THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable R. Keith Kelly
Circuit Court Judge

Appellate Case Number 2023-000969

Terence Sullivan,

Appellant,

v.

Ocean 22 Vacation Owners' Association, Inc.,

Petitioner.

RETURN TO PETITION FOR REHEARING

HOPKINS LAW FIRM, LLC

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INTRODUCTION

Pursuant to Rules 221 and 240, SCACR, and the Court's March 19, 2026 Order, Appellant Terence Sullivan hereby submits his opposition to Respondent Ocean 22 Vacation Owners' Association, Inc.'s Petition for Rehearing ("Petition") to the Court's Unpublished Opinion No. 2026-UP-016 filed January 21, 2026 ("Subject Opinion").

A petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, Appellate Practice in South Carolina 309 (1999)).

This Court should deny the Petition as none of the reasons set forth in Rule 221, SCACR exist. Respondent has not stated with particularity any points that this Court overlooked or misapprehended; instead, it is simply is asking this Court to review the same arguments it made previously.

FACTS

Respondent is the owners' group for Hilton Grand Vacations Club Ocean 22 Myrtle Beach (the Property), a Hilton Grand Vacations, Inc. (HGV) timeshare resort. Subject Opinion, 2. The Association is registered with the South Carolina Secretary of State's Office as a corporation. *Id.* HGV, through its wholly owned subsidiary, Hilton Grand Vacations Management (HGVM) (collectively, Hilton) entered into an agreement with Respondent to manage and operate the Property as a Hilton-branded timeshare resort. *Id.* Respondent has no direct employees. *Id.* The timeshare structure was formalized in the "Declaration of Covenants, Conditions and Restrictions

and Vacation Ownership Instrument for Ocean 22 Vacation Suites" (the Declaration). In the Declaration, Respondent is defined as "a South Carolina non-profit corporation, organized for the purposes set forth in this Declaration. *Id.* Respondent manages the [Property] through the Board and the Manager." *Id.*

Respondent entered into a management agreement (the "Management Agreement") with HGV, which allowed HGV to "manage and operate the Property in accordance with the same practices and standards utilized in the management of other Hilton Grand Vacation Club projects" and "maintain and repair the Property to a first class resort standard." *Id.* Pursuant to the Management Agreement, HGV agreed to "employ, compensate[,] and supervise all persons necessary to manage, maintain, administer and operate the [Property]." *Id.* The Management Agreement further allowed HGV to delegate and subcontract all or part of its obligations. *Id.* Appellant was hired by HGV to serve as a bell person at the Property. *Id.* While working at the Property, Appellant slipped on an algae spot on the sidewalk and was injured. *Id.* He sought and received $80,000 in workers' compensation benefits through his direct employer, HGV. *Id.* A Medicare Set Aside trust account was established for Appellant in the amount of $57,285.31. *Id.* Two (2) months after settling with HGV, Appellant filed suit against Respondent, alleging causes of action for (1) Premises Liability—Negligence/Gross Negligence as to an Invitee, and (2) Negligent Hiring, Training, Supervision and Retention. *Id.*

Respondent moved to dismiss on October 15, 2021, arguing, as Appellant's statutory employer, it was immune from tort liability. *Id.* Following a hearing, the circuit court granted Respondent's motion and dismissed Appellant's complaint with prejudice. *Id.*, 2-3. The order held Appellant's exclusive remedy was dictated by the Workers' Compensation Act (the "Act"), and as such, the circuit court "lacked the subject matter jurisdiction to entertain his work[-]related injury

claims." *Id.*, 3. Appellant moved for reconsideration, arguing (1) the circuit court erred in finding Respondent was his statutory employer specifically because the businesses of Respondent and Hilton were wholly separate and distinct, and (2) even if Respondent was in fact Appellant's statutory employer, Respondent still was not entitled to tort immunity under the Act because Respondent did not establish that it maintained workers' compensation insurance as required by the Act. *Id.* The circuit court denied the motion finding, *inter alia*, Appellant staked his entire argument "on the false premise that [Respondent] needed to secure the payment of workers' compensation to avail itself of tort immunity." *Id.* The circuit court held language in the Management Agreement explicitly showed Hilton was responsible for complying with all applicable laws, "which necessarily includes complying with the insurance requirements of the Act," and this was shown through the workers' compensation settlement reached between Appellant and Hilton and its workers' compensation insurance carrier, Starr Indemnity & Liability Company. *Id.* This appeal followed.

ARGUMENT

I. The Court did not err by basing its Subject Opinion on an argument that was plainly presented to the circuit court.

Respondent argues that the Court erred in finding Appellant preserved his argument regarding its failure to provide evidence of its procurement of workers' compensation insurance. *See* Pet., 15. First, Respondent contends his argument to the circuit court regarding the workers' compensation documentation issue was unpreserved because Appellant failed to specifically *mention* the *Poch* case to the circuit court. *Id.*, 16.

"In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court." *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004). "In other words, the trial court must be given an opportunity to resolve the issue before it is presented to the appellate court."

Id. "A party must file [a Rule 59(e)] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis omitted).

Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue. *See State v. Russell*, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (finding issue was preserved even though defendant did not use exact words "corpus delicti" in his request for a directed verdict). Nonetheless, the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge. *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733; *see also S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007) (finding that although SCDOT did not phrase objection in the exact terms used in the issues on appeal, the objection was sufficiently specific to allow the trial court to rule on the issue).

As the Subject Opinion correctly noted (and Respondent completely ignores), Appellant raised this issue to the circuit court. Subject Opinion, n. 4 ("While Appellant never explicitly named *Poch*, he did raise the issue of procuring workers' compensation insurance at the hearing."); Furthermore, Appellant not only raised this specific issue in his motion for reconsideration, but the circuit court's order denying Appellant's motion for reconsideration addressed the issue at length. Thus, the issue was properly preserved for the Court's review. *See Spence v. Wingate*, 381 S.C. 487, 489, 674 S.E.2d 169, 170 (2009) (finding that because the circuit court's order granted respondents' motion for summary judgment on precisely the grounds argued by respondents at the summary judgment hearing, the ruling was sufficient to preserve petitioner's argument on appeal). For these reasons, the Court did not err by basing its Subject Opinion on an argument that was plainly preserved when Appellant presented it to, and was ruled upon by, the circuit court.

II. The Court did not err when it determined that Respondent's Management Agreement with Hilton was insufficient documentation of workers' compensation coverage.

Respondent argues that the Court erred when it held that its Management Agreement with Hilton did not meet the requirements of "documentation" for evidence of procurement of a workers' compensation policy under S.C. Code Ann. § 415(A). Section 42-1-415 provides that a contractor may shift liability if the contractor obtains adequate proof that the subcontractor had insurance coverage at the time the subcontractor "was engaged to perform work":

> (A) Notwithstanding any other provision of law, upon the submission of documentation to the [C]ommission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section.... The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the [C]ommission to transfer responsibility for continuing compensation to the Uninsured Employers' Fund....
>
> (B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the [C]ommission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the [C]ommission at the time a claim is filed by the injured employee.

S.C. Code Ann. § 42-1-415(A)-(B) (Supp. 2008)

"Liability may only be transferred from the higher tier contractor … after the higher tier contractor ***has properly documented*** the lower tier contractor's claim that it retains workers' compensation insurance." *Hopper v. Terry Hunt Construction*, 373 S.C. 475, 646 S.E.2d 162 (Ct. App. 2007). In regulations promulgated in conjunction with section 42-1-415, the workers' compensation commission clarified that "[t]he ACORD Form 25-S, Certificate of Insurance, as issued by the insurance carrier for the insured, is acceptable documentation of insurance, provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated,

signed and issued by an authorized representative of the insurance carrier for the insured." S.C. Reg. 67-415(A)(2) (2010). Out-of-state employers may also use an ACORD form to verify workers' compensation coverage "provided the authorized representative of the insurance carrier for the insured affirms the following in an accompanying statement: South Carolina is a named state in section 3A or 3C of the declaration page of the insured's policy." *Id.*

In this case, it is undisputed that the only evidence that Respondent put forth to show it satisfied the requirements of Section 42-1-415 was its Management Agreement with Hilton.[1] In *Hopper*, Terry Hunt Construction (Hunt) was the subcontractor contracted by Kajima USA, Inc. (Kajima). 383 S.C. at 313, 680 S.E.2d at 2. The project took place in South Carolina, but Hunt and Kajima were based in Georgia. *Id.* During a previous project that the two worked on together, Hunt provided Kajima with an ACORD form that listed Hunt's insurance policy dates. *Id.* In the section entitled "DESCRIPTION OF OPERATIONS/LOCATIONS," the project number, subcontract number, and the claim deductible amount appeared. *Id.* The ACORD form presented to Kajima at the start of the Greenwood, South Carolina project, however, lacked key information. *Id.* Unlike the previous certificate, the second form contained "no information regarding the coverage that the policy provided, the deductible amount, or the project to which the policy applied." *Id.* at 315, 680 S.E.2d at 3. In addition, the "DESCRIPTION OF OPERATIONS/LOCATIONS" block was blank, and the form showed a policy period that had expired at the time of Claimant's injury. *Id.*

The single commissioner found that the employer could not shift liability to the UEF "because the Certificate of Insurance did not indicate that Hunt had coverage in South Carolina."

[1] Respondent also submits that the workers' compensation settlement agreement indicates it satisfied its requirements under Section 42-1-415. However, that is insufficient because any documentation under 42-1-415 must be obtained when the subcontractor is "engaged to perform work." *Hardee v. McDowell*, 673 S.E.2d 813, 381 S.C. 445 (2009).

Id. at 313, 680 S.E.2d at 2. On appeal, the Supreme Court held that because the form provided at the onset of the new project did not include "information regarding the coverage that the policy provided, the deductible amount, or the project to which the policy applied" it was incomplete. *Id.* at 315, 680 S.E.2d at 3. The court stated, "In failing to fill out the entire [ACORD] Form, Hunt essentially submitted an incomplete document purporting to show that it had a workers' compensation policy, which Kajima accepted. In our view, accepting an incomplete A[CORD] form does not constitute proper documentation." *Id.* The Court further found that Kajima could not rely on the policy because the effective date on the form had expired at the time the employee was injured, stating "a general contractor may not rely upon a Certificate showing an expired worker's compensation policy to show 'documentation' of the subcontractor's workers' compensation insurance." *Id.* at 316-17, 680 S.E.2d at 4.

Respondent fails to cite *Hopper, Hardee*, any other case from South Carolina, or any case from any jurisdiction supporting its position that a management agreement between a property management company and an owner's association is sufficient documentation of workers' compensation insurance coverage that would permit shifting of liability for purposes of Section 42-1-415. Respondent's argument stands for the proposition that if a subcontractor has a management agreement simply stating that both parties have complied with all applicable laws, a general contractor is relieved of liability. Like the *Hopper* Court held, "[f]ollowing this interpretation would allow a general contractor to escape liability by turning a blind eye towards the obvious."

III. The Court did not err in declining to address whether Respondent was Appellant's statutory employer.

Respondent goes to great lengths to argue that it was a statutory employer of Appellant. Petition, 7-13. However, as the Court correctly noted, and Respondent again failed to address, if

Respondent was not Appellant's statutory employer, then it would not be eligible for the immunity protections afforded by the Act. *See* S.C. Code Ann. § 42-5-10 ("Every employer who accepts the compensation provisions of this Title shall secure the payment of compensation to his employees in the manner provided in this chapter."); K*eene v. CNA Holdings, LLC*, 436 S.C. 1, 13, 870 S.E.2d 156, 162 (2021) (emphasizing that the public policy behind the statutory employee doctrine is to ensure coverage for workers, not to provide civil immunity to entities that do not meet the definition of an employer under the Act); *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 224, 661 S.E.2d 395, 403 (Ct. App. 2008) (reiterating the Act "provides the exclusive remedy against an employer for an employee's work-related accident or injury."); *Wright v. Smallwood*, 308 S.C. 471, 475, 419 S.E.2d 219, 221 (1992) ("Under the scheme [set forth in the Act], the employee receives the right to swift and sure compensation; the employer receives immunity from tort actions by the employee.").

As addressed, *supra*, if Respondent was Appellant's statutory employer, "then it did not comply with [its] requirements to provide documentation of a workers' compensation policy" because its Management Agreement with Hilton was insufficient documentation to shift its liability under Section 42-1-415. Subject Opinion n. 5.

CONCLUSION

For all the reasons stated herein, this Court should deny Respondent's Petition. Because Respondent has not stated with particularity any points that this Court overlooked or misapprehended there is no need for further rehearing and Appellant requests that this Court uphold the remand to the circuit court for further proceedings.

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March 30, 2026

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PROOF OF SERVICE

I, J. Clay Hopkins, an employee of the Hopkins Law Firm, LLC, do hereby certify that on March 30, 2026, I served a copy of Appellant's **Return to Petition for Rehearing** upon counsel for Respondent via email only, addressed as follows:

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s/ J. Clay Hopkins
J. Clay Hopkins

Pawleys Island, South Carolina