THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Circuit Court Judge

Case No. 2021-CP-07-01085

Appellate Case No. 2025-001031

R.V. Resort and Yacht Club Owners' Association, Inc., Securitas Services, Inc., Mike Morales, and Sunset, Inc., — Respondent,

v.

Turner's Marina, LLC, — Appellant.

APPELLANT'S REPLY TO RESPONDENTS' INITIAL BRIEF

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I. PRESERVATION OF ISSUE FOR APPELLATE REVIEW

Respondents contend that Appellant is barred from raising this issue on appeal. This argument mischaracterizes both the record and the governing law of error preservation. The "Settlement" is not one document, the "Settlement" consists of three (3) documents. The two primary and long lasting documents were never agreed upon.

It is well-settled that an issue must be raised to and ruled upon by the trial court in order to be preserved for appellate review. See *Creech v. S.C. Wildlife & Marine Res. Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). The purpose of this rule is to ensure that the trial court has been given an opportunity to consider and rule upon the issue in light of the relevant facts and arguments. See *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). However, preservation does not require rigid formalism or the use of precise legal labels; rather, the issue must simply be fairly raised and sufficiently developed to obtain a ruling. See *State v. Nelson*, 331 S.C. 1, 5 n.6, 501 S.E.2d 716, 718 n.6 (1998).

South Carolina appellate courts recognize that preservation turns on the substance of the issue presented, not the terminology used. See *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011). Where an issue is raised, argued, and addressed by the trial court, it is preserved for appellate review even if not artfully pled.

Here, the trial court expressly found the Settlement Agreement to be clear, unambiguous, and enforceable, including Section 9 of the Agreement and the provisions at §§ 2(b) and 6. (R. pp. ___, ___). These rulings, together with the briefing and argument before the trial court, confirm that the enforceability of the overall Settlement, the central issue in this case, was squarely raised, contested, and ruled upon below.

Moreover, as explained below, the question presented involves the legal enforceability of the purported agreement under Rule 43(k), which is a question of law subject to de novo review.

II. RESPONDENTS MISCHARACTERIZE PRESERVATION AND RULE 43(k)

Respondents argue that Appellant is barred from raising Rule 43(k), SCRCP, for the first time on appeal. (Resp. Br. pp. 6–7). This argument mischaracterizes both the record and the nature of the issue presented.

The issue before this Court is one of **legal enforceability**, not mere preservation. Whether a purported settlement agreement satisfies Rule 43(k) is a question of law subject to de novo review. *Byrd v. Livingston*, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012). Rule 43(k) states "no agreement between counsel. . . shall be binding unless . . . signed by the parties and their counsel." Where Rule 43(k) is not satisfied, there is no enforceable agreement as a matter of law. However, the parties in this case contemplated three agreements and only one of them, the mediation agreement, was reduced to writing and signed by the parties and their attorneys. Therefore, as a matter of law, Rule 43(k) law has not been satisfied. Although, Rule 43(k) was not specifically mentioned, the entirety of the overall settlement was and is being challenged. This was the crux of Appellants' arguments. (R. p. ___; Tr. p. 19-21).

Appellant challenged the enforceability of the alleged settlement throughout the proceedings, including in its Motion to Set Aside (R. pp. –) and opposition to enforcement (R. pp. –). The transcript confirms that Appellant moved to set aside "the entire settlement agreement." (R. p. ___; Tr. p. 4, ll. 4–12). The basis for this challenge was that both parties were under the mutual mistaken belief that the terms of the "to be agreed to" easement amendment and lease amendment could be agreed to. There can be no dispute that the parties never agreed upon the **material** terms of the Amended Easement and Amended Lease.

Respondents' reliance on *Scoggins v. McClellion*, 321 S.C. 264, 468 S.E.2d 12 (Ct. App. 1996), is misplaced. (Resp. Br. p. 6). Rule 43(k) is not a technicality, it defines whether a court has authority to enforce an agreement at all. A court cannot enforce a settlement that is legally insufficient because it lacks multiple material terms and it not a meeting of the minds.

III. THE PURPORTED SETTLEMENT DOES NOT SATISFY RULE 43(k)

Respondents contend that Rule 43(k) is satisfied because a written document was signed. (Resp. Br. pp. 7–8). This ignores the dispositive issue: the document was **not a complete agreement**.

Respondents admit that the mediated agreement required additional documents, including amended lease and easement instruments. (Resp. Br. pp. 4, 9). They further acknowledge that the parties later "could not agree" on those documents and their terms. (Resp. Br. p. 5). The record reflects competing drafts of lease and easement amendments, cross-motions to enforce conflicting versions, and Appellant's motion to set aside based on the absence of agreement on material terms. (R. pp. ___).

The transcript reinforces that the settlement framework remained unresolved. The Court itself acknowledged "issues with … the balance of settlements" while enforcement disputes were ongoing. (R. p. ___; Tr. p. 7, ll. 15–20).

Rule 43(k) requires a **binding, complete agreement**, not a preliminary framework requiring future negotiation. *Player v. Chandler*, 382 S.C. 553, 677 S.E.2d 525 (2009). Because material terms were left open, Rule 43(k) was not satisfied.

IV. THE PURPORTED AGREEMENT IS AN UNENFORCEABLE AGREEMENT TO AGREE

Respondents' own narrative confirms that the parties never reached agreement on material terms. They concede that disputes arose regarding: (1) the number of required documents; (2) the meaning of key provisions; and (3) the terms of the amended lease and easement. (Resp. Br. p. 5).

The record confirms this lack of agreement. Multiple motions were pending simultaneously, including motions to enforce and to set aside, demonstrating that no meeting of the minds existed. (R. pp. –; Tr. pp. 7–8). South Carolina law is clear: agreements leaving material terms for future determination are unenforceable. *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 649 S.E.2d 494 (2007).

Although the existence of a contract is ordinarily a question of fact for the jury, where the undisputed facts do not establish a contract, the question becomes one of law. *Capital City Garage & Tire Co. v. Elec. Storage Battery Co.,* 113 S.C. 352, 362, 101 S.E. 838, 841 (1920). A valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. *Patricia Grand Hotel, LLC v. MacGuire Enters.,* 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct.App.2007). Thus, for a contract to be binding, material terms cannot be left for future agreement. *Aperm of S.C. v. Roof,* 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct.App.1986). "In a contract for services two essential terms are the scope of the work to be performed and the amount of compensation." *W.E. Gilbert & Assocs. v. S.C. Nat. Bank,* 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct.App.1985).

Regardless of intent, an agreement which leaves open material terms is unenforceable. *Aperm,* 290 S.C. at 447, 351 S.E.2d at 173; 1 Corbin on Contracts § 2.8 (Rev. ed. 1993) ("Even if an intention to be bound is manifested by both parties, too much indefiniteness may invalidate the agreement, because of the difficulty of administering the agreement."); 1

Corbin on Contracts § 4.1 ("A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood.").

The post-mediation conduct, competing drafts and continued litigation, demonstrates that no final agreement was reached and clearly raised this issue for appellate review.

V. THE TRIAL COURT IMPROPERLY CREATED TERMS BY ADOPTING RESPONDENTS' UNILATERAL DOCUMENTS

Respondents argue the trial court merely enforced the agreement. (Resp. Br. pp. 9–10). The record and transcript show otherwise. Respondents' counsel acknowledged that the Court "adopted the language … proposed" by Respondents in the amended lease and easement. (R. p. ___; Tr. p. 11, ll. 6–14). This demonstrates that competing versions of the agreement existed, that the Court selected one of those versions, and that the Court imposed terms that were not mutually agreed upon by the parties. That is not enforcement, it is contract formation.

South Carolina law is clear that courts may not rewrite agreements or supply material terms that the parties themselves did not agree upon. *C.A.N. Enterprises, Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 373 S.E.2d 584 (1988). See also: *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 696 (2014). Where a court must choose between competing drafts, no enforceable agreement exists.

VI. THE TRIAL COURT IMPROPERLY EXPANDED THE SCOPE OF THE EASEMENT

The trial Court's Order stated "This Court has reviewed the 1984 Easement recorded at Book 397 at Page 612 and the referenced Plat Book 148 at Page 160 ("Parcel B Plat"). Defendants submitted to Plaintiff on January 31, 2024 a proposed Amended and Restated Easement

Agreement with language virtually identical to the above when describing the easement rights granted."

The language is not identical. Had the Parties and the Court follow the plain language of the mediated agreement all that would have been necessary would be a one page amendment adding Parcel B's description to the existing easement which is limited in scope in not one places, but two.

The Grant of Easement drafted by **Respondents** and approved by the trial court reads as follows:

> "(a) Grantor does hereby grant, bargain, sell and convey to Grantee, a permanent, perpetual, non-exclusive right-of-way on, over, and across that certain property owned by Grantor as more particularly depicted as "Parcel B" on that certain plat or survey entitled "Boundary & As Built Survey of Parcel "B", a portion of Hilton Head Marina & Outdoor Resorts", dated July 24, 2017 and recorded in the ROD in Plat Book 148 at Page 160, as prepared by Terry G. Hatchell, a South Carolina Registered Land Surveyor (SC Reg. No. 11059) ("2017 Survey")."
>
> "(b) This Amended Easement is granted for use by the POA, owners of the two hundred (200) individual RV lots at the RV Resort, and their collective guests, lessees, invitees, successors, successors in title, agents, employees, servants, contractors, administrators, mortgagees, and licensees."
>
> "(c) This Amended Easement is for the benefit of and is appurtenant to all those certain pieces, parcels or tracts of land lying, situate and being on Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 200 RV Lots (1 - 200), the roadways, tennis court(s), pool(s), building(s), parking, open spaces, and the well site . . . **and** that certain property owned by Grantee as more particularly depicted as "Parcel A" on the 2017 Survey."

The 1984 Grant of Easement reads:

> "Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, non-exclusive right-of-way, **on, over, and across the paved roads** located on that certain property owned by Grantor as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference. **This Easement is granted to allow and facilitate general access from the entrance of the RV Resort and Yacht Club to the boundary of the lots** by those persons or entities who are owners of the of the property described in Exhibit "B" or any interest therein or portions thereof, their guests . . ."

> "**This Easement is restricted to the paved roadways only**. Grantor may, at its option, change the location of the roadways, provided that the Grantor shall always provide access as states above with said access sufficient for motor vehicle traffic."

The scope of the 1984 Easement is expressly limited to paved roads. Failure to include this limitation in an update which was to merely "add Parcel B" is clear error.

A grant of an easement is construed in accordance with the same rules applicable to deeds and other written instruments, and its scope must be determined from the language of the instrument itself. Property owners are charged with constructive notice of instruments recorded in their chain of title. See *Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975); *Harbison Cmty. Ass'n v. Mueller*, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995); *Fuller-Ahrens P'ship v. S.C. Dep't of Highways & Pub. Transp.*, 311 S.C. 177, 183, 427 S.E.2d 920, 923-24 (Ct. App. 1993).

Accordingly, any modification to an existing easement must be clear, definite, and consistent with the recorded terms. Here, the parties' dispute over whether the easement remained limited to paved roadways or expanded across all of Parcel "B", much less access Parcel "A" (added by the Court), underscores the absence of any agreement on a material term, rendering the purported modification unenforceable.

Respondents argue that the trial court properly enforced the easement modification. (Resp. Br. pp. 12–16). However, the purported Agreement was to add Parcel "B." But the modification added the parcel, increased the scope, and added access to Parcel "A". The record shows a fundamental dispute over scope.

Appellant understood the agreement to provide a limited extension of the existing roadway easement. (R. pp. –; Tr. pp. 9–10).

Respondents, by contrast, argued for a significantly broader expansion allowing access across all of Parcel "B" for all owners and guests. (Tr. p. 20, ll. 10–18).

This dispute is confirmed by the mediated agreement itself, which states that access would be granted broadly to "owners … and their guests, lessees, invitees, and licensees" to Parcel "B". If the desire was to create an easement that was different in scope, then why modify or even refer to the 1984 easement which was expressly limited in scope.

Further underscoring the lack of agreement, the parties also disputed whether the easement, as "updated," would include access to Parcel "A". Appellant's position has consistently been that the original 1984 easement provided access along paved roadways through what is now identified as Parcel "B" to reach the Resort property (Parcel "A"), and that any update would necessarily preserve that functional access. Respondents, however, advanced a different interpretation that redefined the scope and structure of the easement without clearly addressing or incorporating Parcel "A" within that framework. This disagreement is not a new issue, but rather additional evidence that the parties never reached a meeting of the minds as to the location, scope, and extent of the easement. If the agreement were truly clear and unambiguous, there would be no dispute as to whether Parcel "A" was included. The existence of this unresolved issue confirms that essential terms were left open for future negotiation, rendering the purported agreement unenforceable under South Carolina law.

The disagreement over whether the easement was limited to "paved roads" or expanded across the property is a dispute over a **material term**.

Under South Carolina law, easements must be construed strictly according to their terms. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009).

Because the parties materially disagreed as to the scope of the easement, no enforceable agreement existed.

VII. RESPONDENTS AND THE TRIAL COURT IGNORED THE PLAIN LANGUAGE OF SECTION 6 AND SECTION 7

"Business hours for the restaurant are defined multiple times in the settlement agreement and the parking space time restrictions correspond accordingly. The hours for the restaurant are currently Tuesday - Sunday 6:00 pm to 9:00 pm and Sunday 11:00 am to 1:30 pm. In paragraph 6 of the settlement agreement it specifically spells out the business hours for the restaurant as: "**As used in this agreement, Business Hours are agreed to be Tuesday through Sunday 5:00pm to 10:00pm and Sunday 10:30am to 2:00pm**."

Where the language used in a contract is clear and unambiguous, the court will be guided by the language of the contract, taken and understood in its plain, ordinary, and popular sense, to determine the contract's force and effect. *See Warner v. Weader*, 280 S.C. 81, 83, 311 S.E.2d 78, 79 (1983); *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 473, 438 S.E.2d 275, 277 (Ct. App. 1993). To restate the obvious, "as used in this Agreement" does not allow the Court to apply the term to selective portions of the agreement.

In Section 7 of the Mediation Agreement, the Defendants affirmed that "Turner's Marina is the rightful holder of the 99-year exclusive lease and the right and responsibilities arising therefrom not otherwise addressed in this Settlement Agreement" (emphasis added). The 99-year Lease states: "The premises described in the above legal description are hereinafter referred to as the Recreational Facilities which include among other things, a swimming pool, two tennis courts, decking, bathhouse, and certain portions of the Clubhouse complex (emphasis added)." There are only seven (7) portions of the clubhouse complex: the bathhouse, "laundry room", "mail room",

"exercise room", ship's store, restaurant and owners lounge. In the only deposition taken in this lawsuit, the SCRCP 30(b)(6) of Turner's Marina, the owners lounge was not in question of being part of the lease, but all other portions of the club house complex were. The bathhouse, swimming pool, tennis courts (parking), ship's store and restaurant are all addressed in the settlement agreement and all other portions are affirmed to be a part of the lease that are not addressed in the Mediated Settlement Agreement. The attempt of the Defendants to not allow the Appellant/Lessee to have and utilize the remaining leased portions flies directly in the face of the agreement and the plain wording of the Mediated Settlement Agreement.

Courts do not have the authority to make new contracts for parties. Rather, their duty is limited to interpretation of the contract made by parties, regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully." *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988). The Trial Court ignored the Lease and "blue penciled" the Amended Lease to allow Respondents to control portions of the Leased premises to now be in control of the Association, when no document or agreement supports this finding.

VIII. RESPONDENTS' RELIANCE ON MEDIATION POLICY DOES NOT SAVE AN UNENFORCEABLE AGREEMENT

Respondents invoke public policy favoring mediation. (Resp. Br. pp. 16–17). That policy does not override Rule 43(k) or contract law.

As recognized in *Buckley v. Shealy*, 370 S.C. 317, 635 S.E.2d 76 (2006), settlement agreements must still be complete and enforceable.

The transcript confirms this case involved ongoing disputes, competing interpretations, and unresolved terms, not a finalized agreement suitable for enforcement.

CONCLUSION

The record, Respondents' own admissions, and the hearing transcript all confirm the same point: **no complete, enforceable agreement was ever reached**.

For these reasons, Appellant respectfully requests that this Court:

1. **REVERSE** the August 5, 2024 Orders (R. pp. –);
2. **REVERSE** the April 25, 2025 Order (R. pp. –); and
3. **REMAND** with instructions to deny enforcement of the purported settlement agreement.

Respectfully submitted,

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