21,313.95 and Gatlin has paid CC a total of $19,546.61 by check no. 1026 ($11,346.61) and check no. 1002 ($8,200.00) leaving $1,767.34 owed to CC. Plaintiff then claimed several defects with workmanship. CC went back to the house to address the concerns and Gatlin demanded that they remove and replace all of the siding and roofing. When CC refused, Gatlin ordered CC to leave his property. CC left the property and Gatlin hired other contractors to remove all of the siding and roofing and to replace them. After the roof and siding were replaced, Gatlin brought this action against CC, Custom Castles Construction, LLC and John M. Hornbeck, III for Breach of Contract, Quantum Meruit, Breach of Contract Accompanied by a Fraudulent Act, Negligent Misrepresentation, Fraud or Fraud in the Inducement, Negligence, Unfair Trade Practices, Disregard of the Corporate Entity. The initial case, 2018-CP-23-00695, was filed February 7, 2018. The case was dismissed pursuant to SCRCP Rule 40(j) on September 20, 2021 and restored to the active docket on September 26, 2022 bearing case number 2022-CP-23-05339. Once the case was restored to the active docket, Respondent immediately filed its Motion for Summary Judgment on September 16, 2022. On November 17, 2022, the Respondent served a notice of hearing for the February 22, 2023 Motion for Summary Judgment. Respondent filed its Memorandum in Support on February 13, 2023. (Memorandum in Supp.; R. pp. ___). Appellant accepted service of the Memorandum in Support on February 14, 2022. Appellant filed its Memorandum in Opposition

on February 21, 2023) (R. p. ___). The Motion for Summary Judgement was heard on February 22, 2023 and the Form 4 Order granting the motion was entered on March 20, 2023. (R. p. ___). Appellant filed its Motion to Reconsider on March 29, 2023 (R. pp. __) which was formally denied by the Order of June 28, 2024. (R pp. ___) The Noice of Appeal was filed on July 18, 2024.

STANDARD OF REVIEW

a. Summary Judgment-In General

In reviewing a grant of summary judgment, our appellate court applies the same standard as the trial court under Rule 56(c), SCRCP. Quail Hill, LLC v. County of Richland, 387 S.C. 223, 692 S.E.2d 499 (2010). Summary judgment is proper if, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP; *Id*. at 505. Summary Judgment should be granted only if there is no genuine issue as to any material fact of the litigation. Rule 56, SCRCP. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005); Montgomery v. CSX Transp., Inc., 362 S.C. 529, 608 S.E.2d 440 (Ct.App.2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Montgomery v. CSX Transp., Inc., 376 S.C. 37, 656 S.E.2d 20 (2007) (Shearouse Adv. Sh. No. 1 at 11); Bargus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991); Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 605 S.E.2d 744 (Ct.App.2004). The Court of Appeals reviews a grant of summary judgment using the same "yardstick" as the trial court: it views the

facts in the light most favorable to the non-moving party, and draws all reasonable inferences in her favor. Abdelgheny v. Moody, 432 S.C. 346, 852 S.E.2d 225 (Ct. App. 2020).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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. Rule 56(c), SCRCP; Hansson v. Scalise Builders of South Carolina, 374 S.C. 352, 650 S.E.2d 68 (2007); Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005); BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct.App.2005). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004).

Our Supreme Court has recently clarified the standard for a non-moving party to overcome a motion for summary judgment in cases where the standard of proof is a "preponderance of the evidence."

In Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023), our Supreme Court revisited the "mere scintilla standard." The Court wrote,

> "Rule 56(c) became effective in 1985. Rule 86(a), SCRCP. In most cases applying Rule 56(c), this Court and our court of appeals have applied the "genuine issue of material fact" standard set forth in the Rule, requiring the party opposing the motion show a "reasonable inference" to be drawn from the evidence, and we have rejected the "mere scintilla" standard. *See, e.g.*, 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"); Russell v. Wachovia Bank, N.A., 353 S.C. 208, 219 n.4, 578 S.E.2d 329, 334 n.4 (2003) ("The standard for summary judgment 'mirrors the standard for a directed verdict under Rule50(a)' [SCRCP]." (quoting Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991))); Baughman, 306 S.C. at 115, 410 S.E.2d at 545 (holding a party opposing summary judgment "must ... 'do more than simply show that there

> is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a *genuine issue for trial.*' " (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986)); Shelton v. LS & K, Inc., 374 S.C. 294, 297, 648 S.E.2d 307, 308 (2007) ("The existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." (citing Bravis v. Dunbar, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (1994))); *462 Dickert v. Metro. Life Ins. Co., 306 S.C. 311, 313, 411 S.E.2d 672, 673 (1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993) (stating "the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment") (citing Anderson, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214)).[8] *But see* **301 Anders v. S.C. Farm Bureau Mut. Ins. Co., 307 S.C. 371, 375, 415 S.E.2d 406, 408 (1992) ("At the summary judgment stage of the proceeding, it was only necessary for the Defendant to submit a scintilla of evidence warranting a determination by the jury." (citing nothing))"
>
> Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 460–62, 892 S.E.2d 297, 300–01 (2023)

The Respondent's Motion for Summary Judgment was based on the Respondent's defenses to Appellant's legal causes of action and equitable causes of action. "The proper analysis is to view the actions separately for the purpose of determining the appropriate standard of review. *See* Corley v. Ott, 326 S.C. 89, 92, 485 S.E.2d 97, 99 (1997) (legal and equitable actions, when maintained in one suit, each retain their own identity for purposes of the applicable standard of review on appeal). Jordan v. Holt, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005).

b. Standard of Review-Legal Claims

The legal issues appealed by Appellant appear to be based on the lower court's grant of summary judgment for Respondent on its defenses to the Appellant's legal causes of action for Breach of Contract (Amended Initial Brief P. 14), Breach of Contract Accompanied by a

Fraudulent Act (Amended Initial Brief P. 18), Fraud or Fraud in the Inducement (Amended Initial Brief p. 19)[1] , Negligent Misrepresentation (Amended Initial Brief, p. 24), Negligence (Amended Initial Brief, p. 26), Unfair Trade Practices Act Violation (Amended Initial Brief, p. 29) and a challenge to the defense that the Appellant's claims are barred by the economic loss rule (Amended Initial Brief, p. 37). These are legal causes of action for which the burden of proof is a "preponderance of the evidence." In an action at law, the trial judge's findings will be upheld unless without evidentiary support. *See e.g.,* Jordan v. Holt, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005) citing, Future Group, II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996) .

c. Standard of Review-Equitable Claims

Appellant also appeals the lower court's ruling on the grant of summary judgment on the Respondent's Defenses to Appellant's equitable claims of Quantum Meruit (Amended Initial Brief, p. 16), and Disregard of Corporate Entity (Amended Initial Brief, p. 31). Our Supreme Court has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment. *See,* Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994) citing, Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989). Likewise, "[a]n action to pierce the corporate veil lies in equity." *See* C.T. Lowndes & Co. v. Suburban Gas & Appliance Co., 307 S.C. 394, 396, 415 S.E.2d 404, 405 (Ct.App.1991); Sturkie v. Sifly, 280 S.C. 453, 456–57, 313 S.E.2d 316, 318 (Ct.App.1984). "We review factual findings and legal conclusions in an equitable action *de novo*." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 248, 715 S.E.2d 348, 352 (Ct. App. 2011) citing Lewis v. Lewis, 392 S.C. 381,

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1. Appellant also appears to begin another argument on page 23 of it's Initial Brief labeled "d. Fraud or Fraud in the Inducement" which is believed to be a clerical error.

388–89, 709 S.E.2d 650, 653–54 (2011). The broad scope of review applicable to appeals in equity actions does not, however, require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses." Hunting v. Elders, 359 S.C. 217, 223, 597 S.E.2d 803, 806 (Ct. App. 2004) citing, Pinckney v. Warren, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

ARGUMENT

I. DID THE JUDGE ERR IN DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OR REOPENING?

Appellant seems to make some sort of argument within this first issue on appeal by stating the following:

> "PLAINTIFF'S MOTION WAS FILED ON 3/29/2023. ONLY AFTER AN EMAIL ON 01/19/2024 CHECKING ON THE STATUS OF THE MOTION, PLAINTIFF RECEIVED AN EMAIL ON 01/24/2024 ADVISING THAT THE MOTION WAS DENIED. ANOTHER EMAIL WAS SENT ON 05/24/2024 ADVISING PLAINTIFF HAD STILL NOT RECEIVED THE ORDER. THE ACTUAL ORDER WAS NOT RECEIVED UNTIL 06/28/2024 AND DID NOT INCLUDE THE SHORT REASONING REQUESTED OF THE DEFENDANT'S ATTORNEY BY THE JUDGE. THE TOTAL TIME WAS 15 MONTHS. WAS THE DENIAL ORDER SELF SERVING AND DID THE JUDGE ACTUALLY READ THE PLAINTIFFS (sic) MOTION?"

Whether to grant a new trial is a matter within the discretion of the trial judge, and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law. Daves v. Cleary 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003) , rehearing denied, certiorari denied. This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. In fact, the Appellant makes no argument whatsoever or supporting authority and this

issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney."). A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc. , 313 S.C. 34, 437 S.E.2d 30 (1993).

Because the Appellant has failed to identify any particular error of law of the trial court, makes no argument whatsoever, and provides not supporting authority, this issue on appeal should be disregarded by the Court.

II. DID THE JUDGE NOT CONSIDER AS MATERIAL THE FACT THAT DEFENDANT'S ATTORNEY CHANGED THE PLAINTIFF'S DEPOSITION TESTIMONY WHICH HE USED THROUGHOUT HIS "MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT" IN ORDER TO GIVE DEFENDANT A DISHONEST ADVANTAGE."

Appellant points to no particular reference or source to identify any particular misrepresentations made by Respondent's counsel regarding Appellant's deposition testimony either in oral argument or in Apellant's Memorandum in Opposition of Summary Judgment (R. pp. ___). More importantly, there is also no evidence submitted by Appellant wherein Appellant objected to any alleged misrepresentations regarding Plaintiff's deposition testimony. This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. In fact, the Appellant makes no

argument whatsoever or supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.") "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal". State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) citing, Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). "An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court's opinion should be vacated to the extent it addressed an issue that was not preserved." Id. at 694. citing , Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995). This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law that it asserts the court violated. A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc. , 313 S.C. 34, 437 S.E.2d 30(1993).

Secondly, this issue was not raised in the hearing on the Motion for Summary Judgment. New arguments are not to be considered on a motion for reconsideration. In Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct App 1999), the court wrote, "[f]urther, because the transcript of the proceedings below is omitted from the record, it appears

the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review." Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App.1995) (party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not); *see also* Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) (appellant has the burden of presenting a sufficient record to allow review). To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court. Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.' " Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

III. DID THE JUDGE NOT CONSIDER AS MATERIAL THE FACT THE DEFENDANT'S ATTORNEY REFERRED TO THE "CONTRACT" FAVORABLY FOR THE DEFENDANTS KNOWING THE "CONTRACT" WAS PROVEN TO BE FRAUDULENT, DECIEVING AND ILLEGAL?"

This issue on appeal is not supported by reference to any transcript or document which is a part of the Record on Appeal. This issue on appeal is further based on the conclusory statement that the Contract which was the subject of the case was proven to be fraudulent, deceiving and illegal for which there is no basis. Appellant also never articulates any an error of

law committed by the trial court. This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. In fact, the Appellant makes no argument whatsoever or supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.") A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc., 313 S.C. 34, 437 S.E.2d 30(1993). Secondly, this issue was not raised in the hearing on the Motion for Summary Judgment. New arguments are not to be considered on a motion for reconsideration. In Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct App 1999), the court wrote, "[f]urther, because the transcript of the proceedings below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review." Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App.1995) (party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not); *see also* Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) (appellant has the burden of presenting a sufficient record to allow review). To preserve an issue for appellate review, the issue cannot be raised for the first

time on appeal, but must have been raised to and ruled upon by the trial court. Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.' " Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

IV. DID THE JUDGE NOT CONSIDER AS MATERIAL THE FACT THE DEFENDANT'S ATTORNEY LIED THROUGHOUT HIS "MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT" IN ORDER TO GIVE THE DEFENDANT A DISHONEST ADVANTAGE ?"

This issue on appeal is not supported by reference to any transcript or document which is a part of the Record on Appeal. This issue on appeal is further based on the conclusory statement that the Respondent's attorney lied about something (or multiple things) in his Memorandum in Support of the Motion for Summary Judgment. The Appellant does not even identify what the Respondent's attorney lied about. Appellant also never articulates any an error of law committed by the trial court. This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc. , 313 S.C. 34, 437

S.E.2d 30(1993). In fact, the Appellant makes no argument whatsoever or supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.")

Because the Appellant has failed to identify any particular error of law of the trial court, this issue on appeal should be disregarded by the Court.

Secondly, this issue was not raised in the hearing on the Motion for Summary Judgment. New arguments are not to be considered on a motion for reconsideration. In Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct App 1999), the court wrote, "[f]urther, because the transcript of the proceedings below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review." Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App.1995) (party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not); *see also* Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) (appellant has the burden of presenting a sufficient record to allow review). To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court. Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'

" Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

V. DID THE JUDGE NOT CONSIDER AS MATERIAL THE FACT THE DEFENDANT'S ATTORNEY STATED, BY LAW "PLAINTIFFS PREVENTED CCRC FROM PERFORMING IT'S STATUTORY RIGHT TO CURE" KNOWING THE COURT AND RESIDENTIAL BUILDING COMMISSION HAD RULED AGAINST THAT ARGUMENT ?"

Once again, this issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any evidence in the Record on Appeal of a particular prior court ruling that the Appellant did not prevent Respondent from performing its right to cure. Furthermore, notwithstanding the fact that the Residential Building Commission cannot make judicial rulings, Appellant has submitted nothing in the Record on Appeal regarding a ruling by the Residential Building Commission. A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc. , 313 S.C. 34, 437 S.E.2d 30(1993). In fact, the Appellant makes no argument whatsoever or supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is

deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.")

Secondly, this issue was not raised in the hearing on the Motion for Summary Judgment. New arguments are not to be considered on a motion for reconsideration. In Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct App 1999), the court wrote, "[f]urther, because the transcript of the proceedings below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review." Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App.1995) (party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not); *see also* Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) (appellant has the burden of presenting a sufficient record to allow review). To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court. Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.' " Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

VI. DID THE JUDGE NOT CONSIDER AS MATERIAL THE FACT THE EFENDANT'S ATTORNEY STATED, "I. ALL TORT ACTIONS ARE BARRED BY THE ECONOMIC LOSS RULE" IS A LIE. THE SUPREME COURT IN 1989 RECOGNIZED EXCEPTIONS TO THE ECONOMIC LOSS RULE IN THE RESIDENTIAL HOME BUILDING CONTEXT ?

Appellant's purely tort causes of action were the causes of action for Negligent Misrepresentation and Negligence. With respect to the Negligence Misrepresentation cause of action, this cause of action was specifically dismissed on its own defects on the basis that (1) "Plaintiffs have failed to identify any damages specific to this cause of action" and (2) "Plaintiffs have failed to prove how any damages in this case were proximately caused by any alleged representation made by the Defendants." (Order p. 7). With respect to the Negligence cause of action, this cause of action was dismissed pursuant to the holdings of Tommy L. Griffin Plumbing & Heating Co. v. Jordan Jones & Goulding, Inc., 320 S.C. 49, 54-55, 463 S.E. 2d 85, 88 (1995) which holds, "[a] breach of duty under the provisions of a contract must be redressed under contract, and a tort action will not lie." The trial court also mentioned the Economic Loss Rule in ruling on this cause of action (R. p. __Order p. 7), but Appellant never raised the issue in its Memorandum in Opposition to the Motion for Summary Judgment or in oral argument. (R. pp. __). The only time Appellant raised the issue of conflicting case law was in its Motion for Reconsideration and new arguments are not to be considered on a motion for reconsideration. In Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct App 1999), the court wrote, "[f]urther, because the transcript of the proceedings below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review." Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App.1995) (party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been

raised prior to the judgment but was not); *see also* Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) (appellant has the burden of presenting a sufficient record to allow review).

Appellant also averred two quasi-tort actions in his Complaint being Breach of Contract Accompanied by a Fraudulent Act and Fraud in the inducement, but those causes of Action were dismissed on insufficient pleadings of particularity and the fact that Appellant articulated no particular damages attributable to these causes of action. (Order pp. 4-7).

Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

VII. "DID THE JUDGE NOT CONSIDER THE FACT THE ATTORNEY SERVED HIS "MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT" TO THE APPELLANT 6 DAYS BEFORE THE HEARING REDUCING APPEALLANTS TIME TO RESPOND BY 40% ?

This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc. , 313 S.C. 34, 437 S.E.2d 30(1993). In fact, the Appellant makes no argument whatsoever or supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388

S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.")

Another basis for denial of this issue on appeal is that this issue was never raised at the Motion for Summary Judgment hearing or raised in the Appellant's Motion to Reconsider. To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court. Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

VIII. DID THE JUDGE NOT CONSIDER THE NEW EVIDENCE FROM THE RESIDENTIAL BUILDING COMMISSION PLACING TOTAL LIABILITY ON MR. HORNBECK, III?

This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant

to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc., 313 S.C. 34, 437 S.E.2d 30 (1993). In fact, the Appellant makes no argument whatsoever or cites any supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.")

Furthermore, Appellant blatantly admits that this was a new issue raised for the first time in his Motion for Reconsideration (R. __ Motion for Reconsideration, p. 2) and new arguments are not to be considered on a motion for reconsideration. In Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct App 1999), the court wrote, "[f]urther, because the transcript of the proceedings below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review." Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App.1995) (party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not); *see also* Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) (appellant has the burden of presenting a sufficient record to allow review). To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court. Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.' " Staubes v. City of Folly

Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Because the Appellant has failed to identify any particular error of law of the trial court and is precluded from raising a new issue in a Motion to Reconsider, this issue on appeal should be disregarded by the Court. The issue should further be dismissed, because he never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

IX. DID THE JUDGE NOT CONSIDER THE FACT THAT CUSTOM CASTLES ROOFING AND CONSTRCTION WAS NOT LICENSED AND LISTED AND THEREFORE IT WAS ILLEGAL FOR CCRC TO PROPOSE TO DO THE ROOFING AND SIDING WORK MUCH LESS ACTUALLY PERFORM WORK ON SITE?"

This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc. , 313 S.C. 34, 437 S.E.2d 30 (1993). In fact, the Appellant makes no argument whatsoever or supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal

proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.")

Secondly, this issue was not raised in the hearing on the Motion for Summary Judgment. New arguments are not to be considered on a motion for reconsideration. In Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct App 1999), the court wrote, "[f]urther, because the transcript of the proceedings below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review." Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App.1995) (party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not); *see also* Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) (appellant has the burden of presenting a sufficient record to allow review). To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court. Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.' " Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

X. DID THE JUDGE NOT CONSIDER IT MATERIAL THAT CCRC DID NOT INSTALL THE SYSTEMS IN ACCORDANCE WITH THE 2015 INTERNATIONAL

RESIDENTIAL BUILDING CODE OR THE MANUFACTURERS INSTALLATION INSTRUCTIONS WHICH CAUSED MANUFACTURERS TO VOID THEIR WARRANTIES?"

This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc., 313 S.C. 34, 437 S.E.2d 30 (1993). In fact, the Appellant makes no argument whatsoever or supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.")

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judgment but was not); *see also* Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) (appellant has the burden of presenting a sufficient record to allow review). To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court. Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct.App.2005). "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.' " Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)).

Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

XI. DID THE JUDGE NOT CONSIDER THE ECONOMIC LOSS DUE TO DEVALUATION OF THE APPEALANT'S HOME AND THE HUGE COST PAID BY THE APPELANTS FOR REPAIRS TO AND COMPLETION OF THE WORK?

This issue on appeal is not supported by any allegation of Appellant that the court committed an error of law much less any particular statutory or common law violated. A conclusory argument of an issue by appellant amounts to an abandonment of the issue. State v. Black , 319 S.C. 515, 462 S.E.2d 311, rehearing denied (Ct. App. 1995). A broad general statement of issues made by an appellant may be disregarded by the appellate court pursuant to Rule 207(b)(1)(B), SCACR. Sullivan Co., Inc. v. New Swirl, Inc., 313 S.C. 34, 437 S.E.2d 30 (1993). In fact, the Appellant makes no argument whatsoever or supporting authority and this issue on appeal should be dismissed on that defect alone. *E.g.*, First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating the failure to provide arguments or supporting

authority for an issue on appeal is deemed an abandonment of the issue); Rouvet v. Rouvet, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) ("[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.")

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Because the Appellant has failed to identify any particular error of law of the trial court, never advanced an argument on this issue, never provided any supporting authority, and never

raised this issue in the hearing on the Motion for Summary Judgment, this issue on appeal should be disregarded by the Court.

Appellant then begins a section in it's brief entitled "FACTS - DISCUSSION OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT" (Amended Initial Brief pp. 14-38) which appears to be an exact replica of it's Motion for Reconsideration or Reopening. (R. ____Motion for Reconsideration or Reopening). Again, to the extent this can be considered an "issue on appeal" the Appellant advances no argument of error or supporting authority, none of these issues were ever argued by the Appellant in its Memorandum in Opposition to the Motion for Summary Judgement (R. ____ Memorandum in Opposition to the Motion for Summary Judgement) and these "FACTS - DISCUSSION OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT" should be dismissed to the extent they can be considered issues on appeal.

CONCLUSION

For the forgoing arguments, the Court should dismiss this Appeal in its entirety.

Respectfully submitted,

s/ Wendell L. Hawkins

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