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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Darlington County
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge
Civil Action No. 2024-CP-16-00922

Appellate Case No. 2025-001729

Adams Outdoor Advertising Limited Partnership.....Appellant,

v.

West & Joyce, LLC, successor in interest to West Oil Company.....Respondent.

REPLY SUPPORTING MOTION TO DISMISS APPEAL

**I) No Issue Preservation: Post-Trial Motion Cannot Be Used By Appellant Adams
To Raise Structure Ownership Issue For First Time**

a. The Actual Leased Property

In its motion response, Adams deceptively describes the leased property by the previous singular tax map number and singular applicable street mailing address of “105 West Bobo Newsome Highway”; *however, Adams omits from its response that part of the lease description which subdivided the billboard portion from the adjacent convenience store.*

Specifically, the lease agreement, **Exhibit 1**,¹ prepared by Adams on Adams letterhead, provided

¹ Pursuant to SCACR 240(c)(3), the Respondent is filing Exhibits herewith – and for continuity and convenience, the Respondent is using the same first 13 Exhibits (and identical numbering) filed by Adams with its motion response except that Respondent’s version of Exhibit 12 (the West affidavit) will have all the attachments that were filed with the trial court. Respondent also

that the property was “Adjacent to State road 151 bypass, *approximately 1/10 mile west of US Hwy. 15 intersection* on the north side of the roadway, *more described as on the west end of West Oil’s store property adjacent to SC 151 Hwy.*” (emphasis added). See also **Exhibit 12**, West affidavit ¶¶2, 3, and 6 (“small portion” and “.088 tenths of a mile from intersection”). As also noted by the trial court’s order, **Exhibit 9** p. 4, the lease (**Exhibit 1**, p. 1) itself provides for an easement for access, utilities, and unobstructed views across the lessor’s adjacent property. This complete description, in the lease prepared by Adams, makes it clear that Adams was not leasing the “store property” at the time operated by West Oil and subsequently sold to Refuel (with the creation at that time of a separate TMS number).

To *now* suggest that Adams was actually leasing the whole property, including the operational convenience store, for \$500.00 per year (Lease, **Exhibit 1** ¶ 3) was not supported in the trial court by any factual response by Appellant and makes no sense. Likewise, to *now* hint that Adams might have had the “ability or desire” (Adams’ Motion Response, p.4) to offer a competing convenience store purchase price of \$8.245M – *which price was in the trial record* (West Affidavit, **Exhibit 12** ¶ 8)² – is *not* supported by any factual response by Appellant and *not* supported by the damages remedy sought by Adams’ Complaint. The pragmatic fallacy of Adams’ position is clearer when one considers the continued lease, use (content installations), maintenance, and operation of the sign structure by Adams for over five years after the convenience store was sold and rebranded by Refuel.³ Finally, even the affidavit of Adams’

anticipates filing a corrected version of its Motion to Dismiss appeal that will only add cross-references to these same Exhibit numbers.

² This sworn evidence is *contrary to Adams’ erroneous indication to the contrary* (Adams’ Motion Response, p. 4 (“Without any evidence in the record of the purchase price....”).

³ The “Competitive Advertising Addendum” at the end of the Lease Agreement, **Exhibit 1**, confirms Adams awareness of the convenience store operations and gasoline sales “By Lessor”

submitted to the trial court (**Exhibit 2 ¶ 4**) does not affirmatively state that Adams' was leasing the convenience store realty – which could have been stated, if true.

b. The Issue Not Chosen or Preserved – Right of Continued Ownership

Failing to address the clear authority cited by Respondent's Motion To Dismiss Appeal (pp.3-4) which confirmed the well settled law that a party may not raise an issue, for the first time, in post-trial motions,⁴ the Appellant Adams seeks to side-step the clear choice it made at trial to place all its eggs in the theoretical basket that the right-of-first-refusal (ROFR)⁵ for the leased property somehow included the convenience store.⁶ Referencing the case of *Fraternal Order of Police v. S.C. Dept. of Revenue*, 352 S.C.420, 435, 574 S.E.2d 717. 725 (2002), the Appellant suggest that "Adams could not have been barred from addressing ownership during reconsideration because it was not an issue that should have been raised in the first instance." (Adams' Motion Response, page 11).⁷ *What?*

and confirms Adams commitment not to install competitive advertising on the structures.

⁴ *Kiawah Property V. Public Service*, 359 S.C. 105, 597 S.E.2d 145 (S.C. 2004); *Peterson v. Porter*, 389 S.C. 148, 152, 697 S.E.2d 656, 658 (Ct. App. 2010) (holding appellant failed to preserve issue for review where appellants raised the employer-employee argument in his motion to reconsider but failed to raise it during the summary judgment proceedings); *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct.App.1995) (a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment); see also *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 468 S.E.2d 633 (1996) (a party may not raise an issue for the first time in a motion for a new trial).

⁵ For continuity, the Respondent will adopt the acronym used in Appellant's Motion Response.

⁶ Because there never was a sale of the billboard structure location, Adams pinned its claim of ROFR-breach on the sale of the adjacent, but separate, convenience store property. The trial court found that the ROFR did not apply to the convenience store property; thus, there was no breach of any applicable ROFR. **Exhibit 9**, p. 5.

⁷ In *Fraternal Order of Police*, the Supreme Court held that a First Amendment free speech issue was not preserved for appellate review because it was not pleaded, not discussed extensively at trial, and not ruled upon by the trial judge. Citing *McNeely v. South Carolina Farm Bureau Mutual*

The termination of the lease and the residual control of the abandoned structure were clearly raised by the Respondent's counterclaim (**Exhibit 5 ¶¶** 21-23 including use of the phrase "abandoned")⁸, supported by the filed affidavit (**Exhibit 12 ¶9**), and within the trial court's scope of consideration since raised by the Respondent's Motion for Summary Judgment. (**Exhibit 13**). Adams *did not offer any response to the affidavit* stating that the lease was terminated and that a reasonable billboard-structure removal opportunity had been provided.

Trial counsel for Respondent noted at the Rule 59(e) Motion hearing that the Appellant's "took a chance ... to leave [the Billboard] up and go with the argument that they had a right to buy this land." **Exhibit 11**, p.5 lines 15-18. Contrary to Adams' suggestion (page 11) that "in no way" was it like *Fraternal Order of Police* presenting a new theory after presenting and losing on a different theory at trial, that is precisely what it did with its Rule 59(e) motion solely focusing on asserting and protecting ownership rights in the billboard structure when all of its trial pleadings and effort had been to seek damages (not specific enforcement) for a non-existent breach in a ROFR not applicable to the combined properties.

Insurance Company, 259 S.C.39, 190 S.E.2d 499 (1972) (finding estoppel argument made on appeal was not raised in earlier pleadings or appellate exceptions; therefore, was not preserved).

⁸ In Adams' Motion Response, p.6, it is suggested that Respondent "never even asserted during summary judgment, let alone proved, that the Structure had been abandoned...." Again, that is precisely what Respondent pleaded and offered an affidavit to prove. And item 3 listed in Respondent's Motion for Summary Judgment (**Exhibit 13**) sought the trial court's ruling that "[Adams'] billboard lease that ended on October 1, 2024 has terminated and [Adams] has no further right to use West & Joyce's property or the billboard structure thereon."

c. Summary Judgment Was Not Accidental, It Was Sought

Seeking to avoid the fatal strategy chosen by it at trial, Adams *now* suggests that somehow the Respondent accidentally “obtained” unsolicited court-relief (Adams’ Motion Response, p. 11) regarding the sign structure (again disregarding the counterclaim and actual non-removal abandonment facts shown to the trial court by affidavit). Adams further suggests that it preserved the billboard-structure-ownership issue by merely offering the underlying lease to the trial court. (Adams’ Motion Response, Footnote 6).

Adam’s trial submission of the written lease, however, was in support of its sole claim that it had a ROFR on the convenience store (or combined properties) and that the breach of that right entitled it to monetary damages. (**Exhibit 4**, ¶¶ 4-11). Moreover, Adams *now* suggests that its filing of this breach of contract damages claim somehow froze its theoretical leasehold interest and ownership claim to the billboard structure because “a legal action was pending that sought to provide Adams with fee simple title to the Property.” (Motion Response, p. 5, no authority provided). This is incorrect; no such action was pending.

d. Neither Trial Court or Respondent Had Burden to Proactively Raise & Disprove Theories Not Asserted or Factually Supported By Adams

Adams’ Complaint (Exhibit 4) does not seek property title, or specific enforcement of any contractual ROFR, but rather *only* judgment damages for an alleged breach. Notably, Adams did not add Refuel to its legal action as the record title owner of the convenience store property (See SCRCP 19 (requiring joinder of persons with an interest in litigated property)) or file a notice of lis pendens (See S.C. Code 15-11-10) asserting a property interest in any part of the property.

Fatally, Adams failed to address the lease termination raised by Respondent’s motion and Respondent’s affidavit – either in its motion filings with the trial court or in its argument on

February 10, 2025. As *now* admitted in its Motion Response to this Court, p. 5, “Adams did not dispute the lease termination because the Lease expiring or terminating on October 1, 2024 does not mean that ownership of the Billboard Structure automatically transferred from Adams to West & Joyce.” Additionally, in its Motion Response, p. 6, Adams admits it “did not ‘argue’ that it owned the Billboard Structure – it did not need to....”

e. Abandonment & Non-Removal Raised By Respondent, Ignored By Adams

The lease, prepared and submitted on Appellant Adams’ form, did contain language (**Exhibit 1 ¶4**) declaring that “All structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee....” In this case, however, the West affidavit (**Exhibit 12 ¶2**) makes it clear that the billboard structure was *not* “erected by or for” Adams, but rather already existed – the billboard structure was “thereon” at the time of the lease in July 2009.⁹ The trial court’s order, **Exhibit 9**, p. 3, also notes that the lease itself checks the box next to the term “Existing Structure(s).” Accordingly, it is the automatic lease-based ownership asserted by Adams that, by its own express lease terms, appears not apply at all.

Although Adams argues that the lease and other pleaded positions signal Respondent’s agreement, at least at the time of the lease execution, that Adams could or did “own” the billboard structure, such agreement does not preclude the abandonment argument expressly pleaded by Respondent and the failure-to-reasonably-remove factual showing made by the West affidavit. (**Exhibit 12 ¶9**). Although the apparently non-applicable lease provision would allow for permissive removal of the structure within a “reasonable time of termination” (**Exhibit 1 ¶4**), it did

⁹ Paragraph 2 of the West affidavit (**Exhibit 12**) does contain a typo for the date of the attached lease – erroneously stating it is 2019 when it is dated 2009.

not provide for an unlimited period of time. Moreover, the offer of Respondent to allow convenience-removal for a reasonable period of time was not an admission of automatic lease-based ownership for a pre-existing structure.

Rather than address the non-removal and lease termination, Adams chose to focus its entire argument on its sole claim that it had a right of first refusal to purchase the convenience store property and the damages claim that this right of first refusal had been breached by a sale of the convenience store property – Appellant placed all its eggs in that theoretical basket and *did not offer any response to the Respondent’s affidavit* stating that the lease was terminated and that a reasonable billboard removal opportunity had been provided. (West Affidavit, **Exhibit 12 ¶ 9**). The trial court’s order of summary judgment even notes that Adams “has failed and refused to” remove the billboard structure. **Exhibit 9**, p. 4.

II) Lack of Any Appellate Jurisdiction: Because the Post-Trial Motion Improperly Raised New Issues, It Failed To Toll The Time for Appeal of All Issues

While the filing of a proper Rule 59(e) motion normally stays the time for appeal, SCRC 59(f), it is also well settled that an improper or unneeded Rule 59(e) motion does not stay the time for appeal. *Elam v. South Carolina Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004); *Collins Music Co. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct.App.2002). While the *Elam* and *Collins Music Co.* line of cases dealt with successive or unneeded Rule 59(e) Motions instead of “new issues”, the raising of new issues post-trial is equally improper. The preserved issues were already ripe for appeal and raising new issues by Rule 59(e) only thwarts judicial efficiency, timeliness, and economy.

Although the Adams-cited case of *Swing v. Swing*, 445 S.C. 340, 914 S.E.2d 158 (2025), like *Elam* before it, did refuse to extend the "limits and rationale" of *Coward Hund Construction Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999) (involving a second

successive written 59(e) Motion) and *Quality Trailer Products, Inc. v. CSL Equipment Co.*, 349 S.C. 216, 562 S.E.2d 615 (2002)(involving a first written 59(e) motion duplicative of a previous written JNOV/new trial motion) beyond the two specific situations set forth in those cases, **the Court made it clear that “This does not mean, of course, that all timely Rule 59(e) motions will stay the Rule 203(b)(1) deadline for appeal.”** (emphasis added). **The Court further stated, “we do not foreclose the possibility that another scenario may arise justifying a third exception.....”** (emphasis added).

Most importantly, *Swing* did not involve an attempt to raise new issues for the first time after summary judgment as is the case here. As Justice Few noted in his opinion, *Swing* involved interconnected issues of family court, where the appeal was not filed by the Rule 59(e) movant, where the 59(e) motion was not a successive Rule 59(e) motion, and the filed 59(e) motion was unlike previous motions.

Here, the equities cut in favor of a third exception and a declaration of an untimely appeal – Adams chose not to pursue ownership remedies (specific performance, quiet title, *inter alia*) in its Complaint. Rather, Adams chose to argue solely for a ROFR to combined properties and sought only damages related thereto, and Adams filed nothing in response to the assertion that the lease had terminated and pre-existing structure abandoned. Moreover, the issue actually raised and preserved by Adams – its claim of breach related to an alleged ROFR to the combined properties *was ripe* for appeal without filing the Rule 59(e) motion which only raised new issues.

Conclusion

This appeal seeks to raise unpreserved issues not presented to the trial court until after a ruling on the merits. Issues that were presented to the trial court were ripe for appeal before the improper new issues were raised by post-judgment motion; accordingly, those issues were not timely appealed. Thus, this appeal should be dismissed.

October 24, 2025

Florence, South Carolina

By: /s/ J. Rene Josey

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