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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas, The Honorable William A. McKinnon

Appellate Case No. 2022-000580
Unpublished Opinion No. 2025-UP-275, filed July 30, 2025

The Grapevine of Riverwalk, Inc..... Respondent,
v.

Riverwalk River District Building 6, LLC, Mark Mather, GRH Development
Resources, LLC, The Greens of Rock Hill, LLC, and
Assured Administration, LLC,Appellants.

APPELLANTS' PETITION FOR PARTIAL REHEARING

In its Unpublished Opinion No. 2025-UP-275 (“Opinion”), this Court correctly found that the trial court was wrong to grant specific performance where there existed no purchase contract between the parties to specifically enforce. (Op. at Para. III). “The fundamental basis of a suit for specific performance is that there is a contract between the parties; . . . [b]efore specific performance can be decreed, it is first necessary to determine whether there is a contract between the parties or not. If there is no contract, then there is nothing to enforce. It would be speculative for a Court to say what would have been the rights of the parties if they had made a contract.” *Finklea v. Carolina Farms Co*, 196 S.C. 466, 471-472, 13 S.E.2d 596, 599 (1941). Respectfully, for the same reasons that it reversed the lower court’s specific performance rulings, this Court should also have reversed the money damages awarded for breach of “the lease’s option to purchase,” rather than finding the issue to be unpreserved. (R. p. 19).

For the reasons below, and pursuant to Rule 221(a), SCACR, Appellants respectfully move this Court to rehear its Opinion, find that the issues on appeal were each preserved for appellate

review, and reverse the trial court's errors of law, which controlled the judgment in this case.

ARGUMENT

This Court's preservation decisions, woven throughout its sixteen-page Opinion, are legally erroneous, result in injustice, and are an unnecessarily harsh exercise of this Court's discretion. In employing preservation doctrines to evade reversal of errors of law – particularly as to the Lease's option to purchase and its unambiguous common area provisions – the Opinion overlooks that those errors were raised to and ruled upon by the trial court, thereby satisfying this Court's essential preservation requirements, as further discussed herein. *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285-286 (2012) (because Appellant had raised issue in its Complaint, at trial, and within a Rule 59 Motion on which the master ruled, “[o]ur core preservation requirements therefore have been met, and there is no procedural bar to us considering this question.”). Moreover, in holding the issue of the jury trial waiver unpreserved for failure of Riverwalk to immediately appeal, the Opinion misapprehends that a non-jury trial is not a substantial right. Finally, in finding that Appellants' negligent misrepresentation argument was not preserved because their JNOV motion was ostensibly untimely, this Court mistook the unique procedural posture of the case, including that the trial court had maintained jurisdiction to rule on post-trial motions, as it was permitted to do under Rules 54(b) and 59, SCRCF, because judgment had not been entered. Respectfully, Appellants ask this Court to rehear its Opinion and reverse the trial court's errors.

Before delving into the specific reasons that this Court should rehear to find individual issues preserved, Appellants ask this Court to consider, broadly, that Appellants were not required by the rules to bring *any* post-trial motions, whatsoever, to preserve issues that had already been raised to and ruled upon by the circuit court. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772 (2004) (“our rules contemplate two basic situations in which a party

should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original).

Additionally, this case had a unique timeline, because the final judgment here was not solely rendered by the jury. Because the gravamen of the case was for specific performance, final judgment in this action was not entered until several months after the jury was dismissed, subsequent to a series of successive orders filed in response to Grapevine’s directed verdict trial motions for specific performance. (R. pp. 8, 21, 26). This Court’s decision in *Holroyd v. Requa* examined a similar procedural timeline, in which appellant did not file post-trial motions until twenty-six days after the jury rendered its verdict; however, the parties (as here) had reserved one claim for post-trial adjudication by the court. 361 S.C. 43, 603 S.E.2d 417 (Ct. App. 2004). *Holroyd* found that post-trial motions were not required to be filed until after the trial court had “ruled on all the claims presented.” *Id.* at 52-54, citing Rules 54 and 59, SCRCP (“Further, this Court generally only lacks jurisdiction over an appeal when the notice of appeal is untimely.”). Here, until judgment was entered, the clock did not start ticking on the trial court’s jurisdiction to consider questions of law that controlled the case – either in response to arguments of counsel or on its own initiative. See Rule 59(d), SCRCP (“Not later than 10 days after entry of judgment, the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party . . .”) (emphasis added). See App. Reply Br. at pp. 3-5; R. pp. 1186, 1223-1224. This is particularly true with regards to questions of law and fact that had already been raised to and ruled upon by the lower court – **which are reviewable regardless of whether a post-trial motion was made** pursuant to S.C. Code § 14-3-330(1) (“provided, that if no appeal

be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.”). Respectfully, “where the question of [issue] preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.” *Royal v. Free Kindergarten Ass’n of Charleston*, 445 S.C. 436, 454 (Ct. App. 2025).

I. The Opinion commits error of law on issue preservation as to the breach of contract issues.¹

On appeal, Appellants argued that they were entitled to judgment as a matter of law in their favor on Grapevine’s breach of contract claims.² Appellants’ arguments on each of these issues centered around the clear and unambiguous language of the Lease, which they argued the trial court misconstrued as a matter of law. *See* App. Br. pp. 1-8, 12-13, 15, 23-30, 33-37. Appellants argued that the trial court’s errors of law on the construction of the Lease infected the trial and controlled the judgment. *Id.*; *see also* Reply Br. at p. 12-13, 20-22.

¹ The arguments under this heading address the Opinion’s Section II. Further, rehearing and reversal as to these issues is additional grounds for sustaining this Court’s correct decision in Section V of the Opinion, regarding reversal of the erroneous award of attorney fees.

² The breach of contract claims were Issue II and Issue IV in Appellants’ Final Brief:

II. Was Riverwalk entitled to judgment as a matter of law because Grapevine unequivocally failed to exercise the option to purchase in conformance with the Lease’s clear requirements?

[Issue II of Appellants’ brief argues that the trial court erred as a matter of law in misconstruing the plain language of the Lease’s option provision, as well as by disregarding South Carolina law on the strict construction of option contracts.]

IV. Was it error of law to find that the commercial Lease Agreement allows one tenant exclusive use of “common areas”?

[Issue IV of Appellants’ brief argues that the trial court committed error of law in ruling that the Lease’s terms governing the “Common Areas” were ambiguous. (R. p. 605:13–14) (“I find Paragraph 15 to be ambiguous.”). The question of whether a contract is ambiguous is a question of law for the court. *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015).]

Appellants incorporate herein by reference their Final Brief and Final Reply Brief, filed with this Court on Dec. 28, 2023.

The Opinion wrongly finds that Appellants' Issues II and IV were not preserved because Appellants did not renew their motion for directed verdict as to these causes of action at the close of all the evidence. (Op. at Sec. II). But the Opinion **misapprehends the preservation doctrines pertaining to Rule 50, SCRCP, which are intended to preserve factual and evidentiary error by the trial court for appellate review.** See *Dupree v. Younger*, 143 S.Ct. 1382 (2023) (holding Rule 50, FRCP, motion was not required to preserve questions of law). Additionally, the Opinion overlooks that the legal arguments related to the construction of the Lease were repeatedly raised to the trial court. The trial court not only had multiple opportunities to rule on the construction of the Lease, but it did indeed rule – erroneously. Therefore, the trial court's errors of law were preserved for appellate review, irrespective of any post-trial motions. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1997) (“an issue . . . must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”).

A. Rule 50, SCRCP, is not the sole avenue to receive (and preserve) a ruling on the law – it exists to vet factual and evidentiary issues.

Fundamentally, the parties disagreed about whether, as a matter of law, Grapevine properly exercised the Lease's option to purchase simply by sending a letter giving notice “of its intent to exercise its purchase option.” (R. p. 1298). Appellants argued that the Lease by its plain language required a purchase contract and the payment of a deposit into escrow. This was Appellants' argument beginning with its Answer, through summary judgment, and beyond trial. But the trial court incorrectly ruled that Grapevine had exercised its option simply by sending the letter—a fundamental error of law which controlled the judgment in this case. The construction of an unambiguous contract is strictly a question of law for the court. *Lee v. Univ. of S.C.*, 407 S.C. 512, 757 S.E.2d 394, 397 (2014). Similarly, the question of whether the Lease permitted Grapevine to exclusively use the sidewalks, which were common areas as defined by the Lease, was a question of law. The trial court erred by finding the common area provisions to

be ambiguous. *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015) (The question of whether a contract is ambiguous is a question of law for the court.).

There is no requirement that a party move for a JNOV under Rule 50, SCRCP, to preserve a legal error for appellate review.³ Rule 50 is unique to jury trials; its origin is the dichotomy between the jury as the finder of fact and the judge as the keeper of the law. *Fickling v. City of Charleston*, 372 S.C. 597, 600, 643 S.E.2d 110, 112 n. 1 (Ct. App. 2007) (noting Rule 50 is unique to jury trials and turns on sufficiency of evidence questions). The purpose of Rule 50, SCRCP, is to make sure that a jury decides the facts. “A motion for directed verdict goes to the entire case and may be granted only when the evidence raises no issue for the jury as to liability.” *Ecclesiastes Prod. Ministries v. Outparcel*, 374 S.C. 483, 490, 649 S.E.2d 494, 497 (Ct. App. 2007). “In deciding whether to grant or deny a directed verdict motion, the court is concerned only with the existence or nonexistence of evidence.” *Id.* at 491, 649 S.E.2d at 498.

Likewise, a motion for JNOV under Rule 50, SCRCP, permits the trial judge to consider and rule on the question of whether the evidence in the record supports the jury’s verdict. *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 231-232, 603 S.E.2d 605 (Ct. App. 2004) (“In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them.”). “The [appellate court] will reverse the trial court’s ruling [on a JNOV motion] only when there is no evidence to support the rulings or where the ruling are controlled by an error of law.” *Hinkle v. National Cas. Ins. Co.*, 354 S.C. 92, 96, 579 S.E.2d 616 (2003).

³ “Rule 56 aside, Younger insists that Rule 50 supports him. Under this Rule, a district court can grant judgment as a matter of law if it finds that ‘a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.’ Fed. R. Civ. Proc. 50(a), (b) (emphasis added). Therefore, Younger says, a Rule 50 motion is an appropriate vehicle for raising purely legal issues once a case proceeds to trial. Maybe so, but this argument is beside the point: **Even if a party can raise legal issues in a Rule 50 motion, nothing in the Rule requires her to do so.**” *Dupree*, 143 S.Ct. at 1390 (emphasis added).

South Carolina’s Rule 50 “conforms to the Federal Rule.” Rule 50, SCRC, n. 1. Until recently, there was a split in the federal appellate circuits over whether a party must move under Rule 50, FRCP, to preserve an issue of law for appeal. The United States Supreme Court, in *Dupree v. Younger*, considered with great interest the question of whether or not a legal issue raised (and denied) in a summary judgment motion was adequately preserved for appellate review after trial and final judgment—notwithstanding that trial counsel had not made any motion raising the issue under Rule 50, FRCP. 143 S.Ct. 1382, 1387-88, 1391.

In unanimously deciding that the question of law had been effectively preserved from the moment it was first raised and ruled upon, the *Dupree* Court analyzed the distinction between questions of fact, the answers to which may evolve with evidence at trial, and questions of law, the answers to which are unaffected by the record. *Id.* at 1388-89 (“Factual challenges depend on, well, the facts, which the parties develop and clarify as the case progresses . . . A district court’s resolution of a pure question of law, by contrast, is unaffected by future developments in the case.”). *Dupree* provides a thorough discussion of preservation and appealability, and this Court should read it in its entirety. Ultimately, the U.S. Supreme Court held:

From the reviewing court’s perspective, there is no benefit to having a district court reexamine a purely legal issue after trial, because nothing at trial will have given the district court any reason to question its prior analysis. We therefore hold that a post-trial motion under Rule 50 is not required to preserve for appellate review a purely legal issue resolved at summary judgment.

. . . **It also makes sense. Because a purely legal question is, by definition, one whose answer is independent of disputed facts, factual development at trial will not change the district court’s answer.** (Granted, the district court might backtrack, but if the question is purely legal, that is because of law books, not trial exhibits.) So what would a repeat-motion requirement for legal questions typically amount to? For litigants, a copy and paste of summary-judgment motions into post-trial format. For district courts, the tedium of saying no twice. There is no reason to force litigants and district courts to undertake that empty exercise.

Id., at 1389-90 (emphasis added).

In the words of the United States Supreme Court: **This just makes sense.** The law is a constant, though the evidence may evolve. South Carolina courts agree. Once a party has received a ruling from the lower court on the law, he is not required to keep trying to change the judge's mind. *Elam*, 361 S.C. 9, 602 S.E.2d 772.

B. The issues of law were raised to and ruled upon by the trial court; they were thus preserved for this Court's review.

In this case, the law that governs the parties includes the Lease's clear provisions and the body of South Carolina law on contract construction and preemptive rights—all of which has remained unchanged from the day that Grapevine signed the Lease, through the multiple rounds of pleadings in which Riverwalk denied that Grapevine had complied with the Lease, through summary judgment on the questions, which the lower court denied, through legal arguments at trial, and beyond, into multiple rounds of post-trial motions.⁴ The lower court had numerous opportunities to rule on these questions of law, and it did indeed rule.⁵

First, as to the common area provisions of the Lease, the trial court (after hearing extensive argument) erred as a matter of law when it ruled: "I find Paragraph 15 ['Common Areas'] to be ambiguous." (R. p. 605:13-14). The question of whether a contract is ambiguous is a question of law for the court. *N. Am. Rescue Prods., Inc.*, 411 S.C. at 378. Trial counsel was not required to hound the trial court to change its mind—once the trial judge ruled, the decision was capable of review on appeal. Moreover, this erroneous legal ruling by the trial court controlled its decision to submit the common area question to the jury, and thereby necessarily affected the judgment

⁴ See App. Br. at pp. 1-12 (beginning : "There is a *very* long backstory to this appeal, as the voluminous Record on Appeal forbodes. However, despite a lengthy trial which was book-ended by copious motions, the facts of real significance are few—and they are not disputed. Of paramount importance in this appeal is that Grapevine entered into a Commercial Lease Agreement (the 'Lease') with Riverwalk, to rent a 1,490 square foot commercial space on the first floor of Building 6. (R. p. 1247 ¶ B. 1)."

⁵ Instances in which questions on Lease construction were raised to and/or ruled upon by the lower court: R. pp. 8, 11 ¶ 4, 21-36, 129-130, 179, 190-194, 271-274, 282, 290-294, 551 - 553:13; 605:13-14, 947, 964: 24-25, 979, 989:20-992, 1001:21-1002, 1006:22-23, 1189-1197, 1223-1224, 1228-1231.

awarding \$146,124 for breach in regards to “the lease’s use of the patio/common space.” (R. p. 19). This Court should reverse, for the reasons set forth in Appellants’ Briefs and pursuant to S.C. Code § 14-3-330(1) (permitting appellate court to “review any intermediate order or decree necessarily affecting the judgment not before appealed from”).

Likewise, the construction of the option to purchase provision and breach of contract was raised so many times to the trial judge, beginning with pleadings and summary judgment, that the court indicated it was not going to change its mind and that further argument was a waste of time: (R. p. 964: 24-25, 947: 11-14, 979: 3-4, 989:20-992, 1006:22-23) (“I don’t like to play hide the ball. So, I will just tell you what I am thinking now. The breach of contract claim is very, it is going to go to the jury.”) (“We are going to send to the jury the breach of contract claim.”) (“Based on my notes, what we are sending to the jury is, breach of contract”) (“It is going to the jury, the breach of contract, I am confident on.”).

Errors of law, once raised and ruled upon, are well within the reach of appellate review. S.C. Code § 14-3-330 (“if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from”). Appellants respectfully ask this Court to rehear its Opinion, hold that Issues II and IV were indeed preserved for appellate review, and reverse the lower court’s errors of law on these issues, because those errors controlled the ultimate judgment in this case and did not need to be raised in a post-trial motion to be preserved for review.

II. An answer to Judge Hewitt’s question on issue preservation, and a request for rehearing as to the jury trial waiver issue.⁶

The Opinion incorrectly finds that Appellants did not preserve their Issue I, which argued that the circuit court erred by denying Riverwalk’s motion to strike Grapevine’s jury trial demand

⁶ This argument requests rehearing of Section I. of the Opinion.

because the Lease contained a clear and conspicuous jury trial waiver. The erroneous basis for the Opinion's preservation decision is its misapprehension that the denial of the motion to strike affected a substantial right of the Appellants, therefore requiring Appellants to have immediately appealed. But the denial of the motion did not result in the deprivation of any party's fundamental, constitutional right to a trial by jury. Instead, the trial court's erroneous ruling as to this legal issue failed to enforce Riverwalk's contractual right to a nonjury trial under the Lease.

This Court's jurisdiction, and the right to appeal, is governed by statute. South Carolina Code § 14-3-330 applies to this Court's jurisdiction to review interlocutory orders. Intended to avoid piecemeal litigation, § 14-3-330(2) confines immediate direct appeal of an order "affecting a substantial right" to three exceptional circumstances, none of which exist here for the orders denying Riverwalk's motion to strike Grapevine's jury trial request: "when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action [not applicable here], (b) grants or refuses a new trial [not applicable here] or (c) strikes out an answer or any part thereof or any pleading in any action [not applicable here]." **In other words, pursuant to the plain language of S.C. Code § 14-3-330(2), immediate, direct appeal is a limited statutory privilege, confined to orders violating a party's constitutional right to trial by jury.** Here, the lower court's erroneous orders did not deprive Grapevine of a substantial right; instead, they denied Riverwalk's contractual entitlement to enforce the Lease's waiver provision.

It is well settled law that not all "mode of trial" decisions involve a substantial right, and therefore not all mode of trial orders are immediately appealable. Our Supreme Court repeatedly has held that immediate appeal is reserved for cases which "involve review of denials of trial by jury and are based on the public policy consideration of advancing the constitutional mandate to preserve the right to trial by jury inviolate." *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 78,

533 S.E.2d 575 (2000) (emphasis added) (acknowledging bifurcated trial as a “mode of trial” but declining to find that the issue was immediately appealable). Moreover, appellate courts must balance whether an immediate appeal is critical to protect an essential right against the strong policy of “avoiding piecemeal litigation.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93-95, 529 S.E.2d 11 (2000) (holding that although the right to a particular venue is a “substantial right,” nonetheless “[r]equiring a defendant to wait until after trial to appeal the issue of proper venue is the most appropriate course to take where any error in that decision will not prejudice the defendant anymore than other interlocutory orders which, if in error, would require a new trial.”). Most “mode of trial” decisions, including the trial court’s denial of Riverwalk’s motion to strike Grapevine’s jury demand, do not meet the Supreme Court’s stringent test.

Beginning at about Minute 3:50 of the oral argument in this appeal,⁷ Judge Hewitt asked the undersigned counsel whether she was aware of a case that distinguishes between a jury trial as a substantial right, versus a nonjury trial as not a substantial right. At the time, the undersigned counsel was not aware of a specific case but nonetheless discussed with the Court the distinction appellate courts have drawn between a mode of trial decision that is immediately appealable (because it involves a substantial right), as opposed to mode of trial decisions that are not immediately appealable (because no substantial right is affected). However, the undersigned has found such a case, which may help clarify the law in this admittedly complex area, and which compels rehearing and reversal on this issue:

In *Cobb v. South Carolina Dept. of Transportation*, the South Carolina Supreme Court dismissed the D.O.T.’s immediate appeal of an order denying its motion to transfer the case to the nonjury docket. 365 S.C. 360, 618 S.E.2d 299 (2005). The lower court’s order also discussed bifurcation. First, the Court held, “Bifurcation in this context does not refer to the mode of trial

⁷ https://media.sccourts.org/COA_Videos/2022-000580.mp4

issue involved in determining whether a case is tried in a jury or non-jury proceeding.” *Id.* at 363, 618 S.E.2d at 300. Thus, although it was a mode of trial decision, the bifurcation ruling was not immediately appealable because it did not affect a substantial right. Next, the Court went on to discuss at length the question of whether the plaintiff had a substantial right to a jury trial of which it had been deprived. *Id.* (“[W]e turn to the issue whether such an order [denying transfer to the non-jury roster] is immediately appealable. If an order *deprives* a party of a mode of trial *to which that party is entitled as a matter of right*, the order is immediately appealable and failure to do so forever bars appellate review.”) (emphasis added). The court first found that the plaintiffs did have the statutory right to a jury trial, but that they had not lost that right through the order. The Court concluded: “DOT therefore has not been deprived of a mode of trial to which it is entitled as a matter of right. Accordingly, we affirm the dismissal of DOT’s appeal.”⁸ *Id.* at 365, 618 S.E.2d at 301-02.

The circumstances in this appeal are analogous to those in *Cobb*. Riverwalk does not have a substantial, constitutional right to a non-jury trial, which must be preserved “inviolable.” The trial court’s order, essentially misconstruing the unambiguous Lease by denying Riverwalk a non-jury trial, did not deprive Riverwalk of a constitutional right to a trial by jury. Pursuant to *Cobb*, if Riverwalk had immediately appealed the denial of its Rule 12 Motion to Strike Grapevine’s jury demand, then the immediate appeal would have been dismissed. Thus, since it

⁸ A swift, lucid discussion of the distinction between an immediately appealable mode of trial decision, and one that must wait for appeal until final judgment, may also be found in *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co., Inc.*, 292 S.C. 575, 357 S.E.2d 725 (Ct. App. 1987), cited with approval by *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997). In *Rowe*, the parties failed to demand trial by jury within 10 days after service of the last pleading, as required by Rule 38(b), SCRCP. *Id.* at 576, 357 S.E.2d at 725. The trial court therefore ruled that the parties had waived the substantive right to trial by jury. *Id.* The parties subsequently moved the trial court to transfer the case to the jury calendar, pursuant to Rule 39(b), SCRCP. *Id.* When the trial court denied this motion, the parties attempted an immediate appeal of the order denying transfer – arguing that their substantial right to a jury trial had been abridged. *Id.* But the Court of Appeals dismissed the appeal “as premature,” finding that because they were not entitled to a jury trial as a matter of right (having waived the right), an immediate appeal did not lie. *Id.*

had preserved the issue by making the motion and receiving a ruling from the trial court, it was only proper for Riverwalk to wait for final judgment to appeal.⁹ See *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (order denying motion to dismiss for lack of personal jurisdiction was not directly appealable); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 402 S.E.2d 482 (1991) (avoidance of trial is not a substantial right entitling immediate appeal); *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377 (Ct. App. 2002) (“Pursuant to section 14-3-330(2), this Court may not review an order that ‘does not prevent a judgment from being rendered in the action, and [from which the] appellant can seek review . . . in an appeal from [the] final judgment.’”).

To summarize: The interlocutory orders at issue—which hinge on construction of the Lease and not on an entitlement to a fundamental right—fall under S.C. Code § 14-3-330(1), which allows review of intermediate orders on appeal of final judgment, and not S.C. Code § 14-3-330(2) pertaining to deprivation of a substantial right.

This Court should rehear its Opinion and find that Riverwalk properly preserved the question of whether the lower court erred by not enforcing the Lease’s clear jury trial waiver. The Lease is clear as a matter of law, and the circuit court did not have discretion to ignore it. “Whether a party is entitled to a jury trial is a question of law.” *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). Because Grapevine knowingly and voluntarily waived its right to a jury trial when it signed the Lease Agreement, and for all the reasons set forth in Appellants’ Brief and Reply Brief incorporated herein, this Court on rehearing should reverse the lower court’s error and remand for a new, non-jury trial; commensurately, in addition to the reasons correctly given in the Opinion, reversal of the trial court’s award of attorney fees is also necessary.

⁹ To be clear, if the circuit court had *granted* the motion to strike, Grapevine could have taken an immediate appeal—because such a ruling could have affected Grapevine’s alleged substantial right to a trial by jury. But the *denial* of the motion did not finally determine Riverwalk’s rights under the Lease.

III. The question of whether there was any evidence to support Grapevine’s negligent misrepresentation claim was preserved – at a minimum as to one of its essential elements – and the trial court’s error should be reversed.¹⁰

At the outset, the Opinion correctly finds that Appellants did preserve “the argument that no evidence showed Grapevine relied on the representation.” (Op. at Sec. IV). Appellants respectfully request a ruling from this Court on this argument, which the Opinion does not provide. *See* App.Br. p. 37-44; Reply p. 22-25. In a nutshell: justifiable reliance on a representation, which justifiable reliance proximately causes a pecuniary loss, is an essential element of a claim for negligent misrepresentation. *McLaughlin v. Williams*, 665 S.E.2d 667, 670 (Ct. App. 2008). “[T]here is no right to rely . . . where there is no confidential or fiduciary relationship, and there is an arm’s length transaction between mature, educated people.” *DeHart v. Dodge City of Spartanburg, Inc.*, 427 S.E.2d 720, 722 (Ct. App. 1993). Here, the Lease contained an explicit clause excluding prior representations and limiting the parties’ agreement to the terms in the document:

43. **Entire Agreement.** This Lease contains the entire agreement between the parties hereto, and cannot be altered or modified in any way except in writing signed by the parties hereto. *All prior representations, discussions, covenants, or warranties of the parties with respect to the Demised Premises or the subject matter hereof are merged herein and superseded hereby.*

(R. p. 1265, ¶ 43) (italic emphasis added). As a matter of law, there could have been no justifiable reliance because the parties explicitly agreed that the terms of their agreement were set forth entirely in the written Lease, and that all prior discussions were superseded by those terms. Grapevine’s principals each initialed the page of the Lease on which this provision appears. (R. p. 1265). South Carolina courts have long recognized that experienced businesspeople dealing at arms’ length should be free to contract as they see fit. *See Bowaters Carolina Corp. v. Carolina Pipeline Co.*, 259 S.C. 500, 193 S.E.2d 129 (1972). In the absence of intentional fraud, South Carolina courts have consistently enforced the contract made by the parties and refused to re-write parties’

¹⁰ This argument addresses the Opinion’s Section IV.

contracts, or to give a party a better deal than the one it negotiated. *See Gilstrap v. Culpepper*, 320 S.E.2d 445 (1984). Because the jury’s verdict on this issue was not supported by any evidence – and was controlled by error of law as to the Lease’s clear merger clause – this Court should rehear its Opinion and reverse on this argument, which the Opinion agrees that Appellants preserved.

Respectfully, as to the Opinion’s conclusion that the remaining arguments on negligent misrepresentation were not preserved because Appellants’ JNOV motion was ostensibly untimely, this Court misapprehends the unique procedural posture of the case, where the trial court had maintained jurisdiction to rule on both trial and post-trial motions, and for parties to be heard on them, as it was permitted to do because judgment had not been entered. *See Holroyd*, 361 S.C. 43, 603 S.E.2d 417 (“The jury’s verdict in this case did not constitute an adjudication of all the claims in the case . . . The trial court had not ruled on all of the claims presented at the time the jury rendered its verdict. The trial court also made no ‘express determination’ that there was no reason for delay in entering judgment on the claims that had been submitted to the jury. Accordingly, the time for filing post-trial motions [had] not beg[un] to run . . .”). For this Court to find otherwise, under this unique posture, would be manifestly unjust given the trial court’s and Respondent’s consent to the timeline. *See Reply Br.* pp. 3-5; R. 1186, 1223-1224. Appellants respectfully request rehearing and reversal on this issue.

CONCLUSION

Pursuant to Rule 221(a), SCACR, for the reasons set forth herein, Appellants request partial rehearing of this Court’s Opinion No. 2025-UP-275. Respectfully, the Opinion errs as a matter of law as to issue preservation; this Court should find that Appellants preserved the issues for appellate review by this Court because they were timely raised and ruled upon by the lower court. For the reasons set forth in Appellants’ briefs the lower court’s errors should be reversed.

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Respectfully submitted,

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