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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

George M. McFadden, Jr. Circuit Court Judge

Appellate Case No.: 2025-000634

Tine Ferrier, Respondent,

v.

Harborstone, LLC d/b/a
Harborstone Apartment, Appellant.

FINAL BRIEF OF RESPONDENT



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ARGUMENT

I. Appellant's Argument that the FAA Governs the Arbitration Clause in the Lease Agreement Is Not Preserved

Appellant argues that the Federal Arbitration Act ("FAA") applies to the Lease Agreement in the current case because it involves interstate Commerce. This argument is not preserved. Appellant did not argue or discuss that the lease agreement involves interstate commerce during the hearing. (R. pp. 59-64). Nor did Appellant argue or present this argument in its Motion to Dismiss and/or Compel Arbitration (R. pp. 21-24), Motion for Reconsideration (R. pp. 25-47), or in any supporting memorandum. Matters not argued to or ruled on by the trial court are not preserved for review. *Food Mart v. South Carolina Dep't of Health and Env'tl. Control*, 322 S.C. 232, 471 S.E.2d 688 (1996). "It is axiomatic that an issue cannot be first raised for the first time on appeal, but must have been raised and ruled upon by the trial judge to be preserved for appellate review." *Creech v. South Carolina Wildlife and Marine Resource Dep't.* 328 S.C. 24, 491 S.E.2d 571 (1997.) Issues not raised in the trial court will not be considered on appeal. *State v. Hudgins*, 319 S.C. 233, 460 S.E.2d 388 (1995), cert. denied, 516 U.S. 1096, 116 S. Ct. 821, 133 L. Ed. 2d 764 (1996).

The first time Appellant mentions that the lease agreement involves interstate commerce is in its Initial Brief for this Appeal. Therefore, this matter was not preserved and cannot be heard for the first time in this appeal.

Appellant also argues that the Carol Management Company is a corporate entity with its principal place of business in North Carolina. It goes on to argue that it manages multifamily residential properties across state lines. Again, this argument is not preserved. Appellant did not argue or discuss these facts in its Motion to Dismiss and/or Compel Arbitration (R. pp. 21-24),

Motion for Reconsideration (R. pp. 25-47), any memorandum, or even during the hearing (R. pp. 59-64). Therefore, it is improper for Appellant to argue this matter during this appeal.

II. Appellant's Exhibit to its Motion for Reconsideration was Properly Not Considered by the Circuit Court.

In response to the Court's decision denying its' Motion to Dismiss and/or Compel Arbitration, the Appellant filed a Motion for Reconsideration. Attached as an exhibit was a copy of a lease. The Appellant attached a copy of a lease without laying any proper foundation. There was no evidence, whether affidavit, deposition testimony or otherwise, that it was relevant and governed the rental period discussed in the filed Complaint. Appellant just simply attached a copy of a lease with no additional information. And therefore, Respondent would argue it is not admissible.

In addition, Appellant's exhibit did not meet the requirements of self-authentication under Rule 902, and therefore, would require evidence, whether affidavit, deposition testimony, or otherwise, to authenticate the document.

A judge should not consider non-admissible evidence, because the court rules and principles of fairness require that judicial decisions be based only on evidence that meets the standards of admissibility. Without the proper foundation or evidence authenticating the document, the judge was in his right not to consider the document.

CONCLUSION

For the forgoing reasons, Respondent respectfully requests that this Court confirm the Circuit Court's Order.

Respectfully Submitted,



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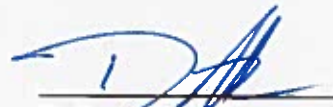
Harborstone, LLC d/b/a
Harborstone Apartment,Appellant.

PROOF OF SERVICE

I, the undersigned attorney for Respondent, do hereby certify that I have served all counsel of record in this action with a true and correct copy of the Final Brief of Respondent, pursuant to Rule 209, a copy of that electronic mail is attached to this certificate.

Final Brief of Respondent served upon:

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