THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas for the Ninth Judicial Circuit

The Honorable Courtney Clyburn Pope, Circuit Court Judge
Lexington County

Appellate Case No.: 2024-001585
Trial Court Case No.: 2020-CP-32-04007

Insurance Office of America, Inc., Respondent,

v.

1221 Bower, LLC, Appellant.

FINAL BRIEF OF RESPONDENT INSURANCE OFFICE OF AMERICA, INC.

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STATEMENT OF THE CASE

Appellant 1221 Bower, LLC ("Appellant" or "Landlord") appeals the trial court's decision to reduce the amount of a request for attorney's fees that is improper and excessive under any standard of measurement. The appeal is without merit and has failed to show an abuse of discretion as to any issue that has been preserved for appellate review.

Respondent Insurance Office of America, Inc. ("Respondent" or "IOA") was a tenant that occupied certain ground floor units of a three-story, mixed-used office building located at 1221 Bower Parkway in Columbia, South Carolina ("Bower Commons"). IOA Properties III, LLC, an affiliate of IOA ("Affiliate"), previously owned the ground floor units and leased the units to IOA under the terms and conditions of a Lease Agreement dated January 1, 2012. (R. pp. 1266 – 1302.) There was a total of five (5) amendments to the Lease Agreement subsequently executed by the Affiliate and IOA, which amended certain terms such as gross rental area, base rent, and the lease

term; however, the controlling provisions at issue below were contained in the original Lease Agreement dated January 1, 2012. (R. pp. 1266 – 1296.) On July 10, 2019, Landlord's owner/operator, A.J. Leone ("Leone"), entered into a contract to purchase the office space from IOA's Affiliate. Landlord ultimately acquired ownership of the office space through a series of transactions and assumed the Lease Agreement from IOA's Affiliate.

On August 17, 2020, IOA provided notice to Landlord regarding an apparent water leak within IOA's office. (R. pp. 1347 – 1348.) The water leak, which was caused by a toilet leak in an upstairs unit, dripped through the ceiling onto the desks of IOA's employees and caused mold to form in the walls. (R. p. 0031; R. pp. 1347 – 1350.) The sewage water leak persisted after Landlord received IOA's initial notice and the office space was not repaired, restored, and rebuilt within ninety (90) days as required by the Lease Agreement, which provides, in pertinent part, as follows:

> **If the Leased Premises are damaged** or destroyed by fire, flood, tornado or by the elements, or **through any casualty, or otherwise**, after the commencement of the Lease Term, this Lease shall continue in full force and effect, and **Landlord at its expense shall promptly restore, repair or rebuild the Leased Premises** including but not limited to the store front, to the same condition as it existed when the possession of the Leased Premises were turned over to the Tenant at the commencement of the Lease Term, **within ninety (90) days after such damage** or destruction. **In the event Landlord fails to restore the Leased Premises as aforesaid, Tenant's sole remedy against Landlord shall be to terminate this Lease as of the date of such casualty.**

(R. pp. 1278 – 1279 (emphasis added).)

As a result of Landlord's failure to repair damage caused by the water and sewage infiltration and mold infestation within ninety (90) days, IOA terminated the Lease Agreement by providing Landlord with a Notice of Termination of the Lease Agreement on December 1, 2020, confirming that IOA was exercising its right to terminate the Lease Agreement and surrendering the premises back to Landlord on December 15, 2020. (R. pp. 1319 – 1321.) In the Notice of

Termination, IOA advised Landlord that rent reimbursement was due for the period from August 14, 2020 through December 15, 2020, in accordance with Section 11.1 of the Lease Agreement, which provides, in part:

> Fixed Rent shall abate from the date of such damage or destruction until ten (10) days after Landlord has repaired or restored the Building in the manner and in the condition provided in this Section and notified Tenant of that fact. In the event that a part only of the Leased Premises is untenantable or incapable of use for the normal conduct of Tenant's business therein, a just and proportionate part of the Fixed Rent shall be abated from the date of such damage until ten (10) days after Landlord has completely repaired same and notified Tenant of such fact.

(R. pp. 1278 – 1279; R. pp. 1318 – 1321.)

IOA surrendered the premises back to Landlord on December 15, 2020. However, Landlord refused to reimburse IOA for the portion of rent paid to Landlord from August 14, 2020 through December 15, 2020. (R. pp. 1266 – 1302.)

IOA asserted two causes of action against Landlord: (i) declaratory judgment confirming IOA's valid termination of the Lease Agreement; and (ii) breach of contract based on Landlord failure to reimburse IOA for certain Fixed Rent in accordance with the Lease Agreement, plus prejudgment interest. (R. pp. 0028 – 0035.) Landlord asserted two counterclaims: (i) declaratory judgment relating to the termination of the Lease Agreement; and (ii) breach of contract. (R. pp. 0015 – 0016; R. pp. 0036 – 0052.) A jury trial was held before the Honorable Courtney Clyburn Pope during the week of January 22 – 26, 2024 at the Lexington County Courthouse. (R. pp. 0158 – 1212.) After the closing arguments and deliberations, the jury returned a "split verdict" as follows: (i) a verdict in favor of Landlord on the first cause of action asserted by IOA for declaratory judgment relating to the termination of the Lease Agreement; (ii) a verdict and judgment in favor of IOA against Landlord for $25,000.00 on the second cause of action for breach of contract relating to the reimbursement of rent; (iii) a verdict in favor of Landlord against IOA

on Landlord's cause of action for declaratory judgment relating to the termination of the Lease Agreement; and (iv) a verdict and judgment in favor of Landlord against IOA for $150,000.00 on Landlord's counterclaim for breach of contract. (R. pp. 0010 – 0014.)

Thereafter, Landlord filed a Motion for Attorney Fees and Costs seeking an award of $172,206.03 in attorney fees and costs. (R. pp. 0137 – 0148.) Landlord's fee request not only exceeded the verdict amount, but it grossly exceeded the amount contemplated in the fee provision of the Lease Agreement which provides, in part, as follows:

> Following the occurrence of any Event of Default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above […] (vii) all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies at law, equity or hereunder, including reasonable attorneys' fees (**which shall be not less than fifteen percent (15%) of all sums then owing by Tenant to Landlord**), litigation expenses and court costs.

(R. p. 1283 (emphasis added).) Based on the language of the Lease Agreement, a reasonable award of attorney's fees and expenses would "be not less than fifteen percent (15%) of all sums then owing by Tenant to Landlord," *i.e.*, 15% of $125,000.00. Fifteen percent (15%) of the sums owing by IOA to Landlord would be $**18,750.00**. (R. pp. 0133 – 0134.) Landlord's request for a fee award in the amount $172,206.03 was approximately **137%** of the sum owed by IOA, which was unreasonable in light of the terms of the Lease Agreement indicating that a 15% fee should be the minimum amount. (R. pp. 0125 – 0136.)

At the commencement of trial, Landlord claimed damages in the amount of $664,302.35, as stated in Landlord's Pre-Trial Brief. (R. p. 0085.) During trial, Landlord's damages number was reduced due to successful results obtained by IOA in excluding certain damages as speculative or otherwise improper. (R. p. 0126.) During closing arguments, Landlord asked the jury to award $497,541.31 in damages. (R. p. 0126; R. p. 1178, lines 11 – 12; R. p. 1182, lines 3 – 4.) The jury's

verdict amounts to only 30% of what Landlord requested at the close of trial and only about 23% of the amount claimed prior to trial. (R. pp. 0010 – 0014; R. pp. 0126 – 0132.)

Furthermore, Landlord's Motion for Attorney Fees, Affidavit, and supporting documentation were deficient. (R. pp. 0134 – 0135; R. pp. 0137 – 0148.) The Affidavit of Attorney's Fees and Costs merely provides a general description of general tasks performed by counsel. (R. p. 0134.) The supporting documentation consists of block billing with vague task entries labeled as "emails with OC," "review," "read responses," "trial prep," and "discuss case strategy." (R. p. 0134.) The reasonableness of the hourly rates is not addressed in the Affidavit of Attorney's Fees. (R. pp. 1450 – 1452.) The Motion for Attorney's Fees and Supporting Memorandum state that Landlord's lead counsel "capped" his hourly rate to $167.50 per hour beginning in August of 2023. (R. p. 0146.) The invoices accompanying Landlord's fee request indicate that, during the 32-month period prior to August 16, 2023, Landlord's lead counsel billed an hourly rate between $300.00 and $350.00. (R. pp. 1454 – 1593.)

In the Order on Post-Trial Motion entered September 11, 2024 (the "Order"), the trial court awarded Landlord attorney's fees and costs in the amount of $94,500.00, which represents a reduction of approximately 45% form the amount requested. (R. pp. 0015 – 0027.) As indicated in the Order, the trial court's analysis and decision to reduce Landlord's fee request by 45% was not just because of Landlord's limited degree of success. (R. p. 0021.) The trial court found other equitable considerations arising from the evidence presented at trial also supported the reduction, as certain actions and inactions on the part of Landlord contributed to and complicated the dispute. (R. p. 0021.) Also, IOA prevailed on a number of issues. The trial court concluded that a reduction in the award of fees and expenses as warranted under the circumstances and in consideration of the applicable factors, as both parties prevailed and both sides received a verdict in their favor. (R.

pp. 0015 – 0027.) The trial court found that, although the judgment awarded to Landlord was larger than the judgment awarded to IOA, "[a]n award of any amount in IOA's favor indicates a determination by the jury that *Landlord* breached the Lease Agreement by refusing to provide IOA with a reimbursement of rent." (R. p. 0018.)

STANDARD OF REVIEW

An appellate court will not reverse the trial court's decision unless that court abused its discretion. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006). An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *Id*.

ARGUMENT

I. THE TRIAL COURT PROPERLY CONSIDERED EACH *BLUMBERG* FACTOR IN DETERMINING THE AMOUNT OF FEES AND COSTS AWARDED TO LANDLORD AND LANDLORD DID NOT SEEK RECONSIDERATION OF THE FINDINGS SET FORTH IN THE ORDER

Landlord seeks this Court's review of unpreserved arguments in an effort to secure a fee award that exceeds the amount of the verdict and grossly exceeds the amount considered reasonable under the Lease Agreement. Despite having been awarded fees and costs in the amount of $94,500.00, Landlord asks for a second chance at obtaining a fee award that is not warranted and not recoverable.

A. Landlord's Challenge to the Trial Court's Findings as to Each *Blumberg* Factor is Unpreserved for Appellate Review

Landlord's argument that the trial court abused its discretion in reducing fee award has not been preserved for review. On appeal, Landlord argues that the trial court committed a reversable error by giving "improper weight" to the factors set forth in *Blumberg* and asks that the case be remanded for a "holistic review" of the *Blumberg* factors. *See Blumberg v. Nealco, Inc.,* 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). This is exactly what the abuse of discretion standard does not allow. Before taking this appeal, Landlord did not file a motion for reconsideration or a motion to alter or amend the Order due to the trial court's alleged "improper reliance on a single factor," as would have been necessary to preserve that argument for further review. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("[T]he losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.").

Notably, Landlord did not cite *Blumberg* in its Motion for Attorney Fees, Memorandum in Support of Motion for Attorney Fees, or the Affidavit of Attorney's Fees and Costs. (R. pp. 0137 – 0148; R. pp. 1450 – 1452.)

B. The Trial Court Articulated Each of the *Blumberg* Factors as Indicated in the Order

Landlord argues that the trial court's award of attorney's fees should be reversed and remanded for lack of "sufficient evidentiary support" as to the six factors set forth in *Blumberg*. (R. pp. 0015 – 0026.) As discussed below, the trial court articulated its findings as to each of the six factors based on the record presented. However, to the extent that evidentiary support was lacking, the burden of proving reasonableness is on the fee applicant, not the trial court. *See, e.g*., *Nutramax Lab'ys, Inc. v. Manna Pro Prods*., LLC, 2017 WL 6523616, at *4 (D.S.C. Dec. 21,

2017) ("The fee applicant has the burden of proving hours spent and how those hours were allotted to specific tasks, and the Court must ensure that the time is reasonable and that the work billed by different attorneys is not duplicative").

Once a basis for an award is established, to evaluate a request for attorney's fees and expenses, courts must consider the following factors when determining an award of attorney's fees: (1) the nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. *See Blumberg,* 310 S.C. at 494, 427 S.E.2d at 660. "Trial courts should make specific findings of fact on the record for each of the factors set out above." *See Rowell v. Whisnant*, 360 S.C. 181, 186, 600 S.E.2d 96, 99 (Ct. App. 2004). Landlord asks this Court to find that the trial court abused its discretion in reducing the fee request due to an "improper consideration of the *Blumberg* factors." Appellant does not identify a factor that was not addressed in the Order or any evidence that was presented but overlooked by the trial court. Landlord's apparent dissatisfaction with the number of pages devoted to trial court's assessment of the *Blumberg* factors does not warrant remand.

As indicated by the chart below, consideration was given to all six criteria set forth in *Blumberg*. The trial court made specific findings of fact for each factor, which are set out in the Order:

Blumberg Factor	Trial Court's Findings of Fact	Did Factor Support Reduction in Fees?
The nature, extent, and difficulty of the legal services rendered	"Although the case was well-litigated, it was a commercial lease dispute that was not exceptional or novel." (R. p. 0024.)	YES
Time and labor devoted to the case	"Fees and expenses incurred by Landlord in seeking to defeat IOA's successful claim for reimbursement of rent should not be charged to IOA." (R. p. 0019.) Upon review of the record provided in support of Landlord's Motion, Landlord did not make any adjustment for its limited degree of success or time spend on unsuccessful motions or on developing inadmissible evidence." (R. p. 0023.) "Landlord also requests all fees and costs for what appears to be three or more rounds of trial preparation, which appears to be duplicative." (R. p. 0023.) "[T]he Court believes that the involvement of 18 timekeepers on a single file appears excessive and inefficient." (R. p. 0024.) "There are also a number of instances of 'block billing' that does not include detail about the tasks being performed." (R. p. 0025.) "The Court does not question that the work was performed, but the record does not justify awarding the total hours or fees requested based on the *Blumberg* factors." (R. p. 0025.)	YES
Professional standing of counsel	"The Court finds that Landlord's counsel has good professional standing." (R. p. 0024.) "Additionally, no information has been provided about the skills, experience, or professional standing of each of the timekeepers." (R. p. 0025.)	YES

Blumberg Factor	Trial Court's Findings of Fact	Did Factor Support Reduction in Fees?
Contingency of compensation	"Also, based on the invoices provided, it appears that the compensation of counsel was not contingent." (R. p. 0024.)	YES
Fee customarily charged in the locality for similar services	"From the record presented, it is uncertain how the fees requested would compare to the fees customarily charged in the locality for similar services." (R. p. 0024.) "Although the hourly rates charged do not appear to be excessive, the involvement of so[] many timekeepers would result in an increase of the total hours." (R. pp. 0024 – 0025.)	YES
Beneficial results obtained	"The relative degree of success on the merits is of particular importance when evaluating a request for attorney's fees and expenses." (R. p. 0019.) "Such considerations apply here based on the jury's verdict, both the verdict in favor of IOA and the verdict in favor of Landlord for an amount significantly less than what Landlord had claimed." (R. p. 0020.) "[A]n award equal to 63% of the judgment is certainly reasonable based on Landlord's partial success on the merits." (R. p. 0021.) "The Court's analysis and decision to reduce the Landlord's fee request by 45% is not limited to Landlord's limited degree of success" but includes "[o]ther equitable considerations arising from the evidence presented at trial[.]" (R. p. 0021.)	YES

A review of the Order confirms that the trial court ruled on each of the six factors. (R. pp. 0015 – 0026.) Landlord is not entitled to a second attempt at obtaining a greater award than is due.

C. The Trial Court Properly Considered the Amounts Due to Landlord in Assessing the Fee Request, as Required by the Lease Agreement and South Carolina Law

The trial court acted within its discretion in reducing the fee award based on Landlord's limited success on the merits, as well as the language of the Lease Agreement and South Carolina law. (R. pp. 0015 – 0026.) On appeal, Landlord asks this Court to find that the trial court abused its discretion by purportedly giving "improper weight" to the beneficial results obtained factor and to remand the case due to the "improper reliance on a single factor." As indicated in the Order, the trial court's decision to reduce the fees and costs awarded to Landlord "is not limited Landlord's limited degree of success" but was made in consideration of the circumstances and equities of the case, including the evidence presented at trial, as well as the relevant fee provision of the Lease Agreement. (R. p. 0021.)

In determining whether Landlord's fee request was appropriate, the trial court considered the causes of action asserted by IOA, Landlord's counterclaims, the amount of damages sought by each party, and the jury's verdict on these claims. (R. pp. 0015 – 0019; R. p. 0021.) The trial court recognized that the relative degree of success on the merits is of particular importance when evaluating a request for attorney's fees and expenses. (R. p. 0019.) *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (finding that "the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees"). The "beneficial results obtained" factor aids in determining whether an award is appropriate when considering whether the services of a lawyer facilitated a favorable result. *See Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

The trial court also properly considered the amount of the verdicts to determine the "sums then owing by Tenant to Landlord," as provided in the fee provision of the Lease Agreement, which states:

> Following the occurrence of any Event of Default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above […] (vii) all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies at law, equity or hereunder, including **reasonable attorneys' fees (which shall be not less than fifteen percent (15%) of all sums then owing by Tenant to Landlord**), litigation expenses and court costs.

(R. p. 0021; R. p. 1283 (emphasis added).) The trial court found that "the jury's determination that Landlord breached the Lease Agreement should be taken into account when determining the appropriate amount of fees and expenses, if any, that should be awarded to Landlord." (R. p. 0018.) The jury awarded $150,000.00 to Landlord and awarded $25,000.00 to IOA. (R. pp. 0010 – 0013.) After offsetting the amount of the judgment in favor of IOA, the jury's award to Landlord amounts to $125,000.00. As such, Landlord's request for a fee award in the amount $172,206.03 was approximately **137%** of the sum owed by IOA. (R. p. 0133.) The trial court properly exercised its discretion in finding that a reduction was warranted under the circumstances. The trial court awarded $94,500.00 in fees and expenses, which is substantially more than the 15% minimum under the Lease Agreement. (R. p. 0021.) Based on the language of the Lease Agreement, a reasonable award of attorney's fees and expenses would "be not less than fifteen percent (15%) of all sums then owing by Tenant to Landlord," *i.e.*, 15% of $125,000.00. The trial court's award of $94,500 is approximately 76% of the judgment amount. (R. p. 0021.)

Despite receiving a fee award that is 76% of the judgment amount, Landlord requests that this Court reverse the Order due to the trial court's "overemphasis on the amount of the judgments." Landlord analogizes the trial court's findings to an error identified by the Supreme

Court in *Baron Data Sys., Inc. v. Loter*. *Id*., 297 S.C. 382, 385, 377 S.E.2d 296, 297 (1989) ("A reading of the Court of Appeals' opinion indicates that the amount of the monetary judgment was the critical factor upon which the Court of Appeals relied in making its determination."). Here, unlike *Baron* where the jury returned a verdict in favor of Baron, there was not a singular prevailing party in this case. *Id*. 297 S.C. at 383, 377 S.E.2d at 296. Each side prevailed on various issues and claims, as both IOA and Landlord received a verdict in their favor. (R. p. 0018.) The trial court compared the amount of damages sought to the amount awarded in quantifying the respective success of the parties. *See Randolph v. PowerComm Constr., Inc*., 780 F. App'x 16, 23 (4th Cir. 2019) (recognizing that the courts "must compare the amount of damages sought to the amount awarded" in attempting to quantify success). On this basis, the trial court determined that "the circumstances whereby both parties have prevailed in this case warrants an adjustment" to the amount of fees requested. (R. p. 0018.)

Having properly determined that a reduction was warranted, the trial court undertook an analysis of a reduction that would be both reasonable and equitable and looked to cases in which courts have applied percentage reductions to arrive at a reasonable fee. (R. pp. 0020 – 0021.) Landlord argues that the trial court erred by citing decisions involving fee requests made pursuant to federal or state statute since the Lease Agreement does not require Landlord to be the "prevailing party" in order to recover fees.[1] As indicated in the Order, the trial court relied on these decisions as providing guidance on the issue of the appropriate percentage reduction, not to determine the prevailing party. (R. pp. 0019 – 0025.) Whether the decisions cited in the Order awarded fees pursuant to contract or statute had no bearing on the trial court's decision to apply a percentage

[1] To the extent Landlord is suggesting that it can recover fees even when it does not prevail, Landlord is advancing a legal rule that has never been recognized in South Carolina, and that is irreconcilable with applicable law.

reduction to the amount requested by Landlord. (R. pp. 0019 – 0021.) The trial court properly recognized that Landlord is not entitled to be paid for time and labor devoted to issues that it lost and adjusted the fee request accordingly. (R. p. 0019.) *See Prevatte v. Asbury Arms*, 302 S.C. 413, 417, 396 S.E.2d 642, 644 (Ct. App. 1990) (finding that the time and labor devoted to issues on which party does not prevail should not be charged against the opposing party who prevailed on those issues).

The alleged errors in the Order were not raised to the trial court. Because Landlord's arguments relating to the trial court's decision to apply a reduction to the fee award have not been preserved for appellate review, the Order should be affirmed.

II. THE FEE REDUCTION WAS APPROPRIATE DUE TO IMPROPER INCLUSION OF LEGAL FEES RELATING TO UNSUCCESSFUL MOTIONS, EXCLUDED EVIDENCE, AND DUPLICATIVE TRIAL PREPARATION

As indicated by the record below, Landlord sought to require IOA to pay fees and costs relating to Landlord's unsuccessful motions, inadmissible evidence, or duplicative trial preparation. The trial court properly declined to do so. (R. pp. 0022 – 0024.) As indicated in the Order, the trial court concluded that an adjustment was proper based on its review of the record provided in support of Appellant's fee submission. (R. p. 0023.) Specifically, the trial court found that Landlord's fee request sought payment for tens of thousands of dollars of fees and expenses incurred relating to a summary judgment motion that was denied, in developing a theory that IOA had fraudulent intent for vacating the leased premises, including conducting significant discovery relating to IOA's subsequent occupancy of a leased space, and three or more rounds of trial preparation. (R. p. 0023.) The decision to reduce the amount of the award to exclude certain fees and costs was properly made within the discretion of the trial court and should not be disturbed. *See Baron*, 297 S.C. at 384, 377 S.E.2d at 297 ("Where there is a contract, the award of attorney's

fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown.").

In taking this appeal, Landlord argues that the trial court erred in excluding fees for unsuccessful motions and defenses because the time devoted to the unsuccessful issues was intertwined with its successful claims and defenses. The issue of whether the successful and unsuccessful claims and counterclaims were intertwined for purposes of a fee award was not raised to the trial court. To the extent Landlord believed that the issue had been raised but not ruled upon by the trial court, it failed to file a motion for reconsideration or a motion to alter or amend the Order. Having failed to raise this argument below, Landlord is not entitled to a second attempt at requiring IOA to pay for duplicative and excessive fees. *See Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 645 (2011) (recognizing that issue preservation rules "prevent a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case").

Therefore, the Order should be affirmed.

III. LANDLORD'S ARGUMENTS RELATING TO THE TRIAL COURT'S RELIANCE ON EVIDENCE ADMITTED AT TRIAL HAS NOT BEEN PRESERVED FOR APPELLATE REVIEW

The third issue on appeal is both unpreserved and without merit. Under the guise of an appeal of the Order, Landlord asks this Court to weigh the evidence presented at trial, to disregard the jury's verdict in favor of IOA relating to the rent reimbursement, and to find that IOA was ultimately responsible for Landlord's breach of the Lease Agreement. These arguments relate to issues that have not been preserved for this Court's review.

Landlord argues that the trial court abused its discretion by reducing the fee award based on its review of the record, including trial exhibits that Landlord believes were improperly

admitted. Landlord did not file a motion for a new trial or a motion for judgment notwithstanding the verdict but instead points to its pre-trial motions *in limine* as basis for reversing the trial court's Order. The purpose of a motion *in limine* is to prevent disclosure of potentially prejudicial matter to the jury. *State v. Floyd*, 295 S.C. 518, 520, 369 S.E.2d 842, 843 (1988). A ruling on the motion is not the ultimate disposition on the admissibility of evidence. It remains subject to change based upon developments during trial. *Id*. Therefore, Landlord's argument relating to the trial court's findings based on evidence in the trial record is unpreserved for review by this Court. *See State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (finding the appellant did not preserve for appellate review his claim that certain testimony constituted an impermissible character attack where, at trial, counsel objected to the testimony solely on relevancy grounds).

Furthermore, Landlord's argument that the trial court erred by considering inferences drawn from disputed evidence consists of conclusory statements and arguments of counsel without supporting legal authority. An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority. *See, e.g., State v. Jones*, 344 S.C. 48, 58–59, 543 S.E.2d 541, 546 (2001); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal); *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.").

Accordingly, the Order should be affirmed.

CONCLUSION

For the reasons set forth above, Appellant 1221 Bower, LLC has failed to present a basis warranting reversal of the trial court's Order. Therefore, Respondent Insurance Office of America, Inc., respectfully requests that the Court affirm the Order.

Respectfully submitted,

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June 17, 2025
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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The Honorable Courtney Clyburn Pope, Circuit Court Judge
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Insurance Office of America, Inc., Respondent,

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1221 Bower, LLC, Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Brief of Respondent Insurance Office of America, Inc., complies with Rule 211(b), SCACR.

June 17, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas for the Ninth Judicial Circuit

The Honorable Courtney Clyburn Pope, Circuit Court Judge
Lexington County

Appellate Case No.: 2024-001585
Trial Court Case No.: 2020-CP-32-04007

Insurance Office of America, Inc., Respondent,

v.

1221 Bower, LLC, Appellant.

PROOF OF SERVICE

I hereby certify that on this date the **Final Brief of Respondent Insurance Office of America, Inc**., was served on counsel for Appellant 1221 Bower, LLC via electronic mail dated June 17, 2025, at the following addresses:

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June 17, 2025
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