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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2025-000963

James R. Brady, Respondent,

v.

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

RESPONDENT'S RETURN TO PETITION FOR A WRIT OF CERTIORARI

Pursuant to Rule 242(f), SCACR, Respondent James R. Brady respectfully submits this Return to Petitioners' Petition for Writ of Certiorari and requests that this Honorable Court deny the Petition.

Petitioners seek review while ignoring the dispositive basis for the Court of Appeals' decision. The jury returned unanimous verdicts on two theories—breach of contract and conversion—awarding $711,027 under each. (Verdict Form, R. pp. 9-10). Petitioners appealed only the breach of contract verdict, completely abandoning any challenge to the conversion verdict. Under South Carolina's well-established two-issue rule, this abandonment alone requires affirmance regardless of any breach of contract arguments.

Yet Petitioners' Petition ignores this dispositive reality entirely. They make no mention of the conversion verdict, fail to acknowledge the two-issue rule, and pretend this case involves only contract interpretation issues. This pattern of abandonment—evident in their appellate brief, their failure to file a reply brief, their petition for rehearing, and now this Petition—cannot be cured through certiorari review.

Petitioners seek to use this Court's discretionary jurisdiction to relitigate arguments they waived below while ignoring the actual basis for the Court of Appeals' decision. This misuse of certiorari review should be rejected.

Most remarkably, this case involves a defendant who admitted—both in writing and at trial—that he owed Mr. Brady the exact amount the jury awarded: $711,027. (Pl. Exh. 3, 9/15/07 Email from Grossman to Brady, R. p. 583 ["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"]; Trial Tr., Vol. I, R. pp. 241:12-23, 298:13-15 [Grossman stipulating in open court to the $711,027 amount]; Pl. Exh. 2, Griffith Letter, R. pp. 584-587 [accounting showing $711,027 owed]; Griffith De Bene Esse Depo, R. pp. 538:19-539:1, 545:14-546:14 [Griffith confirming amount owed]). Despite these admissions, Petitioners now seek this Court's discretionary review while continuing to ignore that the jury also found Mr. Grossman personally liable for converting these same admitted funds. This attempt to escape liability for an admitted debt through selective appellate arguments exemplifies why certiorari is unwarranted.

COUNTER-STATEMENT OF THE CASE

This case arises from a business relationship between James R. Brady and Gary L. Grossman regarding the development of residential properties in the Allenwood neighborhood of Hilton Head Island. On February 2, 2004, Mr. Grossman sent Mr. Brady a written proposal

outlining the terms of their collaboration, including payment for construction management, marketing, and sales services, as well as profit sharing. (Pl., Exh. 1, 2/2/04 Letter of Agreement, R. pp. 653-655; Trial Tr., Vol. I, R. pp. 411:20 – 420:23).

Mr. Brady performed the agreed-upon services over approximately three years, overseeing the construction and sale of forty-four homes. (R. p. 418:5-13; Pl. Exh. 2, Ginger Griffith letter, at R. p. 586). The project was successful, generating substantial profits. However, Mr. Grossman began failing to make required payments to Mr. Brady. (R. p. 423:5-18).

In September 2007, Mr. Grossman's treasurer and staff accountant, Ms. Ginger Griffith, acknowledged in writing that Mr. Brady was owed $711,027 for his services and profit sharing. (Pl. Exh. 2, R. pp. 584-587; pp. 423:19-431:4; Griffith De Bene Esse Depo, R. pp. 538:19-539:1; pp. 545:14-546:14). Mr. Grossman himself confirmed this amount in a September 15, 2007 email, stating the accounting "accurately accounted for the various forms of compensation as laid out in our Feb 2, 2004 letter of agreement." (Pl. Exh. 3, 9/15/07 Email from Grossman to Brady, R. p. 583; pp. 431:23-434:21).

When Mr. Grossman refused to pay, Mr. Brady filed suit asserting claims for breach of contract, conversion, and quantum meruit. (Summons and Complaint, R. pp. 182-188). After extensive litigation, a jury unanimously found in favor of Mr. Brady on both the breach of contract and conversion claims, awarding $711,027 in damages under each theory of liability. (Verdict Form, R. pp. 9-10).

The trial court denied Petitioners' post-trial motions (Order, R. pp. 1-6), and the Court of Appeals affirmed, applying the well-established two-issue rule because Petitioners failed to challenge the jury's verdict on the conversion claim.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

The questions presented are not those posed by Petitioners, but rather:

1. Whether the Court of Appeals correctly applied the two-issue rule when Petitioners failed to challenge the jury's unanimous verdict on the conversion claim, thereby providing an independent basis for affirming the judgment?

2. Whether Petitioners have demonstrated any compelling reason for this Court's discretionary review of routine contract interpretation and procedural issues that were correctly resolved by the Court of Appeals under settled South Carolina law?

ARGUMENT

I. THE PETITION SHOULD BE DENIED BECAUSE THE COURT OF APPEALS CORRECTLY APPLIED THE TWO-ISSUE RULE.

The Court of Appeals' decision rests on the firm foundation of the two-issue rule, which provides an independent and dispositive basis for affirming the trial court's judgment. This application of settled law forecloses any need for further review.

A. The Two-Issue Rule Is Well-Established South Carolina Law.

The two-issue rule is well-established in South Carolina appellate practice. As the Court of Appeals correctly stated: "[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).

B. Petitioners Failed to Challenge the Conversion Verdict and Have Waived Any Challenge Through Their Pattern of Abandonment.

The jury returned unanimous verdicts finding Mr. Grossman liable under two separate theories: breach of contract and conversion, awarding $711,027 in damages under each independent theory of liability. (R. pp. 9-10). Critically, Petitioners' appellate brief contained no arguments challenging the conversion verdict. This is particularly striking given that the jury

found Mr. Grossman personally liable for converting funds that both he and his accountant admitted were owed to Mr. Brady. Respondent pointed out this fatal omission in his appellate brief to which Petitioners' filed no reply. As the Court of Appeals noted, "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 omission represents a complete abandonment that has been compounded at every subsequent stage. South Carolina law is clear that issues not raised in petitions for rehearing or writs of certiorari are considered waived or abandoned. In *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001), this Court emphasized: "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." (citing, Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999), and *Arnold v. Carolina Power & Light Co*., 168 S.C. 163, 167 S.E. 234 (1933)). Similarly, in *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011), this Court reiterated that "a petition for rehearing must 'state with particularity the points supposed to have been overlooked or misapprehended by the court.'" Specifically, Rule 221(a), SCACR, requires petitions for rehearing to "state with particularity the points supposed to have been overlooked or misapprehended by the court." Petitioners did no such thing, failing to address the two-issue rule at all—the very basis of the Court of Appeals' decision.

Moreover, there are two prerequisites to preserving an issue for consideration by this Court on a writ of certiorari: (1) the issue must have been raised in the initial arguments to the

Court of Appeals, and (2) the issue must have been raised in the petition for rehearing before the Court of Appeals. Rule 242(d), SCACR; see *Mazloom v. Mazloom*, 392 S.C. 403, 709 S.E.2d 661 (2011); *Kleckley v. Nw. Nat. Cas. Co*., 338 S.C. 131, 526 S.E.2d 218 (2000). An issue not raised to or addressed by the Court of Appeals is not properly preserved for review by this Court on certiorari. See *Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 496 S.E.2d 17 (1998); *Camp v. Springs Mtg. Corp.*, 310 S.C. 514, 426 S.E.2d 304 (1993) (determining issue not preserved for appeal where the Court of Appeals did not address the issue and petitioner did not petition for rehearing for the court to consider it).

Here, Petitioners failed to address the conversion verdict in their petition for rehearing and completely ignore it in this Petition for Writ of Certiorari. Under established South Carolina law, this pattern of abandonment constitutes a waiver of any challenge to the conversion verdict.

C. The Two-Issue Rule Application Is Dispositive and Precludes Any Need for Further Review.

Because the conversion verdict provides an independent basis for the $711,027 judgment, and because Petitioners failed to challenge that verdict at any stage of the appellate process, the Court of Appeals was required to affirm regardless of any arguments concerning the breach of contract claim. As this Court emphasized in *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004): "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court."

Here, Petitioners not only failed to preserve any challenge to the conversion verdict, but have compounded that failure by continuing to ignore it through every stage of appellate proceedings. This straightforward application of procedural law presents no issue warranting this Court's review.

II. THE PETITION SHOULD BE DENIED BECAUSE PETITIONERS PRESENT NO NOVEL LEGAL ISSUES REQUIRING REVIEW AND HAVE ALTERNATIVE SUSTAINING GROUNDS.

Even setting aside the dispositive two-issue rule, Petitioners' substantive arguments involve only routine applications of settled contract law principles that were correctly resolved by the Court of Appeals. Moreover, additional sustaining grounds exist for affirming the jury's verdict that Petitioners have entirely failed to address.

A. The Merger Clause Analysis Involved Straightforward Contract Interpretation.

Petitioners' arguments concerning merger clauses present no novel questions of law. The Court of Appeals' analysis was supported by uncontroverted evidence that the February 2, 2004 Letter of Agreement and the Assignment agreements addressed entirely different subject matters. As Mr. Grossman himself admitted at trial, the Assignment agreements did not address construction management, marketing, or sales services—the very services that were the subject of the February 2, 2004 Letter of Agreement:

> 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).

Similarly, Mr. Grossman admitted that the assignments did not address these services:

> Q. And, in fact, these assignments don't even mention construction management or sales, do they?
> A. Not on the assignments.
> Q. These assignments do not contain the phrase incentive management fee anywhere in them, do they?
> A. They do not.
>
> (Trial Tr., Vol II, R. pp. 289:22-290:2).

The merger clauses in the Assignments were expressly limited to "the entire agreement between the parties pertaining to its subject matter" (Assignments, R. p. 644, para 9.5; p. 650, para 9.5), and construction management, marketing, and sales services were not within that subject matter. (Trial Tr., Vol II, R. p. 291:12-17). Importantly, Mr. Grossman is not even a party to the Assignments because he did not sign them in his individual capacity. (Assignments, R. pp. 645 and 651).

Moreover, Petitioners' own subsequent conduct contradicted any claim that the February 2, 2004 Letter of Agreement was superseded. Both Mr. Grossman and Ms. Griffith expressly acknowledged in September 2007—long after the Assignments were executed—that Mr. Brady was owed $711,027 under the February 2, 2004 Letter of Agreement. Ms. Griffith's September 13, 2007 letter stated that pursuant to the February 2, 2004 letter of agreement, Mr. Brady was owed $711,027 for profit sharing and for construction, marketing, and sales services. (Pl. Exh. 2, R. pp. 584-587). Mr. Grossman's September 15, 2007 email confirmed: "Hi Rod, I finally got a chance to look at Ginger's Sept 13 letter and the worksheets. 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." (Pl. Exh. 3, 9/15/07 Email from Grossman to Brady, R. p. 583).

At trial, Mr. Grossman admitted that the $711,027 figure was accurate and stipulated in open court that Mr. Brady was owed that exact amount of money for the work Mr. Brady performed. (R. p. 241:12-23; p. 298:13-15). If the parties truly believed that the 2004 Letter of Agreement was superseded by the Assignments, Ms. Griffith and Mr. Grossman would not have referenced the Letter of Agreement or the services and forms of compensation addressed therein in their 2007 communications with Mr. Brady.

B. The Statute of Frauds Issues Were Correctly Resolved Under Established Procedural Rules.

Petitioners' statute of frauds arguments were properly rejected for multiple independent reasons, each sufficient to defeat the defense:

First, the defense was waived by failure to plead. The statute of frauds was not pleaded as an affirmative defense as required by Rule 8(c), SCRCP. (Answer, R. pp. 172-180). Significantly, Petitioners ***waited until after both parties had rested*** to move to amend their answer to add this defense for the first time. (R. p. 303:9-11; p. 303:20-25; p. 305:3-18). This timing was procedurally improper because it denied Mr. Brady any meaningful opportunity to prepare evidence or present testimony to refute the newly-raised defense. A defendant cannot wait until after both sides have rested their cases to amend their answer because it precludes the other side from raising defenses to the newly-asserted claim.

Second, the defense was barred by promissory estoppel. All elements of promissory estoppel were established: (1) Ms. Griffith's September 13, 2007 Letter and Mr. Grossman's September 15, 2007 email established unambiguous terms; (2) Mr. Brady reasonably relied on these promises, as evidenced by his testimony that he performed the work and gave up other opportunities (R. pp. 419:19-420:1); (3) this reliance was expected and foreseeable by Mr. Grossman, who derived a personal financial benefit from the transaction in the form of interest paid to him at 500 basis points equaling 15% per annum (Letter of Agreement at R. p. 654; p. 222:2-23); and (4) Mr. Brady sustained substantial injury, including loss of income, ruined credit, foreclosure, and loss of his family home (R. pp. 441:15-442:24).

Third, the defense was barred by equitable estoppel. Mr. Brady suffered a definite, substantial, detrimental change of position in reliance on Mr. Grossman's agreement, and no

remedy other than enforcement of the bargain would adequately restore Mr. Brady to his former position.

Fourth, the statute of frauds was satisfied. The February 2, 2004 Letter of Agreement was authored by Mr. Grossman and signed with an electronically typed signature, which has the same legal effect as a wet signature under S.C. Code § 26-6-70(d). (Pl. Exh. 1, R. pp. 653-655). Moreover, both Ms. Griffith and Mr. Grossman subsequently acknowledged the clear and unambiguous terms through their September 2007 correspondence and trial testimony.

C. Additional Sustaining Grounds Exist That Petitioners Fail to Address.

Beyond the dispositive two-issue rule, additional grounds support the jury's verdict that Petitioners completely ignore in their Petition:

Quantum Meruit. Mr. Brady clearly established the elements for relief under quantum meruit: (1) he conferred a benefit on Mr. Grossman by providing construction management, sales, and marketing services, resulting in the sale of forty-four homes (R. p. 418:5-13; Pl. Exh. 2, at R. p. 586); (2) Mr. Grossman realized that benefit, including deriving personal financial benefit in the form of 500 basis points interest (Letter of Agreement, at R. p. 654; p. 222:2-23); and (3) it would be inequitable for Mr. Grossman to retain the benefit of Mr. Brady's labor while Mr. Brady receives nothing in return.

These alternative grounds provide independent bases for affirming the judgment that Petitioners have failed to challenge or even acknowledge.

III. THE PETITION SHOULD BE DENIED BECAUSE NO CONFLICTS EXIST WITH OTHER DECISIONS.

Petitioners have failed to identify any conflict between the Court of Appeals' decision and any decision of this Court or any other jurisdiction. The decision represents a straightforward application of settled South Carolina law to case-specific facts.

IV. THE PETITION SHOULD BE DENIED BECAUSE THE DECISION INVOLVES ROUTINE APPLICATION OF SETTLED LAW.

This case involves the application of well-established legal principles to specific facts developed through a two-day jury trial. The jury heard testimony from all parties, examined relevant documents, and unanimously found liability under two separate theories. The Court of Appeals properly affirmed this verdict based on established procedural and substantive law principles.

There is nothing in this decision that would benefit from this Court's review or that would provide guidance for future cases beyond the existing body of South Carolina law. The case presents no issues of statewide importance or constitutional significance.

Petitioners have been unsuccessful at every stage of this litigation: the jury unanimously found against them, the trial court denied their post-trial motions, the Court of Appeals affirmed, and the Court of Appeals denied their petition for rehearing. Most significantly, Petitioners have failed to challenge the conversion jury verdict at every single stage of the appellate process—in their appellate brief, in their failure to file a reply brief, in their petition for rehearing, and now in this very Petition for Writ of Certiorari.

This complete abandonment of any challenge to the conversion verdict is particularly damaging because the conversion verdict is the very basis for the Court of Appeals' decision under the two-issue rule, which Petitioners now seek to have this Court review while continuing to ignore the dispositive legal principle that decided the case. This consistent pattern of unsuccessful challenges, combined with Petitioners' strategic decision to abandon the conversion verdict entirely, reflects that the courts have correctly applied the law to facts that do not support Petitioners' position, rather than any misapplication of legal principles warranting this Court's intervention.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny Petitioners' Petition for Writ of Certiorari. The Court of Appeals correctly applied the two-issue rule, which provides a dispositive and independent basis for affirming the trial court's judgment. Beyond this threshold issue, the Court of Appeals correctly applied settled South Carolina law to resolve routine legal and factual questions.

This case represents exactly the type of routine contract dispute that does not warrant Supreme Court review. The decision presents no novel questions of law, creates no conflicts with existing precedent, and involves no departure from accepted judicial proceedings. The unanimous jury verdict in favor of Mr. Brady, properly affirmed by the Court of Appeals under well-established legal principles, should be allowed to stand.

[Signatures on following page]

Respectfully submitted,

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