RECEIVED
Jul 31 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

THE HONORABLE B. ALEX HYMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2024-000705
CIVIL ACTION NO. 2021-CP-26-00808

A. Tebele & Sons, a South Carolina General Partnership,

APPELLANT-RESPONDENT,

versus

Certain Underwriters at Lloyd's; HDI Global Specialty SE; General Security Indemnity Company of Arizona; and Crescent Coast Insurance, LLC,

RESPONDENTS,

Of which Crescent Coast Insurance, LLC is the,

RESPONDENT-APPELLANT.

FINAL RESPONSE BRIEF OF RESPONDENTS, CERTAIN UNDERWRITERS AT LLOYD'S, HDI GLOBAL SPECIALTY SE, GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA

BUTLER WEIHMULLER KATZ CRAIG, LLP

MIHAELA CABULEA
Pro Hac Vice
mcabulea@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Certain Underwriters at Lloyd's, HDI Global Specialty SE, and General Security Indemnity of Arizona

L. ANDREW WATSON, ESQ
SC Bar No. 100322
awatson@butler.legal
ROMAN C. HARPER, ESQ.
SC Bar No. 104000
rharper@butler.legal
11525 N. Community House Road, Ste. 300
Charlotte, North Carolina 28277
Counsel for Certain Underwriters at Lloyd's, HDI Global Specialty SE, and General Security Indemnity of Arizona

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

STATEMENT OF ISSUES ON APPEAL

I. Whether A. Tebele & Sons et al. ("Tebele & Sons") waived the argument that it is entitled to coverage as a matter of law due to an ambiguity in the policy by not raising it in a directed verdict and a motion for judgment notwithstanding the verdict; alternatively, whether the lower court correctly declined to find an ambiguity as a matter of law and correctly denied Tebele's motion for judgment notwithstanding the verdict.

II. Whether Tebele & Sons waived the argument that it was entitled to coverage as a matter of law because the limitations on coverage were not provided to Tebele & Sons until after the loss, by failing to move for directed verdict on this issue and renew it in a motion for judgment notwithstanding the verdict; alternatively, whether affirmance is proper because the issue is without merit.

III. Whether affirmance is proper on the alternative ground that Tebele & Sons has no insurable interest.

IV. Whether, if this Court determines in the primary appeal of A. Tebele & Sons that insurance coverage exists for the claimed fire loss, the jury's verdict against Crescent Coast for negligence and breach of fiduciary duty for failure to procure coverage must be reversed as a matter of law.

STATEMENT OF THE CASE

Nature of the case

Fire caused a total loss at the subject property. The Insureds—a sophisticated group of commercial property management companies with decades of experience in negotiating and obtaining coverage for their properties—represented in a signed insurance application that the property was 100% sprinklered. In reality, the property was

never sprinklered at all, because it lacked a connection to the city's water supply line. Undeterred, Tebele & Sons submitted a claim for property damage to Insurers, who declined it outright given the lack of the required sprinkler system to protect the property from what occurred. Tebele & Sons filed suit against the Insurers challenging their denial of the claim, but the jury agreed with the Insurers that they did not breach the insurance contract and did not act in bad faith.

On appeal, Tebele & Sons challenges the lower tribunal's purported denial of directed verdict in its favor claiming it was entitled to judgment as a matter of law due to an ambiguity in the policy. But this argument was not properly preserved for appellate review because Tebele & Sons did not move for directed verdict on this precise issue. It merely asked the lower court to find as a matter of law that there was an ambiguity in the policy. Furthermore, in its motion for judgment notwithstanding the verdict, Tebele & Sons asked for contradictory alternative relief, urging the lower court to grant a new trial based on the court's purported failure to charge the jury with the law of ambiguity in an insurance policy. Even when considered on the merits, this argument fails, as there is no ambiguity in the policy. Thus, the lower courts' finding of no ambiguity must be affirmed.

Tebele & Sons also posits, without identifying any error committed by the lower court, that it is entitled to coverage as a matter of law because the limitations on coverage were not disclosed to Tebele & Sons until after the loss. Tebele & Sons failed to move for directed verdict on this issue, thus the issue was not properly preserved for appellate review. Even when considered on the merits this argument still fails, because the evidence adduced at trial conclusively established that the policy and the Protective Safeguards Endorsement were delivered to the Insureds' broker before the fire. Thus, as

a matter of law, the Insureds' broker's knowledge was imputed to the Insureds and the Insureds are deemed to have had knowledge of the Safeguards Endorsement prior to the loss. Thus, affirmance on this issue on the merits is proper.

Insurers submit that affirmance is proper on the alternative argument that Tebele & Sons has no insurable interest in the subject property, as the property was initially purchased under the Tebele & Sons business but was later deeded to a different entity, who was never joined as Plaintiff in the lawsuit prior to the expiration of the statute of limitation.

Alternatively, should this Court determine in the primary appeal that insurance coverage exists for the claimed fire loss, then the Insurers do not dispute the law supports reversal of the jury's verdict against Crescent Coast.

Procedural history

On February 3, 2020, Tebele & Sons sued Certain Underwriters at Lloyd's, London, HDI Global Specialty SE, and General Security Indemnity Company of Arizona ("Insurers") and its insurance agent, Crescent Coast Insurance ("Crescent Coast"), alleging breach of contract and bad faith against Insurers and, alternatively, negligence and breach of fiduciary duty against Crescent Coast. (R. pp.15-28.) The Insurers and Crescent Coast answered the complaint denying the allegations. (R. pp. 29-54; R. pp. 55-80; R. pp. 81-106; R. pp. 107-113.) Tebele & Sons and the Insurers filed cross-motions for summary judgment, which were denied by the court. (R. pp.114-140; R. pp. 141-144; R. pp.183-208; R pp. 220-228.)

The case was tried to a jury between December 4, 2023, and December 13, 2023. At the close of evidence, Tebele & Sons did not specifically move for a directed verdict

but asked the lower court to find that the policy was ambiguous as a matter of law, which could arguably be interpreted as a bare bones directed verdict motion. (R. p. 1360, line 8–p. 1361, line 3.) Tebele & Sons did not seek a directed verdict on any other issues. On December 13, 2023, the jury rendered its verdict finding for the Insurers on the breach-of-contract and bad-faith claims. (R. pp. 9-10; R. p. 1454, line 23–p. 1455, line 12.) The jury further found Crescent Coast was negligent and its negligence proximately caused Tebele & Sons' damages. (R. p. 11; R. p. 1455, lines 13-25.) However, the jury determined that Tebele & Sons was 60% negligent. (R. p. 12; R. p. 1455, lines 19-24.) On the breach of fiduciary duty, the jury found for Tebele & Sons and awarded $15,000 in damages. (R. p.13; R. p. 1455, line 25–p. 1456, line 4.)

On December 21, 2023, Tebele & Sons filed post-verdict motions, which were amended on December 27, 2023. (R. pp.250-274; R. pp. 275-299.) Tebele & Sons argued in relevant part that the lower court erred when it did not find that there was an ambiguity in the policy's Protective Safeguard Endorsement - Fire. Tebele & Sons urged the court to enter judgment notwithstanding the verdict on the ambiguity of the policy. (R. p. 299.) Alternatively, Tebele & Sons asked the court to grant a new trial because it failed to charge the jury with the law of ambiguity in an insurance contract. (R. p. 299.) On January 10, 2024, Insurers filed a response in opposition. (R. pp. 300-315.) On April 8, 2024, the lower court denied Tebele & Sons' post-trial motions. (R. pp. 1-6.) On April 29, 2024, Tebele & Sons filed a notice of appeal. On May 6, 2024, Crescent Coast filed a cross-appeal, seeking to challenge the jury's verdict determining that Crescent Coast breached its fiduciary duty to Tebele & Sons.

STATEMENT OF RELEVANT FACTS

Based on Mr. Tebele's representation in the insurance application that the subject property was 100% sprinklered, a policy was issued with the requirement that the subject property have a connected, operational sprinkler system in place.

Tebele & Sons, a South Carolina general partnership overseeing the leasing and management of twenty-three commercial properties whose value amounted to approximately $22 millions, has been in the business for approximately twenty-five to thirty years. (R. p. 895, lines 1-4; p. 1011, lines 22-24; p. 1014, lines 21-25; p. 1060, lines 3-8.) Abraham Tebele ("Mr. Tebele") makes insurance decisions for the commercial properties he manages. (R. p. 1015, lines 8-16; p. 1016, lines 1-6.) Thus, Mr. Tebele is a highly sophisticated insurance buyer who, during twenty-five to thirty years of procuring and renewing insurance coverage for his multi-million-dollar properties, has acquired significant experience in insurance coverage. (R. p. 653, line 22–p. 654, line 9; p. 739, lines 12-23; p. 925, line 12–p. 926, line 4; p. 1016, line 21–p. 1018, line 15; p. 1059, line 9-p. 1060, line 8.)

In the summer of 2018, Mr. Tebele began seeking insurance quotes for his twenty-three commercial properties, whose existing insurance policies were scheduled to expire on January 15, 2019, and for that purpose he met with Crescent Coast to see if it could save him money. (R. p. 720, line 1–p. 721, line 2; p. 743, lines 11-14; p. 890, line 17–p. 891, line 4; p. 975, lines 5-13.) Mr. Sutherland and Mr. Egan of Crescent Coast met with Mr. Tebele to gather information regarding his twenty-three commercial properties and went through each property to verify the information, including information regarding whether each property was sprinklered. (R. p. 513, lines 3-9; p. 744, line 1–p. 745, line

7.) Mr. Tebele acknowledged that the three of them went through the information for each piece of property. (R. p. 1035, lines 2-12.) Both Mr. Egan and Mr. Sutherland testified that Mr. Tebele informed them that a sprinkler system was being installed at the subject property located at 1901 North Kings and told them to mark the property as being 100% sprinklered on the Acord application. (R. p. 746, line 11–p. 747, line 1; p. 892, lines 6-18; p. 1065, line 25–p. 1067, line 17; R. pp. 1925-1961: Defendants' Ex. 23, August 20, 2018, Acord Application.) Crescent Coast relied on the information provided by Mr. Tebele. (R. p. 737, lines 24-25.)

In the process of gathering multiple quotes, Crescent Coast received a quote for coverage from AmWins Special Risk Underwriters ("Amwins SRU"), which indicated the policy required a Protective Safeguards Endorsement and an automatic sprinkler system for the properties marked as sprinklered on the Acord form. (R. p. 2088: Defendants' Ex. 64, Quote; R. p. 890, line 5–p. 902, line 15.) On Friday, January 11, 2019, Mr. Egan forwarded the quote to Mr. Tebele, who indicated he needed until Monday to review. (R. p. 897, line 10-p. 898, line 17; p. 902, lines 4-7.) Mr. Tebele further mentioned he was still looking to find coverage through his then current agent. (R. p. 982, lines 4-9.) Ultimately, Mr. Tebele chose Crescent Coast because of the better premium, and on January 14, 2019, he signed the Acord application, which was then submitted to AmWins SRU. (R. p.750, lines 10-18; p. 904, lines 13-24; p. 982, line 12–p. 984, line 10; p. 1085, line 16-p. 1088, line 7; R. pp. 1925-1961: Defendants' Ex. 23, Acord application.) The Accord application and the testimony adduced at trial establish that the 1901 North King property was marked as 100% sprinklered. (R. p. 1945: Defendants' Ex. 23, Accord application; Tr. p. 1009, lines 8-24.) Mr. Tebele, after reviewing the application acknowledged by his

signature that the information was true and accurate. (R. p. 738, lines 1-3; p. 902, line 17–p. 904, line 8; p. 1035, line 25–p. 1036, line 6.)

The policy was bound on January 14, 2019, and that is when the Protective Safeguards Endorsement became part of the subject policy. (R. p. 1968: Defendants' Ex. 27, January 15, 2019, email; R. p. 2083: Defendants' Ex. 46, Declination letter; R. p. 780, lines 5-20.) Mr. Egan provided Mr. Tebele with the insurance binder on January 17, 2019. (R. p. 906, line 2–p. 707, line 17; R. pp. 1962-1970: Defendants' Ex. 25, Binder; R. pp.1971-1972: Defendants' Ex. 28, January 17, 2019, email.) The binder indicated in relevant part that the Protective Safeguard Endorsement requiring an automatic sprinkler for the subject policy was included with the policy and identified Form SRU-024 0710 Protective Safeguards – Fire, as the relevant form. (R. pp. 1962-1970: Defendants' Ex. 25.) After receiving the policy, the Insureds identified adjustments needed to the policy, including some modifications to the Schedule of Values, but did not raise any issue with the automatic sprinkler system at the subject property or the corresponding Protective Safeguard Endorsement. (R. p. 214: Crescent Coast Insurance, LLC's Answers to HDI Global Specialty SE's Second Requests for Admission, Response no. 11 (admitting change requests regarding addresses and additional mortgagees); R. p. 2090: Defendants' Ex.109, Jan. 30, 2019 email (identifying address revisions and an additional property to be insured); R. p. 1973: Defendants' Ex. 29, January 31, 2019 email; R. p. 2089: Defendants' Ex. 103 (endorsement showing inclusion of new property added to Policy by Insureds).)

Mr. Egan testified that on February 7, 2019, Crescent Coast received the policy package that included the Protective Safeguard Endorsement at issue in this case. (R. p.

944, line 24–p. 945, line 4; R. p. 2078: Defendants' Ex. 34.) The reason why Crescent Coast did not immediately forward the policy to the Insureds is because Crescent Coast was still waiting on some endorsements to be able to deliver the entire policy. (R. p. 912, line 25–p. 915, line 2.) Notwithstanding that Crescent Coast did not provide a copy of the policy to the Insureds until after the fire, the twenty-three properties listed in the policy were covered by the policy subject to its terms and conditions. (R. p. 917, line 24–p. 918, line 1.)

The policy's Protective Safeguards Endorsement established both a condition precedent to coverage, and an exclusion. (R. p. 2053: Defendants' Ex. 31, Policy, AMWINS-000092.) As a condition precedent, the Endorsement required the Insureds "to maintain the protective devices or services listed" on the "Schedule" specified in the Endorsement. *Id.* In turn, the Endorsement's Schedule" incorporated "the Schedule of Values on file with the Company" to identify the locations subject to the "Automatic Sprinkler System" ("AS") safeguard condition. *Id.* The Schedule of Values matches the Application signed by Mr. Tebele, when it comes to identifying the sprinklered locations. (R. pp. 2075-2077: Defendants' Ex. 32; R. p. 1945: Defendants' Ex. 23.) It identifies as 100% Sprinklered the same five locations the Insureds represented to be 100% Sprinklered, including the subject property, while the remaining locations also match the Application in that they are identified as 0% Sprinklered. (R. pp. 2075-2077: Defendants' Ex. 32.) As an exclusion, the Endorsement explicitly precluded coverage for "loss or damage caused by or resulting from fire if, prior to the fire, [the Insureds] failed to maintain any protective safeguard listed in the [Endorsement] Schedule . . ., and over

which you had control, in complete working order." (R. p. 2053: Defendants' Ex. 31, AMWINS-000092.)

The subject property did not have a connected, operational sprinkler system installed at the time of the loss, but the Insureds never notified Crescent Coast or the Insurers of that fact.

Despite the representation in the application for insurance that the subject property was 100% sprinklered, the trial testimony conclusively established that the sprinkler system was never completed. In 2017, Mr. Tebele contracted with Crawford Sprinkler Company ("Crawford Sprinkler") to install the sprinkler system for the property. (R. p. 461, lines 19-25; p. 467, lines 8-15; p. 468, lines 13-16; p. 472, line 23–p. 473, line 23; p. 1021, line 24–p. 1022, line 3.) Mike Dover with Crawford Sprinkler, testified at trial that after all the piping for the sprinkler system was installed inside the building, a service line had to be brought into the building to connect the interior pipe to the city's main line for the water supply. (R. p. 461, lines 1-18; p. 464, line 13–p. 465, line 2.) Because Crawford Sprinkler did not perform such work, Mr. Tebele retained a utility contractor to install the service line. (R. p. 474, line 24–p. 476, line 1; p. 497, lines 18-20.) The utility contractor installed most of the service line but still had ten to fifteen feet to install and for that it needed to bring the line to the building through the wall and connect it to the interior pipes. (R. p. 476, line 21–p. 477, line 6.)

Mr. Dover testified that he attended a site inspection of the property on February 13, 2019 with Mr. Tebele to discuss the completion of the sprinkler system. He further testified that he kept Mr. Tebele informed of the progress made with the sprinkler system installation process. Thus, Mr. Tebele knew in August 2018, January 2019, and February

2019 that the installation of the sprinkler system had not been completed. (R. p. 494, lines 5-8; p. 498, lines 2-16; p. 1023, lines 3-21.) Despite this knowledge, Mr. Tebele admitted he never informed Crescent Coast that the sprinkler system was not actually connected and operational. (R. p. 749, lines 5-8; p. 893, lines 8-14; p. 926, line 23-p.927, line 10; p. 1023, lines 3-21; p. 1052, lines 10-13; p. 1093, lines 8-11.)

Deputy Fire Marshal Marinaro inspected the property prior to the fire and observed that the sprinkler system had not been completed. (R. p. 444, lines 15-17.) He confirmed that at the time of the fire the sprinkler system was still not operational. (R. p. 444, lines 18-20.) During the testimony of Mr. Twaddell, the Insureds' public adjuster, the jury could also see photographs showing that the interior pipe was not connected to the city's main line for the water supply and listen to his explanation of what the photographs depicted. (R. p. 557, line 7-p. 558, line 12; R. 2080: Defendants' Ex. 35.)

The loss and the Insurers' denial of coverage.

On February 24, 2019, there was a fire at the subject property, causing significant damage. (R. p. 577, lines 11-14 (referencing a proof of loss in the amount of $2.85 million); R. p. 2081: Defendants' Ex. 46 (same).) At the time of the fire, the sprinkler system was still under construction and not connected to the city's water supply, as admitted by Mr. Tebele himself. (R. p. 970, lines 22-24; p. 972, line 2-p. 973, line 14.) After the Insureds provided notice of the fire loss, the Insurers opened a claim and conducted an investigation, which revealed that not only was the sprinkler system not operational at the time of the loss, but it was never connected to water or operational. At all times prior to the loss, the subject property was actually 0% sprinklered, not 100% sprinklered as represented by Mr. Tebele on the Insureds' application.

Given the Insureds' lack of compliance with the Safeguards Endorsement, the Insurers ultimately declined the claim. (R. pp. 2081-2084: Defendants' Ex. 46.) In their declination letter, the Insurers explained that pursuant to the Safeguards Endorsement cited in the letter:

> **Coverage is excluded for the fire loss if "prior to the fire, you failed to maintain any protective** safeguard listed in the Schedule above, and over which you had control, in complete working **order**." **There is no dispute that there was no operational sprinkler system connected to water at the** time of the fire loss. Obviously, if an operational sprinkler system had been connected to water at the time of the fire loss, the fire damage would have been substantially reduced, if not completely prevented.

(R. p. 2083: Defendants' Ex. 46) (emphasis in original). The Insurers further explained why the Insureds' position that they were not required to maintain an operational sprinkler system at all was incorrect:

> The Protective Safeguards-Fire Endorsement was made part of your Policy when it was bound for coverage on January 14, 2019. The Exclusion in Section B. of the Fire Endorsement **references the requirement to maintain "any protective safeguard listed in the Schedule above."** The "Schedule **above" that Exclusion** identifies three possible types of safeguards which would be "**indicated on the Schedule of Values on file with the Company." The** "Schedule of Values" on file with you Insurers indicates that for the Loss Location, the property was to be 100% sprinklered. This is consistent with your electronically signed Policy Application for the Loss Location. You were required to maintain an automatic sprinkler system. This was not the case.

(R. p. 2083: Defendants' Ex. 46) (emphasis in original).

The Insurers also rejected the Insureds' position that because the symbol "AS" was not noted on the Insurers' Schedule of Values, no sprinkler system was required to be maintained by the Insureds at the subject property. *Id.* The Insurers explained that

> [t]he symbol "AS" is a legend for the types of protective safeguards subject to the Fire Endorsement, explained therein, all of which are cross-referenced with the Schedule of Values on file with the Insurers, as applicable. The Schedule of Values required the Loss Location to be 100% sprinklered. This was not the case.

Id.

STANDARD OF REVIEW

An appellate court does not review an issue that is not preserved for appellate review. *See State v. Sheppard*, 391 S.C. 415, 423, 706 S.E.2d 16, 20 (2011) ("Our law is clear tha[t] an issue may not be raised for the first time on appeal.") Here, neither the argument that Tebele & Sons is entitled to coverage as a matter of law due to an ambiguity in the policy (Issue I in Tebele's Initial Brief) nor the argument that Tebele is entitled to coverage as a matter of law because it was not provided with the limitations on coverage prior to the loss (Issue II in Tebele & Sons' Initial Brief) were properly preserved for appellate review.

An appellate court reviews a denial of a motion for directed verdict or for judgment notwithstanding the verdict, employing the same standard as the trial court. *Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct. App. 2006) (citations omitted). When reviewing an order denying a directed verdict, an appellate court must view the evidence and all reasonable inferences in light most favorable to the nonmovant. *Wright v. Craft,* 372 S.C. 1, 18, 640 S.E.2d 486, 496 (Ct. App. 2006) (citations omitted). An appellate court reverses a "trial court's ruling on a directed verdict motion only if no evidence exists to support the ruling, or if the decision was controlled by an error of law." *Id.* (citations omitted). "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the

testimony or evidence." *Wright v. Craft*, 372 S.C. 1, 19, 640 S.E.2d 486, 496 (Ct. App. 2006).

An appellate court has discretion to affirm a judgement "upon any ground(s) appearing in the Record on Appeal". Rule 220(c), SCACR. Here, Insurers have raised an alternative ground for affirmance in Issue III of their Brief, based upon which this Court may affirm the judgment.

ARGUMENT

I. Tebele & Sons waived the argument that it is entitled to coverage as a matter of law due to an ambiguity in the policy by not raising it in the lower court; alternatively, the lower court correctly denied Tebele & Sons' request to find an ambiguity in the policy and its motion for judgment notwithstanding the verdict, as there is no ambiguity in the policy that a connected, operational sprinkler system was required at the insured property and indisputably, there was no such system in place at the time of the fire.

Additional relevant facts

During trial, despite the lower court's ruling that the policy was not ambiguous, Tebele & Sons nevertheless attempted to show the policy was ambiguous based upon the policy's definition of "Covered Property" in the Property Coverage Form and based upon a misguided reading of the relationship between the Protective Safeguards Endorsement and the Schedule of Values referenced within it.

Tebele & Sons elicited testimony from Mr. Twaddell regarding the absence of the "AS" abbreviation on the Schedule of Values as a sign of ambiguity in the policy. (R. p. 520, lines 1-21.) However, when confronted on cross-examination with one of his emails wherein he conceded that the Schedule of Values shows the property was required to have an automatic sprinkler system, he conceded that the Schedule of Values shows a sprinkler system listed for the subject property. (R. p. 549 line 1–p. 551, line 7.)

Other witness testimony supported the correctness of the Insurers' claim decision, based upon a plain reading of the Protective Safeguards Endorsement and its reference to five sprinklered properties, including the subject property, as shown on the Schedule of Values. One such witness was Mr. Melvin with AmWins SRU, whose video deposition was played at trial. (R. p. 502, line 15.) He testified that he personally underwrote and assembled the policy. (R. p. 1469, lines 6-22.) He explained that the Insureds knew which

locations were required to have an automatic sprinkler system based upon the Insureds' application and the Schedule of Values, which reflected all the information from the Insureds' application. (R. p. 1506, lines 4-13; p. 1510, lines 9-19.) Mr. Melvin testified that he did not prepare the Schedule of Values, because it was submitted to him with the representation that the subject property was 100% sprinklered. (R. p. 1507, lines 6-8; p. 1509, lines 15-21.) He prepared the initial quotes, the binder, and the policy on behalf of the Insurers with the understanding that the subject property was indeed 100% sprinklered as represented in the application signed by Mr. Tebele. (R. p. 1482, line 8–p. 1482, line 8; p. 1489, lines 12-18.) He also testified that it would not be accurate to identify the property as 100% sprinklered if the automatic sprinkler system was not connected to a water source. (R. p. 1515, line 19–p. 1516, line 9.)

The representative of the Underwriters, Mr. Hanness, testified that the Protective Safeguards Endorsement required the subject property to be sprinklered, as shown by the Schedule of Values and the Insureds' application. (R. p. 788, lines 2-21.) He explained the bases for the decision of the Insurers to deny coverage for the claim, including how the policy language applied to the facts. (R. p. 785, line 14–p. 788, line 21; p. 801, line 21–p. 802, line 18.) Crescent Coast's expert on the standard of care of insurance agents, Mr. Tadlock, testified that the "AS" symbol used within the Protective Safeguards Endorsement is not placed on Schedules of Values, and that the 100% sprinklered notation signifies that an automatic sprinkler system was supposed to be in place at the property. (R. p. 1339, line 23–p. 1343, line 13.)

Tebele & Sons also elicited testimony from Professor Finkel regarding a purported confusion from the Policy's definition of "Covered Property." (R. p. 612, line 24–p. 614,

line 19.) On cross-examination, however, Professor Finkel admitted the existence of Covered Property per the terms of the policy does not mean an insurance claim for a Covered Property is covered. He also conceded that the fact that damage may befall property while it is being repaired does not invalidate other parts of the Policy, such as the Protective Safeguards Endorsement. (R. p. 625, line 23–p. 630, line 3.) This is consistent with the testimony offered by Mr. Hanness and the Insurers' expert, Mr. Heinze,[1] who explained that the definition of "Covered Property" did include the incomplete sprinkler components, and that had those components been damaged by a cause of loss other than fire, such damage may have been compensable. (R. p. 783, line 25–p. 784, line 8; p. 1168, line 9-p. 1169, line 25.) However, all fire damage to any "Covered Property" was precluded by the Protective Safeguard Endorsement. (R. p. 788, lines 2-16.)

Mr. Tebele also conceded that the Insureds' previous insurance policies for the same locations, including the prior year's policy, had similar protective safeguards endorsements. He even had to correct the prior year's endorsement, which initially inadvertently applied to properties that had no automatic sprinkler system. (R. p. 1057, line 13–p. 1058, line 8.) This clearly demonstrated Mr. Tebele's sophistication and knowledge of how to effectuate changes to a policy after binding, including changes to the sprinkler system status. Yet, he did nothing to advise the Insurers that the Insureds' application on January 14, 2019, incorrectly stated that the Property was 100% sprinklered.

[1] Mr. Heinz's name was misspelled throughout the trial transcript as Bernard Hennes.

Argument

A. Tebele & Sons failed to preserve its argument that it is entitled to coverage as a matter of law due to an ambiguity in the policy by not raising it in a directed verdict motion and in a subsequent motion for judgment notwithstanding the verdict.

At the close of all evidence, Tebele & Sons did not move for directed verdict seeking a determination of coverage as a matter of law based on an ambiguity in the policy. Instead, Tebele & Sons asked the lower court to find that the policy was ambiguous as a matter of law, which could arguably be interpreted as a bare bone directed verdict motion. (R. p. 1360 line 8–1361 line 3.) In its amended post-verdict motions, Tebele & Sons argued in relevant part that the lower court erred when it did not find that there was an ambiguity in the policy's Protective Safeguard Endorsement - Fire. Tebele & Sons urged the court to enter judgment notwithstanding the verdict on the ambiguity of the policy. (R. p. 299.) Alternatively, Tebele & Sons asked the court to grant a new trial because it failed to charge the jury with the law of ambiguity in an insurance contract. (R. p. 299.) Tebele & Sons did not ask the lower court at the close of all evidence to find coverage as a matter of law based on the ambiguity in the policy's Protective Safeguards Endorsement – Fire. Thus, Tebele & Sons failed to preserve for appellate review its argument raised for the first time on appeal that it was entitled to coverage as a matter of law due to an ambiguity in the policy. *See, e.g., Jamison v. Morris*, 385 S.C. 215, 226, 684 S.E.2d 168, 173 (2009) (an issue not raised as a ground for a directed verdict during the liability stage of the trial . . . is not preserved for" appellate review); *In re McCracken,* 346 S.C. 87, 551 S.E.2d 235 (2001) (only grounds raised in directed verdict can be raised in JNOV motion). In fact, in its post-verdict motions, Tebele & Sons asked for contradictory

alternative relief, urging the lower court to grant a new trial based on the court's purported failure to charge the jury with the law of ambiguity in an insurance policy, as if the interpretation of an insurance contract were a question of fact, not a legal question for the court's determination. Now, on appeal, Tebele & Sons changes course once again, attempting to persuade this Court that it is entitled to coverage as a matter of law on the issue of the policy's ambiguity. This Court should decline to review this issue raised for the first time on appeal.

B. Alternatively, Tebele & Sons' argument is without merit, as there is no ambiguity in the insurance policy.

"Insurance policies are subject to general rules of contract construction." *State Farm Mut. Auto. Ins. Co. v. Windham*, 432 S.C. 134, 144–45, 850 S.E.2d 633, 638–39 (Ct. App. 2020), *aff'd as modified*, 438 S.C. 156, 882 S.E.2d 754 (2022) (citation and internal quotation marks omitted). Courts "must enforce, not write, contracts of insurance and we must give policy language its plain, ordinary, and popular meaning. We should not torture the meaning of policy language to extend or defeat coverage that was never intended by the parties." *Windham*, 432 S.C. 134, 145, 850 S.E.2d 633, 639 (citations and internal quotation marks omitted). "The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself." *Id.* (citation and internal quotation marks omitted). "When the contract language is clear and unambiguous, the language alone determines the contract's force, and terms must be construed to give effect to their 'plain, ordinary, and popular meaning.' " *Id.* (citations omitted).

In its Brief, Tebele & Sons identifies three purported ambiguities in the policy: (1) the Protective Safeguards Endorsement is purportedly inconsistent with the Schedule of

Values; (2) the policy does not define the words “maintain” and “control”; (3) the policy provided that covered property included “additions under construction if not covered by other insurance” but excluded the sprinkler system which was being installed. (Tebele & Sons’ Brief at 23.) Each of these purported ambiguities are addressed in turn.

1. There is no inconsistency between the Protective Safeguards Endorsement and the Schedule of Values.

In its Brief, Tebele & Sons relies on some after-the-fact speculation that the Insurers allegedly modified the language of the Protective Safeguards Endorsement after Tebele submitted its claim as purported evidence that the Insurers were aware of some ambiguity in the policy. (Tebele & Sons’ Brief at 27-28.) This Court should reject such speculations, as the evidence adduced at trial conclusively established that Mr. Tebele was aware of the sprinkler system requirement at the time of signing the insurance application. He signed the application indicating the property was fully sprinklered, despite the system not being connected to water or operational.

Mr. Twaddell, the Insureds’ public adjuster, acknowledged the application signed by Mr. Tebele had a box checked indicating that the subject property had a sprinkler system. (R. p. 554, lines 10-14.) Professor Finkel also admitted on cross-examination that Mr. Tebele signed the application stating the property was 100% sprinklered, representing the information was true and accurate. (R. p. 423, lines 1-6.) Thereafter, neither Mr. Tebele nor anyone else in his employment contacted Crescent Coast to inform Crescent Coast that the sprinkler system was not completed at the subject property. (R. p. 920, lines 12-15.) Had Mr. Tebele informed Crescent Coast that the property did not have an operational sprinkler system in place, Crescent Coast would have notified AmWins SRU even after coverage was bound because it would have been possible to change the policy

after coverage was bound and Mr. Tebele did in fact do that for the other properties. (R. p. 920, line 8-p. 921, line 11.) Tebele & Sons cannot now work its way out of a misrepresentation in Insureds' application by fabricating a purported ambiguity in the policy. As established at trial, Mr. Tebele was a savvy business owner, well-versed in negotiating insurance coverage, who knew how to effectuate changes to a policy even after it was bound, yet he decided to take a gamble when he represented the subject property was 100% sprinklered when it was not, in order to obtain a reduced premium.

Tebele & Sons relies on a case from the E.D. of Michigan, Southern Division, with no precedential value that is also distinguishable, to demonstrate the policy in this case is ambiguous. (Tebele & Sons' Brief at 28-30, (citing *Westfield Ins Co v Enterprise 522, LLC*, 34 F Supp 3d 737 (ED Mich., 2014) in support of its argument that the policy is ambiguous)). The insurer in *Westfield* issued a fire insurance policy after an insurance agent mistakenly represented on the insured's application that the property had an automatic sprinkler system. In 2011, an inspector reported to the insurer that the property did not have a sprinkler system, but the insurer still renewed the policy at a reduced premium. *Id.* at 742. After a fire completely destroyed the insured's building, the insurer denied coverage based on an exclusion that precluded coverage due to the lack of an automatic sprinkler system. *Id.* at 743.

The court found the exclusion was "patently ambiguous" on its face, and that a reading of the policy as a whole, including the endorsement and the declarations page, failed to demonstrate that the exclusionary language was a condition of fire coverage. *Id.* at 744. The court noted that the exclusion was only defined on one page of the policy—the protective safeguards endorsement—but it was not actually listed on the schedule of

that endorsement. *Id.* The policy provided only that "as a condition of insurance [the insured] is required to maintain the protective devices or services listed in the schedule above." *Id.* at 742. The court explained that "P–1" was the code for automatic sprinklers and it was not listed in the schedule, which provided that "Information required to complete this Schedule, if not shown above, will be shown in the Declarations." *Id.* P-1 was referenced in the Declarations but not listed as a limitation on coverage; instead, it was listed under "Optional Coverages." *Id.* In denying the insurer's motion for summary judgment, the court noted that when coverage under the policy was conditioned on an exclusion, the insurer said so explicitly, but that the insurer did not so condition fire coverage on having a sprinkler system. *Id.* at 745. Further, given the testimony of Westfield's representatives that if the underwriters had corrected the file to reflect that a sprinkler system was not in place, fire coverage would have still issued without the P-1 condition, it was "clear that the exclusion was not intended to be part of the agreement." *Id.*

Westfield is factually distinguishable because in that case, the exclusion did not actually list a required protective device or service in the schedule, despite directing its insured to "maintain the protective devices or services listed in the schedule above." Here, the policy's Safeguards Endorsement clearly establishes both a condition precedent to coverage and an exclusion. (R. p. 2053: Defendants' Ex. 31, AMWINS-000092.) As a condition precedent, the Endorsement required the Insureds "to maintain the protective devices or services listed" on the "Schedule" specified in the Endorsement. *Id.* In turn, the Endorsement's Schedule" incorporates "the Schedule of Values on file with the Company" to identify the locations subject to the "Automatic Sprinkler System" ("AS") safeguard

condition. *Id.* The Schedule of Values matches the Application signed by Mr. Tebele, when it comes to identifying the sprinklered locations. It identifies as 100% sprinklered the same five locations the Insureds represented to be 100% sprinklered, including the property, while the remaining locations also match the Application in that they are identified as 0% aprinklered. (R. pp. 2075-2077: Defendants' Ex. 32.) As an exclusion, the Endorsement explicitly precludes coverage for "loss or damage caused by or resulting from fire if, prior to the fire, [the Insureds] failed to maintain any protective safeguard listed in the [Endorsement] Schedule . . ., and over which you had control, in complete working order." (R. p. 2053: Defendants' Ex. 31, AMWINS-000092.)

Furthermore, Tebele & Sons' interpretation is *per se* unreasonable because it renders the entire Protective Safeguards Endorsement surplusage. *See Sullivan Management, LLC v. Fireman's Fund Ins. Co.*, 437 S.C. 587, 591, 879 S.E.2d 742, 744 (2022) (deeming interpretation that would render provisions mere surplusage unreasonable). The Insureds' interpretation, on the other hand, gives meaning to the policy's terms, since the Schedule of Values identifies the subject property as having a sprinkler system, and being 100% sprinklered, both of which are consistent with the information in Tebele & Sons' signed insurance application. Thus, the trial court correctly declined to find an ambiguity in the policy and so should this Court.

2. The lack of a definition of the terms "maintain" or "control" does not create an ambiguity in the policy.

Tebele & Sons next argues that the lack of a definition for the words "maintain" and "control" somehow creates an ambiguity in the policy. As a preliminary matter, this argument was also waived, as it was not argued at trial in a directed verdict motion, thus it could not be renewed in Tebele & Sons' motion for judgment notwithstanding the verdict.

See S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("[A]n issue may not be raised for the first time in a [post-trial] motion."). Therefore, it was not properly preserved for appellate review and this Court should decline to consider it.

Notwithstanding this preservation issue, the argument is also meritless. Tebele & Sons relies on *Breton, LLC v. Graphic Arts Mut. Ins. Co.*, 446 F. App'x 598, 600 (4th Cir. 2011) to support its argument that the word "maintain" can be interpreted in more than one way and, therefore, it is ambiguous. In *Breton*, the policy contained a Protective Safeguards Endorsement stating that, "[a]s a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above." *Id.* at 600. The only protective device or service referenced in the Schedule was an Automatic Sprinkler System. *Id.* The endorsement also contained an exclusion stating, "[insurer] will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you ... [f]ailed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order." *Id.* The *Breton* court found by analyzing the Black's Law Dictionary definition of the word "maintain" that the word could be understood in more than one way in the context of that case, as:

- To continue (something)
- To continue in possession of (property, etc.)
- To care for (property) for purposes of operational productivity or appearance; to engage in general repair and upkeep. *Id.* at 603. (citing to *Black's Law Dictionary* 1039 (9th ed.2009)).

The court concluded that the multiple meanings of the word "maintain" supported a finding of ambiguity. *Id.*

Unlike the endorsement in *Brenton*, the Protective Safeguards Endorsement here provides more information regarding the required Automatic Sprinkler System that makes the meaning of the word "maintain" clear and unambiguous. The Endorsement provides in relevant part:

> **Protective Safeguards**
> **A.** As a condition of this insurance, you are required to *maintain* the protective devices or services listed in the Schedule above.
> The protective safeguard(s) to which this endorsement applies are identified by the following symbols:
> **1. "AS" Automatic Sprinkler System**, *including related supervisory services*.
> **a.** Any automatic fire protective or extinguishing system, *including connected*:
> **(1)** *Sprinklers and discharge nozzles* . . .

(R. p. 2053: Defendants' Ex. 31, AMWINS-000092.) (italics supplied). A plain reading of this provision makes clear that the Insureds were required to maintain *connected* sprinklers and discharge nozzles, including related supervisory services. There is no question that under this language, which is clearly distinguishable from the provision in *Breton*, the Insureds had to maintain a connected Automatic Sprinkler ("AS") System. In addition, the exclusion requires the Insureds to "maintain" the AS in "complete working order." Thus, reading the Endorsement as a whole eliminates any ambiguity in the meaning of the word "maintain." It becomes clear that the Insureds were required to maintain an AS system that had connected sprinklers and discharge nozzles, which had to be maintained in working order and for which supervisory services were required.

The Insureds never completed installation of an Automatic Sprinkler System at the subject property. They installed sprinkler heads and piping, making it appear that a

sprinkler system was in place, but never made the tap connection to water in order to complete the Automatic Sprinkler System. Thus, it does not matter whether "maintain" means to "repair," keep connected, prevent service interruption, or keep the complete Automatic Sprinkler System in place because the Insureds did none of these. The Insureds did not keep an "Automatic Sprinkler System" or "automatic fire protective or extinguishing system" in place at the subject property. Thus, regardless of the interpretation of "maintain," ultimately the conclusion remains that the Insureds failed to comply with the Safeguards Endorsement condition, and thus, there is no coverage for their loss.

Similarly, there is no ambiguity regarding the term "control" utilized in the exclusion section of the Endorsement. Tebele & Sons attempts to create an ambiguity by referencing its contract with Crawford, which provided that no one other than Crawford was permitted to "place the system in service or perform a test upon it." (R. p. 1683: Plaintiff's Ex. 4.) This, however, refers to the system prior to it being operational as required by the subject Endorsement. Thus, the contract with Crawford is irrelevant to the interpretation of the word "control" in the Endorsement and could not create an ambiguity.

3. There is no ambiguity in the policy's definition of Covered Property.

Tebele & Sons' tortured reading of the policy's Covered Property definition, which includes "additions under construction, alterations and repairs to the building or structure" "[i]f not covered by other insurance," to repudiate the Protective Safeguards Endorsement should also be rejected by this Court. As adduced through the trial testimony of witnesses Finkel, Hanness, and Heinze, such definition merely identifies the *types* of property for

which the Insureds may make a claim if damaged by a covered cause, pursuant to the policy's terms. The policy's "Covered Property" definition does not amend or abrogate any condition precedent or the policy's other defined terms, including "Covered Cause of Loss." Such a reading of the policy is not permitted by South Carolina law. *See Beaufort County School District v. United National Insurance Co.*, 392 S.C. 506, 516, 709 S.E.2d 85, 90 (2011) (holding courts must read the insurance contract as "a whole document so that 'one may not, by pointing out a single sentence or clause, create an ambiguity'"); *see also McGill v. Moore*, 381 S.C. 179, 186, 672 S.E.2d 571, 574-75 (2009) ("If a contract contains a condition precedent, that condition must either occur or it must be excused before a party's duty to perform arises.").

Although the Covered Property of the Insureds (including the building and its unfinished sprinkler system) sustained fire damage, such damage was not covered because the Insureds did not comply with all requisite conditions precedent and the damages resulted from an excluded cause of loss as opposed to a Covered Cause of Loss. *See also Sullivan Management, LLC v. Fireman's Fund Insurance Co.*, 437 S.C. 587, 879 S.E.2d 742 (2022) (recognizing that a covered loss, not just "covered property," is required to trigger coverage under a property insurance policy). Interpreting all relevant policy provisions as a whole makes clear that Tebele & Sons' tortured reading of the "Covered Property" definition must be rejected.

The Insureds never complied with the Endorsement's unambiguous condition precedent. As previously discussed, the evidence adduced at trial conclusively established the installation of an Automatic Sprinkler System was never completed, let alone "maintain[ed]" at the property. The empty pipes and sprinkler heads were never

connected to water or in service and never subject to supervisory services. As a result, they could never have responded to a fire. Since a fire caused the damages for which Tebele & Sons sought policy proceeds, the exclusion in the Endorsement clearly and unambiguously excluded coverage for the loss.

II. Tebele & Sons waived the argument that it is entitled to coverage as a matter of law because the limitations on coverage were not disclosed to Tebele & Sons until after the loss by failing to raise it in a directed verdict motion; alternatively, this argument is without merit.

Tebele & Sons identifies no error committed by the trial court in Issue II of its Brief but merely posits that it was entitled to coverage as a matter of law because the limitations on coverage were not disclosed to Tebele & Sons until after the loss. Tebele & Sons moved for partial summary judgment on this issue, but it failed to raise it again in a motion for directed verdict. Although Tebele & Sons did not specifically move for directed verdict at the close of all evidence, it asked the court to find as a matter of law that the policy was ambiguous. But it never asked the lower court to rule that it was entitled to coverage as a matter of law because it was not provided with a copy of the limitations on coverage. Thus, this issue should be deemed waived and the Court should decline to consider it. *Creech v. S.C. Wildlife & Marine Res. Dep't,* 328 S.C. 24, 34, 491 S.E.2d 571, 576 (1997) (holding the appellant's failure to raise a particular issue in its directed verdict motion precludes appellate review of that issue); *see also* Rule 50(a), SCRCP ("A motion for a directed verdict shall state the specific grounds therefor.").

Notwithstanding the waiver, this argument is also without merit. It is well-established that when an insured employs an insurance broker, like the Insureds did here, the broker acts as the insured's agent and has authority to bind the insured regarding insurance procurement and placement. *See Allstate Insurance Co. v. Smoak*, 256 S.C.

382, 392-93, 182 S.E.2d 749, 754 (1971). Unquestionably, Mr. Egan of Crescent Coast acted as the Insureds' broker at all relevant times and Mr. Tebele acknowledged that.

At trial, the Insureds' expert witness on bad faith, Professor Finkel, explained that Crescent Coast is a broker of different insurance lines, who tries to place insurance. Mr. Tebele asked Mr. Egan, with Crescent Coast, to find insurance for twenty-three buildings and Mr, Egan went to Amwins SRU to obtain insurance. (R. p. 602, line 18-p. 603, line 2.) It was Professor Finkel's opinion that there was never a valid delivery of the policy before the fire. (R. p. 622, lines 13-16.) When pressed on cross-examination, however, Professor Finkel acknowledge that the binder provided by Amwins SRU contained a package that listed all the relevant forms provided to Tebele & Sons by way of Crescent Coast, and one of the forms listed was SRU024710, which was the Protective Safeguards – Fire Endorsement. (R. p. 647, lines 3-24; p. 1962: Defendants' Ex. 25.)

David Egan, an owner of Crescent Coast, also confirmed that Mr. Tebele was Crescent Coast's client, and he submitted a claim following the loss to help out Mr. Tebele. (R. p. 847, lines 7-9; p. 875, lines 14-20.) He acknowledged that he received the policy via email on February 7, 2019. (R. p. 886, lines 1-6.)

Thus, undisputedly the Insureds' broker received both the binder and the policy with the Safeguards Endorsement, before the fire. Thus, as a matter of law, the Insureds' broker's knowledge was imputed to the Insureds and the Insureds are deemed to have had knowledge of the Safeguards Endorsement prior to the loss but admittedly failed to inform the Insurers that their application on January 14, 2019 incorrectly represented that the subject property was 100% sprinklered. Regardless of whether the Insureds availed themselves of the opportunity to access or read the policy, they had the

obligation to do so. *See, e.g.*, *Walpole v. Great American Insurance Companies*, 914 F. Supp. 1283, 1291 (D.S.C. 1994) ("An insured has a duty to read the policy he purchases and to abide by its plain terms."); *Doub v. Weathersby-Breeland Insurance Agency*, 286 S.C. 319, 326, 233 S.E.2d 111, 114 (1977) ("One entering into a contract should read it and avail himself of every reasonable opportunity to understand its contents and meaning."). Furthermore, the Insureds had a legal obligation to abide by the terms of the policy, including the Safeguards Endorsement. *Id.*

Tebele & Sons' reliance on *Poston v. Nat'l Fid. Life Ins. Co.*, 303 S.C. 182, 187, 399 S.E.2d 770, 773 (1990) is misplaced. That case involved a life insurance policy, which provided that if three conditions were met, the policy would become effective as of the application date. The court explained that the insured's agent did not specifically called the insureds' attention to the conditions provided on the receipt and he could not remember if he had delivered the receipt to the insured or his wife. *Id.* 183-84. The court ultimately held that the applicant for life insurance had to have notice of its limitations to be bound. *Id.* Here, unlike the insured in *Poston*, Mr. Tebele was the one who decided to solicit the services of Crescent Coast and unlike the insured in *Poston*, he was a savvy insurance coverage negotiator who decided to purchase insurance for his companies at a lower premium on the condition that certain property was 100% sprinklered. Furthermore, he signed an application of insurance that affirmatively represented the subject property was 100% sprinklered. Thus, Mr. Tebele, unlike the insured in *Poston*, was on notice of the limitation. The jury ultimately decided that the Insurers' declination of coverage was correct, and this Court should not substitute its

judgment for that of the trier of fact, especially based on an unpreserved argument like the one raised by Tebele & Sons in Issue II of its brief.

III. This Court has discretion to affirm the jury verdict on the alternative ground that Tebele & Sons has no insurable interest. [2]

Relevant facts.

Kings Realty, LP not Tebele & Sons owned the subject property. (R. p. 211, lines 6-9: Tebele Depo.; R. p. 210, lines 4-7: Insureds' EUO ("[T]he property is owned by a partnership, which is Kings Realty, LP."); R. p. 1921: Defendant's Ex. 1, Amendment to Commercial Lease (identifying Kings Realty, LP as landlord/lessor of property); R. p. 1010, lines 22-24.) Tebele & Sons has no legal relationship to Kings Realty, LP. (R. p. 210, lines 13-19: Insureds' EUO; R. p. 1102 line 10–p. 1103, line 3.) The only connection between the two separate entities is an overlap of individuals involved with both. *Id.* Similarly, the property management company, Kings Realty of SC, had no involvement with the property. (R. p. 209, lines 8-23: Insureds' EUO.) The testimony and evidence adduced at trial show that Mr. Tebele's father purchased the subject property under Tebele & Sons. (R. 953, line 21–p. 955, line 10; R. pp. 1570, 1573: Plaintiff's Ex. 1A, Ex. 2A, Certified Deeds.) Later, the property was deeded to Kings Realty, LP. (R. p. 955, line 22.)

The property is an approximately 36,000 square-foot commercial space. (R. p. 1163, lines 3-7 (admitting that La Casona occupied only 9,300 square feet and remaining area was vacant).) The lease provided that Kings Realty, LP retained ultimate decision-making authority regarding any improvement or alteration to be installed within the rented space. (R. p. 1921: Defendants' Ex. 1, Amendment to Lease and Initial Lease ("No

[2] Issue III in Tebele's Brief addresses arguments relevant to their claims against Crescent Coast, thus the Insurers provide no response to that Issue.

improvement or alteration of the premises shall be made without the prior written consent of the Lessor.)".)

During the course of La Casona's use of the rented space, Kings Realty, LP decided to add an automatic sprinkler system to the entire property, not just the property occupied by La Casona. (R. p. 212, line 25-p. 213, line 17: Tebele Depo.; R. p. 210, lines 13-19: Insureds' EUO.) Kings Realty, LP paid contractors to perform installation of sprinkler heads and piping throughout the entire property. However, the Insureds never completed the sprinkler system or made it operational, because they failed to complete a tap connection to the city water line outside of the property. (R. p. 1022, lines 19-22.)

Argument

Under South Carolina law, an insured must have a legal or equitable interest in property, such as ownership or tenancy, to pursue indemnification pursuant to an insurance contract. *See Belton v. Cincinnati Insurance Co.*, 360 S.C. 575, 579-80, 602 S.E.2d 389, 391-92 (2004); *South Carolina Insurance Co. v. White*, 301 S.C. 133, 138, 390 S.E.2d 471, 474-75 (Ct. App. 1990). Other connections to property, including mere possession, are insufficient as a matter of law to obtain any indemnification from an insurance policy. *Id.* The owner of the subject property, Kings Realty, LP did not sue the Insurers and was never added to the lawsuit. Furthermore, the statute of limitations for Kings Realty, LP to bring a breach of contract has expired. *See, e.g., Allwin v. Russ Cooper Associates, Inc.*, 825 S.E.2d 707, 713 (S.C. Ct. App. 2019) (providing a three-year statute of limitations for " 'an action upon a contract, obligation, or liability, express or implied.' ") (citation omitted). "Generally, a cause of action accrues under South

Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.' " *Id.* (citations omitted). Here, the cause of action would have accrued at the time of the declination letter, informing Mr. Tebele of the decision to decline coverage, which was issued on August 6, 2019. (R. pp. 2081-2083: Defendants' Ex. 46, Declination letter.) Because more than four years have passed since that date, the statute of limitations has expired.

Here, the record evidence and the trial testimony conclusively demonstrate that the owner of the subject property is Kings Realty, LP who is not the Plaintiff in this suit. (R. p. 1921: Defendant's Ex. 1, Amendment to Commercial Lease, (identifying Kings Realty, LP as landlord/lessor of property); R. p. 1010, lines 22-24.) Tebele & Sons, the named Plaintiff, has no membership interest in Kings Realty, LP. (R. p. 210, lines 13-19: Insureds' EUO; R. p. 1102 line 10–p. 1103, line 3.) The only connection between the two separate entities is an overlap of individuals involved with both. (R. p. 210, lines 13-19: Insureds' EUO; R. p. 1102 line 10–p. 1103, line 3.) Furthermore, Tebele & Sons had no interest as an owner or a tenant of the subject property at the inception of the policy period or at the time of loss. The trial testimony clearly established that Mr. Tebele's father purchased the subject property under the Tebele & Sons name, but in 1990, the property was deeded to Kings Realty, LP and Tebele & Sons lost any ownership interest. (R. p. 953, line 21–p. 955, line 22; R. pp. 1570, 1573: Plaintiff's Ex. 1A, Ex. 2A, Certified Deeds.) Thus, Tebele & Sons cannot establish entitlement to policy proceeds under the subject policy and cannot demonstrate a breach of contract without an insurable interest. In fact, as argued by the Insurers at the summary judgment and directed verdict stage, Tebele & Sons did not even have standing to sue the Insurers.

(R. pp. 195-196: Defendants' Consolidated Brief in Support of Summary Judgment; R. p. 1230, line 2-p. 1232, line 4.)

Therefore, this Court has discretion to affirm the jury verdict on this alternative ground. *See* Rule 208(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)[,]" which in turn provides that [t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the Record on Appeal").

IV. There is no coverage for the claimed loss, but assuming for the sake of argument that this Court were to find coverage, the Insurers do not dispute the law supports reversal of the jury's verdict against Crescent Coast for negligence and breach of fiduciary duty due to its failure to procure coverage.[3]

As argued extensively by the Insurers in response to A. Tebele & Sons' Initial Brief, there is no coverage for the fire loss. Those arguments are incorporated herein by reference. However, assuming for the sake of argument that this Court were to find coverage, the Insurers do not dispute that the law supports reversal of the jury's verdict against Crescent Coast for negligence and breach of fiduciary duty due to its failure to procure coverage.

CONCLUSION

For the reasons set forth in Issues I and II, the Insurers respectfully request this Court affirm the jury verdict because Tebele & Sons has not properly preserved those issues for appellate review and, alternatively, on the merits, Tebele & Sons is not entitled to coverage on those grounds, because there is no ambiguity in the policy and the

[3] This is a response to Issue II in Crescent Coast's Brief. Issue I raises arguments directed at A. Tebele & Sons, regarding which Insurers express no position.

limitations on coverage were provided to Crescent Coast. Alternatively, for the reasons set forth in Issue III, the Insurers ask this Court to exercise its discretion and affirm the jury verdict on the alternative ground that Tebele & Sons has no insurable interest and, therefore, has no standing to sue the Insurers and is not entitled to recover insurance proceeds.

BUTLER WEIHMULLER KATZ & CRAIG, LLP

/s/ Mihaela Cabulea
MIHAELA CABULEA
Pro Hac Vice
mcabulea@butler.legal
rburnison@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900

L. ANDREW WATSON, ESQ
SC Bar No. 100322
awatson@butler.legal
ROMAN C. HARPER, ESQ.
SC Bar No. 104000
rharper@butler.legal
11525 N. Community House Road, Ste. 300
Charlotte, North Carolina 28277
Telephone: (704) 543-2321
Facsimile: (704) 543-2324

DOMINIC ALLEN STARR, ESQ.
MCANGUS GOUDELOCK & COURIE, LLC
Post Office Box 1349
Myrtle Beach, SC 29578
dominic.starr@mgclaw.com

Counsel for Certain Underwriters at Lloyd's; HDI Global Specialty SE; and General Security Indemnify Company of Arizona

Dated: July 31, 2025.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Butler Weihmuller Katz Craig, LLP, for Respondents, Certain Underwriters at Lloyd's HDI Global Specialty SE, and General Security Indemnity Company of Arizona, do hereby certify that I have this date served the foregoing Final Brief, dated July 31, 2025, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

William Wayne DesChamps, III
W. W. DesChamps, Jr.
DESCHAMPS LAW FIRM
1357 21st Avenue N, Suite 102
Myrtle Beach, SC 29577
trey@deschampslaw.com
wwd@deschampslaw.com
Attorneys for Appellant-Respondent, Tebele & Sons

Caleb M. Riser
Carmen V. Ganjehsani
Hunter W. Adams
RICHARDSON, PLOWDEN & ROBINSON
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, SC 29202
criser@richardsonplowden.com
cganjehsani@richardsonplowden.com
hadams@richardsonplowden.com
Attorneys for Respondent-Appellant Crescent Coast Insurance, LLC

Gene McCain Connell, Jr.
KELAHER CONNELL & CONNOR, PC
Post Office Drawer 14547
Surfside Beach, SC 29587
gconnell@classactlaw.net
Adam Sinclair Ruffin
RUFFIN LAW FIRM, LLC
1320 Main Street, Suite 300
Columbia, SC 29201-2941
adam@ruffinappeals.com
Attorneys for Appellant-Respondent A. Tebele & Sons

Adam Sinclair Ruffin
RUFFIN LAW FIRM, LLC
1320 Main Street, Suite 300
Columbia, SC 29201-2941
adam@ruffinappeals.com
Attorneys for Appellant-Respondent, Tebele & Sons

A copy of the sent email is enclosed with this Certificate of Service.

BUTLER WEIHMULLER KATZ CRAIG, LLP

/s/ Mihaela Cabulea
MIHAELA CABULEA
Pro Hac Vice
mcabulea@butler.legal
rburnison@butler.legal
400 North Ashley Drive, Suite 2300
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
Counsel for Certain Underwriters at Lloyd's, HDI Global Specialty SE, and General Security Indemnity of Arizona

Dated: July 31, 2025.