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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

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 REPLY BRIEF

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INTRODUCTION

West & Joyce has embarked on a substantially different tack in this appeal, and its new arguments distort Lease provisions, underlying facts, and the points raised by Adams. Hoping to deflect attention from its changed positions, West & Joyce accuses Adams of "creatively" and "erroneously" describing the contract and allegations at issue (at least those which are unfavorable to West & Joyce).[1] The biggest takeaway from West & Joyce's brief, though, is that it has abandoned and now argues in contravention of its previous admission that Adams owns the sign and is obligated to remove it from the Property due to the Lease expiring. And that is the story of this case: West & Joyce's gamesmanship shifting the rules and boundaries of the field of play in an effort to obtain the relief it decides is desirable at that given moment.

Before turning to the arguments, it must be restated that this is an appeal of an order ruling on West & Joyce's motion for summary judgment. Although Adams filed a dispositive motion on its claim a few weeks after West & Joyce's motion, Adams' motion was not argued before the lower court, nor did the court consider or rule on Adams' motion. (*See*, *e.g.*, R. p. 95 (Def.'s Opp. to Mot. to Alter or Amend p. 1) ("On February 10, 2025, the Court heard oral argument on Defendant's Motion for Summary Judgment.")). As a result, West & Joyce's attempt to include Adams' motion in the record on appeal (Respondent's Designation ¶ 8) and rely on the motion in its brief (Resp't Br. at 3, 21 n.27, 22), are improper.[2] *See* Rules 208(b)(4), 210(c), SCACR.

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[1] Unless otherwise stated, capitalized terms are afforded the meaning set forth in Appellant's Brief.

[2] West & Joyce seems to indicate that the extraneous material and its reliance on the same should be permitted because a hearing was held on West & Joyce's motion (Resp't Br. at 4 n.4), which is faulty logic. Adams does not dispute that the Affidavit of Glynn Willis, its Real Estate Manager for the market, is properly included in the record, but because it was filed as an opposing affidavit with Adams' memorandum opposing West & Joyce's motion (R. pp. 65, 69-70) not through its filing with Adams' separate motion, as West & Joyce contends. Resp't Br. at 4 n.4.

ARGUMENT

Perhaps realizing no evidence exists to support its previous claim that it assumed control and ownership of Adams' billboard during the pendency of this case, West & Joyce abruptly and wholly abandons the position in its brief. In a complete about face, West & Joyce now argues, for the first time ever, that it has always owned the billboard. Resp't Br. at Argument II. Attempting to re-cast the evidence previously relied on but which refutes this new position, it suddenly characterizes its previous demands for Adams to remove Adams' billboard as "gratuitous offers." Apparently, unbeknownst to Adams, West & Joyce was attempting to gift a valuable billboard structure for no reason, although it does not explain why it filed claims against Adams for not removing the billboard. Resp't Br. at 19. Regardless, there is no evidence in the record to show that West & Joyce owned the billboard prior to, during, or after the Lease term.

In addition, West & Joyce asks this Court to adopt a novel standard for the permissibility of extrinsic evidence in interpreting contracts. It argues that parol evidence can always be considered and relied on, even if the provisions of a contract are clear and unambiguous, so long as the evidence is consistent with the court's opinion of the contract language's meaning (not necessarily the language's plain meaning), and is used to provide background for the contract or show its "logical consistency" and consistent "economic logic" with a separate agreement between different parties signed a decade later. Resp't Br. at 16.

Finally, West & Joyce recycles its prior arguments asserted in its motion to dismiss this appeal, arguments this Court rejected in denying the motion. No new facts or arguments are raised in support and the viability of those assertions, or lack thereof, has not changed.

I. WEST & JOYCE'S CONTENTION THAT IT HAS ALWAYS OWNED THE BILLBOARD, RAISED FOR THE FIRST TIME IN ITS APPELLATE BRIEF, IS IN DIRECT CONFLICT WITH ITS PRIOR ARGUMENTS AND REQUESTED RELIEF

As its binding position on appeal, West & Joyce's only argument in its brief to support a ruling that it owns and can destroy or use the billboard is that it has always owned the billboard. Yet, for nearly 16 months prior to filing its initial brief on February 5, 2026, every legal filing West & Joyce made and every letter it sent to Adams stated the opposite — that Adams owned and needed to remove the billboard, or, because Adams did not remove its billboard while the underlying lawsuit was pending, that West & Joyce could either remove or take ownership of and use or destroy the billboard.

Even after Adams appealed to this Court, West & Joyce argued in seeking to dismiss the appeal that **it had taken "*residual* control of the abandoned structure"** after the Lease expired. Oct. 24, 2025 Reply p. 4 (emphasis added). As addressed in Adams' brief, this justification of transfer of billboard control and ownership was not raised on summary judgment, and the lower court erred in finding West & Joyce acquired ownership during the case's pendency. Appellant Br. at 2, 5, 6, 7-16 (Secs. I, I.A.-C.). However, West & Joyce's *post-hoc* argument demonstrates that it never previously claimed pre-Lease-expiration ownership of the structure.

Now, it apparently hopes that Adams and the Court will fail to read the record or simply not realize the blatant conflict between its current and previous arguments. A timeline of West & Joyce's prior arguments, raised since Complaint filing and service on September 19 and 25, 2024, respectively, is helpful to assess its new theory that it supposedly always owned the billboard.

Timeline of Arguments by West & Joyce ("W&J")

- October 14, 2024 (Letter): Two weeks after the Lease expired, W&J asserted that "**Adams is in default for its failure to remove its sign from the Property**[.]" (R. p. 103) (emphasis added). In this letter, W&J did not claim to own or control the sign, and only stated it would be pursuing damages for the default, without mention of any equitable relief.

- October 25, 2024 (Counterclaims): W&J alleged, *inter alia*, that:

    - it "**expected the Plaintiff to remove its Billboard** from the Property." (R. p. 27 at ¶ 20) (emphasis added);

    - due to the billboard remaining on the Property, Adams was trespassing (R. p. 27 at ¶¶ 22-23); and

    - the lower court should **"issue an order mandating that the Plaintiff remove the Billboard"** (R. p. 28 at ¶ 1 (emphasis added)).

- November 1, 2024 (Letter and Trespass Notice): W&J's first notice that it would prosecute Adams (and its Chief Legal Officer) for trespass, based on Adams not removing the billboard by the letter's mailing date, Nov. 1, 2024. (R. pp. 105-106). W&J did not claim it owned the billboard or was entitled to destroy or convert the billboard for its own use. (R. p. 105).

- January 13, 2025 (Motion for Summary Judgment): W&J asserted that Adams "no longer has any right" to access the subject property (R. p. 55 (emphasis added)), and the supporting affidavit of an owner of W&J (also the Lease signatory) states **West & Joyce "requested that the Plaintiff remove the Billboard"** (R. p. 57 at ¶ 9 (emphasis added)).

- February 10, 2025 (Summary Judgment Brief): W&J argued, *inter alia*, that because **Adams "has failed and refused to remove its Billboard**[,]" Adams should be prohibited "from using the Billboard Property for its advertising[.]" (R. pp. 75, 77 (emphasis added)).

- February 10, 2025 (Summary Judgment Hearing): In arguing its motion, W&J stated the Lease was for a piece of land (R. p. 36, lines 20-22) and focused almost exclusively on the boundaries of the Leased Property and validity of the ROFR, without ever mentioning ownership or future use of the billboard (R. p. 35, line 5–p. 39, line 2; R. p. 42, line 6–p. 44, line 1).

- May 9, 2025 (Brief Opposing Adams' Rule 59(e) Motion): W&J asserted it "instructed [Adams] to remove the Billboard[,]" and because Adams did not remove the sign, and instead "took a chance with this litigation and lost[,]" … it "abandoned any right to the Billboard" (R. p. 97).

- May 12, 2025 (Motion to Reconsider Hearing): W&J advised the lower court that it wrote Adams and said "[t]he lease is terminated. **Come get you[r] sign. The lease says they had a reasonable time to remove their sign.**" (R. p. 49, lines 18-25 (emphasis added)).

- September 25 and October 24, 2025 (Motion to Dismiss and Reply in Support): W&J argued that, **because "a billboard removal opportunity had been provided[,]" Adams "had no *further* right to use the billboard structure."** (Mot. to Dismiss at 2 (emphasis added); *see also* Reply Supporting Mot. at 4).

Despite the record containing more than a year's worth of its statements unreservedly admitting Adams' ownership, West & Joyce now emphatically and unequivocally asserts that "there is *no* evidence that ownership of the structure was ever vested with the lessee." Resp't Br. at 19 (emphasis in original); *see also* Resp't Br. at 20 ("[T]he 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.").

To borrow from West & Joyce: "*What?*" (Resp't Oct. 24, 2025 Reply p. 3) (emphasis in original). Adams is not certain what basis West & Joyce has for such statements, which are completely untethered from reality. Clearly, West & Joyce, consistent with the truth, always believed Adams owned the sign and was entitled to remove the sign after expiration of the Lease.

West & Joyce does not contest the facts and evidence that it previously demanded that Adams remove Adams' billboard, and that it requested an injunction requiring removal by Adams, which eviscerate its new ownership argument. As a result, West & Joyce is forced to manufacture an alternative explanation for the evidence, with the chosen rationale being that it purportedly offered to let Adams remove the sign in exchange for dismissing the damages claim. Resp't Br. at 19 n.25 (West & Joyce contending it "was not focused on" the "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.").[3] These communications were never referenced previously, and more problematic is that, if they actually transpired, they constitute

[3] If this offer was actually conveyed, it is not clear why West & Joyce, after prevailing on summary judgment, did not allow Adams to remove the sign. Instead, it adopted (and then abandoned in its brief) the errant "transfer of control" ruling in the Order (which West & Joyce presumably drafted, at least in part, since the lower court requested proposed orders from the parties at the conclusion of the summary judgment hearing (R. p. 44, lines 2-10)).

materials outside the record which are relied on in violation of this Court's Rules, and arguably in violation of Rule 408, SCRE.

Setting the rules violations aside,[4] West & Joyce's argument does not hold water, as the record shows this new notion of "gratuitous removal offers" is just that, a newly concocted plan designed to explain away the defects in its argument on appeal. At all points prior to its appellate brief, West & Joyce stated Adams was obligated to remove the billboard and sought legal and equitable relief based on Adams not removing the billboard.

II. EVIDENCE IN THE RECORD SHOWS THAT ADAMS OWNED AND CONTINUES TO OWN THE BILLBOARD

While the record is void of support for West & Joyce's alleged pre-Lease (or post-Lease) ownership, the evidence is clear that Adams owned the billboard at the time of Lease execution, and during and after the term of the Lease. Adams' brief discusses its ownership of the structure and certain supporting evidence, such as prior statements of West & Joyce and the lower court, as well as provisions of the Lease. Appellant Br. at 7-8, 12-16 (Sec. I.C.), 25-28. West & Joyce's admissions of Adams' ownership are discussed *supra* (Sec. I) and certain Lease provisions are analyzed below in response to unsupported claims raised in West & Joyce's brief.

A. The Lease, Modified and Executed by the West & Joyce Owner Who Signed Its Supporting Affidavit, Evidences Adams' Billboard Ownership and the Parties' Agreement On the Same.

When interpreting the Lease, its provisions must be read collectively as a whole. *See, e.g.*, *Harris v. Ideal Sols., Inc.*, 385 S.C. 74, 79, 682 S.E.2d 523, 526 (Ct. App. 2009) ("A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause.");

[4] It is also not clear why West & Joyce was previously "not focused on" the billboard's ownership but is now hyper-focused on the issue, willing to adopt a new theory that shreds its prior arguments just to wrest away control over the sign.

Sifonios v. Town of Surfside Beach, 414 S.C. 269, 273, 777 S.E.2d 425, 428 (Ct. App. 2015) ("'Lease provisions are construed under rules of contract interpretation.'") (internal citation omitted).

Although West & Joyce would like this Court to believe otherwise, **there is no text in the Lease stating that Adams is leasing the Structure and no evidence that it was ever owned by West & Joyce.** Thus, West & Joyce is left to cobble together an argument based on an affidavit signed more than 15 years after Lease execution, and a box being checked on the Lease stating that the Structure(s) on the Property are Existing Structure(s). Yet, although it would have been easy for Mr. West to opine that West & Joyce owned or owns the Billboard, he made no such statements in his affidavit. (R. pp. 56-57). And, among many other deficiencies with West & Joyce's "checked box" argument, the Lease consistently refers to the Structures as "Lessee's Structures." There is no reference in the Lease to a "Lessor Structure" or any language indicating that West & Joyce owned the Structure.

As used in the Lease, "Structures" is a defined term, and refers to personal property that exists on the leased "Property," which is a separately defined term referring to real property. (R. p. 19 at § 1). **"Structures" is defined therein as "outdoor advertising structures, together with any advertising, equipment and accessories that *lessee* may desire to place []on [the leased Property]"** (R. p. 19 at § 1 (emphasis added)).[5] Thus, whenever the word "Structures" appears in the Lease, it must be read with that meaning and in the context of its use in the relevant clause.

As to Section 4, West & Joyce continues to misconstrue or fail to grasp the language therein. Contrary to its position, the provision does not provide that Adams only owns structures that are erected by or for Adams, and neither the Lease nor Adams' brief suggests that Adams is a successor to West & Joyce in terms of the billboard's ownership. Section 4, in the part relevant to

[5] Only one of Adams' "Structures" or "Billboards" is on the Property.

West & Joyce's misunderstanding, provides: "**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[.]" (R. p. 19 (Lease § 4) (emphasis added)). A reasonable interpretation of this provision is that a different outdoor advertising company previously owned the structure, such that Adams acquired said company or the structure, which frequently occurs in the billboard industry. Another reasonable interpretation is that the parties had reached an agreement in principle to lease, but were negotiating the final terms, including the length of the Lease term, which is struck through and revised by West & Joyce in the Lease (R p. 19 at § 2), and Adams finished constructing the billboard before the parties signed the final version of the Lease.

Disingenuous of West & Joyce is that its brief appears to contend that Adams' opposing affidavit speaks of a "billboard owned by the lessor West." Resp't Br. at 20. Mr. Willis' affidavit submitted in opposition to West & Joyce's summary judgment makes no such representation and gives no indication that Adams leased anything other than real property, that being the entire 2.5-acre parcel at 105 West Bobo Newsome Highway in Darlington County as it existed prior to its subdivision. (R. pp. 69-70 at ¶¶ 3, 4, 7-9).

Regardless, as discussed in Adams' brief, when Section 4 is read together with the remaining Lease provisions as a whole, as is required, there can be no doubt that Adams owns the Structure and the Structure is not included in the leased "Property." Appellant Br. at Argument Sec. IV.A. Adams was not leasing the Structure — otherwise it could not carry out the purpose of the Lease, which is for Adams to operate and maintain Adams' Structure on the Leased Property. (R. p. 19 (Lease § 1)). Moreover, West & Joyce would not have covenanted in the Lease to "not enter into any agreement for or conditioned upon the removal of Lessee's Structures[,]" nor would it have agreed Adams has the right remove "any trees and other vegetation as often as Lessee in

its sole discretion deems appropriate to prevent obstructions" of "Lessee's Structures" (R. p. 19 (Lease § 1)) if the Lessor, and not the Lessee, owned the Structure(s).

In addition to Sections 1 and 4 of the Lease, Sections 6, 7, 8, and 10 evidence Adams' ownership of the billboard and the Lease parties' agreement on the same. Section 6, titled "Cancellation," discusses Adams' right to cancel the Lease or reduce and abate rent if events transpire which, "in its sole opinion," impact the view of or ability to use and maintain the sign, specifically referring to the billboard as "Lessee's Structure." (R. p. 19 § 6). Section 7 of the Lease specifies that "**Lessor shall indemnify and hold Lessee harmless from all injuries to Structures** or third persons caused by Lessor[.]" (R. p. 20). Surely West & Joyce would not indemnify Adams from injuries to the Structures if West & Joyce owned the Structures, there would be no point.

Section 8, titled "Condemnation," states that if all or any part of the Property is condemned or conveyed in lieu of condemnation, then "Lessee shall be entitled, in its sole and absolute discretion, to: … b) reconstruct any of its Structures on the remaining property of Lessor; and/or, c) recover damages and **compensation for the fair market value of its *leasehold and Structures*** taken or impacted by the acquisition." (R. p. 20 (Lease § 8) (emphasis added)). Obviously, referring to the billboard as belonging to the Lessee, Adams, shows its ownership, but the Lease's distinction in separately valuing Adams' leasehold and Structure is equally important. (R. p. 20 (Lease § 8)). A multi-million-dollar business like West & Joyce (Resp't Br. at 16-17 n.20) would not have agreed to give away money from a condemning authority, paid as just compensation for the billboard structure, if it owned the billboard structure.

Finally, as to Section 10, containing the clause giving Adams a right of first refusal to purchase the leased "Property" (R. p. 20 at § 10), the Lease would not give Adams a right to purchase the Structure which the Lease refers to throughout as "Lessee's Structure." Moreover, if

Adams did not own the billboard, then Adams would have no incentive to purchase the Property or include the ROFR clause because there would be no guarantee that Adams could continue to operate the billboard.[6] Adams is an outdoor advertising company whose business is operating billboard structures, not convenience stores, and the purpose of the ROFR is to allow continued billboard use even if the Property is proposed to be sold. (R. p. 40, lines 9-18 (Summ. J. Transcr.)).

In signing the Lease, West & Joyce acknowledged and agreed to its provisions stating the billboard is owned by Adams, including its use of the term "Lessee's Structure(s)" to reference the billboard operated on the Property under the Lease. And, as set forth in West & Joyce's brief and its Answer to the Complaint, West & Joyce does not contest the validity or accuracy of the Lease provisions. Resp't Br. at 4 ("Mr. Willis' affidavit authenticates the *uncontested written lease* (attached to his affidavit) and also confirms the *uncontested public recording* of the lease.") (emphasis in original); (R. pp. 25-26 at ¶¶ 7, 9 (Answer) ("admit[ting] all allegations that are consistent with the terms of the lease[]")).

B. On the Dates It Executed the Lease and Filed Its Counterclaims and Summary Judgment Motion, West & Joyce Had Not Disputed Adams' Ownership and Control of the Billboard.

Contrary to West & Joyce's contentions, while noting again that Adams' motion for summary judgment on its claim is not on appeal and cannot be considered, Adams is not prevented from removing and retaking possession of its billboard even if it only asserted a breach of contract cause of action. Adams' ownership of the billboard, at least from the time of the Lease's execution until the lower court entered its summary judgment order, was not in dispute. *See supra* Sec. I (Timeline). West & Joyce certainly did not believe it owned the billboard when the pleadings were being filed below, as evidenced by the demands for Adams to remove Adams' billboard that West

[6] As set forth in Adams' brief, the existing billboard is nonconforming, meaning it cannot be rebuilt and a new one cannot be constructed. Appellant Br. at 15.

& Joyce sent after the Complaint and its counterclaims were filed. *See supra* Sec. I. Thus, Adams did not need to assert a "quiet title" claim for the billboard to retain ownership of the same, as West & Joyce errantly suggests. Resp't Br. at 22; *see also* Resp't Br. at 18. In addition, "if the facts alleged are broad enough to warrant relief, it matters not how narrow the specific prayer may be if the bill contains a prayer for general relief." *McMaster v. Strickland*, 322 S.C. 451, 454, 472 S.E.2d 623, 625 (1996). Adams' Complaint contains a prayer for general relief and alleges facts broad enough to warrant equitable relief. (R. pp. 15-17 at ¶¶ 4-11.a.-d., ¶ 11, Prayer ¶ (d)).

Moreover, that Adams raised arguments about its ROFR in its opposition brief and at the hearing on West & Joyce's motion does not mean Adams did not present arguments in opposition to West & Joyce's claims or requested relief.[7] The majority of West & Joyce's summary judgment brief focused on the validity of Adams' ROFR and the property it burdened. That is because West & Joyce did not assert a separate claim arising from different facts and circumstances — the issues encompassed in Adams' claim alleging breach of the Lease and the ROFR clause therein are the same ones that comprise West & Joyce's claims seeking to prevent Adams from accessing the Property. West & Joyce explicitly admitted this in its summary judgment brief. R. p. 78 ("The decisive facts for both [parties' claims] are the same[.]").

If the ROFR applies to all or part of the "Convenience Store Property," then West & Joyce has no right to exclude Adams from the Property. Conversely, if the ROFR does not burden any part of the "Convenience Store Property," then Adams is required to remove its billboard and vacate the Property, as West & Joyce's counterclaims demand. (R. p. 28 at ¶ 1).

[7] The contrary assertions by West & Joyce errantly assume that it either asked the lower court to dispositively rule that Adams abandoned the sign and ownership transferred, or that West & Joyce had previously asserted that it has always owned the billboard. The record shows that neither transpired.

C. West & Joyce Does Not Contest that Ownership of the Billboard Did Not Transfer to West & Joyce After Expiration of the Lease.

West & Joyce does not refute that it never gave adequate notice of a demand for Adams to remove Adams' billboard. It even acknowledges that the earliest notice of a removal demand in the record was sent 14 days after the Lease expired (Resp't Br. at 11-12, 12 n.10), a letter which claimed Adams was obligated to remove the sign 7 days before the letter's mailing. (R. pp. 103-104). West & Joyce further states that its October 2023 notice of non-renewal of the Lease, which is not in the record, is "not of any real import[]" (Resp't Br. at 12 n.10), which necessarily means that letter did not notice a demand or deadline for billboard removal. **It is uncontested that a reasonable opportunity to remove was not provided. Therefore, Adams could not have abandoned its billboard structure.** Additionally, West & Joyce's brief does not contest that ownership and control of the billboard did not transfer to West & Joyce after the Lease expired.

> 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.

Resp't Br. at 19 (emphasis in original).

First, West & Joyce describes a non-existent ruling. The lower court's Order was clear in setting forth and adopting West & Joyce's (previous, now-abandoned) position that Adams was required to remove its Billboard while the case was pending, but because Adams did not, it was purportedly trespassing on the Property. (R. p. 6 (Order p. 4) ("Defendant notified Plaintiff that the Lease would not be renewed, and that it expected Plaintiff to remove the Billboard from the Billboard Property. To date, Plaintiff has failed and refused to do so. Accordingly, Defendant seeks an injunction enjoining Plaintiff from trespassing on the Billboard Property."); R. p. 8 (Order p. 6)

("This Court also finds that summary judgment is appropriate on Defendant's counterclaims. Defendant has presented ample evidence to show that the Lease term has ended[.]").

Moreover, after the lower court's Order was entered, West & Joyce argued at the reconsideration hearing that the Order was correct in (errantly) finding that Adams' billboard had been abandoned because Adams did not remove it from the Property. Below is an excerpt from the argument by West & Joyce's attorney at the hearing.

> [W]e filed the DJ claim and said, look, we got a right to deal with this billboard. … The lease is over. As he's [Adams' attorney] got attached to his, whatever he filed today with the Court, I wrote him, we wrote him numerous times. **The lease is terminated. Come get you[r] [sic] sign. The lease says they had a reasonable time to remove <u>their</u> sign. They never removed it.** They've never done anything. So they took a chance, basically. . . . **All I know is they took a chance. They decided to leave it up and go with the argument that they had a right to buy this land.** And despite all our requests, all the letters, all everything, they decided not to remove it. And they left it up in a hope of a miracle that they were somehow going to say, oh, yeah we have the right to buy land that has never been sold. But now that they've lost they want to come in here and claim they want a metal pole out there. . . . It's not about the pole being worth anything or whatever, it's about they don't want us to use it now. . . . **They took a chance. They didn't want to remove it. And so we would ask that we have the right, that *the order stay as it is*.** That we've got a right to remove the billboard if we choose to do so.

(R. p. 49, line 18 – p. 51, line 10 (emphasis added)).

Contrary to West & Joyce's brief, the lower court's Order errantly held, without explanation or basis, or even a request for the same, that control of the Billboard transferred from Adams to West & Joyce.

However, setting aside its wholly inaccurate description of the lower court's holding, West & Joyce no longer contests that ownership and control of the billboard never transferred to West & Joyce. It does acknowledge that Adams "suggests that the trial court erroneously found that ownership of the pre-existing billboard structure had 'transferred[.]'" Resp't Br. at 19. But West & Joyce warps Adams' argument, alleging Adams claimed the billboard transferred "from the

lessor West to the lessee Adams." Resp't Br. at 19. Adams has never made any such statement or argued anything which resembles this misrepresentation. West & Joyce has never owned or had dominion and control over the billboard.

Ignoring this impropriety, though, West & Joyce does not attempt to dispute that control and ownership of the billboard never left Adams and was never transferred to West & Joyce. While continuing to mislead the Court as to Adams' argument, West & Joyce writes that "West has no burden to prove a reacquisition when that reacquisition was never needed." Resp't Br. at 20. Adams does not argue that West & Joyce failed to show a reacquisition – West & Joyce failed to show that it ever *acquired* the billboard. And it has now doubled down, eliminating its ability to even claim residual or assumed control due to alleged abandonment of the billboard after "a reasonable billboard-structure removal opportunity" was (not) provided. Resp't Oct. 24, 2025 Reply p. 4. **Accordingly, it is uncontested that ownership and control of Adams' billboard never transferred to West & Joyce.**

III. WEST & JOYCE SEEKS TO CREATE A NEW EXTRINSIC EVIDENCE STANDARD FOR INTERPRETING UNAMBIGUOUS CONTRACTS

Looking to sidestep the lower court's errant reliance on extrinsic evidence to interpret what it deemed to be "clear" contractual language, West & Joyce attempts to create new law that directly contravenes well-established precedent. Resp't Br. at 16 ("the trial court expressly found that 'the Lease is clear. … it is clear that [West] only leased the Billboard Property to [Adams].' … **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." (bold emphasis added, alterations in original) (quoting R. p. 7 (Order p. 5)).

A. If the Lease was "Clear" that It "Circumscribed" the "Billboard Property," Then the Lower Court Was Not Allowed to Consider Extrinsic Evidence Nor Would Such Evidence Have Been Necessary.

South Carolina appellate courts have left no doubt that parol evidence cannot be considered if the provisions of a contract are clear and unambiguous. *See*, *e.g.*, *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 378 n.3, 373 S.E.2d 584, 586 n.3 (1988) ("The Hearing Panel and **the trial court erroneously considered extrinsic evidence after concluding that the contract was unambiguous. Extrinsic evidence may only be considered if the contract is found to be ambiguous.**") (emphasis added); *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) ("Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it."); *Hanold v. Watson's Orchard Prop. Owners Ass'n*, 412 S.C. 387, 402, 772 S.E.2d 528, 536-37 (Ct. App. 2015) ("Because the language in the 1981 R&Cs was unambiguous, we find **the circuit court did not need to consider extrinsic evidence . . . a court will not examine extrinsic evidence to interpret a contract absent an ambiguity**[.]") (emphasis added).

West & Joyce argues in direct contravention of this long line of precedent, asserting extrinsic evidence can be considered regardless of whether the contract language is ambiguous.[8] Resp't Br. at 16. West & Joyce does attempt to qualify or backtrack on its position slightly, arguing the "seasoned" lower court only "noted" or "gratuitously observed the logical consistency" of the extrinsic evidence. Resp't Br. at 16. And, according to West & Joyce, because the lower court did not specifically state that it relied on non-lease evidence, that means it did not rely on any such

[8] This and the following argument subsection (III.A.-B.) do not address the lower court's error in finding that the Lease was clear in defining the Leased Property as being less than the entire 2.5-acre parcel, or, alternatively, as not including at least part of the subsequently created "Convenience Store Property." Appellant Br. at Argument Secs. II–V.

materials, and they were only considered to "provide[] context and background" and to refine or support the alleged "limited scope" of the Lease. Resp't Br. at 16.

West & Joyce's descriptions of the Order do not change the analysis or result, as they are just semantic attempts to dress up the lower court's improper consideration of and reliance on parol evidence to render an interpretation that varied from and was inconsistent with the contract language. If the Lease was clear, then "the contract's language determines the instrument's force and effect." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013); *see also id.* ("a court must first look to the language of the entire contract to determine the parties' intent and **if the language is perfectly plain, '*it alone* determines the document's force and effect**'") (emphasis added) (internal citation omitted).

As one example, for the lower court to find that the clear meaning of the Lease "was consistent with the economic logic of the subsequent convenience store sale" (Resp't Br. at 16 n.20), it was necessarily required to consider, rely on, and compare the 2019 sale to the 2009 Lease.[9] Moreover, while the West affidavit (additional parol evidence) indicated a purchase price,[10] neither the purchase contract nor any of its other terms were introduced.

Beyond its disregard for common law mandates, the lower court ignored the Lease's merger and integration clause, whereby the parties agreed that "[n]either Lessor nor Lessee shall be bound

[9] West & Joyce's contemporaneous objection argument is disingenuous. This case did not involve a trial where exhibits were being proffered for a ruling on their admissibility. Materials were filed in advance of the motion hearing — and West & Joyce filed its supporting memorandum less than 2 hours before the 10 a.m. hearing. (R. pp. 73-83 (8:16 AM time stamp); R. p. 111 (motions roster at #10); R. p. 37, lines 17-18 (MSJ Tr.)). Adams did not know which materials the lower court would rely on until its Order was filed in the case. Regardless, "'[u]nder the parol evidence rule, the terms of the writing are controlling, even if extrinsic evidence is admitted without objection or admitted over appropriate objection.'" *Curry v. Carolina Ins. Grp. of S.C., Inc.*, 428 S.C. 60, 74, 832 S.E.2d 760, 767 (Ct. App. 2019).

[10] Mr. West, who signed the affidavit (R. pp. 56-57) that West & Joyce relies on, is the same individual who modified and executed the Lease on behalf of West & Joyce (R. pp. 19-23).

by any terms, conditions or oral representations that are not set forth in this Lease Agreement. … This Lease Agreement (and any addendum) represents the entire agreement of Lessee and Lessor with respect to the Structures and the Property." (R. p. 20 (Lease § 13)). Accordingly, Adams cannot be restricted by any representations from, and its Lease cannot incorporate or be modified by, post-Lease documents or information, such as alterations of the Property's characteristics or the supposed value of West & Joyce's business in 2019.

In the face of unmistakable and long-standing binding precedent requiring the exclusion of extrinsic evidence, the lower court abused its discretion in considering such materials. West & Joyce does not allege that the lower court's errant reliance on extrinsic materials constituted harmless error, but such an assertion would be without merit. The reliance clearly harmed and prejudiced Adams. The lower court utilized improper materials to find that the Leased Property did not include any of the land that was subdivided and sold in 2019, whereby it held Adams was not entitled to exercise its ROFR in relation to that transaction. As a result of the lower court's errant reliance and rewriting of the Lease language, Adams has been deprived of an ability to continue operating its billboard on the Property — or anywhere else.

Crucially, the lower court's interpretation of the "Property" that is subject to the Lease and the ROFR, a ruling based on and which incorporated the extrinsic evidence, is not consistent with the text of the Lease. The leased "Property," as defined in the Lease, is the property located in Darlington County, South Carolina at "105 West Bobo Newsome Highway 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)).

This contract language does not set forth an acreage amount of the Leased Property, let alone clearly state (or give any indication) that the Leased Property is specifically comprised of and limited to a 0.5479-acre portion of West & Joyce's 2.5-acre parcel. And, at the time of the Lease, in July 2009, a parcel did not exist bearing TMS Number 058-00-01-167. Yet the lower court found that the Lease defined the leased "Property" subject to the ROFR as being the ".5479 acre parcel bearing TMS No. 058-00-01-167[.]" (R. pp. 5, 7 (Order pp. 3, 5)). In doing so, the lower court disregarded the language of the Lease and relied solely on extrinsic materials created at least a decade after the Lease's execution, namely tax maps printed in 2024, to rewrite Lease provisions and redefine key terms therein.

The lower court's error in relying on extrinsic materials to interpret the Lease was not harmless error because its interpretation was **not consistent** with the contract's language. *See Laser Supply & Servs. v. Orchard Park Assocs.*, 382 S.C. 326, 336, 676 S.E.2d 139, 145 (Ct. App. 2009) (finding the "error in considering the extrinsic evidence was harmless because the circuit court's interpretation based on the extrinsic evidence presented at trial was consistent with the contract's language[]") (internal citation omitted).

B. West & Joyce Ignores that the Lower Court's Order Relied Almost Exclusively on Evidence that Originated At Least a Decade After The Lease to Interpret the Lease, Despite the Requirement to Analyze the Contract as of the Date of Execution.

The majority of West & Joyce's brief focuses or relies on its contention that the 2009 Lease clearly "circumscribed" the half-acre "Billboard Property" that was officially subdivided 10 years later. Resp't Br. at 1 (Issue 1), 2, 4, 8-11, 13, 13 n.11, 14, 16 n.20, 23. It argues that, regardless of the fact that the original 2.5-acre tract was not subdivided until 2019, the Lease is unambiguous and clear as to the Leased Property description. And, according to West & Joyce, that description

in the 2009 Lease, of the "Property" being leased, plainly defines a 0.5479-acre portion of land with the exact same boundaries and dimensions specified in the 2019 subdivision plat.

To read the Lease's Property description and conclude that it plainly and clearly circumscribed the exact half-acre "Billboard Property," which at the time was included in and part of the singular 2.5-acre parcel, requires clairvoyance. Perhaps sensing this, West & Joyce asks the Court to simply take its word for it. Resp't Br. at 10 (asserting the 10-year delay in creating the "Billboard Parcel" "does not mean that a separate leasehold property interest [therein] was not created; *indeed, it was*.") (emphasis in original). Contrary to West & Joyce's mischaracterization (Resp't Br. at 14, 14 n.15), though, Adams does not dispute that a leasehold interest can be conveyed over a portion of an existing parcel. But what a lease cannot do is define the leased portion of a larger parcel by specific boundaries that are not set forth in the lease, and it cannot impliedly incorporate boundaries which are created 10 years after the lease's execution.

The real issue is that West & Joyce and the lower court defined the Leased Property by reference to and adoption of a revised Darlington County tax map that resulted from a 2019 subdivision plat. (*See*, *e.g.*, R. pp. 56-57 at ¶¶ 5, 7-10 (West Affidavit ¶¶ 5, 7-10), R. pp. 61-62 (West Affidavit Exs. C-D (tax map aerials printed in 2024)); R. pp. 73-78, 91-92 (West & Joyce MSJ Mem. pp. 1-6, Ex. B at Exs. C-D (same tax map aerials)); R. pp. 5, 7 (Order pp. 3, 5)). West & Joyce argued and the lower court found that the Property leased in 2009 was defined by the tax map boundary lines created in 2019, such that the provisions of the Lease and the ROFR therein were interpreted and ruled upon by relying solely on "evidence" that was created a decade or more after the date of the Lease. Appellant Br. at 18-19. In part, the lower court opined that Adams' breach of Lease claim, and thus the question of its right to continued use of the Property, must be

decided based on the existence of the two subdivided parcels as reflected in Darlington County tax records.

> 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) (emphasis added)).

Accordingly, whenever the lower court's Order makes reference to the "Billboard Property" or "Convenience Store Property," it is referring to the 0.5479-acre and 1.95+ acre pieces of property created via a 2019 subdivision plat, as shown on a County tax map that was revised to reflect the plat and the subdivision. This means the lower court did not define or refer to the Leased Property by examining and applying the language contained in the Lease, despite being required to limit its examination solely to the Lease language due to finding that the Lease provisions were clear. It also means that the lower court did not examine the intent of the parties as of the date of the contract, as is required in South Carolina. *See Laser Supply & Servs.*, 382 S.C. at 336, 676 S.E.2d at 145 ("Interpretation of a contract is governed by the objective manifestation of the parties' assent ***at the time the contract was made***, rather than the subjective, after-the-fact meaning one party assigns to it.") (emphasis added) (citing *Bannon v. Knauss*, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct. App. 1984)); *see also* Appellant Br. at 17-18.

West & Joyce utilized the same defined terms to refer to what it believes are separate Billboard and Convenience Store Properties. Even now on appeal, it continues this errant practice but takes it a step further to misstate Adams' arguments. Resp't Br. at 13 n.11 ("'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.' Indeed, this succinct issue is the heart of Appellant's duplicative second, fifth, and sixth issues on appeal."

(quoting R. p. 5)). If that is truly West & Joyce's belief, then it fails to comprehend the issues on appeal and arguments set forth in Adams' brief. Regardless, the continued impropriety of its insistence on arguing in contravention of established contract interpretation principles is evident.

C. The Lease Could Not Have Been Clear That It Did Not Burden the "Convenience Store Property" Since It Defined the Leased Property as Including at Least Part of the Store Property.

As to the "Property" description in the Lease, Adams' primary argument is that the Leased Property includes the entire 2.5-acre parcel that existed "at 105 West Bobo Newsome Highway in Darlington County[,]" as of the date the "lease was entered into on July 15, 2009." (R. p. 69 (Willis Aff. ¶¶ 3-4);[11] *see* Appellant Br. at Argument Secs. III-IV).

Alternatively, though, the text of the Lease is clear that it burdens at least part of what would later become the "Convenience Store Property." That is because the Lease defines the leased "Property," in part, as being "the west end of West Oil Company's store property[.]" (R. p. 19 (Lease § 1)). As a result, it is not possible for the Lease to be "clear" and "unambiguous" that it circumscribed the "Billboard Property" and did not burden any part of the "Convenience Store Property." This is consistent with the finding of the lower court and its discussion of West & Joyce's argument. (R. pp. 5-6 (Order pp. 3-4) (**"Defendant contends that the plain language of the Lease provides that Plaintiff leases a parcel of land located on the west end of the store property, not the *entirety* of the Convenience Store Property."**) (emphasis added); R. p. 7

[11] West & Joyce attempts to critique the Willis Affidavit by advising it views Adams' discussion of the same with incredulousness (Resp't Br. at 9 n.6 ("Incredibly, … Again, incredibly, …)). Such inflammatory descriptors of West & Joyce's (mis)perceptions are employed throughout its brief, likely to bolster its unfounded arguments. While the affidavit does not contain the exact phrase "as it existed," it does speak to Mr. Willis' negotiation of the Lease prior to its execution in July 2009, and, in reference to the 2019 subdivision and sale of a part of the Property, states the Lessor failed to advise of a potential sale and failed to provide Adams the required ROFR-exercise opportunity, meaning the Leased Property included the entire 2.5 acres and West & Joyce had a duty to advise of offers for the land containing the later-created "Convenience Store Property."

(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.") (emphasis added)).

Indeed, the allegations in West & Joyce's brief, that "[t]he actual clear lease circumscribed the leased billboard realty from the adjacent convenience store property[,]" (Resp't Br. at 13) is a different argument than what it asserted below. In the lower court, West & Joyce made conclusory statements that the unnoticed sale of the half-acre "Billboard Property," which it defined via 2024 tax map aerials, did not violate the Lease's ROFR. West & Joyce did not previously claim that the Lease itself was clear in "circumscribing" the 0.5479-acre "Billboard Property," only that it did not sell the "Billboard Property" and Adams did not have a right of first refusal as to the "Convenience Store Property." (R. pp. 73-74, 76-77).

And, contrary to its position on appeal that the Lease is unambiguous as only burdening the Billboard Property, West & Joyce's Answer to the Complaint asserted it had "not had an opportunity to conduct a sufficient investigation or engage in adequate discovery about the allegations of this lawsuit[,]" and noticed its "intent to assert any further affirmative defenses that an investigation supports[.]" (R. p. 26 (Answer ¶ 16)). But, in another position shift and change to the playing field, West & Joyce never served any discovery and moved for summary judgment shortly after filing its responsive pleading.

Because the text of the Lease, in defining the burdened "Property," is clear that it includes as least part of the convenience store property (the west end), Adams' ROFR was triggered by the purchase and sale agreement between West & Joyce and Refuel that preceded the purported conveyance to Refuel in 2019.

IV. WEST & JOYCE'S PRESERVATION ARGUMENTS, ALREADY REJECTED BY THIS COURT IN THIS APPEAL, ARE STILL WITHOUT MERIT

After previously submitting a motion to dismiss and a separate reply detailing its issue preservation argument, West & Joyce's brief takes a third bite at the apple. It acknowledges that this Court gave "careful consideration" to the motion to dismiss the appeal before denying the motion. Resp't Br. at 1 n.1. West & Joyce also states that its dismissal arguments are only reasserted in its brief to preserve the same. Resp't Br. at 1 n.1, 5, 18 n.23. Therefore, without its brief raising any different facts, issues, or arguments from those previously asserted, the outcome of West & Joyce's preservation arguments should not change.

The time for appeal was 30 days from the date of the lower court's order on Adams' motion to reconsider, which was entered July 31, 2025 (R. pp. 11-13). The thirtieth day from that order was Saturday, August 30, 2025, such that the deadline to appeal was extended to Tuesday, September 2, 2025, as September 1 was the Labor Day holiday. Thus, Adams' Notice of Appeal, served and filed on August 28, 2025, was timely.

Adams does wish to address one of West & Joyce's timeliness arguments, as Adams did not previously have a chance to respond because it was only raised in West & Joyce's reply to the motion and not the motion to dismiss itself. Contrary to West & Joyce's argument, the equities here cut in favor of <u>not</u> finding a third exception to the rule that a timely motion to reconsider acts to stay the deadline to appeal. West & Joyce claims that Adams waited until its Rule 59(e) argument to claim it owned the billboard. However, and as discussed in the opposition to West & Joyce's unsuccessful attempt to dismiss the appeal, as well as in Adams' briefs, Adams' ownership of the billboard was not an issue in dispute until the lower court's order held, without a request or support for the same, that West & Joyce could take possession of and convert the structure for its own use.

Yet, prior to that holding, West & Joyce asked the lower court to find that Adams owned the billboard and that Adams should be *required* to remove it from the Property, or to find Adams liable for trespass due to not removing the sign. Continuing its inequitable gamesmanship, West & Joyce reversed course in its appellate brief and abandoned is prior arguments for one in direct conflict, claiming for the first time that it always owned the billboard.[12]

As to the remainder of West & Joyce's timeliness and preservation arguments, those are addressed in Adams' Return to the Motion to Dismiss, filed October 21, 2025, and in parts of Adams' brief and this reply brief. *See* Appellant Br. at 2, 5, 6, 7-16 (Secs. I, I.A.-C.); *supra* at Secs. I.A., II.B.-C. For convenience to the Court, and to conserve judicial and party resources, Adams incorporates herein by reference its Return to West & Joyce's Motion to Dismiss, and, to the extent necessary, the relevant portions of its brief, including the analysis and legal authorities contained therein.

CONCLUSION

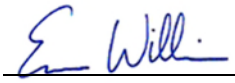
West & Joyce, for the first time ever, claims in its appellate brief that it has always owned the billboard, despite the absence of evidence to support the same. This new theory directly conflicts with West & Joyce's: prior admissions of Adams' ownership; demands for Adams to remove the billboard belonging to Adams; and counterclaims requesting relief based on Adams having not yet removed the billboard. Additionally, West & Joyce acknowledges and willingly

[12] Likely due to repurposing its previous motion to dismiss filings, West & Joyce's timeliness argument claims that Adams was required to file something below "in response to the assertion that the lease had terminated and the pre-existing billboard structure had been abandoned." Resp't Br. at 22. This is not true, as West & Joyce only asked on summary judgment that the billboard be removed and Adams be prevented from accessing the Property. However, it also shows the conflict in West & Joyce's argument in its brief as compared to the assertions it has made at all times prior thereto.

chooses to not oppose the evidence showing it did not provide a reasonable opportunity for Adams to remove the billboard and that ownership of Adams' billboard never transferred to West & Joyce.

The lower court's error in relying on extrinsic evidence to reach an interpretation of the Lease that varies from and is not consistent with the contract language constitutes reversible error. Finally, Adams timely brought this appeal and the arguments it raises were properly preserved. Because the lower court erred in granting summary judgment to West & Joyce, the ruling must be reversed, and this matter should be remanded for further proceedings.

Respectfully submitted,



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