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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Darlington County
Court of Common Pleas
Civil Action No. 2024-CP-16-00922

The Honorable Paul M. Burch, Circuit Court Judge

Appellate No. 2025-001729

Adams Outdoor Advertising Limited Partnership.......................................Appellant,

v.

West & Joyce, LLC successor in interest to West Oil Company.......................Respondent.

BRIEF OF RESPONDENT WEST & JOYCE, LLC,
SUCCESSOR IN INTEREST TO WEST OIL COMPANY

Florence, South Carolina

April 8, 2026

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STATEMENT OF ISSUES ON APPEAL

1. Did the Appellant ever have a right of first refusal to purchase the *combined* billboard and adjacent convenience store properties when the lease clearly circumscribed and described the leased property as only the billboard portion? (Addressed in Argument I).

2. Was the Appellant's right of first refusal to the *billboard-only property* violated when that property was *not* sold by the lessor? (Addressed in Argument I).

3. Did the Appellant preserve any claim to ownership of the billboard structure in this at-law damages action when it raised the ownership issue for the first time after summary judgment in a Rule 59(e) Motion ? (Addressed in Argument II).

4. Did the Appellant have any legal right to remove the lessor's pre-existing billboard structure once the lease was terminated, when the pre-existing structure was not protected by Appellant's lease language? (Addressed in Argument II).

5. Is this appeal timely where it was filed more than 30 days after the trial court's grant of summary judgment and the subsequent motion for reconsideration under Rule 59(e) of the South Carolina Rules of Civil Procedure *only raised new issues* for the first time in the case? [1] (Addressed in Argument III).

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[1] This issue was raised by Respondent in its Motion to Dismiss the Appeal, filed with this Court on September 25, 2025. After careful consideration, the Court denied that motion in a one paragraph order with no explanation. The issue is raised again here for preservation.

STATEMENT OF THE CASE[2]

Appellant ("Adams Outdoor Advertising" or "Adams") was the commercial lessee of a billboard structure and the realty underneath that billboard owned by Respondent ("West & Joyce") and its predecessor ("West Oil") (collectively "West") in Darlington County *adjacent to* a convenience store /gas station. The convenience store/gas station was also owned by West for much of the lease period.

On September 19, 2024, Adams filed this action seeking damages from West for an alleged breach of the written billboard lease. R.pp.14-23 (Complaint with attachments). Specifically, the Complaint alleged that the 2019 sale of the convenience store breached a right of first refusal[3]

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[2] Respondent offers its own statement of the case pursuant to SCACR 208(b)(2) because it disagrees with the following three statements from the Appellant's Statement Of The Case:

1) "A portion of the *leased* property was subdivided and sold . . ." (Appellant's Brief, Page 2, First Sentence)(emphasis added);
2) "Adams initiated this case to *enforce* West & Joyce's breach of the lease and right of first refusal clause therein . . ." (Appellant's Brief, Page 2, First Full Paragraph, First Full Sentence) (emphasis added);
3) ". . . the lower court . . . awarded West & Joyce . . . additional equitable relief *not requested* in the counterclaims." (Appellant's Brief, Bottom, Page 2 to Top, Page 3) (emphasis added).

Contrary to Statement 1, none of the *leased* property was subdivided and sold because the *leased* property was circumscribed from lessor's adjacent convenience store property at the time of the lease in 2009 and that subdivided *leased* property was *not* sold.

Contrary to Statement 2, Adams did not initiate a case *in equity* to *enforce* its lease or *enforce* its right of first refusal, but rather initiated a case *at law* to seek alleged damages from an alleged violation of the lease.

Contrary to Statement 3, the lower court did not accidently award relief unsolicited by the lessor, but rather the court granted the lessor the declaratory relief and injunctive relief sought by its counterclaim.

[3] Hopefully as a matter of convenience, and not confusion, the Respondent will occasionally adopt Appellant's acronym of "ROFR" for this asserted lease provision.

given by the lessor (West) to the lessee (Adams). This was the sole and simple basis alleged for Adams claim to damages.

By way of Counterclaim, West asserted that the billboard structure was pre-existing (¶¶ 5 and 17), that the leased realty was "certain" (¶5), covered by a lease agreement (¶17), and that the leased property was different from "real estate located adjacent" (¶28) – to which the ROFR did not apply (¶9 ("only"). The Answer and Counterclaim further averred that the West "did not sell the Property that is subject to the lease" (¶¶ 14 and 28) and also that the lease had been terminated and the structure abandoned (¶¶ 21-23). West sought a declaratory judgment that it "has the right to remove and destroy any structures, including the Billboard." (¶ 29). R. pp. 25-29 (Respondent's Answer and Counterclaim).

Cross motions for summary judgment were filed in the trial court. In its motion (filed 1/13/2025), West argued Adams' "sole cause of action for breach of lease must fail." R. p. 54. West also argued "Summary Judgment is also proper as to West & Joyce's counterclaims." R. p. 55. Among specifics, West sought the trial court's ruling that "[Adams'] billboard lease that ended on October 1, 2024 has terminated and [Adams] has no further right to use West & Joyce's property or the billboard structure thereon." R. p.54. (MSJ, page 1, item 3). In Adams' cross-motion for summary judgment (filed 1/31/25), Adams sought a ruling on its sole legal claim *for damages* for an alleged breach of the right of first refusal to purchase for the billboard real property. R.pp.63-64.

Each party submitted an affidavit prior to the summary judgment hearing. West submitted one from corporate principle Alexander West (originally filed January 13, 2025). R.pp.56-62. The West affidavit confirmed that the "small portion" billboard property (by then governmentally identified as TMS 058-00-01-167) had not been sold at all, but only the adjacent convenience store property (by then governmentally identified as TMS 058-00-01-101) had been sold. R.pp.56-57.

(Affidavit ¶¶ 2-10). The West affidavit further provided in part (¶9): "The Lease expired on October 1, 2024 and West & Joyce decided not to extend the Lease. [Appellant] was reminded of the termination date of the Lease and it requested that the [Appellant] remove the Billboard from the Billboard Property. The [Appellant] failed to remove the Billboard as requested." R. p. 57.

Adams submitted the limited Affidavit of property manager Glynn Willis, who was not a signatory to the lease, but who "assisted in the negotiation." R. pp. 69-72. Mr. Willis' affidavit authenticates the *uncontested written lease* (attached to his affidavit) and also confirms the *uncontested public recording* of the lease. Mr. Willis further avers that he "came to learn" (¶7) of the publicly recorded sale of the convenience store parcel sometime in 2024. R. p. 70.

Summary Judgment arguments were heard in the trial court on February 10, 2025 (R.pp.33-45) (Transcript of Hearing) and the trial court's order of summary judgment for West was entered on April 9, 2025. R.pp.3-10. [4] The trial court found that Adams had no claim for breach of contract damages because the contract had not been breached by the sale of the convenience store because the lease and its ROFR was not applicable to that parcel.

Adams filed a Rule 59(e) Motion to Alter or Amend the Judgment on April 21, 2025. R.pp. 93-94. Adams' Rule 59(e) Motion asserted the Appellant's claim to ownership of the billboard structure located on the Respondent's real property. In its supporting memorandum, R.pp. 99-110 (filed May 12, 2025), Adams argued that there was "no legal basis" for the trial court's April 9,

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[4] Appellants' Brief (p. 2) notes that "only West & Joyce's motion was heard" at this hearing. Indeed, West motion was filed first and West counsel did argue in support of its motion. The Adams motion was filed only 6 days prior to the hearing. Ten days motion notice is generally required by SCRCP 6(d). Adams counsel was heard fully in response, however, making Adams' arguments that the ROFR applied and that the ROFR was valid – reasons to both deny the West motion and grant the Adams motion. Although not referenced by Adams counsel, the affidavit of its real estate manager was on file with the Court 6 days prior to the hearing and was available and timely for reference and reliance by Adams in response to the West motion for summary judgment. SCRCP 6(d) (affidavits allowed no later than two days before a hearing).

2025 ruling that West owned the billboard. The Rule 59(e) Motion was heard by the trial court on May 12, 2025 (R.pp.46-53) (Transcript of Hearing) and a ruling was filed on July 31, 2025. R. pp. 11-13. This appeal followed with a Notice of Appeal filed August 28, 2025.

In *this* Court, West filed a Motion to Dismiss the Appeal on September 25, 2025 (with corrected version filed October 24, 2025 adding Exhibit Numbers). Adams filed a response on October 21, 2025. West filed a Reply in support on October 24, 2025. This Court denied the Motion with no explanation by short order on November 26, 2025. The issue raised by Respondent's Motion to Dismiss the Appeal is also preserved by briefing herein.

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCP." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009).

The South Carolina Supreme Court has clarified the standard to be applied to a Motion for Summary Judgment under South Carolina Rules of Civil Procedure 56(c). Kitchen Planners LLC v. Friedman, 440 S.C.456, 892 S.E.2d 297 (2023) (rejecting the "mere scintilla" standard for summary judgment survival). Rule 56(c) provides that the moving party is entitled to summary judgment "if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Kitchen Planners clarifies this "genuine issue of material fact" standard.

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Callawassie Island Members Club, Inc. v. Martin, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022) (*quoting* Fleming v. Rose, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002)). But again, such inferences must be "reasonable", as our Supreme Court has also said, ***a party opposing summary judgment must "'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a genuine issue for trial.'*** " Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (S.C. 1990) *quoting* Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348 1356, (1986) (emphasis in original).

With regard to Appellant's complaint regarding the alleged improper consideration of parol evidence (Appellant's third issue on appeal),[5] the admission of evidence is a matter left to the discretion of the trial judge and, absent a clear abuse of discretion, will not be disturbed on appeal. Carlyle v. Tuomey Hosp., 305 S.C. 187, 407 S.E.2d 630 (1991); *see also* Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 623 S.E.2d 373 (2005) ("The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal."); Jamison v. Ford Motor Co., 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007). For the appellate court to reverse a case based on the admission or exclusion of evidence, a party must demonstrate both error and prejudice. Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970); *see also* Conner v. City of Forest Acres, 363 S.C. 460, 611 S.E.2d 905 (2005) ("To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error and the ruling and the resulting prejudice, i.e., there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence.").

[5] As discussed in argument below, Respondent does not agree that parol evidence was improperly admitted or improperly considered. Evidence other than the lease itself was submitted but *without* any objection and *without* any improper reliance.

STATEMENT OF FACTS

A. In 2009, A Unified Property With A Pre-Existing Billboard Structure Is Divided By A Specific Circumscribing Lease – Prepared By The Appellant.

It is undisputed that the parties entered into a 2009 written lease for property owned by West and located in Darlington County near Hartsville. It is undisputed that a billboard structure was on the property prior to the 2009 lease adjacent to a convenience store and gas station. It is undisputed that the lease provided for lease payments of $500 per year.

Adams' Brief repeatedly describes the leased property by the convenience store's singular applicable street address of "105 West Bobo Newsome Highway" (Appellant's Brief, pp. 3, 23, 24, and 25); *however, Adams* deceptively *omits that part of the lease description which subdivided the billboard portion from the adjacent convenience store.* Specifically, the lease agreement, R.p. 19, prepared by Adams on Adams letterhead, provided that the property was **"Adjacent to State road 151 bypass, *approximately 1/10 mile west of US Hwy. 15 intersection* on the north side of the roadway, *more described as on the west end of West Oil's store property adjacent to SC 151 Hwy.*"** (emphasis added). See also R. pp.56-57 (West affidavit ¶¶2, 3, and 6) (describing the leased property as a "small portion" and ".088 tenths of a mile from intersection"). The adjacent convenience store and gas station are located at the actual intersection of U.S. Hwy 15 and SC Hwy 151.

This complete description, in the lease prepared by Adams, makes it clear that Adams was not leasing the "store property" at the time operated by West Oil and subsequently sold to Refuel (with the creation of a separate TMS number at that time of sale). The "Competitive Advertising Addendum" at the end of the Lease Agreement, R. p. 21, confirms Adams awareness of the ongoing

convenience store operations and gasoline sales "By Lessor" on the adjacent non-leased property and confirms Adams commitment not to install competitive advertising on the billboard structures.[6]

B. From 2009-2019, Appellant Lessee Continues to Lease And Use The Billboard Property Adjacent To Lessor's Use And Occupancy Of The Convenience Store – With Access To The Billboard Across the Convenience Store Property Protected By The 2009 Recorded Lease.

As stated by Adams' Real Estate Manager, "The lease continued for a number of years and all lease payments were made by Adams." R. p. 69, Willis Affidavit ¶ 5. As confirmed in the Respondent's Affidavit, "The Lease expired on October 1, 2024 and West & Joyce decided not to extend the Lease." R. pp. 56-57, West Affidavit ¶ ¶ 2 and 8.

The Lease demise provided that "Lessor also hereby grants to Lessee the following easements over the Property *and adjacent property* owned or controlled by Lessor…." R. p. 19 (Lease, page 1 Section 1) (emphasis added). As also noted by the trial court's order, R.p.6 (Order p. 4), the lease itself provides the lessee these easements for access, utilities, and unobstructed views across the lessor's adjacent property. R. p. 19 (Lease p. 1). To state the obvious,

6 Notably, the affidavit submitted by Adams in the trial court did *not* offer any averment that Adams was actually leasing and using the convenience store property for the rental amount of $500 annually. R.pp. 69-72 (Willis affidavit). Incredibly, Adams now construes (Appellant's Brief, p. 25) that its affidavit shows that the lease was for property "as it existed prior to the Property's subdivision for purposes of a sale in 2019." However, this "as it existed" language is *not* in the actual Willis affidavit. Moreover, it would have been easy for Willis to affirm "Adams leased the convenience store and gas station" or "Adams leased the entirety of the 2.5-acre West property." That is, it would have been easy if it were true and if the lease did not expressly circumscribe the small portion of realty directly under the billboard structure. Again, incredibly, Adams' Brief (p.25) claims "Based on this evidence from [Willis]….the Property… referred to the entire 2.5-acre Property that existed prior to the 2019 subdivision." That is *not* what the Willis affidavit says, implies, or hints. That is also *not* what the lease clearly says or intends.

if the lease didn't circumscribe a smaller area than the whole of West realty – creating a parcel over which Adams would not have leasehold control – the easement would not be needed.[7]

C. From 2009-2019, In The Absence of A Lease Provision, Lessor Remains Responsible for Real Estate Taxes on All of Its Owned Property – the Convenience Store And The Circumscribed Billboard Location.

The 2009 written lease is silent as to property taxes thereby leaving that responsibility with the record owner of the property (the lessor West). The County's continued reliance upon West for payment of Ad Valorem property taxes, perhaps administratively using a single government tax map identifier, does not mean that a separate leasehold property interest was not created; *indeed, it was*. The lease of a parcel or sub parcel of property does not and did not trigger an administrative need for a separate property tax designation.[8]

D. In 2019, Respondent's Predecessor Sells Only The Convenience Store Property To A New Owner Triggering A New Governmental Tax Identifier.

After an initial ten-year period of the lease, the convenience store parcel was sold to a separate owner/operator ("Refuel") on April 27, 2019. And that sale and corresponding real property deed in 2019 to a new owner /taxpayer did trigger an administrative need to create a new tax map identifier – that new identifier (TMS 058-00-01-101) is verified and described in West affidavit. R. pp. 56-62 (West Affidavit ¶¶4 - 8 and attached exhibits B, C, and D).

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[7] Inexplicably, Adams' Brief (p. 25) suggest that the easement is not "even indicative that the Lease was for a smaller area."

[8] Notably, the lease agreement does not use any tax identifier in its description. A specific line in the Appellant's lease form, available for such a designation, was left blank by the two parties at execution. R.p. 19.

E. From 2019 Until Lease Termination, Appellant Lessee Continues to Lease And Use The Billboard Property Adjacent To A New Owner And Occupant Of The Convenience Store – With Access To The Billboard Across the Convenience Store Property Protected By The 2009 Recorded Lease.

As stated by Adams' Real Estate Manager, "The lease continued for a number of years and all lease payments were made by Adams." R. p. 69, Willis Affidavit ¶ 5. As confirmed in the Respondent's Affidavit, "The Lease expired on October 1, 2024." R. p. 56, West Affidavit ¶ 2. As mentioned above, in the Lease demise, it provided that "Lessor also hereby grants to Lessee the following easements over the Property *and adjacent property* owned or controlled by Lessor…." R.p. 19 (Lease, page 1 Section 1) (emphasis added).

The Lease provided, of course, that it could be recorded for public notice. R.p.20 (Lease, p.2, Section 12). And the Adam's Real Estate Manager confirmed in his affidavit that the Lease was recorded on January 22, 2010 at Book 0158 Page 7711 of the Darlington County Clerk of Court, R.p. 69 (Affidavit ¶4), thereby placing the subsequent (2019) convenience store purchaser Refuel on record notice of the continuing easement obligations.

F. The Lease Expires and Litigation is Brought.

The Lease provided for a five-year term beginning October 1, 2009 with successive five-year automatic extensions – absent notice of termination given 90 days in advance of the next automatic extension. R.p.19 (Lease §2). *See also* Appellant's Brief, p. 4. Such Notice would be due before July 1, 2024 for an October 1, 2024 termination. West properly notified Adams that the Lease would not be renewed and would terminate on October 1, 2024. R.p. 27 (Answer &

Counterclaim ¶19). R.p.57 (West Affidavit ¶9). Adams admits that it received notice attempting to terminate the lease. R.p.30 (Reply ¶4). [9]

Adams' Memorandum in Opposition to West Summary Judgment also conceded receipt of a non-renewal letter dated October 18, *2023* -- a year before the lease term expiration. R.p. 66. [10]After this non-renewal notice, the litigious Adams brought its legal action for alleged ROFR-breach damages on September 19, 2024 -- after 5 years of leasing the Billboard next to a Refuel store.

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[9] The termination of Adams lease was raised by Respondent's Counterclaim (¶¶17-29) and supported by the West affidavit (¶9) as quoted above. Although termination itself is denied in its Reply, R.p. 30, Adams chose not to contest or address the termination issue with its affidavit or response to the Motion for Summary Judgment – instead focusing exclusively on its alleged ROFR. Thus, the West affidavit's evidentiary showing of termination was uncontested at the time of summary judgment.

[10] The uncontested letter itself is not in the record and not of any real import. Appellant's Memorandum in support of its Rule 59(e) Motion included an October 14, 2024 Notice of Default letter (the Default being failure to remove the billboard structure) (Default letter also referencing earlier termination notices) and a November 1, 2024 Notice of Trespass letter – and these documents are further supportive of the termination. R. pp. 99-107.

ARGUMENTS

I. UNDER THE CLEAR WRITTEN LEASE, THE APPELLANT *NEVER* HAD A RIGHT OF FIRST REFUSAL TO PURCHASE *BOTH* THE BILLBOARD PARCEL *AND* THE ADJACENT CONVENIENCE STORE PARCEL AS A COMBINED PROPERTY; THUS, THE APPELLANT'S RIGHT OF FIRST REFUSAL TO THE BILLBOARD-ONLY PARCEL WAS *NOT* VIOLATED BECAUSE THAT PROPERTY WAS *NOT* SOLD BY THE LESSOR.

This is an appeal seeking *alternative facts* -- an alternative lease that doesn't exist. A written lease, prepared by the Appellant, *does exist*, but it isn't the version that Appellant seeks *now*.

The court found that the existing written lease was clear. The actual clear lease circumscribed the leased billboard realty from the adjacent convenience store property and it specifically addressed the leased property as one with a pre-existing billboard structure. Thus, the actual written lease was *not* violated by the convenience store sale and was *not* violated by the lease termination and return of the billboard structure to the lessor's exclusive control.[11]

While the Appellant's action at-law sought *only* damages for an alleged breach of that lease agreement,[12] the Appellant's post-judgment motion sought, for the first time, ownership control of the formerly leased structure.[13] Creatively, Appellant's Brief erroneously even suggests that its

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[11] As the trial court succinctly stated, "Ultimately, the question is whether a lease between the parties gave [Adams] a right of first refusal in the Billboard Property or in both the Billboard Property and the Convenience Store Property." R.p. 5 (Order p. 3). Indeed, this succinct issue is the heart of Appellant's duplicative second, fifth, and sixth issues on appeal.

[12] As noted in the Respondent's separate Statement of The Case above, this action was initiated by the Appellant, as a commercial billboard tenant, seeking damages against the Respondent landlord solely for an alleged breach of the lease contract with regard to an alleged right of first refusal to purchase the leased real property. The Complaint did *not* seek any injunctive relief to protect any alleged remaining property interest in the leased property or its structures. R.pp. 14-23 (Complaint filed 9/19/2024).

[13] Appellant's Rule 59(e) Motion (filed on April 21, 2025) raised, for the first time, the Appellant's claim to ownership of the billboard structure located on the Respondent's real property. R.p.93.

action at-law for damages creates a possible route to a real property ownership interest (bottom page 14, top page 15).[14] Regardless of Appellant's creative and strategic changes, all of the remedies suggested by the Appellant (initially and upon reconsideration) are *inconsistent* with the clear lease as correctly found and followed by the trial court.

Because there never was a sale of the billboard structure location, Adams pinned its claim of ROFR-breach on the sale of the adjacent, but separate, convenience store property. The trial court found that the ROFR did not apply to the non-leased convenience store property; thus, there was no breach of any applicable ROFR. R.p.7(Order of Summary Judgment, p. 5). The trial court was correct.

Appellant argues that the lower court violated "the principle that a lease cannot create an interest in property which does not exist at the time of the lease." Appellant's Brief, top 17 and Issue on Appeal No. 2. In reality, it is clear that West as lessor did own and have an interest in the billboard location – an interest capable of being leased – and a location actually described in the lease agreement. The property interest *existed* <u>and</u> *could be* <u>and</u> *was* circumscribed from a larger parcel *through the lease* itself. The only thing not existing for 10 years was the administrative tax identifier assigned by Darlington County – which was assigned when later needed.[15]

Indeed, this is the only issue raised in Appellant's post-judgment motion. In its supporting memorandum (filed May 12, 2025), the Appellant argued that there was "no legal basis" for the trial court's summary judgment ruling that the Respondent owned the billboard. R. p. 101.

[14] Notably, Adams did not add Refuel to its damages action as the legal record title owner of the convenience store property (<u>See</u> SCRCP 19 (requiring joinder of persons with an interest in litigated property)) or file a notice of lis pendens (<u>See</u> S.C. Code §15-11-10) asserting a property interest in any part of the property.

[15] Appellant's Brief (p.1 issue 2, and p.17) even suggest that lessor had no interest in the leased property "for 10 years after that lease." Appellant's argument implicitly, and incorrectly, suggests that the perfunctory task of tax mapping is what creates an interest in real estate when all that task does is administratively identify an owned parcel of real property.

Out of an abundance of precaution, the lessor did argue *as an alternative theory*,[16] R.p. 82 (MSJ Memo p.10), that contract ambiguity might defeat the lessee's claim to damages for alleged breach of the ROFR.[17] The trial court, however, correctly found that the contract/lease was *not* ambiguous. The trial court found the lease clearly limited the leasehold property to the small pre-existing billboard location and found the written lease's property description, checked box, rent amount, and easement for access (all *within* the written lease document) indicative of and consistent with that clear intent.[18]

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16 In its Brief, Appellant perhaps fairly characterizes some of Respondent's alternative theories as "self-conflicting relief." Appellant's Brief, p. 6. However, the Brief's extrapolated criticsm of the trial court order as "a patchwork of incomplete and unsupported findings" (also page 6) is not fair. The trial court's ruling on the clarity of the contract is well-supported and eliminated the need to consider some of the Respondent's alternative theories (ambiguity and unlawful restraint) against the ROFR damage claim.

17 An ambiguous contract is one that "is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business." Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 334, 676 S.E.2d 139, 144 (Ct. App. 2009). "A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one." Gordon Farms, Inc. v. Carolina Cinema Corp., 363 S.E.2d 235, 236, 294 S.C. 158, 160 (Ct. App. 1987) (citing Farr v. Duke Power Co., 265 S.C. 356, 218 S.E.2d 431 (1975)).

18 "Parties to a contract have a right to make their own contracts, and when the contracts they make are capable of clear interpretation, the court's province is confined to the enforcement of the contract as written; the court cannot exercise its discretion as to the contents of the contract or substitute its own construction for an agreement clearly entered into between the parties." Id. (citing Bruce v. Blalock, 241 S.C. 155, 127 S.E.2d 439 (1962)). "In ascertaining the intention of the parties, the court must first look to the language of the contract." Id. (citing Blakeley v. Rabon, 266 S.C. 68, 221 S.E.2d 767 (1976)). "And if the language of the contract is clear and capable of legal construction, the language alone determines the force and effect of the instrument." Id. (citing Superior Automobile Insurance Co. v. Maners, 261 S.C. 257, 199 S.E.2d 719 (1973)). "Moreover, the words used in the contract should be given their usual and ordinary meaning except where it appears that they were used in a different sense or have a technical meaning." Id. (citing Blakeley v. Rabon, 266 S.C. 68, 221 S.E.2d 767 (1976)).

Related to West alternative argument of possible ambiguity, Adams now suggest the trial court erred in using parol evidence to interpret the parties written lease. Appellant's Brief, p. 1 (Issue Presented No.3) and pp. 16-19. Here, the trial court expressly found that "the Lease is clear." R. p. 7 (Order, p.5). The Order further added "it is clear that [West] only leased the Billboard Property to [Adams]. As stated in the Lease, Plaintiff was leased a portion of Property on the west end of the "store property." Parol evidence is not prohibited entirely --- rather, it is prohibited from use to *vary or contradict or alter or change* the terms of a clear unambiguous contract. [19]

There is nothing in the Order suggesting that the trial court *varied or contradicted or altered or changed* the terms of the written lease in reliance upon parol evidence. The affidavits of each party provided background and context to the parties' written lease. While the trial court noted the submission of aerial overlays and later administrative tax number assignments, the trial court did not point to any reliance upon those overlays in interpreting the lease. *Moreover, the Appellant interposed no contemporaneous objections to the submission of this evidence.*

The trial court also did not rely upon the convenience store sale price in interpreting the lease although the seasoned judge gratuitously observed the logical consistency of the lease's limited scope with that price. [20] Again, the non-lease evidence submitted and considered by the Court was without objection, and provided context and background.

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[19] "Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract. 'However, if a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties.'" HK New Plan Exch. Prop. Owner I, LLC v. Coker, 375 S.C. 18, 23-24, 649 S.E.2d 181, 184 (Ct. App. 2007) (citation omitted) (*quoting* Koontz v. Thomas, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999).

[20] The trial court noted that the clear meaning of that lease (circumscribing a portion of the whole realty) was consistent with the economic logic of the subsequent convenience store sale ("It defies logic that [Adams], who leased only a Billboard and a small parcel of land for $500.00 per year, should have a right of first refusal in an adjacent property and a business worth over eight million

Similar to the ambiguity argument, West also argued in the alternative that any ROFR applicable to the convenience store would be an unlawful restraint on alienation.[21] The Trial Court's well-supported ruling made it unnecessary to address the alternative theories argued below.[22]

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dollars."). R.p. 7 (Order, p. 5). Tellingly, Adams made no proffer to the trial court of its willingness to match the convenience store's sales price; of course, this lack of proffer was consistent with its pleaded action at-law seeking breach damages.

[21] A considerable portion of Appellant's Brief is addressed to the application of the Clarke v Fine Housing, Inc., 438 S.C. 174, 882 S.E.2d 763 (2023), decision to the validity or enforceability of the asserted rights of first refusal. Appellant suggests that the trial court "failed to properly analyze the validity of the ROFR clause" -- but the trial court here didn't find the ROFR clause *invalid*– it found it *not applicable* to that portion of the property *not covered by the lease* – the convenience store. The trial court found the asserted rights not applicable based upon the lease itself and its scope of leased property. Thus, the Court did not need to address the Clarke issue. Again, the trial judge's seasoned decision is well-supported in the record.

[22] Because of the clarity and support for the trial court's decision, the Respondent will not burden this Court with a complete briefing of these alternatives. Nevertheless, as this Court knows, Rule 220(c) provides that this court may affirm the trial court's decisions "upon any ground(s) appearing in the Record on Appeal." Accordingly, a respondent may raise additional reasons for affirmance – even if not raised by the respondent below or if different from grounds raised by respondent below. I'on, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). Ferguson v. Charleston Lincoln/Mercury, Inc., 344 S.C. 502, 544 S.E.2d 285 (Ct. App. 2001), aff'd as modified, 349 S.C. 558, 564 S.E.2d 94 (2002).

II. IF THE ISSUE IS PRESERVED FOR APPELLATE REVIEW, THE APPELLANT HAD NO LEGAL RIGHT TO REMOVE THE LESSOR'S PRE-EXISTING BILLBOARD STRUCTURE BECAUSE THE PRE-EXISTING STRUCTURE WAS NOT PROTECTED BY THE APPELLANT'S LEASE LANGUAGE.

Appellant's Rule 59(e) Motion raised, *for the first time*, the Appellant's claim to ownership of the billboard structure located on the Respondent's real property. Indeed, this is the *only* issue raised in Appellant's post-judgment motion. As West has suggested, Appellant Adams knowingly abandoned (or waived) (or did not preserve) any claim to billboard structure ownership by choosing to only pursue a remedy at-law of damages for the alleged violation of its right of first refusal. [23] Clearly, having received notice of the lease non-renewal in 2024, a disappointed and litigious Adams placed all its eggs in the ROFR-breach theory. As trial counsel for Respondent stated at the Rule 59(e) Motion, Adams "took a chance ... to leave [the Billboard] up and go with the argument that they had a right to buy this land." R. p. 50 lines 15-18. [24]

A party may not raise an issue for the first time in post-trial motions; ***such an issue is not preserved.*** Kiawah Property v. Public Service, 359 S.C. 105, 597 S.E.2d 145 (S.C. 2004); Peterson v. Porter, 389 S.C. 148, 152, 697 S.E.2d 656, 658 (Ct. App. 2010) (holding appellant failed to preserve issue for review where appellants raised the employer-employee argument in his motion to reconsider but failed to raise it during the summary judgment proceedings); Commercial Credit

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[23] As further argued below, the Appellant's Rule 59(e) Motion improperly and belatedly raised the new claim of structure ownership. For this reason, even if tolling is allowed on the issue of ROFR applicability, the structure ownership issue was not properly presented and preserved in the trial court and should not be considered now. Respondent raises the preservation issue again to avoid any presumption of preservation (by Appellant) – or waiver (by Respondent). McCormick v. England, 328 S.C.627, 494 S.E.2d 431 (Ct. App. 1997).

[24] By its own admission, Adams had almost a year's notice of the lease's non-renewal. Although denying the lease termination because of its erroneous claimed path to a litigated property interest, Adams has not disputed reasonable notice of the non-renewal. Moreover, in response to West summary judgment motion on all claims, including the West counterclaims, Adams did not seek to delay the hearing, did not make a proffer of the convenience store purchase price, and did not seek to amend its Complaint to seek additional relief perhaps including purchaser Refuel.

Loans, Inc. v. Riddle, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999); Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct.App.1995) (a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment); *see also* McGee v. Bruce Hosp. Sys., 321 S.C. 340, 468 S.E.2d 633 (1996) (a party may not raise an issue for the first time in a motion for a new trial).

Erroneously emphasizing Wests initial gratuitous structure removal offers/requests,[25] Adams Brief now fails to address the actual facts in the record demonstrative of continuous lessor ownership of the billboard structure; instead, Adams argues against a non-existent "subliminal determination" by the lower court that ownership "transferred back" to lessor "automatically" with the lease termination. (Appellant's Brief, page 15). That is not what happened and that is not the lower court's holding.

The Court did conclude that the billboard structure was owned by and controlled by the lessor – but *not* as the result of any unknown or automatic transfer from the lessee. Indeed, the *only* evidence in the record is that the lessor *always owned* this pre-existing structure; there is *no* evidence that ownership of the structure was ever vested with the lessee. Nevertheless, Adams Brief (pages 6 - 7) suggests that the trial court erroneously found that ownership of the pre-existing billboard structure had "transferred" from the lessor West to the lessee Adams.

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[25] As noted above, and repeatedly noted by Appellant's Brief (pages 2, 6, 8, 10, 13, 14), West originally *requested*, and *was desirous of*, and *even legally pleaded for*, Adams removal of the billboard structure at the end of the lease. Respondent was not focused on West true ownership of the billboard structure and was otherwise initially willing to allow the removal of that structure at Appellant's cost if the Appellant's damage claim was defeated or abandoned. Of course, previous unaccepted offers to allow Plaintiff to remove the structure, arguably within the context of Rule of Evidence 408, does not alter the factual record of continuous landlord ownership of the pre-existing billboard structure.

In support of its claim of ownership, Adams first points to section 4 of the lease. While this section of the lease (§ 4) does provide that the lessee would own any structures "erected *by* or *for* the lessee" (emphasis added), R. p. 19, .the only evidence in the record is that *this billboard structure pre-existed the lease* as recognized in the lease property description and evidenced by the lessor's affidavit. There is *no* evidence that the structure was *erected by Adams* or *erected for Adams*; the *only* evidence is that it was already erected upon West real property.

It is disingenuous, therefore, for Appellant to argue that the burden was on the one and only true owner (West) to challenge the lessee's un-pleaded and belatedly asserted claim to structure ownership. If West presented "no allegation, let alone evidence" (Adams Brief, bottom p.6) that West *reacquired* ownership in the billboard structure, it is because the only evidence in the record is that ownership never left from West! West has no burden to prove a reacquisition when that reacquisition was never needed.

Also disingenuous, footnote 9 of Appellant's Brief suggest that Adams Outdoor is somehow the successor-in-interest to West or some other benefactor who erected the sign before the 2009 lease *for Adams*.[26] There is no evidence in the record that Adams acquired an assignment of a pre-existing leasehold or had someone erect the billboard *for Adams*. To the contrary, the lease express declaration of a pre-existing structure (checked box in Section 1), and the affidavits of both parties speak of a new lease and negotiations in 2009 for a location with an existing billboard owned by the lessor West. *See also* R. p.19, (lease representation of ownership, §5, accepted by both parties).

Appellants reliance upon Creative Displays, Inc. v. South Carolina Hwy. Dept., 272 SC 68, 248 S.E.2d 916 (1978) to support its claim of structure ownership is also misplaced. Like here, a

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[26] In contrast, the affidavit of Appellant's real estate manager appropriately recognizes West & Joyce LLC as a successor in interest to West Oil Company. R.p. 69 ¶3.

written lease was in place and the written lease protected the structure ownership by an *erecting lessee* and their successors in interest. But, unlike here, the real property owner/lessor was not involved and had no structure prior to the creation of the lease. Also, unlike here, there *were* successive *lessees* under the lease. Creative Displays had succeeded to Miller Outdoor Advertising, Inc. While the Court in Create Displays did confirm that sign structures are removable personal property as a matter of law (therefore not subject to condemnation damages under the Federal Relocation Assistance and Real Property Acquisition Act), that holding is of no consequence in this factually distinguishable situation.

III. THE APPELLANT'S APPEAL IS UNTIMELY.

The trial court's order of summary judgment was entered on April 9, 2025. Appellant's Rule 59(e) Motion to Alter or Amend the Judgment was filed on April 21, 2025. It remains the Respondent's position that the Rule 59(e) Motion was improper and did not toll the time to appeal the April 2025 Order of Summary Judgment.[27]

Last year, our Supreme Court made it clear that its decision in Swing v. Swing, 445 S.C. 340, 914 S.E.2d 158 (2025) (a domestic relations case) to toll the appellate deadline did "not mean, of course, that all timely Rule 59(e) motions will stay the Rule 203(b)(1) deadline for appeal." [28]

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[27] *Even if tolling is allowed*, the Respondent suggests that tolling only be allowed for those issues raised by Appellant prior to its Rule 59(e) motion – mainly, its theory seeking damages for an alleged breach of the right of first refusal to purchase the combined billboard and convenience store properties which is addressed in Argument I herein. *Even if tolling is allowed*, the ownership asserted by Appellant in its Rule 59(e) motion should be treated as unpreserved.

[28] As Justice Few noted in his opinion, Swing involved interconnected issues of family court, where the appeal was not filed by the Rule 59(e) movant, where the 59(e) motion was not a successive Rule 59(e) motion, and the filed 59(e) motion was unlike previous motions. Most importantly, *Swing* did *not* involve an attempt to raise new issues for the first time after summary judgment as is the case here.

Referencing the "limits and rationale" of Coward Hund Construction Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999) and Quality Trailer Products, Inc. v. CSL Equipment Co., 349 S.C. 216, 562 S.E.2d 615 (2002), each of which found an exception to the appellate deadline stay created by Rule 59(e), the Court did "not foreclose the possibility that another scenario may arise justifying a third exception….."[29] Respondent suggests that a Rule 59(e) raising an unpreserved issue for the first time is precisely the type of scenario which should *not* stay the time to appeal otherwise ripened issues from the Court's initial ruling.

Specifically, the equities here cut in favor of a third exception and a declaration of an untimely appeal. Adams chose not to pursue ownership remedies (specific performance, quiet title, *inter alia*) in its Complaint. Rather, Adams chose to argue solely for a ROFR to combined properties and sought only damages related thereto, and Adams filed nothing in response to the assertion that the lease had terminated and the pre-existing billboard structure had been abandoned. Moreover, the issue actually raised and preserved by Adams – its claim of breach related to an alleged ROFR to the combined properties *was rip*e for appeal without filing the Rule 59(e) motion which only raised new issues. Raising new issues by Rule 59(e) thwarts judicial economy and delays the appellate process for ripe matters.

The time for appeal from the April 9, 2025 Summary Judgment Order was 30 days under SCACR 203(b)(1) which would have run on Friday, May 9, 2025. This appeal was filed with the appellate court on August 28, 2025. Accordingly, because Appellant chose to only address the theory of breach of lease in its argument and presentation to the trial court, it needed to appeal that ruled-upon theory by May 9, 2025 – and raising an unpreserved issue for the first time by Rule

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[29] Coward Hund involved a second successive written 59(e) Motion whilst Quality Trailer involved a first written 59(e) motion duplicative of a previous written JNOV/new trial motion.

59(e) Motion did not toll the time for appeal. Accordingly, no preserved issued has been timely appealed and this appeal should be dismissed.

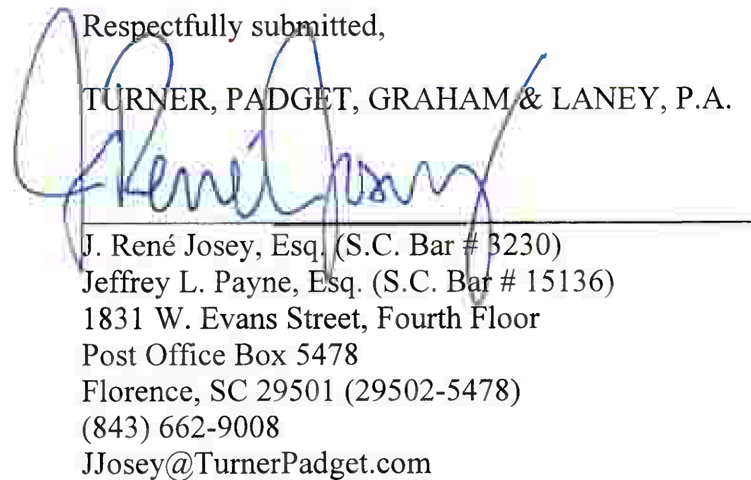
CONCLUSION

The Appellant brought an action for damages and now seeks a route to title. The trial court looked at the clear lease, prepared on the Appellant's form, and found it was limited to a circumscribed portion of the Respondent's adjacent properties. Contrary to the suggestion that the Court erroneously then relied upon parol evidence to interpret the lease, all evidence outside of the lease merely corroborated the clear meaning of the lease. The trial court's findings are well-supported by the record and within the four corners of the leasehold-creating document. The background and contextual evidence provided by both parties, without contemporaneous objection support the trial court's findings. The trial court's order of summary judgment for the Respondent should be affirmed.

Respectfully submitted,

Florence, South Carolina

TURNER, PADGET, GRAHAM & LANEY, P.A.



April 8, 2026

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