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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

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-000580
Circuit Court Case No. 2018-CP-46-03726

The Grapevine of Riverwalk, Inc.,

Respondent,

v.

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

Appellants.

**RESPONDENT'S RETURN TO APPELLANTS' PETITION FOR PARTIAL
REHEARING**

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Attorneys for Respondent

Respondent, The Grapevine of Riverwalk, Inc., (“Respondent” or “Grapevine”) files this return to appellants’ petition for partial rehearing in the decision this Court of Appeals issued in this case. Respondent respectfully asserts this Court of Appeals correctly determined issues one, two, and four of the issues on appeal set forth in this Court’s opinion.

ARGUMENT

I. This Court properly determined that Appellants failed to preserve their arguments regarding the trial court’s submission of the breach of contract issues to the jury.

A. Appellants did not renew their motion for directed verdict as to the causes of action related to the breach of contract issues at the close of all evidence.

“When a defendant moves for a directed verdict under Rule 50, SCRPC at the close of the plaintiff’s case, he must renew that motion at the close of all evidence. Otherwise, this court is precluded from reviewing the denial of the motion on appeal.” *Wright v. Craft*, 372 S.C. 1, 19-20, 640 S.E.2d 486, 496 (Ct. App. 2006) (citations omitted). “[A] motion for JNOV under Rule 50(b), SCRPC is a renewal of a directed verdict motion. When a party fails to renew a motion for a directed verdict at the close of all evidence, he waives his right to move for JNOV.” *Id.* at 20, 640 S.E.2d at 496 (citation omitted).

“It is a question of law for the court whether the language of a contract is ambiguous.” *Harbin v. Williams*, 429 S.C. 1, 8, 837 S.E.2d 491, 495 (Ct. App. 2019) (quoting *S.C. Dep’t of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001)). “Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties.” *Id.* (quoting *S.C. Dep’t of Nat. Res.* 345 S.C. at 623, 550 S.E.2d at 303). “The determination of the parties’ intent is then a question of fact.” *Id.* (quoting *S.C. Dep’t of Nat. Res.* 345 S.C. at 623, 550 S.E.2d at 303).

Appellants clearly did not renew their motion for a directed verdict under Rule 50, SCRPC regarding the breach of contract issues at the close of all evidence. In their petition for partial rehearing, Appellants attempt to excuse this mistake by citing *Dupree v. Younger*, 598 U.S. 729 (2023) to support their proposition that their motion for a directed verdict as to the breach of contract issues did not need to be renewed. The analysis and holding in *Dupree* is not applicable here though because the issue in *Dupree* was a question of law.

Unlike the issue in *Dupree*, the issue here was a question of fact. The trial court properly determined that the relevant contract provisions were ambiguous; accordingly, the issue of the parties' intent was submitted to the jury, and the jury's determination of the parties' intent was a question of fact. See *Harbin*, 429 S.C. at 8, 837 S.E.2d at 495 ("Once the court decides [contract] language is ambiguous, evidence may be admitted to show the intent of the parties. The determination of the parties' intent is then a question of fact." (quoting *S.C. Dep't of Nat. Res.* 345 S.C. at 623, 550 S.E.2d at 303)).

Appellants attempt to fit a square peg into a round hole by citing *Dupree* to support their assertion that they were not required to renew their motion for a directed verdict regarding the claims for breach of contract to preserve them for appellate review. The jury's determination of the parties' intent was a question of fact; therefore, Appellants were required to renew their motion for a directed verdict at the close of all evidence. Appellants clearly failed to renew their motion for a directed verdict regarding the breach of contract issues at the close of all evidence. Accordingly, this Court should deny Appellants' Petition for Partial Rehearing.

II. This Court properly determined that Appellants failed to preserve their argument regarding the motion to strike the jury trial demand.

"Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the order . . . is immediately appealable. The failure to timely appeal the interlocutory order of the

trial court effects a waiver of appeal rights.” *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993) (citation omitted). “Orders affecting the mode of trial affect a substantial right as defined in section 14-3-330(2) of the South Carolina Code (1976), ‘and must, therefore, be appealed immediately.’” *Frampton v. S.C. Dep't of Transp.*, 406 S.C. 377, 385, 752 S.E.2d 269, 274 (Ct. App. 2013) (quoting *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997)).

Appellants did not immediately appeal the trial court’s denial of their motion to strike Respondent’s jury trial demand. Appellants first attempt to excuse this mistake by claiming that only orders that deny a request for a jury trial are immediately appealable. Appellants ignore clear precedent that orders denying requests for nonjury trials are also immediately appealable. *See id.* at 386, 752 S.E.2d at 274 (holding that the appellant did not preserve for appellate review its argument that the trial court erred by *denying its request for a nonjury trial* because it “did not immediately appeal the trial court's order affecting the mode of trial, which is a substantial right” (emphasis added)).

Again, Appellants cite an irrelevant case to support their proposition that an order denying a request for a nonjury trial does not need to be immediately appealed. The South Carolina Supreme Court explicitly stated in *Cobb v. S.C. Dep't of Transp.* that the appealing party’s argument did “not refer to the mode of trial issue involved in determining whether a case is tried in a jury or non-jury proceeding.” 365 S.C. 360, 363, 618 S.E.2d 299, 300 (2005). Unlike the appealing party in *Cobb*, Appellants asserted that they were entitled to a nonjury trial, and Appellants did not immediately appeal the trial court’s order denying Appellants’ request for a nonjury trial. Accordingly, this Court should deny their petition for partial rehearing as to this issue. *See Frampton* 406 S.C. 386, 752 S.E.2d at 274 (“We find [the appealing party] did not preserve this

issue for our review because it did not immediately appeal the trial court's order affecting the mode of trial, which is a substantial right”).

III. This Court properly determined that Appellants failed to preserve their argument regarding the negligent misrepresentation claim.

“The time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them.” Rule 6(b), SCRCP. “Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.” Rule 50(b), SCRCP. “A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict” *Id.* A “motion for [JNOV] shall be made promptly after the jury is discharged, or in the discretion of the court *not later than 10 days thereafter.*” Rule 50(e), SCRCP (emphasis added).

Appellants had to renew their motion for a directed verdict regarding the negligent misrepresentation issue “not later than 10 days” after the jury was discharged. Rule 50(e), SCRCP. While the trial court stated that Appellants had fourteen days to renew their motion for JNOV, it lacked the discretion to allow Appellants to make that motion “later than 10 days” after the jury was discharged. Rule 50(e), SCRCP. Accordingly, this Court should deny Appellants’ Petition for Partial Rehearing as to this issue.

CONCLUSION

This Court correctly determined that Appellants failed to preserve for appellate review their arguments regarding the breach of contract issues, the motion to strike the request for a jury trial, and the negligent misrepresentation claim. Accordingly, this Court should deny Appellants’ Petition for Partial Rehearing in its entirety.

(Signature page for Respondent's Return to Appellants' Petition for Partial Rehearing, Appellate Case No. 2022-000580)

Respectfully submitted,
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PROOF OF SERVICE

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Attorneys for Respondent

I, Stephen L. Brown, of Clement Rivers, LLP, attorneys for Respondent, hereby certify that the **RETURN TO APPELLANTS' PETITION FOR PARTIAL REHEARING** was served on all other parties to this appeal on October 13, 2025, via email (see attached) to their following counsel of record:

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Respectfully submitted,
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October 13, 2025

Bell, Pollyana (Polly)

From: Bell, Pollyana (Polly)
Sent: Monday, October 13, 2025 1:24 PM
To: 'Ian Ford'; 'Ainsley Tillman'
Cc: Hines, Russell; Brown, Stephen L.; Justman, Aimee; Olive, IV, Graydon
Subject: The Grapevine of Riverwalk, Inc. v. Riverwalk River District Building 6, LLC // Appellate Case No. 2022-000580 (CR 220062)
Attachments: Respondent's Return to PFR.pdf

Enclosed please find Respondent's Return to Appellants' Petition for Partial Rehearing for service upon you in the above-referenced matter.

Thank you,

Pollyana Bell

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