THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge
Circuit Court Case No. 2024-CP-16-00922

Appellate Case No. 2025-001729

Adams Outdoor Advertising Limited Partnership,

Appellant,

v.

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

Respondent.

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err in holding that West & Joyce could destroy Adams' billboard at issue or convert the billboard for West & Joyce's own use when it did not raise the issue on summary judgment or assert that it took ownership of the billboard?[1]

2. Did the lower court err in distinguishing two parcels subject to the Lease at issue when only one parcel existed at the time of the creation of the Lease in 2009, and said parcel was not subdivided until ten years later?

3. After finding that the contract language was clear and unambiguous, did the lower court err in utilizing parol evidence to interpret the Lease at issue?

4. In interpreting the right of first refusal clause in the Lease, did the lower court err in failing to apply the factors for assessing rights of first refusal set forth in the South Carolina Supreme Court's decision in *Clarke v. Fine Housing, Inc.*, 438 S.C. 174, 882 S.E.2d 763 (2023)?

5. Did the lower court err in holding that the right of first refusal in the Lease did not encumber the entire 2.5-acre parcel, which was the only undivided tract that existed at the time of the Lease?

6. Alternatively, did the lower court err by ignoring the express language of the property description in the Lease, which included part of the store property in the encumbered property?

STATEMENT OF THE CASE

Adams and West & Joyce entered into a lease in July 2009 for Adams to operate a billboard on West & Joyce's property, which also provides Adams a right of first refusal to purchase the

[1] Herein, "West & Joyce" or "Lessor" refers to Respondent West & Joyce, LLC, successor in interest to West Oil Company. "Adams" or "Lessee" refers to Appellant Adams Outdoor Advertising Limited Partnership.

property. (R. pp. 19-23 (the "Lease")). A portion of the leased property was subdivided and sold in 2019, but due to the lack of notice required under the Lease, Adams remained unaware until four years after the fact.

Adams initiated this case to enforce West & Joyce's breach of the Lease and right of first refusal clause therein, filing its Complaint on September 19, 2024, prior to expiration of the Lease term on October 1, 2024. (R. pp. 14-18 (Complaint); R. p. 75 (West & Joyce MSJ Mem. p. 3)). On October 25, 2024, West & Joyce filed its Answer and Counterclaims, alleging the right of first refusal did not burden the subdivided part of the property which was sold, that Adams and its billboard were trespassing on the property, and that Adams should be required to remove the billboard and should be enjoined from trespassing on the property after it removed its billboard. (R. pp. 27-28 (Answer pp. 3-4)).

A week after filing its counterclaims, on November 1, 2024, West & Joyce sent a letter to Adams, alleging for the first time that any attempt to access the property would be considered a trespass, based on Adams not removing its billboard by the date the letter was mailed, November 1, 2024. (R. pp. 105-106). Adams had not received any previous correspondence which set forth a November 1, 2024 deadline to remove its billboard.

Without conducting any discovery or filing any papers beyond its responsive pleading, West & Joyce moved for summary judgment on January 13, 2025. Although Adams filed a motion for summary judgment on its breach of lease claim a few weeks later, only West & Joyce's motion was heard by the lower court at a February 10, 2025 hearing. Via an order entered April 9, 2025, the lower court dismissed Adams' Complaint with prejudice, granted summary judgment to West & Joyce on Adams' breach of lease claim, and awarded West & Joyce the injunctive relief and part

of the declaratory relief requested in its Counterclaims, as well as additional equitable relief not requested in the Counterclaims. (R. pp. 3-10 (April 9, 2025 Order) (the "Order")).

On April 21, 2025, Adams filed a motion to alter or amend the lower court's order on West & Joyce's summary judgment motion. (R. pp. 93-94 (Mot. Alter or Amend)). The court held a hearing on the motion on May 12, 2025, and subsequently entered a one-sentence form order on July 31, 2025 denying Adams' request for reconsideration. (R. pp. 46-53 (May 12, 2025 Hearing Tr.); R. p. 11 (July 31, 2025 Order)). This appeal followed, with the Notice of Appeal timely served and filed on August 28, 2025.

West & Joyce filed a Motion to Dismiss the Appeal on September 25, 2025, alleging purported procedural deficiencies as to issue preservation and timing of this appeal. Adams filed a return opposing the motion on October 21, 2025, and West & Joyce filed a "Corrected Motion to Dismiss Appeal" and a reply in support of the motion on October 24, 2025. The Court denied the motion via its Order entered November 26, 2025.

STATEMENT OF THE FACTS

On or about July 15, 2009, West & Joyce, as Lessor, and Adams, as Lessee, entered into a lease of real property for the purpose of Adams "operating, maintaining, repairing, modifying and reconstructing outdoor advertising structures, together with any advertising, equipment and accessories that lessee may desire to place" on the leased Property, the foregoing being defined as the "Structures."[2] (R. p. 19 (Lease § 1)). The Lease defines the encumbered "Property" by its address, 105 West Bobo Newsome Highway in Darlington County, South Carolina. (R. p. 19 (Lease § 1)).

[2] Adams only operates one of its Structures or "Billboards" on the Property pursuant to the Lease.

At the time the Lease was executed and until a portion of the Property was sold in 2019, the real property located at 105 West Bobo Newsome Highway in Darlington County was a single parcel of land, consisting of approximately 2.5 acres, which only bore one tax map number, 058-00-01-101. (R. p. 70 (Aff. of Glynn F. Willis at ¶ 7); R. p. 36, lines 7-10 (Tr. of Summ. J. Hearing) (West & Joyce's counsel stating "this property originally was a 2.5 acre tract of property. When we sold the convenience store we sold … 1.7 acres to Refuel.")).[3] Prior to the subdivision and sale, the single tract on which the billboard is operated also contained a convenience store and gas station. (West & Joyce Reply Supporting Motion to Dismiss Appeal ("Oct. 24, 2025 Reply") p. 2 (stating the "store property" was "subsequently sold to Refuel (with the creation at that time of a separate TMS number)[]")).

The Lease's initial 5-year term commenced on October 1, 2009 and the Lease was publicly recorded with the Darlington County Clerk of Court on January 22, 2010, in Book 1058, at Page 7711. (R. pp. 19-23 (Lease)); (*compare* R. p. 16 (Complaint ¶ 5) (providing the date, book, and page of recording), *with* R. p. 25 *(*Answer ¶ 6) (admitting allegations in paragraph 5 of the Complaint)). Pursuant to its provisions, after the initial Lease term, it automatically extends for another 5-year term, and thereafter extends for successive 5-year terms, except that, after the first extension term, either party can terminate by giving notice 90 days in advance of the next extension term. (R. p. 19 (Lease § 2)).

Section 10 of the Lease provides Adams with its right of first refusal to purchase. (R. p. 20 § 10 (the "ROFR")). The ROFR requires Lessor to: give Lessee notice if the Property is being

[3] Adams does not admit, and nothing herein should be construed as an admission, that the purported conveyance from West & Joyce to Refuel in 2019 was valid, as it was carried out in violation of the express provisions of the Lease. (R. p. 20 (Lease § 10); *infra* at pp. 4-5, discussing same; R. p. 68 (Adams' Mem. in Opp. to West & Joyce's Mot. for Summ. J. ("MIO MSJ") p. 4)).

offered for sale and if an acceptable offer to purchase is received; provide Lessee with a 30-day period to exercise its right of first refusal; and advise the third party contract purchaser that Lessee possesses a right of first refusal. (R. p. 20 (Lease § 10)). The ROFR further specifies that "Lessor will … not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement." (R. p. 20 (Lease § 10)).

On or about October 18, 2023, West & Joyce sent a letter to Adams giving notice of its intention to not renew the Lease when the existing term expired on October 1, 2024. (R. p. 66 (Adams' MIO MSJ p. 2)).[4] It was during this same time that Adams first learned that West & Joyce had subdivided and sold part of the leased Property to a third party four years prior, in 2019. (R. p. 17 (Complaint ¶ 10)). As West & Joyce does not believe that the ROFR encumbers the portion of the Property sold in 2019, the parties could not resolve the dispute and Adams filed its Complaint on September 19, 2024, serving the same on West & Joyce six days later (R. pp. 14-18 (Complaint); R. p. 24 (Acceptance of Service)). The Complaint was filed and served prior to expiration of the Lease term and before West & Joyce attempted to give any notice of purported trespass by Adams or its Billboard. (R. pp. 105-106).

STANDARD OF REVIEW

When reviewing a grant of summary judgment, an appellate court applies the same standard of review applied by the trial court under Rule 56(c), SCRCP. *See, e.g.*, *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).[5] "Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law." *Joyner v. Greenville Hotel Assocs., Ltd. P'ship*, 364 S.C. 237, 239-240, 612 S.E.2d

[4] A copy of this October 2023 letter was not filed with the lower court, and the record does not reflect whether that letter noticed a deadline to remove the Billboard.

[5] Unless otherwise stated herein, all internal citations are omitted and all emphases are added.

727, 728 (Ct. App. 2005) (citing Rule 56(c), SCRCP). "[T]he 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). "In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." *John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 434, 904 S.E.2d 889, 894-95 (Ct. App. 2024).

ARGUMENT

Despite West & Joyce's failure to request summary judgment on each of its claims and requested remedies, and the void of evidence for the same, the lower court dismissed Adams' Complaint with prejudice and granted West & Joyce's motion for summary judgment as to its counterclaims for damages and injunctive and declaratory relief. (R. pp. 3, 8 (Order pp. 1, 6)). However, likely due to the self-conflicting relief West & Joyce requested and the different claims and requests in West & Joyce's pleading as compared to its summary judgment motion, the Order is a patchwork of incomplete and unsupported findings, which rules on some but not all of the claims, awards some but not all of the requested relief, and rules on matters that were not placed before the lower court on summary judgment.

The lower court's errors derive from its failure to apply the principles of contract interpretation established under long standing precedent. In large part, reversal is warranted because the court failed to properly ascertain the intention of the contracting parties at the time of the contract and inserted or substituted its own meaning into the Lease based on events which transpired a decade after its execution. Additionally, its Order failed to properly analyze the validity of the ROFR clause under the framework required by South Carolina common law.

West & Joyce's counterclaims requested an injunction "mandating that [Adams] remove the Billboard" (R. p. 28 at ¶ 1), and in seeking summary judgment it presented no allegation, let alone evidence, that ownership of the Billboard transferred from Adams to West & Joyce at any point. Yet, the lower court ruled that Adams did not have a right to remove the Billboard and that West & Joyce could destroy the Billboard or convert the same for its own use. (R. p. 8).

The lower court's orders on appeal should be reversed, such that West & Joyce's motion for summary judgment is denied, and this matter should be remanded for further proceedings.

I. WEST & JOYCE'S SUMMARY JUDGMENT FILINGS AND ARGUMENT DID NOT ASSERT THAT IT TOOK OWNERSHIP OF AND CAN DESTROY, OR CONVERT AND USE, THE BILLBOARD.

While West & Joyce was not entitled to summary judgment on any claim, most egregious may be the lower court's determination that ownership and control of the Billboard had unknowingly automatically transferred to West & Joyce, without such matters being raised on summary judgment or supported by any evidence.

In pursuing summary judgment, West & Joyce did not contest the fact that Adams owns the Structure and that it is the personal property of Adams, as is explicitly set forth in unambiguous language in the Lease (R. p. 19 (Lease § 4)). West & Joyce never even asserted during summary judgment, let alone proved, that the Structure had been abandoned and came to be owned by West & Joyce, such that it could destroy or even convert the Structure for its own use. As a result, the fact that Adams owns the Billboard was not placed in dispute by West & Joyce when it moved for judgment and the lower court, in ruling on said motion, erred in finding to the contrary.

To prevail on summary judgment, West & Joyce was required to prove that "'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, LLC v. Friedman*, 440 S.C.

456, 459, 892 S.E.2d 297, 299 (2023) (quoting Rule 56(c), SCRCP); *see also id.* at 462, 892 S.E.2d at 301 ("'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.'").

During the hearing on its motion, ownership of the Billboard was never mentioned nor did West & Joyce claim that it was the owner, and it certainly did not request a ruling that it could destroy or convert the Billboard for its own use. (R. pp. 33-45 (Tr. of Summ. J. Hearing)). West & Joyce's motion for summary judgment and memorandum of law do not contain the words "abandon" or "destroy," and absent therein is any statement or request for a finding that it owns the Billboard. And although West & Joyce's motion asked for permission to remove the Billboard, removal alone allows for the possibility of Adams retrieving the sign and is a much different act than destroying or converting it, which require ownership of and dominion and control over the structure. Signs and sign materials are considered the personal property of the sign company that erected them, and the landowner's removal of the sign does not create an inference or presumption that the sign company abandoned or is not entitled to retrieve the sign. *See, e.g., Creative Displays, Inc. v. South Carolina Hwy. Dept.*, 272 S.C. 68, 72-73, 75, 248 S.E.2d 916, 917-19 (1978).

Because it did not even ask for a ruling on summary judgment that it owned the Billboard, it was not possible for West & Joyce to meet its burden of proof on the matter, which means the lower court erred in its ruling.

A. An Allegation in West & Joyce's Pleading Does Not Entitle It to Summary Judgment.

In seeking to dismiss the appeal, West & Joyce argued that the issue was properly raised for a summary judgment ruling simply because its Counterclaims contained a single conclusory allegation of abandonment and supposedly raised "residual control" of the Billboard based on the Lease's termination. (Oct. 24, 2025 Reply pp. 4, 5). However, in the prayer for requested relief

in its counterclaims, **the first remedy requested by West & Joyce is an injunction "*mandating that the Plaintiff [Adams] remove the Billboard*[,]"** (R. p. 28 at ¶ 1), thereby acknowledging Adams' ownership of and right to possess and control the Billboard Structure.

Moreover, in moving for summary judgment, West & Joyce cannot simply rely on its pleading and a generic request to prevail on "all claims," especially when such a request is inherently vague due to its counterclaims seeking conflicting remedies. *See*, *e.g.*, Rule 56(c), SCRCP (requiring the movant to submit "pleadings, depositions, answers to interrogatories, ***and*** admissions on file," to "show that there is no genuine issue as to any material fact"); *Hawkins v. City of Greenville*, 358 S.C. 280, 288-89, 594 S.E.2d 557, 561 (Ct. App. 2004) ("Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied."). In light of the South Carolina Supreme Court's recent clarification that the "scintilla of evidence" standard is insufficient to prevail on summary judgment (*Kitchen Planners*, 440 S.C. at 459, 892 S.E.2d at 299), an allegation in a pleading that is denied by the opposing party (and contradicted within the pleading) fails to satisfy the burden of proof, as it cannot even be categorized as evidence.

Perhaps more fatal to West & Joyce's reliance on its unproven pleading allegations is that its pleading, claiming Adams abandoned the Billboard by not timely removing it, was filed prior to West & Joyce ever giving notice to Adams of such a contention. Before the Lease expired on October 1, 2024, and before it filed its counterclaims (24 days after Lease expiration), West & Joyce never issued notice to Adams that not removing the Billboard during the pending litigation would allegedly create an automatic assumption that ownership transferred to West & Joyce.

A letter dated November 1, 2024 is the first and only communication in the record whereby West & Joyce gave Adams a deadline to remove the Billboard before it would not be allowed to

enter the Property to access or retrieve the same. (R. pp. 105-106).[6] Therein, for the first time, West & Joyce demanded that Adams remove the Billboard by November 1, 2024. (R. p. 105). Yet, the letter was sent to Adams "via Certified Mail, RRR" (presumably return receipt requested), meaning the November 1, 2024 "notice" of trespass was not delivered until after the alleged November 1, 2024 deadline for removal (R. pp. 105-106).[7]

Thus, West & Joyce waited until 37 days after it was served with the Complaint, and 31 days after the Lease expired, to send its first notice to Adams that an attempt to access or remove the Billboard would be considered a trespass. The certified mail return receipt for said letter is not in the record, but as November 1, 2024 was a Friday, the earliest possible date on which the "notice" could be effective under the Lease was November 4, 2024. (R. p. 20 (Lease § 11)).

However, in its counterclaims, which were filed 10 days earlier on October 25, 2024, West & Joyce alleged that Adams had abandoned the Billboard because it failed to remove the same in response to an unspecified notice, and as a result, Adams was trespassing on the Property. (R. p. 27 (Answer ¶¶ 20-22)). Based on the actual timeline of events, West & Joyce could not have asserted plausible claims for abandonment or trespass at the time of its responsive pleading.

The foregoing analysis assumes, *arguendo*, that a disputed pleading allegation can serve as the only basis for summary judgment. Needless to say, such an assumption is false.

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[6] Indeed, its October 14, 2024 letter to Adams only stated that West & Joyce would seek to recover breach of contract damages due to Adams not removing the Billboard within six (6) days of the Lease's expiration. (R. pp. 103-104). This further shows Adams did not receive notice of West & Joyce's potential equitable claims prior to their filing and proves that West & Joyce did not provide Adams a reasonable amount of time after Lease expiration to remove the Billboard.

[7] Additionally, the Lease states notices given thereunder are not effective until the earlier of the date of receipt of the notice, or the date that is 3 days after mailing. (R. p. 20 (Lease § 11)).

B. The Lower Court Erred in Ruling on an Issue Not Before It.

Because West & Joyce did not request summary judgment on whether it owned or could use or destroy Adams' Billboard Structure, the lower court's Order erred in ruling that Adams did not have the right to remove the Billboard and that West & Joyce "has the right to remove and destroy the Billboard *if it elects to do so*;" which in turn grants West & Joyce the right to convert the Structure for its own use. (R. p. 8 at ¶¶ 2, 4).

Rule 7(b), SCRCP, specifies that all motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." West & Joyce's summary judgment motion, consisting of only one and a half pages, simply asked "for an order pursuant to Rule 56 … granting summary judgment in [its] favor[.]" (R. p. 54). Its motion did not reference any specific allegation from its counterclaims and did not request a finding on its trespass claim or even contain the word trespass.[8] The motion did not ask the lower court to find that Adams had abandoned the Billboard, or that West & Joyce could destroy the Billboard or convert the Structure for its own use, and is void of any grounds, particular or otherwise, which would support such a request.

After failing to allege a transfer of ownership (or even dispute Adams' ownership) during summary judgment, West & Joyce gave the impression during the motion for reconsideration hearing that it intends to convert Adams' Billboard for its own use. (R. p. 51, lines 3-5 (Tr. of Mot. to Alter or Amend ("MTA") Hearing) ("It's not about the pole being worth anything or whatever, it's about they don't want us to use it now.")). But in rebuttal, Adams correctly advised the lower

[8] And, despite stating it was granting West & Joyce's "motion in its entirety[,]" including the counterclaim for damages based on alleged trespass (R. p. 3 (Order p. 1)), the Order contains no discussion of the claim, makes no finding that a trespass occurred, and does not award any damages. (R. pp. 3-10 (Order)). Nor did West & Joyce ever request or offer support for a specific amount of damages.

court that this was "an issue that we didn't argue in the prior motion hearing and there's just no explanation for why the ownership changed." (R. p. 51, lines 13-15 (Tr. of MTA Hearing)).

In short, it was improper for the lower court to grant such relief when it was not requested in the underlying motion, the associated memorandum, or at the hearing.

C. Even if West & Joyce Had Placed the Billboard's Ownership at Issue, Its Statements and Other Evidence in the Record Confirm Adams' Ownership.

If it can somehow be shown that West & Joyce asked the lower court to rule on summary judgment that it owned and could convert the Billboard to its own use, despite the record being entirely bare of such a request, West & Joyce presented no evidence in support and failed to prove there was no issue of material fact. Moreover, the Lease itself is material evidence presented to the Court that disproves this claim, or at the very least creates a genuine dispute of material fact. The Lease was attached to the counter-affidavit filed with Adams' brief opposing West & Joyce's motion. (R. p. 65 (Adams MIO MSJ p. 1); R. pp. 69, 71-72 (Glynn Willis Aff. at ¶ 3, Ex. A)).

As established by the Lease and the admission of its terms by West & Joyce (and the lower court), as well as the evidence presented by Adams, Adams' ownership of the Billboard was not a disputed fact. Section 4 of the Lease, titled "Structures," states as follows:

> **All Structures erected by or for the Lessee or its predecessors-in-interest on the Property shall at all times be and remain the property of the Lessee … Similarly, all license and permit rights relating to the use of the Property for outdoor advertising purposes are and shall at all times be and remain the property of the Lessee.**

(R. p. 19 at § 4; *see also* R. p. 25 (Answer ¶ 7) ("The Defendant admits all allegations that are consistent with the terms of the lease."); R. p. 25 (Answer ¶ 9) (same); *infra* Argument IV.A.).[9] In

[9] West & Joyce appears to argue that Section 4 of the Lease is not applicable because the Billboard was on the Property prior to Lease execution. (Oct. 24, 2025 Reply p. 6). This ignores the express language therein that Adams owns "Structures erected by…its predecessors-in-interest." (R. p. 19 (Lease § 4)).

its Order, the lower court quoted language from the Lease referring to the Billboard as "Lessee's Structure[.]" (R. p. 6).

Other evidence in the record demonstrates that West & Joyce recognized Adams' ownership. Its requests for Adams to remove the Billboard, including its counterclaim filed nearly a month after the Lease's term expired, which sought *prospective* relief via an injunction requiring removal by Adams, are admissions that Adams owns and controls the Billboard. (R. p. 28 at ¶ 1); (R. p. 103 (West & Joyce claiming "Adams' structures" must be removed and notice was given "telling Adams to remove its sign" within 6 days of the Lease's expiration)). West & Joyce's summary judgment motion and brief do not state it owns the sign, only contending that it owns the remaining part of the Property not sold to Refuel and Adams can no longer use that real estate — conclusory assertions lacking support which are in direct conflict with Adams' claims.

In its Reply Supporting Motion to Dismiss Appeal, West & Joyce argued that the Affidavit of Alexander West clearly supports and proves its contention that it took control of the Billboard after providing a reasonable billboard removal opportunity.[10] (Oct. 24, 2025 Reply pp. 4, 6). But nowhere does the West Affidavit expressly state, or even give an indication, that West & Joyce took ownership of the Billboard, and it in no way states that West & Joyce has a right to destroy or use the Billboard. (R. pp. 56-57 (West Aff.)).

Even more, the West Affidavit, as well as each of West & Joyce's other filings below, fail to identify any specific date on which any alleged notice was issued to Adams or by which the Billboard supposedly had to be removed. As a result, the affidavit did not make a "failure-to-

[10] Notably, West & Joyce's summary judgment motion does not reference the West Affidavit, nor does the affidavit state it is filed in support of the motion. (R. pp. 54-55 (West & Joyce MSJ); R. pp. 56-57 (West Aff.)). And although the West Affidavit was filed as an exhibit to West & Joyce's supporting memorandum, the memorandum is void of any reference to the affidavit. (R. pp. 73-83 (West & Joyce MSJ Mem.)).

reasonably-remove factual showing" as West & Joyce erroneously claims (Oct. 24, 2025 Reply p. 6).[11] It is clear there is no concrete factual showing or evidence to support, let alone a request for, a ruling on summary judgment that the amount of time provided to Adams to remove the Billboard was reasonable, or that Adams willfully abandoned the Billboard by refusing to remove it within a reasonable amount of time after the Lease expired.

To the contrary, the only notices from West & Joyce in the record are the letters Adams submitted with its Rule 59(e) brief, which show that West & Joyce was patently unreasonable in its notices and demands for removal. First, the record does not contain any communication sent prior to the Lease's expiration that noticed a removal date. The earliest letter in the record is dated October 14, 2024, two weeks after the Lease's expiration, claiming that previous notices were sent demanding that Adams remove the Billboard by October 7, 2024 — 6 days after the Lease's expiration — an unreasonable timeframe.[12] Then, on November 1, 2024, 40 days after it was served with the Complaint, West & Joyce issued its first notice of a removal deadline that had expired days before the notice was delivered. *See supra* pp. 9-10, p. 10 nn.6-7.

Furthermore, the existence of Adams' breach of contract claim, which was filed before the Lease expired, created a genuine dispute as to whether Adams was entitled to purchase the Property. Thus, West & Joyce issued its demands for Adams to remove Adams' Billboard from the Property at a time when a legal action was pending over Adams' ability to obtain title to the

[11] West & Joyce's only supporting citation for this contention was paragraph 9 of the West Affidavit (Oct. 24, 2025 Reply p. 6), which, in relevant part, generically states that West & Joyce "requested that the Plaintiff remove the Billboard from the Billboard Property. The Plaintiff failed to remove the Billboard as requested." (R. p. 57 at ¶ 9). Such statements are nothing more than broad based conclusory allegations and certainly cannot provide undisputed evidence of any issue.

[12] Section 4 of the Lease states that Adams may remove the Structure "within a reasonable time of termination or expiration of this lease." (R. p. 19 (Lease § 4)). To remove an outdoor advertising structure, which are usually secured in the ground with concrete footings, the necessary contractor or personnel must be scheduled and the necessary equipment secured.

Property. (R. p. 17 (Complaint at ¶ 11)). This is consistent with Adams' Reply to Counterclaim, in which it pleaded an unclean hands defense to West & Joyce's counterclaims, asserting they were barred by previous acts, such as selling part of the Property in violation of the Lease or noticing a purported Billboard removal deadline that had already expired. (R. p. 31 (Reply to Countercl. ¶ 21)). If Adams prevails on enforcing the ROFR, the Lease would be unnecessary as Adams would have a separate interest giving it the right to operate the Structure on the Property. (R. p. 17 (Compl. ¶ 11) ("[Adams] has been harmed by [West & Joyce's] breach of contract in that it was deprived of the opportunity to purchase the property or to negotiate with the third party buyer for a lease agreement."); R. p. 17 (Compl. p. 3 at Prayer ¶ (d)); R. p. 39, lines 4-7 (Tr. of Summ. J. Hearing) ("[Adams] brought this action to enforce a right of first refusal.")).

If Adams had removed the Billboard Structure from the Property, it would have mooted its pre-existing claim and requested relief, as the sign is nonconforming in Darlington County and cannot be rebuilt. (R. p. 49, lines 1-8 (Tr. of MTA Hearing) ("[H]ad we removed it during the litigation it would have made the litigation [moot]. That billboard is grandfathered in its location and if removed it could not be replaced there because the permitting requirements for DOT and for the County of Darlington have changed. So had we removed it the litigation would have had no further meaning in terms of the billboard.") (cleaned up)).

On summary judgment, West & Joyce did not even give a passing mention to the matter of Billboard ownership, let alone assert that the Billboard had surreptitiously changed hands such that Adams was suddenly prohibited from retrieving its personal property. Thus, there was no issue as to Adams' ownership, which was a fact borne out by the unambiguous language of the Lease and reiterated by West & Joyce.

Without any underlying discussion or analysis in the Order as to the lower court's abandonment and transfer-of-ownership ruling, the basis for the same is not entirely clear. However, it would appear the lower court subliminally determined that the Lease expiring on October 1, 2024 somehow meant that ownership of the Billboard Structure automatically transferred from Adams to West & Joyce. And, without any request for or evidence to support the ruling, it seems the court implicitly found that Adams unknowingly admitted that West & Joyce took ownership of Adams' Billboard Structure simply because the Lease expired (after Adams filed this action) and Adams did not immediately remove its Billboard Structure from the Property (while this action was pending).

The lower court's ruling on ownership and control of the Billboard must be reversed.

II. THE LOWER COURT ERRED IN FINDING THAT TWO SEPARATE PARCELS EXISTED AT THE TIME OF LEASE EXECUTION AND IN USING PAROL EVIDENCE TO INTERPRET WHAT IT FOUND WAS "CLEAR" CONTRACT LANGUAGE.

In part, the lower court's April 9, 2025 order granted summary judgment to West & Joyce on Adams' breach of Lease claim, as well as West & Joyce's requested declaration that the property it sold in 2019 was not subject to the Lease and Adams' ROFR therein. (R. pp. 7, 8 at ¶¶ 1, 3). In doing so, the Order found that the Lease was "clear" that the only property subject thereto was the specific half-acre parcel that was created by subdivision 10 years after the Lease was signed. (R. pp. 5, 7). In part, the lower court opined that:

> Plaintiff's breach of lease cause of action hinges on the distinction between two separate parcels of property: a .5479 acre parcel bearing TMS No. 058-00-01-167 and containing a billboard ("Billboard Property") and a 1.95+ acre parcel of land bearing TMS No. 058-00-01-101 and containing a convenience store that was owned and operated by the Defendant ("Convenience Store Property").

(R. p. 5 (Order p. 3)). After it defined the separate parcels that were created in 2019, the Order went on to hold that "it is clear that Defendant [West & Joyce] only leased the Billboard Property

to the Plaintiff [Adams]." (R. p. 7; *see also* R. p. 8 ("the Court finds and declares … [t]he Billboard Property is the only property Plaintiff had a right of first refusal in, and the Defendant did not sell the Billboard Property[]")).

The lower court erred in many respects in reaching these conclusions, violating the tenets of contractual interpretation as well as the principle that a lease cannot create an interest in property which does not exist at the time of (or for 10 years after) the lease.

When interpreting or construing a contract, ascertaining the intention of the parties is the paramount consideration, which is first accomplished by examining the text of the contract. *See, e.g.*, *Sifonios v. Town of Surfside Beach*, 414 S.C. 269, 273-74, 777 S.E.2d 425, 428 (Ct. App. 2015) ("Lease provisions are construed under rules of contract interpretation. One cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties. To determine the intention of the parties, the court must first look at the language of the contract."). In making such a determination, the text of the contract itself controls if it is clear and unambiguous, in which case the court may not resort to examining extrinsic materials. *Warner v. Weader*, 280 S.C. 81, 83, 311 S.E.2d 78, 79 (1983) ("Where a contract is unambiguous, clear and explicit, it must be construed according to the terms which the parties have used, to be taken and understood in their plain, ordinary, and popular sense."); *HK New Plan Exchange Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 23, 649 S.E.2d 181, 184 (Ct. App. 2007) ("Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract.").

The intent of the contract parties must be measured at the time of contract execution. *Bannon v. Knaus*, 282 S.C. 589, 593, 320 S.E.2d 470, 471 (Ct. App. 1984) ("Interpretation of the contract is governed by the objective manifestation of the parties' assent at the time the contract was made. It does not depend on the subjective, after the fact meaning one party assigns to it.");

see also, *e.g.*, *Gooldy v. Storage Ctr.-Platt Springs, LLC*, 422 S.C. 332, 342, 811 S.E.2d 779, 784 (2018) ("Initially, we note the relevant inquiry regarding the parties' intent is limited to the facts and circumstances *at the time of the [] conveyance*.") (emphasis in original).

The parties' claims concern the Lease that was executed in 2009. As a result, the lower court not only erred in reading language into the Lease that is not present,[13] but also by utilizing subdivided lot lines created in 2019 to define the area that is subject to the ROFR in the 2009 Lease. In other words, the Order found that the parties' intent in 2009 as to the land being leased should be determined based on a subdivision and attempted sale that occurred ten years after the fact. (R. p. 7 ("it is clear that Defendant only leased the Billboard Property to the Plaintiff[]")). West & Joyce does not dispute that two separate parcels did *not* exist at the critical date of Lease execution — at that time, there was only one parcel bearing one tax map number with one address. (Oct. 24, 2025 Reply p. 2); (R. p. 36, lines 7-10 (Tr. of Summ. J. Hearing)).

West & Joyce argued that the Lease's property description was "ambiguous"[14] (such that a dispute of fact existed and summary judgment should have been denied), but the lower court disagreed, ruling, in part, that "it is clear that [Adams] only leased the" 0.55-acre parcel that was subdivided and created 10 years after the Lease's execution. (R. p. 7). By finding that the Lease's language was unambiguous, there was no room to examine parol evidence, meaning the Lease

[13] *See, e.g.*, *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 473, 438 S.E.2d 275, 277 (Ct. App. 1993) ("The court is limited to the interpretation of the contract made by the parties, regardless of its wisdom or folly, apparent unreasonableness, or failure of the parties to guard their rights carefully. The court is without authority to alter a contract by construction or to make a new contract for the parties.").

[14] (R. p. 82 (West & Joyce MSJ Mem. p. 10) ("It is not clear from a reading of the Lease what portion of the property the right of first refusal encumbers."); R. p. 54 (West & Joyce MSJ p. 1) (claiming the lease "failed to readily identify the property being leased[]")).

itself was the only evidence the lower court could permissibly consider to determine the parties' intentions as of July 15, 2009, the time of contract.

However, the Order disregarded binding common law principles, relying on matters completely unrelated to the intent of the parties under, and interpretation of, the ROFR clause in the Lease. In addition to aerial overlays on tax maps printed in 2024 showing the two parcels created in 2019 (R. p. 7 (Order p. 5); R. pp. 74, 90-92 (West & Joyce MSJ Mem. p. 2, Ex. B at Exs. B-D)), the lower court held that the amount for which West & Joyce agreed to sell part of the leased Property, 10 years after the Lease, provided a basis to dismiss Adams' breach of Lease claim. (R. p. 7 (Order p. 5)). The lower court found that the disparity between the purchase price and the rent Adams owed under the Lease was conclusive evidence that the right of first refusal to purchase the Property did not apply to the entire Property, even though West & Joyce did not raise this argument in its summary judgment motion or supporting brief, and even though there was no evidence in the record of Adams' ability or desire to pay such an amount. (R. p. 7 (Order p. 5)).

By improperly considering extrinsic and irrelevant evidence, the lower court erred and its ruling should be reversed.

III. THE REQUIRED COLLECTIVE CONSIDERATION OF THE *CLARKE* FACTORS SHOWS THAT THE ROFR IS A REASONABLE RESTRAINT.

The lower court also erred in failing to give any consideration to, or even reference, recent South Carolina common law on rights of first refusal, the *Clarke* and *Crescent Homes* decisions.[15] In 2023, the South Carolina Supreme Court issued its *Clarke* opinion, adopting the Restatement (Third) of Property's approach in evaluating a right of first refusal, holding that **the Restatement's *three* factors are to be considered**. *Clarke*, 438 S.C. at 181, 882 S.E.2d at 767 (adopting the

[15] *Clarke v. Fine Housing, Inc.*, 438 S.C. 174, 882 S.E.2d 763 (2023); and *Crescent Homes SC, LLC v. CJN, LLC*, 445 S.C. 164, 912 S.E.2d 389 (Ct. App. 2024).

Restatement's three-factor test, which considers "(1) the legitimacy of the purpose of the right, (2) the price at which the right may be exercised, and (3) the procedures for exercising the right[]").

The lower court's Order made no mention of these factors, nor did West & Joyce's summary judgment filings argue that they were not satisfied under the Lease. The lower court's sole focus, without citing any right of first refusal case law, was on whether the Lease clearly defined the property that is burdened by the right. But *Clarke* does not mandate consideration of the property description factor, let alone find that that element on its own can be dispositive, and only weighed it against enforcement because the lease was completely silent as to the property that was encumbered. Thus, in addition to inserting its own language and meaning into the Lease's ROFR based upon post-Lease occurrences, the lower court failed to properly examine the clause under binding precedent.

Moreover, the right of first refusal clause in the *Clarke* lease was invalidated because it contained no provisions *whatsoever* regarding price, procedures to exercise, or the property encumbered. 438 S.C. at 179, 185, 187, 882 S.E.2d at 766 769, 770. The ***entire*** right of first refusal provision in *Clarke* stated:

> Right of First Refusal: Lessor grants the Lessee the right of first refusal should it wish to sell.

Id. at 179, 882 S.E.2d at 766.

Unlike in *Clarke*, the Lease here defines the Property subject to the ROFR, and it was not disputed that the three mandatory factors are satisfied. (R. p. 91 (West & Joyce MSJ Mem. p. 9) ("Admittedly, the lease in this case is much clearer on price and procedure for exercising the right of first refusal than the lease in *Clarke*.")). The ROFR in the subject Lease complies with the requisite criteria such that it is not an unreasonable restraint on alienation. The ROFR clause states:

> RIGHT OF FIRST REFUSAL TO PURCHASE: Lessee is granted the right to purchase the Property at the same price and on the same terms as any proposed sale that Lessor desires to consummate. In the event such sale of the Property is proposed, whether by offer (or counter-offer) of Lessor to a third-party or by an offer (or counter-offer) from a third-party to Lessor (either case being referred to herein as the "Offer"), Lessor shall first provide each and every such Offer, in writing, to Lessee in the manner set forth in paragraph 11 of the Lease Agreement and Lessee shall have thirty (30) days to agree in writing to purchase the Property for the price and on the terms set forth in the Offer; otherwise, the Offer shall be deemed to have been rejected by the Lessee. In the event Lessee rejects an Offer, Lessor may proceed to consummate the sale with the third-party at the same price and on the same terms as those set forth in the Offer. Further, Lessee shall have a right of first refusal to meet any offer for the least of any portion of the real property for outdoor advertising purposes. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. This Lease and the right of first refusal granted herein shall be binding on successors and assigns of Lessor and Lessee. Lessor will give notice of Lessee's right of first refusal when listing the Property for sale and not accept nor make any offer or counteroffer except in accord with the terms of this Lease Agreement

(R. p. 20 (Lease § 10)).

A. There is No Dispute that the ROFR Satisfies the Three Factors Required by the Restatement of Property and *Clarke*.

First, there is no doubt that the Lease's ROFR satisfies the three predominant factors set forth in the Restatement (Third) of Property and adopted in *Clarke*, those being the legitimacy of the right's purpose, determination of price, and procedures for exercising the right. Here, the right's inherently reasonable purpose is to allow Adams to protect its longstanding interest in and use of the Property, and the ROFR's price and exercise provisions, whereby Adams must meet the terms of a valid offer and exercise within 30 days, are similarly clear and reasonable.

Regarding the requirement for a right of first refusal to identify a process for setting a purchase price, the *Clarke* Court held:

> If the Right provided that Clarke could acquire the Subject Property by matching the terms of a third-party offer, the restraint on RRJR's power of alienation would perhaps have been minimal. … **a right of first refusal that allows the holder to match any bona fide offer made by a third party 'works *a de minimis restraint* on the alienation of property**'. … Under the facts of this case, the *complete*

> *absence* of any method for determining price weighs in favor of a finding that the Right is an unreasonable restraint on alienation.

Clarke, 438 S.C. at 184-85, 882 S.E.2d at 768-69.

The ROFR's price determination language is directly in line with the *Clarke* analysis as to the elements necessary for a right to constitute a *de minimis* restraint. (R. p. 20 (Lease § 10) (Lessee has a "right to purchase the Property **at the *same price* and on the *same terms*** as any proposed sale that Lessor desires to consummate. … [Lessee must] agree in writing to purchase the Property **for the price and on the terms set forth in the Offer**[.]")).

The second element addressed by the *Clarke* opinion is the procedures for exercising the right. Again, the ROFR was not challenged on this ground, but this element further illustrates the inability to show that the right is an unreasonable restraint.

This prong of the analysis largely focuses on "the time period within which the right can be exercised after the owner decides to sell[,]" as extended time periods for determining whether to exercise can substantially restrain alienability. *Clarke*, 438 S.C. at 185, 882 S.E.2d at 769. In *Clarke* and *Crescent Homes*, the rights did not contain any procedures whatsoever for exercising. *Id.*; *Crescent Homes*, 445 S.C. at 192-93, 912 S.E.2d at 403-04. "However, when the time allowed for the exercise of the right is reasonable, the right will generally be enforced." *Clarke*, 438 S.C. at 185, 882 S.E.2d at 769.

The ROFR's exercise procedure is clear and unambiguous and easily satisfies the standard set forth in *Clarke*, as it specifies Adams only has 30 days to exercise the right after Lessor gives notice of a purchase offer it wishes to consummate. (R. p. 20 (Lease § 10)).

B. Distinct from *Clarke*, the Lease Describes the Encumbered Property.

Because the Lease's ROFR easily satisfies the Restatement's test, the only matter West & Joyce could contest was the ancillary, tagalong factor of whether the property description lacks clarity, a factor that need not be considered in every case.

> The Restatement does not address whether a lack of clarity as to the real property encumbered by a right of first refusal is a factor to consider in determining whether a right of first refusal is an unreasonable restraint on alienation. We hold it is a valid consideration *in this case*.

Clarke, 438 S.C. at 182, 882 S.E.2d at 767-68.

The Lease defines the "Property" subject to the Lease and the ROFR as the property bearing the address of 105 West Bobo Newsome Highway in Darlington County, "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 Company's store property adjacent to SC 151 Hwy." (R. p. 19 (Lease § 1)). By entering into the Lease, West & Joyce agreed that the Lease's description of the Property was sufficiently clear and contracted to convey Adams a leasehold interest in, *and* right of first refusal to purchase, the Property. (R. pp. 19, 20 (Lease §§ 1, 10)).[16]

In *Clarke*, the clause did not even contain the words "property," "parcel," or anything similar — it merely said that lessee had a right of first refusal should lessor wish to sell. *Clarke*, 438 S.C. at 179, 882 S.E.2d at 766. Thus, the provision gave no indication in the slightest as to

[16] West & Joyce argued below that, because it purportedly "had no part in the drafting of the Lease," any ambiguity therein should be construed against Adams (R. p. 82 (West & Joyce MSJ Mem. p. 10)). As evidenced by the Lease itself, this is not true. West & Joyce struck through and modified the Lease term language in Section 2. Additionally, the Lease contains a Competitive Advertising Addendum, prohibiting Adams' Structure from advertising products or services that competed with West & Joyce's. Adams would not voluntarily or unilaterally propose to restrict its advertising abilities. While Adams may have initially drafted the Lease, both parties clearly had input on its content before and after its drafting. (R. p. 39, lines 7-19; R. p. 39, line 19–R. p. 40, line 2).

what property was subject to the right. In contrast, the Lease's ROFR clause not only uses the word property, but it identifies the encumbered "Property" by utilizing the capitalized term defined in the Lease. (R. p. 20 (Lease § 10) ("Lessee is granted the right to purchase **the Property** … In the event such sale of **the Property** is proposed, … Lessee shall have thirty (30) days to agree in writing to purchase **the Property** …")).

Similarly, *Crescent Homes* provides support for upholding the validity of the ROFR clause and the Lease's property description. As with *Clarke*, in addition to being void of all other requisite factors, the clause in *Crescent Homes* failed because it also did not include a property description. *Crescent Homes*, 445 S.C. at 192-93, 912 S.E.2d at 403-04. Thus, the *Clarke* and *Crescent Homes* opinions can only support a finding of unreasonable restraint when the agreement does not contain any information to satisfy any of the required criteria. *Crescent Homes*, 445 S.C. at 192-93, 912 S.E.2d at 403-04 ("In the present case, the *Clarke* factors all support the same conclusion here … The [requisite factors are] **clearly missing** from the ROFR."). Thus, because no factor is missing from the Lease and each is satisfied, such a finding cannot be made in the instant matter. (R. pp. 66-68 (Adams' MIO MSJ pp. 2-4)). The lower court erred in failing to collectively weigh and analyze the validity of first refusal clause factors, as mandated by binding South Carolina precedent.

IV. THE LEASE ENCUMBERS THE ENTIRE PARCEL THAT EXISTED AT THE TIME OF LEASE EXECUTION.

As discussed *supra* (pp. 17-18), the Lease provisions must be interpreted as of the date the Lease was entered into. The leased "Property," as defined in the Lease, is the property located at 105 West Bobo Newsome Highway in Darlington County, South Carolina, adjacent to State road 151 bypass, approximately 1/10 mile west of US Hwy. 15 intersection. At the time of the Lease's execution, that land was a single parcel, consisting of approximately 2.5 acres, which only bore

one tax map number, 058-00-01-101. (R. p. 70 (Aff. of Glynn F. Willis at ¶ 7); R. p. 36, lines 7-10 (Tr. of Summ. J. Hearing)).

In ruling on the issue of the property subject to the ROFR, and West & Joyce's motion in general, the lower court clearly erred in finding that Adams did not present any evidence to combat the motion, as it failed to realize that Adams did in fact present such evidence and failed to consider the same. (R. p. 7 (Order p. 5) ("Plaintiff has not presented any contradictory evidence, … Plaintiff merely restates its claim that the Lease is clear that Plaintiff has a right of refusal in the Convenience Store Property.")). With its opposition to West & Joyce's motion, Adams filed an opposing affidavit and the Lease. The affidavit was executed by Adams' Real Estate Manager who "assisted in the negotiation of [the] Lease[,]" which "was for property located at 105 West Bobo Newsome Newsome Highway in Darlington County[,]" as it existed prior to the Property's subdivision for purposes of a sale in 2019. (R. pp. 69-70 at ¶¶ 2-4, 7). Mr. Willis further attested that West & Joyce was obligated to but did not provide Adams with notice of the pending sale or with the 30-day right of first refusal period. (R. p. 70 at ¶¶ 8-9). Based on this evidence from the person who negotiated the Lease with West & Joyce on behalf of Adams, the Property, as described in the Lease, referred to the entire 2.5-acre Property that existed prior to the 2019 subdivision.

The Competitive Advertising Addendum attached to the Lease further demonstrates that the entire pre-subdivision Property was encumbered. As a restriction to the Lease of the Property, Adams agreed that its Billboard Structure thereon would not display advertising copy for products or services that directly compete with those provided by Lessor, listed as food store, gasoline/fuel, and convenience store. (R. p. 21 (Compl. Ex. A p. 3)). Those products and services are offered by Lessor on the store property, which is the leased Property.

Additionally, contrary to the lower court's discussion, the Lease's conveyance of easement rights to Adams is not dispositive, or even indicative that the Lease was for a smaller area. The easement provision simply grants additional and necessary rights to perform the activities and uses for which Adams has leasehold rights under the Lease. For example, the Lease does not state that it is for the purpose of trimming or removing trees or other vegetation, or for connecting utilities. (R. p. 19 (Lease § 1)). Thus, the Lease grants Adams easement interests to perform these activities, all of which assist Adams in performing the purposes of the Lease — operating, maintaining, and modifying the Billboard on the Property — and aid in Adams' quiet enjoyment of the Property, as warranted by West & Joyce therein. (R. p. 19 (Lease § 1)).

In fact, the Lease specifically provides Adams with easement interests in the leased "Property," as well as "adjacent property." (R. p. 19 (Lease § 1) (granting "easements over the Property and adjacent property owned or controlled by Lessor[]")). In this regard, West & Joyce misfired in arguing that "if Plaintiff had a leasehold interest in the Convenience Store Property, then it would not have needed an easement over the adjacent Property[,]" and the lower court erred to the extent it relied on the same. (R. p. 6 (Order p. 4)). Again, West & Joyce and the lower court ignore the crucial fact that the 1.95-acre, separately assessed "Convenience Store Property" did not exist at the time of the Lease, meaning it was impossible for the Lease to contemplate the existence of said parcel or to convey any interest therein. Additionally, the lower court failed to consider the plain meaning and logical interpretation of the easement provision: that, by its express terms, easement interests were created in the leased Property itself, the 2.5-acre parcel existing in 2009, as well as "adjacent property," which referred to other property outside the Property's boundaries that Lessor may have owned or controlled at that time which was necessary for Adams to use to access or connect utilities to the Property.

A. The Billboard is not the subject of the ROFR or the Lease, under which Adams has a right to purchase *the Property*, and a right of first refusal to lease a *portion of property*.

The lower court misapprehended the nature of the property at issue and failed to recognize the personal property's distinct existence from the real property interest conferred under the Lease. First, contrary to its finding (R. p. 5 (Order p. 3)), the Billboard Structure was not leased to Adams under the Lease, which only demised a leasehold interest in real property (*e.g.*, R. p. 69 (Willis Aff. ¶ 4)). The Billboard Structure was at all times, and still is, owned by Adams, as explicitly set forth in Section 4 of the Lease. (R. p. 19 (Lease § 4)); *see also supra* Argument I.C. (pp. 12-16).

In the circuit court and on appeal, West & Joyce alleged that the box in the Lease next to the term "Existing Structure(s)" being checked proves that the Billboard is included in the leased Property (R. p. 81 (West & Joyce MSJ Mem. p. 9); Oct. 24, 2025 Reply p. 6)), a position the lower court errantly adopted (R. p. 5 (Order p. 3)). This contention and finding not only ignore West & Joyce's admissions of Adams' ownership, but fail to consider the entirety of the Lease provisions as a whole, thereby contravening South Carolina common law.[17] *See S.C. CVS Pharmacy, LLC v. KPP Hilton Head, LLC*, 440 S.C. 360, 364, 890 S.E.2d 824, 825-826 (Ct. App. 2023) ("'[A]n interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous.'"); *see also, e.g.*, *Bennett v. Investors Title Ins. Co.*, 370 S.C. 561, 571, 635 S.E.2d 660, 665 (Ct. App. 2006).

The Lease states that the leased Property is being leased for the purpose of, *inter alia*, "erecting, operating, maintaining, repairing, modifying and reconstructing" the Structure on the Property (R. p. 19 (Lease § 1)). If the "Property" being leased included the Billboard Structure,

[17] As the checked-box field appears to be outside the margins of the Property description text, and based upon a collective reading of the entire Lease, such as Section 4's provision that Adams owns pre-existing Structures built by predecessors, a reasonable interpretation is that it only serves an internal record keeping role, for inventory of Lessee's signs or other administrative matters.

then the Lease's purpose would be for Adams to operate, maintain, and reconstruct the Billboard Structure on the Billboard Structure, which is nonsensical. By distinguishing between the "Structure" and the "Property," and by specifying the different owners of each (R. p. 19 (Lease §§ 4, 5)), the Lease clearly did not convey to Adams a leasehold interest in the Billboard Structure that it owned.

In its summary judgment brief, West & Joyce used the false premise that Adams' personal property, the Billboard, is property subject to the ROFR as support for its allegation that the Lease's ROFR is an unreasonable restraint on alienation of the leased Property. It argued that the ROFR "does not specify whether it encumbers only the Billboard, or the entirety of the parcel[,]"[18] and that the Lease's definition of the "Property," "[a]s applied to the [ROFR]," means "there are no reasonable interpretations of the Lease." (R. p. 81 (West & Joyce MSJ Mem. p. 9)). Expanding on its argument, it offered two alternative "unreasonable" interpretations. First, "[i]f the entire parcel is subject to the right of first refusal, then the lessor cannot sell the Property without giving the lessee of the Billboard an opportunity to purchase the entire parcel." (R. p. 81). Under this scenario, the reader is apparently supposed to accept that a right of first refusal to purchase agreed to by the landowner is *per se* unreasonable, as West & Joyce does not offer any further analysis.

The only other supposedly unreasonable outcome proffered by West & Joyce was that "[i]f only the Billboard is subject to the right of first refusal, then the lessor must potentially sever the portion of land the Billboard sits on from the rest of the parcel." (R. p. 81). Setting aside the fact that West & Joyce did actually sever a portion of the Property in order to alienate the same (in violation of the Lease), which shreds its own argument, and that the Billboard is not the subject of

[18] West & Joyce's assertions that the Lease's Property description was ambiguous meant that it was not entitled to summary judgment. *See infra* Argument Sec. V (pp. 29-31).

the ROFR, there is no need to sever any part of the Property in order for Adams to exercise its ROFR to purchase. As the Lease and ROFR clause demonstrate, the right to purchase pertains to the Property, a term defined at the start of the Lease.

But the ROFR clause in the Lease actually provides two separate rights — to purchase and to lease. The ROFR does have a mechanism for partitioning the Property, but only for purposes of the right of first refusal to *lease*. With regard to the lease right, Section 10 of the Lease provides:

> … Further, Lessee shall have a right of first refusal to **meet any offer for the lease of any <u>portion</u> of the real property for outdoor advertising purposes**. Lessee shall exercise the option within thirty (30) days after receipt of written notice of the terms of the third-party lease. …

(R. p. 20 (Lease § 10)).

Thus, the Lease clearly distinguishes between the larger (upper-cased) "Property" subject to the Lease and ROFR to purchase, and smaller portions of (lower-cased) property subject to the right of first refusal to lease if a third-party proposes outdoor advertising use for the same.

V. ALTERNATIVELY, THE LOWER COURT ERRED IN NOT CONSIDERING WHETHER THE LEASE BURDENED ANY PORTION OF THE SUBSEQUENTLY CREATED "CONVENIENCE STORE PROPERTY."

Alternatively, if the Court does not find that the Lease clearly defines the encumbered Property as the entire 2.5-acre parcel, such that ambiguities may exist, Adams asserts that the lower court erred by failing to consider the plain, "common sense" meaning of the Lease language in determining how much of that land was subject to the Lease, and in prematurely ruling on the issue.

The lower court paid much attention to the portion of the Lease's definition of "Property" which stated it was "on the west end of West Oil Company's store property[.]" (R. pp. 5-7 (Order pp. 3-5)). The lower court interpreted this provision as defining the leased Property to be the 0.55-

acre parcel that came to exist via subdivision of the larger Property 10 years after the Lease was signed. *See supra* Argument Sec. II (pp. 16-19). It clearly erred in holding as such.

Moreover, without any discovery conducted prior to West & Joyce's motion and the ruling on the same, the record did not contain evidence demonstrating the parties' intent, in July 2009, as to the point of beginning of the "west end" of the single-parcel store property, or the point in the intersection of SC Hwy 151 and U.S. Hwy 15 that was considered the starting point of the "1/10 mile" distance between the intersection and the Property. (R. p. 19 (Lease § 1)).

This terminology could indicate that the Lease encumbers half the 2.5-acre parcel, as it creates a reasonable inference that there were two parts of the property, a western part and eastern part. Or, ***at the very minimum, a lease of the west end of the convenience store property should necessarily be read as a lease of at least part of the convenience store property***. If the "west end of [the] store property" language is not clear in providing an interest in the store property, it at least creates a genuine dispute of material fact. As a result, the lower court erred in holding that Adams "did not lease the Convenience Store Property[,]" and that "[t]he Billboard Property is the only property Plaintiff had a right of first refusal in[.]" (R. pp. 7, 8 (Order pp. 5, 6)). Indeed, other analysis within the Order seems to contradict these rulings and support a finding that the ROFR encumbered more than just the half-acre "Billboard Property." (R. p. 7 (Order p. 5) ("Plaintiff was leased a portion of Property on the west end of the 'store property'. Not [sic] the ***entirety*** of the Convenience Store Property.")).

In analyzing the Property description, West & Joyce argued below that "[e]ven if the right of first refusal is not ambiguous enough to constitute an unreasonable restraint on alienation, it is nonetheless ambiguous." (R. p. 82 (West & Joyce MSJ Mem. p. 10)). Under West & Joyce's position, if the sufficiency of property description issue must be decided to rule on the parties'

claims, it only creates a question of fact that mandates denial of summary judgment, as such a question cannot be dispositively decided on summary judgment. It is well settled that where a provision in a contract cannot be afforded a clear and unambiguous meaning under the four corners of the document, then the question of the parties' intent must be determined at trial, where extrinsic evidence may be considered after the parties have had an opportunity to obtain the same in discovery.

> However, summary judgment is improper where the motion presents a question as to the construction of a written contract, and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument. Where a contract is unclear, or is ambiguous and capable of more than one construction, the parties' intentions are matters of fact to be submitted to a jury. … "if a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties."

HK New Plan Exchange Prop. Owner I, LLC v. Coker, 375 S.C. 18, 23, 649 S.E.2d 181, 184 (Ct. App. 2007).

The Lease's satisfaction of the three Restatement criteria for rights of first refusal was not challenged or questioned by West & Joyce or even addressed by the lower court. *See supra* Argument Secs. III, III.A. (pp. 19-22). And while the ROFR contains valid provisions identifying the encumbered property, if this Court finds that the relevant language is not clear and unambiguous, then the matter must be decided at trial by the trier-of-fact, warranting a reversal of the lower court's Order granting summary judgment.

CONCLUSION

The lower court erred in ruling that West & Joyce had taken ownership of, and could destroy or convert and use, the Billboard belonging to Adams, as the issue had not been raised and there was no request for such a holding on summary judgment, nor is there evidence in the record to support such a finding. Additionally, the lower court erred in interpreting the Lease's language, including its description of the Property subject to the Lease and the Right of First Refusal therein,

failing to properly ascertain the parties' intent at the time it was entered into. In analyzing the Right of First Refusal, the lower court failed to collectively consider the factors outlined in recent South Carolina Supreme Court case decisions for such review. Finally, the lower court erred in not recognizing that the Right of First Refusal to purchase encumbered the entire 2.5-acre parcel that existed at the time of the Lease; or alternatively, in failing to consider whether the right encumbered part of the Convenience Store Property that was created 10 years after the Lease.

Accordingly, the lower court's ruling granting summary judgment to West & Joyce must be reversed, and this matter should be remanded for further proceedings to properly determine the rights and interests of the parties.

Respectfully submitted,

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