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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals
APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2024-001510
Circuit Court Case No.: 2021-CP-19-00050

Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl, Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie Bowes, Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood, Paul Vichroski, Nydza Vichroski, James Montellese, Roxann Montellese, Individually, Derivatively, and on Behalf of all the Mount Vintage Homeowners Association Members,……...Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales Plantation, LLC, and Mount Vintage Plantation Homeowners Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc...……..Defendants,

Of which LL of SC, LLC, Raiford Topsail Island Investments, LLC, and TR Sales Plantation, LLC, are the ……..…..Appellants.

RESPONDENTS' REPLY IN SUPPORT OF THEIR MOTION TO STRIKE AND RETURN IN OPPOSITION TO APPELLANTS' MOTION TO COMPEL AND FOR CONTINUANCE

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Oral argument in the appeal filed by LL of SC, LLC, Raiford Topsail Island Investments, LLC, and T R Sales Plantation, LLC ("Appellants" or "Movants") is scheduled to occur before this Court on November 5, 2025, at 12:00 p.m., in Courtroom 1. Time is short. For that reason, Respondents will be brief in this provisional and consolidated filing.

1. As is true for most mediations involving complex financial cases, the mediator-facilitated negotiations in this matter began well before the Mediation Conference held on October 7th and continued up through the day that Appellants filed the instant Motion to Compel and Motion for Continuance (October 24, 2025).

2. Here, the post-Mediation Conference communications principally concerned the Financial Contingency[1]—the condition precedent that had to occur or be waived prior to the Mediation Agreement becoming enforceable.

3. The clause provides that the entire *agreement* is contingent upon disclosure and acceptance of non-public, material financial transactions. (*See* Mediation Agreement, Att. A to Resps. Prov. Ret. to App. Motions, filed Oct. 27, 2025).

4. Indeed, Appellants do not dispute that the Mediation Agreement contains a condition precedent—which Respondents refer to as a Financial Contingency. They cannot dispute it because the language itself is unambiguous.[2]

[1] The "Financial Contingency" condition precedent at issue is more particularly described in Respondents' provisional Return in Opposition to Appellants' Motions to Compel and Continue (hereinafter "Provisional Return"). For the sake of brevity and in the interest of time, Respondents will not repeat those arguments and instead incorporate them here in full.

[2] The condition is unambiguous, and so the instant dispute is not one about the "language of the Settlement Documents," as Appellants say. (*See* App. Ret. to Resps. Mot. to Strike, Oct. 29, 2025). As Respondents pointed out in their Provisional Return, there is at present no enforceable Mediation Agreement for this Court to interpret, and so Appellants' Motion to Compel Settlement should be denied as premature and not ripe for consideration.

5. Appellants also cannot dispute its existence because they took affirmative steps to satisfy it-- why else would they provide Respondents access to the Developer-controlled HOA's QuickBooks accounts? (*See* Mediation Agreement, Terms and Conditions, at par. 5) ("Def[endants] will turn over all Association and Association-related records in their custody, possession, or control, including all access to and licenses with QuickBooks.").

6. All this to say that the occurrence or waiver of the condition precedent (which Appellants do not dispute *exists*), was always going to entail additional work and possibly negotiation, which was being facilitated by the mediator.[3]

7. What Appellants dispute is whether Respondents should be forced to accept certain non-public, previously undisclosed financial liabilities. Respondents do not believe the Mediation Agreement requires them to accept these liabilities, or waive them, simply at Appellants' urging.

8. Instead of continuing the mediator-facilitated work and negotiations to satisfy the condition precedent, which Respondents believed was occurring, Appellants panicked and brought this dispute to the doorstep of the South Carolina Court of Appeals. (As an aside, it cannot be forgotten that the *reason* this Court is asked to weigh-in here is that Appellants do not want to appear next week in front of this Court to *argue their own appeal*.)

9. What Appellants brought to this Court's doorstep are piecemeal, cherry-picked, and revisionist portions of what was (at least) a six-weeks long negotiation.

10. Respondents are faced with a difficult choice to either fill in these gaps with protected, mediator-facilitated communications, or not.

11. Counsel for the Appellants is aware, for example:

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[3] A condition precedent either exists or it does not; and, if it exists, it is either satisfied or it is not. *See generally McGill v. Moore,* 381 S.C. 179, 188, 672 S.E.2d 571, 575 (2009).

a. that he acknowledged at various times during and after the Mediation Conference that the Employment Contract[4] was something that had to be dealt with after the Mediation Conference and that it was one of the "non-public, material, financial transactions" that necessitated the inclusion of the Financial Contingency;

b. that the Financial Contingency was a specifically bargained-for condition precedent in the Mediation Agreement, and that its satisfaction—which would occur in the future—was necessary for the Mediation Agreement to become enforceable.

c. that, for Respondents to *accept* any non-public, material, financial transactions, Appellants had to *disclose* them by, for example, giving Respondents access to the HOA's QuickBooks account, which access took a week for Appellants to provide;

d. that Appellants repeatedly represented that the debt to be forgiven by Appellants was $1.3 million, and that $1.25 million was the amount demanded and accepted, and that ultimately the phrase "estimated" was included in order to approximate *accrued interest*, and not to reduce the amount—$1.25 million—being offered and accepted; and

e. that the Proposed Addendum Respondents seek to remove from the record was sent, **through the mediator**, explicitly as an offer of compromise on the Financial Contingency condition precedent—a compromise which **always had to occur** because the contingency itself requires Appellants' **disclosure** and Respondents' **acceptance** of agreements, QuickBooks records, and any other undisclosed financial commitment.

12. Respondents could file confidential mediation communications to establish the truth of the items above, and others—but to do so would violate the South Carolina Rules of Alternative Dispute Resolution, and would be an embarrassment to the mediator, to the parties, and to the profession.

13. Respondents hoped to achieve an *enforceable* Mediation Agreement and worked up until the moment Appellants filed their motions to achieve that goal, as did the mediator.

[4] The Employment Contract is more particularly described in Respondents' Provisional Return.

14. That has not occurred, and so the case should continue. Respondents are owed their day in court, which cannot occur until *Movants'* appeal is heard and decided.

15. Respondents respectfully request that this Court:

a. deny Appellants' motions to continue and to enforce the mediation agreement;
b. grant Respondents' motion to strike; and
c. allow the oral arguments in this matter to proceed, as scheduled, on November 5, 2025.

Respectfully,

s/ Anna S. McCann
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PROOF OF SERVICE

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The undersigned hereby certifies that on this day, October 31, 2025, she served a true copy of the within and foregoing **Respondents' Reply in Support of Their Motion to Strike and Return in Opposition to Appellants' Motions to Compel and for Continuance**, upon all counsel of record to this matter via electronic mail to the e-mail addresses listed below:

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October 31, 2025
Mount Pleasant, South Carolina

By: /s/ *Anna S. McCann*
Anna S. McCann, Esq.
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