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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Unpublished Opinion No. 2025-UP-275, filed July 30, 2025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' REPLY
IN SUPPORT OF APPELLANTS' PETITION FOR PARTIAL REHEARING

Appellants' reasons for rehearing are simple and straightforward, and the Respondent has no legitimate answers to them. This Court should grant Appellants' Petition for Partial Rehearing, to rehear those issues that the Opinion erroneously finds to be unpreserved, and it should reverse the trial court's errors of law.

I. The trial court's error on the construction of the Lease was one of law.

Respondent's sole argument in opposition to Appellants' Petition for Rehearing as to appellate Issues II and IV is the inaccurate and illogical assertion that these issues were questions of fact. Says Respondent: "The *trial court properly determined that the relevant contract provisions were ambiguous;*[1] 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." (Return at pp. 1-2) (emphasis

[1] The thrust of Appellants' appeal was that the trial court's decision on ambiguity was improper error of law. 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, 378, 769 S.E.2d 237, 240 (2015).

added). Respondent is wrong—these issues were each **questions of law** pertaining to the construction of a clear and unambiguous Lease agreement.[2] Because the trial court's errors of law on these questions of law were preserved for review, Appellants respectfully request rehearing, review of the errors, and reversal of the rulings.

The Opinion incorrectly finds that Appellants' Issues II and IV were not preserved for appellate review because Appellants did not renew their directed verdict motions on those questions at the close of all evidence. But the Opinion misapprehends that directed verdict motions are only necessary to preserve factual error[3]; **a trial court's error of law is preserved for appellate review as soon as it is raised to and ruled upon by the lower court.** *See* S.C. Code § 14-3-330 (appellate jurisdiction "for correction of errors of law" extends to "[a]ny intermediate . . . order or decree in a law case involving the merits . . ."); S.C. Code § 18-1-130 ("Upon an appeal from a judgment the court may review any intermediate order involving the merits and necessarily affecting the judgment."); *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.").

Here, the Lease construction arguments were raised to the trial court before trial, during trial, and in post-trial motions, and <u>each</u> were specifically ruled upon by the trial court. In particular, the trial court's erroneous determination that certain Lease provisions were

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[2] The threshold 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, 378, 769 S.E.2d 237, 240 (2015). Appellants argued on appeal that the trial court erred as a matter of law to find the plain and clear terms of the Lease to be ambiguous. Further, 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 are common areas as defined by the Lease, was a question of law.

[3] Rule 50, SCRCP, sets the timing for such motions as being "at the close of evidence" and "at the close of all evidence" because such motions challenge the sufficiency of factual evidence.

ambiguous—and its commensurate decision to submit the questions to the jury—involved the merits of the case and controlled the ultimate judgments for damages and specific performance. *See* S.C. Code § 18-1-130. Notably, the trial court's erroneous rulings extended long after trial due to the unusual procedural posture of this case, in which Respondent made a post-trial directed verdict motion for specific performance. (*See*, *e.g.*, R. pp. 33-34, requiring an amended master deed and holding that the "amended Master Deed shall contain terms that are . . . not unduly restrictive of Plaintiff's rights, including the right of Plaintiff to use Common Areas adjacent to its space, as established by the judgment in this case."). Because the trial court ruled on the questions (repeatedly), the Opinion thus erroneously finds the issues to be unpreserved for lack of a motion pursuant to Rule 50, SCRCP.

The United States Supreme Court's case of *Dupree v. Younger* explains in instructive detail that Rule 50 motions are for the preservation of <u>factual</u> error — and they are not required to preserve for review errors of <u>law</u> by the lower court. 143 S.Ct. 1382, 1389-90 (2023) (holding Rule 50, FRCP, motion was not necessary to preserve questions of law) ("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.").

The Respondent tries and fails to distinguish *Dupree* by wrongly characterizing the question of Lease construction as "a question of fact" for the jury. Nonsensically, as to trial court's error in ruling that the common area provisions of the lease are ambiguous, Respondent initially ***agrees*** that this was a question of law. (Return, p. 1, *quoting Harbin v. Williams*, 429 S.C. 1, 8. 837 S.E.2d 491) ("It is a question of law for the court whether the language of a contract is ambiguous."). But then Respondent backpedals, claiming that "the issue here was a question of fact [because the] trial court *properly* determined that the relevant contract provisions were

ambiguous." (Return, p. 2) (emphasis added). Appellants' argument, of course, was that this determination of law on ambiguity was *improper*.

The whole point of Appellants' appeal on the common area provisions (Issue IV on appeal) is that the trial court erred as a matter of law in finding the provisions to be ambiguous and thereby erred in submitting the question to the jury. The common area provisions of the Lease are clear, straightforward, textbook common area terms that as a matter of law do not allow Grapevine to exclusively occupy the building's sidewalks with its tables and chairs. Likewise, the trial court's error in finding the Lease's option provision to be an enforceable contract for purchase (Issue II) was an error of law that reverberated throughout the case: the question was raised to and ruled upon repeatedly (and erroneously) by the trial court, including in multiple post-trial orders, and the erroneous rulings therefore unequivocally meet the statutory test of being an order "necessarily affecting the judgment." S.C. Code § 18-1-130; S.C. Code § 14-3-330.

This Court indeed has power and jurisdiction to review the trial court's errors of law that constitute Issues II and IV of Appellants' appeal, and it should rehear its Opinion to reverse those errors. 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).

II. South Carolina Code § 14-3-330(2) does not permit immediate appeal of the lower court's denial of Riverwalk's Rule 12 Motion to Strike Grapevine's jury demand.

Respondent makes this issue so much "harder than it has to be."[4] Quite simply, the question of whether Appellants were required to immediately appeal the denial of their Rule 12 Motion to Strike Respondent Grapevine's jury demand is controlled by statute, and that statute ***Can* Tell You Why**: no party was deprived of a constitutional right by the order, and so no

[4] Eagles (1979), "**I Can't Tell You Why**." The Long Run. Elektra Records.

immediate appeal could be taken from it. The Opinion thus incorrectly holds that Appellants failed to preserve the issue because they did not immediately appeal.

South Carolina Code § 14-3-330(2) confines immediate, direct appeal of an order "affecting a substantial right" to three exceptional circumstances, none of which exist here: "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]." The statute is clear: **immediate, direct appeal is restricted to orders <u>violating</u> a party's constitutional right to trial by jury.**

A non-jury trial is simply not a substantial right. *Cobb v. South Carolina Dept. of Transportation,* 365 S.C. 360, 618 S.E.2d 299 (2005) (holding that the Department of Transportation was not entitled to an immediate appeal of the denial of its motion to transfer the case to a non-jury roster "because DOT . . . has not been deprived of a mode of trial to which it is entitled as a matter of right."). In this instance, the *Cobb* Court's analysis is on point and precedential. Like the plaintiffs in *Cobb*, here it was Grapevine who held the substantial right (to a jury trial); and, like the plaintiffs in *Cobb*, Grapevine was never deprived of this right by the trial court's orders. Similarly, like the D.O.T. in *Cobb*, Riverwalk did <u>not</u> have a substantial right to a non-jury trial.

Although Respondent argues that the case of *Frampton v. South Carolina Dept. of Transportation* is "clear precedent," 406 S.C. 377, 752 S.E.2d 269 (Ct. App. 2013), this Court's decision in *Frampton* does <u>not</u> control over the Supreme Court's unmistakable ruling in *Cobb* that the denial of a non-jury trial is not immediately appealable. Moreover, *Frampton* does not alter the unambiguous limit on this Court's jurisdiction to hear immediate appeals, which is constrained by statute. S.C. Code § 14-3-330(2).

Riverwalk argued to the lower court that Grapevine had waived its right to a jury trial

within the Lease, and it sought court enforcement of this contract provision in its Motion to Strike Grapevine's demand for a jury trial. When the lower court denied Riverwalk's motion, it misconstrued the Lease's clear language. In that regard, the lower court's order was no different from any other contract construction decision that it made in the course of trial, and which could be appealed after final judgment pursuant to South Carolina Code § 14-3-330(1)("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.").

Put another way, there is no doubt that Riverwalk was not required to take an immediate appeal from the trial court's ***other*** errors of law on contract construction, including the common area and option to purchase provisions discussed above. For example, had Riverwalk attempted to immediately appeal the trial court's ruling that the Lease's common area provisions are ambiguous, such an appeal would have been dismissed pursuant to S.C. Code § 14-3-330, and Riverwalk would have been required to wait until final judgment to appeal. Likewise, no immediate appeal could be taken by Riverwalk of the order denying its contractual right to a non-jury trial. This makes sense from a public policy standpoint: the statutory, jurisdictional guardrails on appellate review are designed to avoid piecemeal appeals and to promote judicial economy.

Aside from mis-branding *Cobb*—a South Carolina Supreme Court decision that is directly on point—as "an irrelevant case," Respondent has no real argument in opposition to the request for rehearing. Because Appellants were not required to take an immediate appeal from the denial of their motion to strike, they respectfully request that this Court would rehear its Opinion, find the issue to be preserved, reverse the lower court's error of law in misconstruing the unambiguous jury trial waiver, and remand for a new, non-jury trial.[5]

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[5] Alternatively, this Court could rule as a matter of law on the unambiguous lease provisions to find

III. The jury's verdict was not a final adjudication of all claims in this case, and therefore Appellants' post-trial motions were timely.

Despite having consented[6] to the fourteen-day timeline for post-trial motions, which was necessitated in part by its own, still-pending, as-yet-unadjudicated claim for specific performance, Respondent now cries "Gotcha!" and insists Appellants should have filed within ten days. (Return, p. 4). But issue preservation "is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants," and "where the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *Atlantic Coast Builders & Contractors* at 333, 730 S.E.2d at 287.

Here, the question of preservation is "subject to multiple interpretations." *Id.* While the rules of procedure do allot ten days for post-trial motions, the very same rules of procedure also permit a trial court to change its mind at any time before final adjudication of "all the claims" within an action. *See*, Rule 54(b), SCRCP ("any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or

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that Grapevine did not exercise its option to purchase and was not entitled to exclusively occupy the common areas with its tables and chairs. *See* S.C. Code § 18-1-140 ("Upon appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from as to any or all of the parties and may, if necessary or proper, order a new trial. When the judgment is reversed or modified the appellate court may make complete restitution of all property and rights lost by the erroneous judgment."). Moreover, in addition to the reasons correctly given in the Opinion, reversal of the trial court's award of attorney fees is also necessary upon reversal of rulings on Grapevine's Lease-based claims.

[6] **THE COURT:** Let's get back on the record. Counsel, my inclination is to give y'all ten days for post-trial motions and that would include, if the Plaintiff wants to make the motion for specific performance. . .

Let's just give y'all two full weeks. We will say, post-trial motions by, that would be Friday, the 10th.

That is acceptable to [Grapevine]?

COUNSEL FOR GRAPEVINE: ***Yes, Your Honor.***

(R. p. 1186) (emphasis added).

other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."). Thus, the trial court here had authority to rule on the issues raised in Appellants' post-trial motions, as well as on Appellants' arguments in opposition to Grapevine's post-trial motions, which it did. *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.").

This Court in *Holroyd v. Requa* held that post-trial motions were not required to be filed until after the trial court had "ruled on all the claims presented." 361 S.C. 43, 52-54, 603 S.E.2d 417 (Ct. App. 2004), *citing* Rule 54, SCRCP. In *Holroyd*, the jury rendered a verdict on December 20 — but (as here) the parties had reserved one cause of action for post-trial adjudication by the court. Interestingly, on January 8 the plaintiff withdrew the claim it had previously reserved; the defendant then filed his post-trial motions on January 15 (so, twenty-six days after the jury verdict). This Court found in *Holroyd* that those post-trial motions, made twenty-six days after the jury retired, were nonetheless timely. *Id.* at 53-54 (holding, "the time for filing post-trial motions did not begin to run until the time Respondents' UTPA claim had been withdrawn. Requa filed his post-trial motions within seven days of the informal notice of withdrawal and eight days prior to the formal withdrawal. Requa's post-trial motions were therefore timely under the rules.").

At a minimum, this Court's decision in *Holroyd*, based on its evaluation of procedural circumstances nearly identical to those in this case, implicates an alternative interpretation to the Opinion's error preservation ruling. **Multiple interpretations on issue preservation should propel this Court to rehear its Opinion and find the issue preserved**:

> It cannot be said that Appellant's arguments are clearly preserved. But in light of the foregoing, it also cannot be said that [Appellant]'s arguments are clearly unpreserved. In these situations, "where the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of

> preservation." Therefore, we find Appellant has preserved her arguments to this court, and has adequately appealed the circuit court's order.

Johnson v. Roberts, 422 S.C. 406, 412, 812 S.E.2d 207 (Ct. App. 2018), *quoting Atlantic Coast Builders & Contractors LLC* at 333, 730 S.E.2d at 287 (Toal, C.J. concurring in part and dissenting in part).

CONCLUSION

Pursuant to Rule 221(a), SCACR, 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. For the reasons set forth in Appellants' briefs and in their petition, this Court should rehear this case and reverse the lower court's errors, which were preserved for appellate review.

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman

Ainsley F. Tillman, S.C. Bar No. 70551
Ainsley.Tillman@FordWallace.com
Ian S. Ford, S.C. Bar No. 12463
Ian.Ford@FordWallace.com
Robert E. Byrd, S.C. Bar No. 106284
Robert.Byrd@FordWallace.com
715 King Street
Charleston, South Carolina 29403
(843) 277-2011

Attorneys for Appellants

Charleston, South Carolina
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PROOF OF SERVICE

I certify that on October 30, 2025, I served Appellants' Reply in Support of Appellants' Petition for Partial Rehearing on Respondent by sending the same to its attorneys of record at their email addresses of record with AIS.

s/ Ainsley Tillman

Attorney for Appellants