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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Scott F. Talley, Special Referee

Court of Appeals Appellate Case No. 2025-001073

Angelica Shelest,.....Respondent,

v.

Martin Maina Gitau and Mark One Freight & Logistics, LLC,.....Appellants.

RESPONDENT’S REPLY TO APPELLANTS’ RETURN TO THE
MOTION TO STRIKE ARGUMENTS I.a. AND I.b. OF THE INITIAL BRIEF OF
APPELLANTS AS VIOLATING AN ORDER OF THE COURT, AND TO STAY
DEADLINES UNTIL THE COURT RULES ON THE MOTION

Respondent Angelica Shelest submits this Reply in support of her motion to strike Arguments I.a. and I.b. of the Initial Brief of Appellants.¹

Appellants’ response to the motion is that they may raise subject matter jurisdiction at any time. In other words, this Court’s denial of the motion to remand has no effect. This is incorrect for two reasons.

First, Appellants do not explain why it was necessary for them to file the motion to certify to the Supreme Court (with the condition that they would make a motion to remand to challenge the special referee’s authority) and then to make a motion to remand in this Court. The filing of the motion necessarily indicates that they needed the relief sought. If permission was

¹ Appellants did not oppose Respondent’s motion to stay filing deadlines until this Court rules on the Motion to Strike.

not needed to make the arguments that Appellants now make, then asking for permission to raise them on remand was a waste of time. After all, “whatever doesn't make any difference, doesn't matter.” *Miller v. Dillon*, 432 S.C. 197, 211, 851 S.E.2d 462, 470 (Ct. App. 2020) (internal quotation marks omitted). If Appellants did not need to raise the issues below to be allowed to raise them on appeal, then the motion to remand did not matter.

Second, subject matter jurisdiction is not at issue in this case. The words “subject matter” do not appear in Appellants’ brief. Instead, their argument is that the Special Referee did not have the power to act because they did not “consent” to the appointment of the Special Referee. (Br. of App. pp. 6-12). If the appointment is something they could consent to, then it necessarily does not involve subject matter jurisdiction. See *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners*, 320 S.C. 113, 121, 463 S.E.2d 600, 605 (1995) (“[S]ubject matter jurisdiction cannot be waived or conferred by consent.”); *Williams v. Jeffcoat*, 444 S.C. 224 (2024) (holding a challenge relating to statutes that confer power or authority to act, but not subject matter jurisdiction, could not be argued at any time). Therefore, as Appellants already recognized by spending seven months of the Courts’ and the parties’ time asking for a remand, their arguments must have been raised below to be preserved for appeal.

This Court denied Appellants’ request for permission for a remand to attempt to preserve these arguments. Therefore, Appellants’ argument of those issues violates this Court’s prior order, and the Court should grant the Motion to Strike and stay the filing deadlines.

Respectfully submitted,

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