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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2022-000867
Unpublished Opinion No. 2008-UP-273

Bittmint, LLC and Harbour Town Surf Shop, LLC, ... Respondents,

v.

Lynda H. Johnson, Charles S. Giannone, and Sea Pines Resort, LLC, ... Petitioners.

PETITION FOR WRIT OF CERTIORARI

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January 20, 2026
Charleston, South Carolina

CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that Petitioners filed their Petition for Rehearing on August 29, 2025, and that the Court of Appeals denied the Petition by order dated December 18, 2025.

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err by reversing the circuit court's grant of direct verdict when Bittmint[1] presented no evidence at trial to support its allegation that Sea Pines is not the holder of a right of first refusal and the only evidence offered was that Sea Pines is the holder of the right of first refusal?

2. Did the Court of Appeals err by reversing the circuit court's grant of direct verdict when the undisputed evidence at trial established that Sea Pines exercised the right of first refusal within fifteen (15) days of receiving written notice of the price and terms of Bittmint's proposed purchase and the right of first refusal explicitly provides that the right of first refusal may be exercised within thirty (30) days of receipt of "written notice of the price and terms" of the "highest bona fide offer"?

EXECUTIVE SUMMARY AND SPECIAL CONSIDERATIONS FOR GRANTING A WRIT OF CERTIORARI IN THIS CASE

Trial is when the rubber meets the road. A plaintiff can no longer rest on its allegations—proof is required. When a plaintiff fails to put up any proof of its case, the court has a responsibility to grant a directed verdict. As explained below, this case involves the exercise of a right of first refusal in 2017 by Petitioner Sea Pines Resort, LLC. At trial, Bittmint failed to offer evidence supporting its allegation that Sea Pines is not the holder of the right of first refusal that Sea Pines exercised. Instead, Bittmint offered a smattering of half-baked legal theories.[2] There was no

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[1] References to Bittmint, LLC or Respondent(s) are intended to encompass both Respondents to the extent Harbour Town Surf Shop, LLC maintains it did not abandon its appeal at the Court of Appeals. See State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (explaining an issue is abandoned on appeal if not raised in a brief and supported by authority).

[2] One of the primary legal theories asserted was that the right of first refusal was void pursuant to the common law rule against perpetuities. That argument was recently rejected by this court in Spring Valley Interests, LLC v. Best for Last, LLC, Op. No. 28309 (S.C. Sup. Ct. filed Jan. 7,

testimony or documentary evidence supporting the allegation that Sea Pines is not the holder of the right of first refusal. The only testimony was that Sea Pines is the holder of that right. The circuit court agreed.

The Court of Appeals reversed, finding there was a disputed factual issue based primarily on the testimony of Bittmint's lawyer that "[t]here [we]re a number of issues presented by the exercise of the option, including a determination of exactly what rights Sea Pines has, if any, and how those rights are to be exercised." **(Opinion, p. 11)**. As explained in more detail below, this testimony of the personal opinion of the single fact witness does not create a factual issue for determination by the jury in the face of the clear and unambiguous wording of the covenant provision governing the right of first refusal and the uncontradicted proof that Sea Pines exercised the right in compliance with the covenant's terms. Even the quote the Court of Appeals handpicked to highlight in its decision states that Sea Pines may be the holder of the right of first refusal. In other words, it is not contradictory evidence. It is simply a loose generalization by a lawyer that was not supported by the actual evidence which showed Sea Pines exercised the right in strict conformance with the governing provision in the applicable covenants. Trial is the time for proof supporting the facts argued by a party, not musings about what the issues might be.

The second holding by the Court of Appeals was equally flawed. The right of first refusal required it be exercised within thirty (30) days of receipt of written notice of the proposed transaction's "price and terms." The only evidence at trial was that, in full recognition of Sea Pines' right of first refusal, *Bittmint's counsel* sent Sea Pines a request that it waive its right of first

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2026) (Howard Adv. Sh. No. 1 at 16) ("We hold the SCUSRAP cannot be reasonably construed in a manner that preserves the CLRAP."). One of the other theories posited by Bittmint was an argument that right of first refusal was personal and unassignable.

refusal and then provided the contract so that Sea Pines would have written notice of the price and terms of the proposed transaction. There is no proof that Sea Pines had knowledge of the price *and* the terms of the proposed sale until then. The only evidence is that Sea Pines exercised the right and closed on its purchase within fifteen (15) days of that written notice sent by Bittmint.

For these important reasons and those below, Petitioners hereby petition this Court for a writ of certiorari and a ruling reversing the Court of Appeals.

STATEMENT OF THE CASE

I. Factual background

This appeal arises from a commercial restate transaction within Sea Pines Plantation on Hilton Head Island. Respondent Bittmint, LLC ("Bittmint"), contracted to purchase two commercial real estate condominium units (the "Property") owned by Petitioners Lynda H. Johnson and Charles S. Giannone (Johnson and Giannone are together, "Sellers") for $580,000.00 (the "Contract for Sale"). **(R. p. 1151)**. These two commercial units, located in Harbour Town, lie in the heart of the Sea Pines resort. After contracting to buy the Property, Bittmint offered the Property for sale to Petitioner Sea Pines Resort, LLC ("Sea Pines") (together, with Sellers, "Petitioners") on the same terms and requested Sea Pines waive its right of first refusal. Within fifteen (15) days of receiving Bittmint's offer and waiver request, Sea Pines accepted Bittmint's offer and exercised its right of first refusal, closing on the purchase of the Property soon thereafter.

As explained more below, all parties understood Sea Pines possesses a right of first refusal for commercial property sold on Hilton Head Island, as established by real property covenants

recorded in 1973 (the "1973 Covenants").[3] Section 19 of the 1973 Covenants sets forth Sea Pines' right of first refusal in clear and unequivocal terms as follows:

> In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price, and should the Company fail or refuse, within thirty (30) days after receipt of written notice of the price and terms, to exercise its options to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company.

(R. p. 1105).

Bittmint and Sellers were aware of Sea Pines' right of first refusal—the right was discussed during the Contract for Sale's negotiations and Bittmint previously requested that Sea Pines waive its right of first refusal when Bittmint purchased an adjacent unit to the Property less than a year prior. **(R. p. 862:16-21; p. 872:6-11)**.[4]

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[3]The right of first refusal was originally established by Lighthouse Beach Company in real property covenants titled "Commercial Use Covenants," recorded in Book 206, at page 1143 of the Beaufort County Register of Deeds. **(R. pp. 1095-112).** Lighthouse Beach Company recorded the Commercial Use Covenants in 1973. **(R. p. 1112)**. The Commercial Use Covenants' defined terms extended the rights granted therein to include Lighthouse Beach Company, "its successors and assigns." **(R. p. 1096)**.

Lighthouse Beach Company's right was assigned to Sea Pines Plantation Company, as documented in an instrument recorded in 1977. **(R. pp. 1113-15)**. The subsequent instruments, agreements, and court orders showing the transfer of the right of first refusal to Sea Pines can be found as attachments to Steve Birdwell's affidavit, which was previously submitted to the trial court. **(R. pp. 158-231)**. The specific trail of assignment was not an issue at trial, and Bittmint did not admit those documents into evidence or challenge their validity.

[4] See **(R. pp. 811:7-812:23; p. 813:11-18; p. 911:10-20)** (noting that Bittmint's members, Amir Bitton and Alon Mintz, knew of Sea Pines right of first refusal); **(R. p. 812:1-10; p. 878:1-6)** (noting that when Bittmint purchased the unit adjacent to the Property, Bittmint requested that Sea Pines waive their right of first refusal).

Pursuant to the Contract for Sale, drafted by Bittmint's attorney, Michael Mogil ("Mogil"), dated March 17, 2017, Sellers were required to "obtain all appropriate waivers and approvals from Sea Pines . . . within thirty (30) days from the date of execution hereof." **(R. p. 1152, at ¶ 6)**; **(R. pp. 925:16-926:3)**; **(R. p. 1153)**. The Contract for Sale also notes that possession of the Property would not occur until a date *after* "all relevant waivers and approvals" were obtained. **(R. p. 1152, at ¶ 7)**. However, after signing the Contract for Sale, Bittmint agreed it would be the party responsible for receiving a waiver of Sea Pines' right of first refusal. **(R. p. 897:19-23)**.[5] Accordingly, Mogil submitted a written waiver request to Sea Pines dated April 13, 2017. **(R. p. 1282)**; **(R. pp. 849:16-850:22)**. That waiver request also included a separate offer by Bittmint to Sea Pines to purchase the Property:

> The above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser(s) referenced above. **It is hereby understood by all parties that the company has thirty (30) business days from receipt of this offer in which to determine its re-purchase option.**

(R. p. 1282) (emphasis added). Four (4) days later, Mogil provided written notice of the terms of the proposed sale, as required by the 1973 Covenants establishing Sea Pines' right of first refusal, by sending Sea Pines the Contract for Sale. **(R. p. 836:4-5; p. 853:11-17)**. Sea Pines then notified Bittmint on May 2, 2017, that it had decided to exercise its right of first refusal and would purchase the Property. **(R. p. 844:7-8; pp. 934:24-936:12)**; **(R. pp. 1164)**. Bittmint filed a notice of lis pendens and, on May 26, 2017, initiated this lawsuit. **(R. pp. 49-50)**; **(R. pp. 53-63)**; **(R. pp. 949:25-950:1)**.

[5] At trial, Bittmint's member, Mintz, testified that Bittmint agreed that they would be responsible for receiving the waiver.

II. Procedural History

Bittmint filed its Complaint alleging various causes of action against Petitioners. **(R. pp. 53-60).** Petitioners answered the Complaint on July 27, 2017. **(R. pp. 64-68)**; **(R. pp. 69-74)**. The circuit court referred the nonjury case to the master in equity, by order dated June 20, 2018. **(R. pp. 45-46)**. Bittmint then amended its Complaint twice: (1) once on October 31, 2018, adding Harbour Town Surf Shop, LLC ("Surf Shop") (together, with Bittmint, "Respondents") as a Plaintiff and bringing four new causes action against the Petitioners, jointly and individually; and (2) once on December 19, 2018, adding a new cause of action against Sea Pines. **(R. pp. 75-87)**; **(R. pp. 90-107)**. After Petitioners timely answered Respondents' Second Amended Complaint, Bittmint demanded a jury trial on December 26, 2018. **(R. pp. 109-17)**; **(R. pp. 118-27)**; **(R. p. 108)**. The Master in Equity vacated the reference and transferred the case to the circuit court's jury roster by order dated February 6, 2019 **(R. pp. 47- 48)**.

Both Petitioners and Respondents filed motions for summary judgment, which were denied by the circuit court via a Form 4 order dated January 13, 2020. **(R. pp. 148-50)**; **(R. pp. 151-57**); **(R. pp. 39-41) (**denying Respondents' motion for summary judgment); **(R. pp. 42-44)** (denying Petitioners' motion for summary judgment). Petitioners also filed a motion for partial summary judgment after Bittmint conceded that three of its causes of action "may not be actionable claims under South Carolina law," but the circuit court denied Petitioners' motion by Form 4 order dated January 20, 2022. **(R. p. 243, at n.6)**; **(R. pp. 257-58)**; **(R. pp. 33-35)**. The case proceeded to trial before a jury on Monday, February 28, 2022.

As discussed in more detail below, Bittmint failed to submit at trial any proof that Sea Pines does not the hold the right of first refusal that it exercised to purchase the Property. In fact, the only evidence at trial was that Sea Pines held the right and acted timely in exercising its right

of first refusal upon receiving the Contract for Sale's terms from Bittmint. **(R. pp. 811:7-812:23; p. 813:11-18; p. 911:10-20)**; **(R. p. 818:4-25; p. 848:4-12)**; **(R. p. 862:16-21; p. 872:6-11)**; **(R. pp. 1010:19-1011:17)**. Bittmint rested its case on Wednesday, March 2, 2022. **(R. p. 1030:10-12)**.

After Bittmint closed its case in chief without putting up evidence to substantiate all the elements of its claims, Petitioners moved for a directed verdict on all causes of action **(R. pp. 1030:20-1039:16)**. The Court granted the motion as to all claims. **(R. pp. 1048:18-1066:15)**. Bittmint filed a post-trial motion to reconsider, which was denied after a hearing held on May 18, 2022. **(R. pp. 455-79)**; **(R. pp. 7-9)**; **(R. pp. 1068-92).**[6] Respondents filed their Notice of Appeal on June 22. 2022. **(Notice of Appeal, filed June 22, 2025)**.

The Court of Appeals reversed the circuit court's grant of directed verdict to Petitioners, deciding there were two factual issues the circuit court should have submitted to the jury: (1) whether Sea Pines possessed an enforceable right of first refusal over the subject Property, and (2) whether Sea Pines exercised its right within thirty (30) days of receiving written notice of the price and terms of the Contract for Sale to Bittmint, as required by the 1973 Covenants containing the right of first refusal. See Bittmint, LLC v. Johnson, No. 2025-UP-273 (the "Opinion").

Petitioners filed a petition for rehearing on August 29, 2025. **(Pet'rs' Pet. for Reh'g, filed Aug. 29, 2025)**. The Court of Appeals denied the petition for rehearing by order dated December 18, 2025. (**Order Den. Pet'rs' Pet. for Reh'g, filed Dec. 18, 2025)**.

[6] Sellers filed a post-trial motion seeking an award of attorney's fees expended in their defense of Bittmint's claims. **(R. pp. 674-81)**; **(R. pp. 686-89)**. After the hearing on post-trial motions, the Court granted the motion and awarded $96,614.25 in attorney's fees and $7,004.39 in court costs, for a total amount of $103,618.64**. (R. pp. 4-6)**.

APPLICABLE LEGAL STANDARD

This Court grants certiorari in its discretion when "special and important reasons" warrant this Court's discretionary intervention. Rule 242(b), SCACR. Such review is particularly warranted where, as here, the decision below conflicts with controlling precedent of this Court. Rule 242(b)(3), SCACR. Specifically, the decision conflicts with leagues of prior decisions that require evidence to create a factual issue for the jury, rather than simply speculation or the raising of a question without supporting proof of a party's position.

"A directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." Guffey v. Columbia/Colleton Reg'l Hosp., Inc., 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). "When reviewing the trial court's ruling on a motion for a directed verdict . . . this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." Garrison v. Target Corp., 435 S.C. 566, 576, 869 S.E.2d 797, 803 (2022) (quotation omitted). The Court "cannot ignore facts unfavorable to [the nonmoving] party and . . . must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (quoting Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996)). "In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence." RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012).

"On review, an appellate court will affirm the granting of a directed verdict in favor of the defendant when there is no evidence on any one element of the alleged cause of action." Fletcher

v. Med. Univ. of S.C., 390 S.C. 458, 462, 702 S.E.2d 372, 374 (Ct. App. 2010) (citing Guffey, 364 S.C. at 163, 612 S.E.2d at 697).

ARGUMENT

I. The Court of Appeals erred in holding that there was more than one reasonable inference as to whether Sea Pines had an enforceable right of first refusal because there was no conflicting evidence presented at trial, and the only evidence showed that Sea Pines possessed such a right.

Directed verdicts are improper and warrant reversal when there is "no evidence" to support a ruling. Garrison, 435 S.C. at 576, 869 S.E.2d at 803. Courts are not required to submit speculative, theoretical, or hypothetical views to the jury. In reversing the trial court's grant of directed verdict, the Court of Appeals mentioned testimony from Bittmint's attorney, Michael Mogil, and communications between Mogil and attorneys for Sea Pines and the Sellers, Petitioners Johnson and Giannone. **(Opinion at 11).**

Before turning to the substance of his testimony, it is important to note that prior to Mogil's trial testimony, the circuit court explicitly prohibited Mogil from offering any opinion about the enforceability of the 1973 Covenants or their applicability to the subject Property. In fact, when Petitioners objected to Mogil offering opinions about the 1973 Covenants, Bittmint assured the court before Mogil's testimony began that he would not testify to any legal conclusions. **(R. pp. 920:20-921:3)**. When Bittmint nevertheless attempted to elicit Mogil's opinion on whether the 1973 Covenants applied to the Property, the trial court sustained Petitioners' prompt objection and unequivocally ruled: "Well, he's not an expert, so he can't give his opinion." **(R. pp. 939:20-940:16)**. Mogil complied with this ruling, offering no opinion on the issues of the 1973 Covenants' enforceability or applicability, even when Respondents' trial counsel repeatedly attempted to elicit such testimony despite the court's exclusion of such opinions and the sustained objections. (**R. p. 920: 16-25; p. 921:1-3; pp. 939:20-940:16; pp. 945:22-946:21; pp. 960:18-961:1**).

The trial court's ruling was entirely proper. Mogil had not been disclosed as an expert witness and had previously testified under oath during his deposition that he would not "discuss the enforceability or applicability of the covenants" at trial. **(R. pp. 945:22-946:21)**. Bittmint did not appeal the lower court's ruling prohibiting him from rendering opinions.

To elevate Mogil's generalized reflection that there were "issues" about the right of first refusal to creating a genuine factual dispute about the enforceability or applicability of Sea Pines' right of first refusal, nevertheless, effectively permits trial by ambush and undermines the circuit court's essential role as gatekeeper of expert testimony. See generally, Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174 (2010) ("[T]he trial court serves as the gatekeeper and must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law."). This type of litigation gamesmanship has historically been discouraged by our courts.

Further, the Court of Appeals effectively reversed the lower court's decision based on a ruling of the trial court Respondents did not appeal. See generally, State v. Jones, 543 S.E.2d 541, 546, 344 S.C. 48, 58-59 (2001) (noting that issues that are not briefed and argued are abandoned on appeal). In holding that Mogil's comment created an issue for the jury, the Court of Appeals effectively converted his testimony from that of a fact witness to that of an expert witness. Yet, Respondents never attempted to qualify Mogil as an expert, and the lower court held he was prohibited from rendering opinion testimony, a ruling Respondents failed to appeal, making that determination the law of the case. **(R. pp. 248-57; p. 940:1-16; p. 946:18-21)** (Trial court's unappealed ruling that Bittmint's lawyer, who was not identified as an expert, could not testify to his expert opinions, if he had any).

Nonetheless, even if his comment is considered, Mogil never testified as to any *specific* facts that called into question the right of first refusal or Sea Pines' exercise of it. Mogil's testimony did not warrant reversal of a directed verdict because he offered no facts contradicting the clear and unambiguous terms of the right of first refusal in the 1973 Covenants that would create a jury issue as to whether the right existed or was exercised in accordance with the 1973 Covenants' terms. Adhering to the circuit court's evidentiary ruling, Mogil offered no opinion on these matters.[7] Thus, no reasonable inference—or any inference at all—regarding the validity or applicability of the right could be drawn from Mogil's testimony.[8] Yet, the Court of Appeals ignored these rulings and treated Mogil's personal opinion as establishing a factual issue for the jury to decide.

The emails between Mogil and Fraser simply showed that Fraser sent Mogil references to multiple sets of covenants, one of which was the 1973 Covenants containing the right of first refusal. **(R. pp. 935:18-939:19)**. That exchange did not create a factual dispute about whether Sea Pines held the right of first refusal under the 1973 Covenants or whether it applied to the Property.

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[7] Mogil testified, "I didn't agree with Mr. Frazier and then I filed what's called a lis pendens," (**R. p. 947:18-20**), and "I looked at everything that Mr. Frazier referenced me to, I just didn't agree." (**R. p. 948:1-4**). Even taken out of context, these statements are neutral and vague. Mogil never specified what he did not agree with, other than "Mr. Frazier," or why, and in any event, he never stated that he *disagreed*. Regarding the applicability or enforceability of the covenants, Mogil took no position. The trial court had ruled that he could not offer such opinions because he had not been disclosed or qualified as an expert witness. These two neutral and vague remarks neither contradicted the evidence establishing Sea Pines' right of first refusal nor created a jury issue.

[8] At most, the closest Mogil's testimony came to opining on the enforceability or applicability of the 1973 Covenants occurred during proffered testimony outside the jury's presence, (**R. pp. 943:21-944:24**), when he stated that he filed the lis pendens because "I [Mogil] didn't feel like they were controlled by this[.]" (**R. p. 944:23-24**). The court ***excluded*** this testimony from evidence. (**R. p. 946:8-21)**. The rest of Mogil's testimony only offered vague and neutral statements regarding the 1973 Covenants. Thus, his testimony could not lead to a reasonable inference—or any inference at all—regarding the validity or the applicability of the 1973 Covenants,[8] making the Court of Appeals' reversal improper.

If Mogil stating he filed a lawsuit is sufficient evidence to overcome a directed verdict motion, no directed verdict could ever be granted—allegations would be sufficient to create a jury issue at trial.

Similarly, Mogil's letter to the Sellers' attorney stating there were "issues presented by the exercise of the option, including a determination of ***exactly what rights Sea Pines has***, if any," **(R. p. 1169)** (double emphasis added), was not evidence that Sea Pines lacked the right of first refusal. Mogil merely communicated that he was investigating the issue. In fact, the letter can only be read to indicate that Mogil still believed that Sea Pines did in fact hold an enforceable right of first refusal; however, he desired to satisfy himself as to what the terms of those rights were. Mogil has never wavered from that position; he doesn't know and isn't qualified to say.

Further, the Court of Appeals' decision warrants certiorari and reversal because the evidence at trial uniformly established that Sea Pines held the right of first refusal over the Property. This evidence included:

- The testimony of Steve Birdwell who testified that Sea Pines held and exercised the right of first refusal under the Commercial Use Covenants, also known as the 1973 Covenants. **(R. pp. 1010:19-1011:17).**
- The testimony of Robert Bender, who confirmed that Sea Pines held the right of first refusal for the Property. **(R. p. 848:4-12).**
- The Contract for Sale between Bittmint and the Sellers (Johnson and Giannone), drafted by Bittmint's own attorney, which explicitly recognized Sea Pines' right by requiring Sellers to "obtain all appropriate waivers and approvals from Sea Pines" and conditioning closing on obtaining these waivers. **(R. p. 1152, at ¶¶ 6-7)**.
- Testimony from Seller Johnson that she knew Sea Pines had a right of first refusal over the Property, which she owned with her brother, Seller Giannone. **(R. p. 862:16-21; p. 872:6-11)**.
- Evidence that Bittmint's members, Bitton and Mintz, knew Sea Pines held the right of first refusal and had previously sought Sea Pines' waiver of this right when purchasing a neighboring property. **(R. pp. 811:7-812:23; p. 813:11-18; p. 911:10-20)**.

- The waiver document that Bittmint's attorney completed and submitted to Sea Pines, which stated: "The above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser(s) referenced above." **(R. p. 1282).**

- The Assignment of Option to Repurchase, which Bittmint itself introduced into evidence. **(R. pp. 1113-14)**.

Therefore, because the evidence at trial only supported Sea Pines' claim to the right of first refusal, this Court should grant a writ of certiorari, reverse the Court of Appeals, and reinstate the decision of the trial court.

II. The Court of Appeals erred and failed to follow precedent in holding that there was more than one reasonable inference as to whether Sea Pines timely exercised its right of first refusal because the 1973 Covenants' plain language requires notice of both "price and terms."

The Court of Appeals held that "the evidence presented created more than one reasonable inference as to whether Resort exercised its purported right of first refusal within the thirty days required by the 1973 Covenants." **(Opinion at 12).** However, no reasonable inference could be made, and reaching such a conclusion would require the jury to speculate and disregard the language of the contract of issue.

A. <u>The 1973 Covenants required written notice of both "price and terms" to trigger the thirty-day period.</u>

The relevant provision of the 1973 Covenants states that "the said Company shall have thirty (30) days within which to exercise its option to purchase said property" and further provides that "should the Company fail or refuse, **<u>within thirty (30) days after receipt of written notice of the price and terms</u>**, to exercise its options to purchase said property at the offered price, then the owner of said property shall have the right to sell said property". **(R. p. 1105 at § 19)** (double emphasis added).

The plain language of that provision requires written notice of both the "price and terms" to trigger the thirty (30) day period. The terms of a contract for the purchase and sale of real property might include elements such as: closing date, contingencies, financing arrangements, property condition requirements, or other material provisions that would substantially affect the nature of the transaction. Price alone is insufficient for the holder to understand the contractual terms that the holder would have to match if the right were exercised. The drafter of this provision in the 1973 Covenants clearly recognized this dilemma by requiring written notice of the price *and* terms to trigger the thirty (30) day exercise window.

The Court of Appeals conflated a nonbinding letter of intent, which was never actually received by Sea Pines, with the Contract for Sale that was received *less* than thirty (30) days prior to Sea Pines exercising its right of first refusal and closing on the sale. Indeed, material differences exist between the letter of intent and the subsequent Contract for Sale. Unlike the Contract for Sale, the letter of intent was signed by only one of Sellers, Lynda Johnson, without Seller Giannone. (**Compare R. pp. 1150 with 1153**). Critically, the letter of intent expressly states that "until a full form Contract of Sale . . . is executed, the transaction is non binding." (**R. p. 1150**). That provision alone precludes the letter of intent from constituting "notice" that could trigger Sea Pines' deadline to exercise its right of first refusal.

The letter of intent merely outlines a basic purchase price without specifying numerous material terms—such as earnest money requirements, financing contingencies, and closing conditionals—which are essential for the holder of a right of first refusal to evaluate in deciding whether to exercise the holder's option. (**R. p. 1150**). By contrast, the Contract for Sale is an agreement signed by both Sellers and containing specific payment provisions, including a detailed payment structure that required the deposit of minimal earnest money and that made Purchaser's obligation to close contingent on being able to finance a large portion of the purchase price. (**R. p. 1151, §§ 2-3**).

The Contract for Sale contains numerous additional material terms entirely absent from the letter of intent, including: (1) property condition warranties and a termite inspection contingency in Sections 4 and 5; (2) risk allocation provisions for property damage in Section 9; and (3) specific title requirements in Section 11 regarding "marketable title." (**R. pp. 1152-53**). Moreover, Section 6 of the Contract for Sale grants the purchaser an option to back out of buying one parcel if, for any reason, it cannot close on both of the parcels. (**R. p. 1152**).

Even the closing timeline differs substantially between the documents. The letter of intent contemplated closing within one-hundred and twenty (120) days from Seller Johnson's confirmation that Seller Giannone conveyed his interest in Lot 8 to Seller Johnson. (**R. p. 1150**). In contrast, Section 7 of the Contract for Sale established closing to occur within ninety (90) days of all relevant waivers and approvals being obtained or forty-five (45) days after financing approval, whichever was later. (**R. p. 1152, at ¶ 7**).

Given the substantial differences in material terms, the preliminary, non-binding letter of intent signed by only one Seller could not have constituted the "written notice of the price and terms" required to trigger Sea Pines' thirty (30) day exercise period under the right of first refusal.

B. Sea Pines exercised its right within thirty days of receiving written notice of the price and terms.

The uncontroverted evidence at trial established that Sea Pines first received written notice of the complete terms of the sale when Bittmint's attorney furnished the Contract for Sale on April 17, 2017. **(R. p. 853:11-17)**. The record contains no evidence of any prior written communication that conveyed the full terms of the proposed transaction. Sea Pines exercised its right of refusal on May 2, 2017, fifteen (15) days after receiving a copy of the Contract for Sale and well within the allotted thirty (30) days. **(R. p. 844:7-8; pp. 934:24-936:12); (R. p. 1164)**. The timeline conclusively establishes Sea Pines' timely exercise of its right.

In reversing the circuit court, the Court of Appeals cited testimony from Mintz, one of Bittmint's members, that Seller Johnson told him she had given a letter of intent to Sea Pines in February 2017. **(Opinion at 12)**. However, this testimony, even if accepted as true,[9] fails to create

[9] There was no evidence that Seller Johnson actually provided the letter of intent to Sea Pines or that Sea Pines ever received it prior to exercising its right of first refusal.

a jury issue regarding Sea Pines' timely exercise of its right. The letter of intent, which was signed by only one (not both)[10] of the Property's owners, contained the price but left the other terms of the potential transaction to be negotiated. **(R. p. 1150)**. In fact, the letter expressly states that the transaction was "non binding," until such time the parties could agree to additional terms, **(R. p. 1150)**, which is consistent with South Carolina law that "agreements to agree" are not valid contracts. BCD LLC v. BMW Mfg. Co., LLC, 360 F. App'x. 428, 435 (4th Cir. 2010) (explaining that "an 'agreement to agree,' . . . does not amount to a contract under South Carolina law.") (citations omitted). Consequently, regardless of whether or when Sea Pines received this preliminary letter, it could not have triggered the thirty (30) day period under the 1973 Covenants, which required written notice of both "price and terms." Because the only evidence showed that Sea Pines did not receive the terms of the parties' agreement until April 17, 2017, and that Sea Pines exercised its right fifteen (15) days later on May 2, 2017, no factual dispute existed for the jury to resolve. The circuit court correctly granted directed verdict on this issue of whether Sea Pines timely exercised the right of first refusal.

CONCLUSION

Because of these fundamental errors in the decision of the Court of Appeals, including its failure to follow precedent regarding the directed verdict standard, Petitioners respectfully request this Court grant its petition.

Respectfully submitted.

[10] Only one Seller signed the non-binding letter of intent; whereas, both Sellers signed the Contract for Sale. (**Compare R. pp. 1150 with 1153**).

/s/ John P. Linton, Jr.
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ATTORNEYS FOR PEITIONERS LYNDA H. JOHNSON, CHARLES S. GIANNONE, AND SEA PINES RESORT, LLC

January 20, 2026
Charleston, South Carolina

The South Carolina Court of Appeals

Bittmint LLC and Harbour Town Surf Shop, LLC, Appellants,

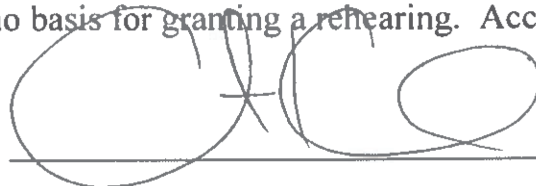
v.

Lynda H. Johnson, Charles S. Giannone, and Sea Pines Resort, LLC, Respondents.

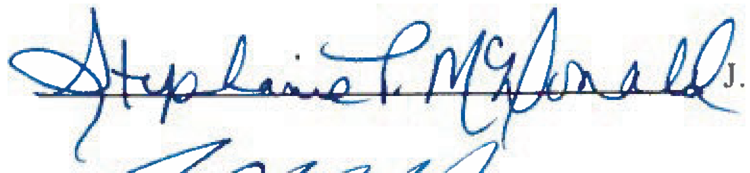
Appellate Case No. 2022-000867

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



_______________________________ J.



_______________________________ J.

_______________________________ J.

Columbia, South Carolina

FILED
Dec 18 2025

cc:
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Ian S. Ford, Esquire
The Honorable Bentley Price

RECEIVED
Aug 29 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2022-000867
Unpublished Opinion No. 2008-UP-297

Bittmint LLC and Harbour Town Surf Shop LLC.. Apellants,

v.

Lynda H. Johnson, Charles S. Giannone, and Sea Pines Resort, LLC .... Respondents.

RESPONDENTS' PETITION FOR REHEARING

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SUMMARY OF THE PETITION FOR REHEARING

This Court's decision in Bittmint, LLC v. Johnson (Unpublished Opinion No. 2025-UP-273) reversed the circuit court's grant of directed verdict to Respondents. The Court decided there were two factual issues the circuit court should have been submitted to the jury: (1) whether Sea Pines Resort, LLC ("Sea Pines" or "Resort") possessed an enforceable right of first refusal over the subject Property, and (2) whether Sea Pines exercised its right within the thirty days of receiving written notice of the price and terms of the contract for sale to Bittmint, LLC ("Appellant" or "Bittmint") as required by the 1973 Covenants containing the right of first refusal. Respondents respectfully submit that the Court overlooked or misapprehended material points in reaching these conclusions.

First, the Court misapprehended the evidence at trial regarding whether Sea Pines possessed an enforceable right of first refusal. The only evidence presented at trial was that Sea Pines held this right. *No contrary evidence was introduced*, and the testimony the Court relied upon from Bittmint's attorney, Michael Mogil, did not create a factual dispute because he was expressly precluded by the trial court from offering—and did not offer—any opinions about the enforceability or applicability of the right of first refusal. Moreover, Mogil's written communications with attorneys for Sea Pines and for Respondents Johnson and Giannone, *i.e.*, the "Sellers," which were admitted into evidence, merely showed that Mogil was investigating the issue and was uncertain as to the answer—they contained no statements about whether Sea Pines possessed a right of first refusal, enforceable or not, and thus created no factual dispute requiring jury resolution. Mogil did not agree or disagree with the evidence that Sea Pines held an enforceable right of first refusal. Further, the trial court ruled that Mogil could not testify to his opinions, including whether Sea Pines possessed a right of first refusal, because he had not

been disclosed or qualified as an expert witness. **(Tr. Trans., R. p. 940:14-16; p. 946:18-21).** That ruling was not appealed.

Second, the Court misapprehended the evidence regarding the thirty-day exercise period. The Commercial Use Covenants dated January 25, 1973 (hereinafter, the "1973 Covenants") require receipt by Sea Pines of *written* notice of both the "*price and terms*" of a sale to trigger the thirty-day period. **(Pl. Trial Ex. 1 at § 19, R. p. 1105).** The only evidence presented at trial on this issue showed that Sea Pines did not receive written notice of the price *and the terms* of the sale until April 17, 2017, when Bittmint's attorney provided Sea Pines with a copy of the Contract for Sale. **(Trial Tr., R. p. 853:11-17).** Sea Pines exercised its right fifteen days later, on May 2, 2017, well within the thirty-day period. **(Trial Tr., R. p. 844:7-8; p. 934:24-936:12); (Pls. Trial Ex. 18, R. p. 1164).**

Third, the Court overlooked two independent grounds that support affirming the directed verdict, including the separate offer and acceptance created through Bittmint's submission of the waiver document to Sea Pines, and a waiver was never obtained from Sea Pines, which was a condition to closing under the Contract for Sale. **(Pl. Trial Ex. 11 at ¶¶ 6, R. p. 1152).**

Fourth, the Court failed to address claims that were abandoned on appeal. Bittmint abandoned the appeal as to the claims that were not addressed in its brief, which were: Set Aside Deed against Defendants, **(2d Am. Compl. at ¶¶ 45-49, R. pp. 97-98)**; Third Party Beneficiary by [Surf Shop] against Defendants, **(id. at ¶¶ 50-57, R. pp. 98-99)**; Violation of the Statute of Repose against [Sea Pines], **(id. at ¶¶ 58-61, R. pp.99-100)**; and Intentional Interference with Prospective Contractual Relations against [Sea Pines], **(id. at ¶¶ 62-66, R. pp. 100-102)**. See State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (explaining an issue is abandoned on appeal if not raised in a brief and supported by authority).

For these reasons, Respondents respectfully request that this Court vacate the opinion , grant rehearing, and affirm the circuit court's directed verdict and its award of attorneys' fees to the Respondents based on their status as prevailing parties.

ARGUMENT

1. The Court misapprehended the evidence regarding Sea Pines' enforceable right of first refusal because there was no conflicting evidence at trial.

The Court held that "Bittmint presented evidence creating more than one reasonable inference as to whether Resort had an enforceable right of first refusal in the Property." Bittmint, LLC v. Johnson, No. 2025-UP-273, slip op. at 11. In reaching this conclusion, the Court relied on testimony from Bittmint's attorney, Michael Mogil, and communications between Mogil and attorneys for Sea Pines and the Sellers, Respondents Johnson and Giannone. Id.[1] However, the Court misapprehended this evidence and overlooked a critical evidentiary ruling on the issue.

Prior to Mogil's trial testimony, the circuit court explicitly prohibited Mogil from offering any opinion about the enforceability of the 1973 Covenants or their applicability to the subject property. In fact, when Respondents objected to Mogil offering opinions about the covenants, Bittmint assured the court before Mogil's testimony began that he would not testify to any legal conclusions. **(R. pp. 920:20-921:3)**. When Bittmint nevertheless attempted to elicit Mogil's opinion on whether the covenants applied to the property, the trial court sustained the Respondents' prompt objection and unequivocally ruled: "Well, he's not an expert, so he can't

[1] "A directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability." Guffey v. Columbia/Colleton Reg'l Hosp., Inc., 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). "When reviewing a directed verdict, [the appellate] court will view the evidence and all reasonable inferences in the light most favorable to the nonmoving party." Thomas v. Dootson, 377 S.C. 293, 296, 659 S.E.2d 253, 255 (Ct. App. 2008). The court "cannot ignore facts unfavorable to . . . [the nonmoving] party and . . . must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Hopson v. Clary, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996).

give his opinion." **(R. pp. 939:20-940:16)**. Mogil complied with this ruling, offering no opinion on the issues of the covenants' enforceability or applicability, even when Plaintiff's trial counsel repeatedly attempted to elicit such testimony despite the court's exclusion of such opinions and the sustained objections. **(R. p. 920: 16-25; p. 921:1-3; p. 939:20-940:16; p. 945:22-946:21; p. 960:18-961:1)**. The trial court's ruling was entirely proper, as Mogil had not been disclosed as an expert witness and had previously testified under oath during his deposition that he would not "discuss the enforceability or applicability of the covenants" at trial. **(R. pp. 945:22-946:21)**. Bittmint did not appeal the ruling.

To view Mogil's testimony as creating a factual dispute about the enforceability or applicability of Sea Pines' right of first refusal, nevertheless, effectively permits trial by ambush and undermines the circuit court's essential role as gatekeeper of expert testimony. This type of litigation gamesmanship has historically been discouraged by our court. The Court's opinion here encourages gamesmanship, ambush and trickery by litigants and their counsel.[2]

Mogil never testified whether the right of first refusal was enforceable or applied.[3] Adhering to the circuit court's evidentiary ruling, he offered no opinion on these matters.[4] Thus,

[2] To be sure, Mogil was very careful *not* to engage in such gamesmanship and did not offer any testimony that contradicted the evidence that Sea Pines holds the right of first refusal. Respectfully, the Court's opinion misapprehends and stretches Mogil's testimony well beyond what he actually said.

[3] The closest Mogil came to opining on the enforceability or applicability of the covenants occurred during proffered testimony outside the jury's presence, **(R. pp. 943:21-944:24)**, when he stated that he filed the lis pendens because "I [Mogil] didn't feel like they were controlled by this[.]" **(R. p. 944:23-24)**. The court excluded this testimony from evidence. **(R. p. 946:8-21)**.

[4] Mogil testified, "I didn't agree with Mr. Frazier and then I filed what's called a lis pendens," **(R. p. 947:18-20)**, and "I looked at everything that Mr. Frazier referenced me to, I just didn't agree." **(R. p. 948:1-4)**. Even taken out of context, these statements are neutral and vague. Mogil never specified what he did not agree with, other than "Mr. Frazier," or why, and in any event, he never stated that he *disagreed*. Regarding the applicability or enforceability of the covenants, Mogil took no position. The trial court had ruled that he could not offer such opinions because he

no reasonable inference—or any inference at all—regarding the validity or applicability of the right could be drawn from Mogil's testimony.

A. The only evidence at trial established that Sea Pines held the right of first refusal.

The evidence at trial uniformly established that Sea Pines held the right of first refusal over the Property. This evidence included:

- The testimony of Steve Birdwell who testified that Sea Pines held and exercised the right of first refusal under the Commercial Use Covenants, also known as the 1973 Covenants. **(Trial Tr., R. pp. 1010:19-1011:17).**

- The testimony of Robert Bender, who confirmed that Sea Pines held the right of first refusal for the Property. **(Trial Tr., R. p. 848:4-12).**

- The Contract for Sale between Bittmint and the Sellers (Johnson and Giannone), drafted by Bittmint's own attorney, which explicitly recognized Sea Pines' right by requiring Sellers to "obtain all appropriate waivers and approvals from Sea Pines" and conditioning closing on obtaining these waivers. **(Pl. Trial Ex. 11 at ¶¶ 6-7, R. p. 1152).**

- Testimony from Johnson that she knew Sea Pines had a right of first refusal over the Property, which she owned with her brother Giannone. **(Trial Tr., R. p. 862:16-21; p. 872:6-11).**

- Evidence that Bittmint's members, Bitton and Mintz, knew Sea Pines held the right of first refusal and had previously sought Sea Pines' waiver of this right when purchasing a neighboring property. **(Trial Tr., R. pp. 811:7-812:23; p. 813:11-18; p. 911:10-20).**

- The waiver document that Bittmint's attorney completed and submitted to Sea Pines, which stated: "The above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser(s) referenced above." **(Defs. Trial Ex. 9, R. p. 1282).**

- The Assignment of Option to Repurchase, which Bittmint itself introduced into evidence. **(Pls. Trial Ex. 2, R. pp. 1113-14).**

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had not been disclosed or qualified as an expert witness. These two neutral and vague remarks neither contradicted the evidence establishing Sea Pines' right of first refusal nor created a jury issue.

B. Mogil's testimony did not create a factual dispute about Sea Pines' right of first refusal.

The Court appears to have misapprehended Mogil's testimony and written communications with Sea Pines' attorney, Fraser. The emails between Mogil and Fraser simply showed that Fraser sent Mogil references to multiple sets of covenants, one of which was the 1973 Covenants. **(Trial Tr., R. pp. 935:18-939:19)**. That exchange did not create a factual dispute about whether Sea Pines held the right of first refusal under the 1973 Covenants or whether it applied to the Property. If Mogil stating he filed a lawsuit is sufficient evidence to overcome a directed verdict motion, no directed verdict could ever be granted—allegations would be sufficient a trial.

Similarly, Mogil's letter to the Sellers' attorney stating there were "issues presented by the exercise of the option, including a determination of ***exactly what rights Sea Pines has***, if any," **(Pls. Trial Ex. 24, R. p. 1169)** (double emphasis added), was not evidence that Sea Pines lacked the right of first refusal. He merely communicated that he was investigating the issue. In fact, the letter can only be read to indicate that Mogil still believed there was a possibility that Sea Pines did in fact hold an enforceable right of first refusal. He has never wavered from that position; he doesn't know and isn't qualified to say.

In sum, the record contains substantial and uncontroverted evidence establishing that Sea Pines held the right of first refusal over the Property. Bittmint failed to introduce any contrary evidence from which a jury could reasonably infer that Sea Pines did not hold the right. Accordingly, the circuit court should be affirmed in its entirety with respect to all causes action on this dispositive basis alone.

received less than 30 days prior to the Resort exercising its right of first refusal and actually closing on the sale. Indeed, material differences exist between the letter of intent and the subsequent Contract for Sale. Unlike the Contract for Sale, the letter of intent was signed by only one seller, Lynda Johnson, without Giannone. **(Compare R. pp. 1150 and 1153)**. Critically, the letter of intent expressly states that "until a full form Contract of Sale . . . is executed, the transaction is non binding." **(R. p. 1150)**. This provision alone precludes the letter of intent from constituting "notice" that could trigger Sea Pines' deadline to exercise its right of first refusal.

The letter of intent merely outlines a basic purchase price without specifying numerous material terms, such as earnest money requirements, financing contingencies, and closing conditionals, that would be essential for a holder of a right of first refusal to evaluate whether to exercise its option. **(R. p. 1150)**. By contrast, the Contract for Sale is an agreement signed by both Sellers and containing specific payment provisions, including a detailed payment structure that required the deposit of minimal earnest money and made Purchaser's obligation to close contingent on being able to finance a large portion of the purchase price. **(R. p. 1151, §§ 2-3)**.

The Contract contains numerous additional material terms entirely absent from the letter of intent, including: property condition warranties and a termite inspection contingency in Sections 4 and 5; risk allocation provisions for property damage in Section 9; and specific title requirements in Section 11 regarding "marketable title." **(R. pp. 1152-1153)**. Moreover, Section 6 of the Contract grants Purchaser an option to back out of buying one parcel if, for any reason, it cannot close on both of the parcels that together comprised the Property. **(R. p. 1152)**.

Even the closing timeline differs substantially between the documents. The letter of intent contemplated closing within 120 days from Seller's confirmation that Charles Giannone conveyed his interest in Lot 8 to Johnson. **(R. p. 1150)**. In contrast, Section 7 of the Contract

established closing to occur within 90 days of all relevant waivers and approvals being obtained or 45 days after financing approval, whichever was later. **(R. p. 1152)**.

Given the substantial differences in material terms, the preliminary, non-binding letter of intent signed by only one Seller could not have constituted the "written notice of the price and terms" required to trigger Sea Pines' thirty-day exercise period under the right of first refusal.

B. Sea Pines exercised its right within thirty days of receiving written notice of the price and terms.

The uncontroverted evidence at trial established that Sea Pines first received written notice of the complete terms of the sale when Bittmint's attorney furnished the Contract for Sale on April 17, 2017. **(Trial Tr., R. p. 853:11-17)**. The record contains no evidence of any prior written communication that conveyed the full terms of the proposed transaction. Sea Pines exercised its right of refusal on May 2, 2017, fifteen days after receiving a copy of the contract and well within the allotted 30 days. **(Trial Tr., R. p. 844:7-8; p. 934:24-936:12); (Pls. Trial Ex. 18, R. p. 1164)**. This timeline conclusively establishes Sea Pines' timely exercise of its right.

In reversing the circuit court, this Court cited testimony from Mintz, one of Bittmintz' members, that Johnson told him she had given a letter of intent to Sea Pines in February 2017. Bittmint, LLC v. Johnson, No. 2025-UP-273, slip op. at 12. However, this testimony, even if accepted as true,[5] fails to create a jury issue regarding Sea Pines' timely exercise of its right. The letter of intent, which was signed by only one (not both)[6] of the Property's owners, contained the price but left the other terms of the potential transaction to be negotiated. **(Pls. Tr. Ex. 10, R. p. 1150)**. In fact, the letter expressly states that the transaction was "non-binding," until such time

[5] There was no evidence that Johnson actually provided the letter of intent to the Resort or that it every received it prior to exercising it right of first refusal.

[6] Only one Seller signed the non-binding letter of intent; whereas, both Sellers signed the Contract for Sale. **(Compare R. pp. 1150 and 1153)**.

the parties could agree to additional terms, **(Pls. Tr. Ex. 10, R. p. 1150)**, which is consistent with state law that "agreements to agree" are not valid contracts. BCD LLC v. BMW Mfg. Co., LLC, 360 Fed.Appx. 428, 435 (4th Cir. 2010) (explaining that "an 'agreement to agree' . . . does not amount to a contract under South Carolina law.") (citations omitted)). Consequently, regardless of whether or when Sea Pines received this preliminary letter, it could not have triggered the thirty-day period under the 1973 Covenants, which required written notice of both "price and terms." Because the only evidence showed that Sea Pines did not receive the terms of the parties' agreement until April 17, 2017, and exercised its right fifteen days later on May 2, 2017, no factual dispute existed for the jury to resolve. The circuit court correctly granted directed verdict on this issue of whether Sea Pines timely exercised the right of first refusal.

3. The Court overlooked several other independent grounds for affirming the circuit court's directed verdict.

The Court's opinion does not address several other independent grounds that support affirming the circuit court's directed verdict.

A. Bittmint's waiver request constituted a separate offer that Sea Pines accepted.

The waiver document that Bittmint submitted to Sea Pines stated: "The above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser(s) referenced above." **(Defs. Trial Ex. 9, R. p. 1282)**. This language created a separate offer that Sea Pines accepted.

Although Bittmint argued that it merely used a form created by Sea Pines, Bittmint's attorney filled in the information and submitted the completed form to Sea Pines. **(Trial Tr., R. pp. 849:16-850:22)**. Under South Carolina law, "[a]cts of an attorney are directly attributable to and binding upon the client." Shelton v. Bressant, 312 S.C. 183, 208, 439 S.E.2d 833, 834 (1993).

Despite its significance, the Court's opinion overlooked this independent ground for affirming the circuit court's directed verdict as to all claims—that Bittmint's waiver request constituted a separate offer accepted by Sea Pines.

B. The Contract for Sale required a waiver from Sea Pines.

The Contract for Sale between Bittmint and Sellers explicitly conditioned closing on "all appropriate waivers and approvals" being obtained from Sea Pines." **(Pl. Trial Ex. 11 at ¶¶ 6-7, R. p. 1152)**. It is undisputed that the waiver was not obtained. Therefore, Sellers were not contractually obligated to close with Bittmint.

The Court's opinion did not address this contractual provision, which provided an additional basis for affirming the circuit court's directed verdict as to all of Bittmint's causes of action.

4. The Court should affirm the circuit court's ruling as to claims abandoned on appeal.

The opinion does not address the fact that Bittmint abandoned several claims on appeal. Bittmint's brief to this Court addressed only four purported causes of action: (1) breach of contract, (2) intentional interference with contractual relations, (3) violation of the common law rule against perpetuities, and (4) invalid assignment of rights. Bittmint abandoned the appeal as to the claims ignored in its brief, which were: Set Aside Deed against Defendants, (2d Am. Compl. at ¶¶ 45-49, R. pp. 97-98); Third Party Beneficiary by [Surf Shop] against Defendants, (id. at ¶¶ 50-57, R. pp. 98-99); Violation of the Statute of Repose against [Sea Pines], (id. at ¶¶ 58-61, R. pp.99-100); and Intentional Interference with Prospective Contractual Relations against [Sea Pines], (id. at ¶¶ 62-66, R. pp. 100-102). See State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) (explaining an issue is abandoned on appeal if not raised in a brief and supported by authority). Even if this Court were to reverse the directed verdict as to

the four claims addressed in Bittmint's brief (which it should not do for the reasons stated above), the Court should grant this petition and enter an amended order affirming the circuit court's directed verdict as to these abandoned claims.

CONCLUSION

The Court's opinion reversing the circuit court's directed verdict rests on two fundamental misapprehensions of the record. First, the Court incorrectly concluded that a factual dispute existed regarding Sea Pines' enforceable right of first refusal, despite uncontroverted evidence establishing this right and the circuit court's explicit ruling prohibiting Bittmint's attorney from offering any opinion on the issue, to which he adhered. Second, the Court misapprehended the plain language of the 1973 Covenants, which required written notice of both "price and terms" to trigger the thirty-day exercise period—a requirement that was indisputably satisfied when Sea Pines timely exercised its right fifteen days after receiving the Contract for Sale.

Furthermore, the Court's opinion overlooked several other grounds that support affirmance of the directed verdict: (1) Bittmint's submission of the waiver document, which constituted a separate offer that Sea Pines accepted; (2) Bittmint's failure to fulfill the condition of the contract that it obtain the waiver from Sea Pines; and (3) Bittmint's abandonment of four of its claims on appeal.

The circuit court, having observed the witnesses firsthand and properly applied the directed verdict standard to the evidence presented, correctly determined that no factual issues existed for the jury to resolve. The reversal of the directed verdict undermines the circuit court's gatekeeping function regarding expert testimony and misapprehends or overlooks the evidence, or lack thereof, upon which its directed verdict was based. For these reasons, Respondents

respectfully request that this Court vacate its Opinion No. 2025-UP-273, grant the petition for rehearing and enter a substituted opinion affirming the circuit court.

Respectfully submitted,

s/ John P. Linton, Jr.

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ATTORNEYS FOR THE RESPONDENTS

Charleston, South Carolina
August 29, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellant Case No. 2022-000867
Case No. 2017-CP-07-01057

Bittmint, LLC and Harbour Town Surf Shop, LLC, ... Appellants,

v.

Lynda H. Johnson, Charles S. Giannone, and Sea Pines Resort, LLC, ... Respondents.

PROOF OF SERVICE

I certify that the foregoing **Petition For A Writ of Certiorari** was served on the following counsel of record by electronic mail on this 20th day of January 2026.

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Via Email & U.S. Mail

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Jan 20 2026
SC Court of Appeals

January 20, 2026

Hon. Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
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Re: Lynda H. Johnson, et al v. Bittmint, LLC, et al
Appellate Case No. 2022-000867
Unpublished Opinion No. 2008-UP-273
WGL File 0859.10

Dear Ms. Howard:

Attached for filing on behalf of Petitioners, please find Petition for Writ of Certiorari, with copy to the Court of Appeals, and Proof of Service. Pursuant to Rule 242(e)(3) and (4), I have also enclosed a copy of the decision of the Court of Appeals and the petition and Court's ruling on Rehearing.

The filing fee of $250 is enclosed with this letter sent via regular mail.

Thank you very much for your courtesies in this matter.

Sincerely,

WALKER GRESSETTE & LINTON, LLC

Nancy Jane Dennis

Nancy Jane Dennis
Paralegal

cc: Hon. Jenny Abbott Kitchings
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