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Mar 24 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-000029

James R. Brady,

Respondent,

v.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company LLC
Lancaster Redevelopment Corp., and
Gary L. Grossman,

Appellants.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

Pursuant to this Court's letter, dated March 21, 2025, Respondent James R. Brady, through undersigned counsel, respectfully submits this Return to Appellants' Petition for Rehearing. Appellants have failed to state with particularity any points overlooked or misapprehended by the Court as required by Rule 221(a), SCACR. Most critically, Appellants entirely ignore this Court's dispositive application of the two-issue rule, which alone is sufficient grounds to deny the petition.

I. APPELLANTS HAVE FAILED TO ADDRESS THE DISPOSITIVE TWO-ISSUE RULE

This Court's March 12, 2025 opinion properly applied the two-issue rule to affirm the trial court's judgment. The Court held:

“We hold Grossman’s arguments, which only challenge the trial court’s failure to grant a directed verdict and JNOV as to the breach of contract claim, are precluded from appellate review because Grossman failed to challenge the jury’s verdict in Brady’s favor on the conversion cause of action.”

This finding alone is dispositive of the entire appeal. The two-issue rule is well-established South Carolina law, as this Court correctly cited: “[W]hen a jury’s general verdict is supportable by more than one cause of action submitted to it, the appellate court will affirm unless the appellant appeals all causes of action.” *Anderson v. S.C. Dep’t of Highways & Pub. Transp.*, 322 S.C. 417, 420, 472 S.E.2d 253, 254 (1996).

Appellants’ petition fails to address this dispositive reasoning at all. Instead, Appellants focus exclusively on the merger clauses in the assignment agreements while completely ignoring their failure to appeal the jury’s verdict on conversion. This omission is fatal to their petition, as the Court’s application of the two-issue rule stands unchallenged and provides an independent basis for affirming the trial court regardless of any arguments concerning the breach of contract claim. “Preserving issues for appellate review is a fundamental component of appellate practice.” *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532-33, 564 S.E.2d 322, 323 (2001) (citations omitted).

II. THE MERGER CLAUSES DO NOT BAR RESPONDENT’S CLAIMS

Even if the Court were to reconsider its application of the two-issue rule, Appellants’ argument regarding the merger clauses fails for several reasons:

First, as demonstrated at trial and in Respondent’s brief, the Assignment agreements and the February 2, 2004 Letter of Agreement addressed entirely different subject matters. The Assignments concerned membership interests in the LLCs, while the February 2, 2004 Letter of Agreement addressed payment for construction management, marketing, and sales services. The

merger clause in Section 9.5 of the Assignments is expressly limited to “the entire agreement between the parties *pertaining to its subject matter*” (emphasis added). (Assignments, R. p. 644, para 9.5; p. 650, para 9.5). As Mr. Grossman himself admitted at trial, the Assignments did not address construction management, marketing, or sales services:

Q. All right. So you’re free to have as much time as you need to look, but these operating agreements don’t say anything about who is going to get paid for managing construction, do they?

A. No, it doesn’t.

Q. And these operating agreements do not say anything about who is going to get paid, or do the sales and marketing for Allenwood, do they?

A. No, it doesn’t.

(Trial Tr., Vol II, R. pp. 297:16-298:5)

Second, Appellants’ reliance on the merger clauses is directly contradicted by their own subsequent conduct. Both Mr. Grossman and Ms. Griffith expressly acknowledged—in 2007, long after the Assignments were executed—that Mr. Brady was owed \$711,027 under the February 2, 2004 Letter of Agreement. Mr. Grossman’s September 15, 2007 email to Mr. Brady stated: “It looks to me like she has accurately accounted for the various forms of compensation as laid out in our Feb 2, 2004 letter of agreement.” (R. pp. 583-587). This admission demonstrates that the parties themselves did not consider the February 2, 2004 Letter of Agreement to have been superseded by the Assignments.

Third, Appellants’ claim that “the letter giving rise to the Mr. Brady’s claims was never signed by Mr. Grossman” is contradicted by the evidence. The February 2, 2004 Letter of Agreement contained Mr. Grossman’s electronically typed signature, which has the same legal effect as a wet signature under S.C. Code § 26-6-70(d). (R. pp. 653-655). Moreover, Mr. Grossman’s subsequent acknowledgment of the Letter of Agreement in his September 15, 2007 email constitutes ratification of the agreement. (R. p. 583).

III. THE COURT PROPERLY AFFIRMED THE TRIAL COURT'S JUDGMENT

This Court's opinion and affirmance of the trial court's judgment are well-founded and supported by the law and the record. The jury heard testimony from all parties, examined the relevant documents, and unanimously found that Mr. Grossman both breached a contract with Mr. Brady and converted property belonging to Mr. Brady. (Verdict Form, R. pp. 9-10). The jury awarded identical damages of \$711,027 under both theories of liability. (Ibid.)

This Court properly applied the two-issue rule to affirm the trial court's judgment. Further, even if this Court were to reconsider the breach of contract arguments, the evidence overwhelmingly supports the jury's verdict under that theory as well.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court deny Appellants' Petition for Rehearing. Appellants have failed to identify any point overlooked or misapprehended by the Court, particularly with respect to the dispositive two-issue rule. The jury unanimously found that Mr. Brady suffered damages under two separate and distinct theories of liability: Breach of Contract and Conversion. Appellants' Brief and Petition noticeably—and fatally for Appellants—fail to appeal or even address the Conversion verdict. This alone is sufficient grounds to affirm the Circuit Court's order, affirm the jury's unanimous verdict awarding Mr. Brady equivalent damages under two separate theories of liability, and support this Court's well-reasoned opinion. The Court's opinion correctly applied settled law to the facts of this case, and there is no basis for rehearing.

[Signatures on following page]

Respectfully submitted,

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Attorneys for Respondent James R. Brady

March 24, 2025
Mount Pleasant, South Carolina

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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

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-000222

James R. Brady, Respondent,

v.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company LLC,
Lancaster Redevelopment Corp., and Gary L. Grossman,
Appellants.

PROOF OF SERVICE

I, the undersigned, certify that I have served the *Respondent's Return to Petition for Rehearing*, contemporaneously, with filing via electronic mail on Counsel for Appellants, George Hamlin O'Kelley, III, Esquire, at his AIS-designated email address (hamlin.okelley@buistbyars.com) on March 24, 2025.

[Signature on following page]

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s/Jesse Sanchez

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ATTORNEY FOR RESPONDENT JAMES R. BRADY

March 24, 2025

Mount Pleasant, South Carolina



March 24, 2025

VIA EMAIL (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

Mar 24 2025

SC Court of Appeals

RE: James R. Brady, Respondent v. Hilton Homes at Allenwood, LLC, et al.,
Appellant. Appellate Case No. 2023-00022

Dear Ms. Kitchings:

Per the Court's letter dated March 21, 2025, attached for filing please find the following:

- (1) Respondent James R. Brady's Return to Appellants' Petition for Rehearing, and
- (2) Proof of Service.

Thank you for your assistance with this matter. Should you have any questions or wish to discuss the filing, please do not hesitate to contact me directly.

Sincerely,

s/Jesse Sanchez_____

Jesse Sanchez (SC Bar No. 101906)

Enclosures (as stated)

Cc: Glynn L. Capell, Esq. (Via Email Only)
Charles W. Thomson, Esq. (Via Email Only)
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