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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Judge Steven DeBerry, IV, Circuit Court Judge

Civil Action No. 2022-CP-07-01195
Appellate Case No. 2025-001618

Beaufort County, South Carolina, Respondent,

v.

Adams Outdoor Advertising Limited Partnership, Appellant.

RESPONDENT'S FINAL BRIEF

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Statement of Issues on Appeal

I. Under *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.3d 199 (1994), a contract giving a party an "indefinite right of renewal" is a disfavored perpetual contract, and is terminable at will upon reasonable notice from either party. Adams's sign lease gives the lessee (Adams) an indefinite right of renewal, and no provision gives the lease a definite duration. Is the lease terminable at will under *Carolina Cable Network*?

II. Arguments first raised in a Rule 59(e) motion, *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990), or on appeal, *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011), are waived. Adams raised new arguments in its Rule 59(e) motion for reconsideration and in its initial appeal brief. Are those arguments waived?

III. An argument raised in a brief but not supported by citation to authority is deemed abandoned. *Equivest Financial, LLC v. Ravenel*, 422 S.C. 499, 505, 812 S.E.2d 438, 441 (Ct. App. 2018). Adams cites no authority for its argument that the trial court erred by not explicitly stating that it considered Adams's motion for reconsideration. Has Adams abandoned its argument based on the trial court's order denying both parties Rule 59(e) motions?

Statement of the Case

Appellant Adams Outdoor Advertising Limited Partnership ("Adams")'s statement of the case is incomplete and asserts "contested matters," contrary to Rule 208(b)(1)(C), SCACR. The County thus provides a short, procedural statement of the case here, and corrects Adam's misstatements in the County's statement of facts below.

On June 29, 2022, the County filed a two-count complaint against Adams, seeking declaratory and injunctive relief. The County filed an amended complaint on August 29, 2022.

In Count 2, the only count on appeal, the County sought a declaration (1) that the Adams lease to have a billboard on County land terminated on October 1, 2021, (2) that the sign materials and displays Adams left behind no longer belong to Adams, and (3) that Beaufort County is authorized to disconnect electric service to the billboard and remove it at its discretion. (R. p. 52, ¶ 74). The County also sought an injunction to prevent Adams from impeding the removal and disposal of the sign. (*Id.*, ¶ 75). Adams opposed the County's requests.

The County and Adams each moved for summary judgment, and then filed their briefs in support on June 6, 2025. The circuit court (DeBerry, J.) heard oral argument on June 10, and on June 25 granted the County summary judgment as to Count 2, but otherwise denied the motions.

Adams and the County moved for reconsideration. The circuit court denied both motions on July 14, 2025. Adams filed and served its notice of appeal on August 13, 2025.

Statement of the Facts

The County corrects Adams's faulty description of the County's actions and arguments regarding the lease that is the subject of this appeal.

In December 2020, the County purchased the Port Royal Island Battlefield property. (*See* R. p. 142 (Property Title).) The newly-purchased property includes a parcel where Adams has operated a billboard under a 1989 lease agreement (the "lease"). (*Id.*; R. pp. 161-162; R. pp. 229-231.)

The lease says that after the original three-year term (expiring in 1992), the lease would:

> continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written notice of termination by Lessee to Lessor, served not less than thirty (30) days before the end of such term or additional year.

(R. p. 162.)

As for Adams's sign, the lease provided:

> All materials and displays placed upon the property by Lessee shall remain Lessee's property, and Lessee may remove the same at any time during the term or extended term of this agreement or within thirty (30) days after termination or cancellation of this agreement.

(*Id.*)

In April 2021, the County sent Adams's area representative (Liz Mitchum) a letter giving Adams more than six-months' notice that the lease would terminate on October 1, 2021. (R. p. 230.) The County advised that the lease afforded Adams thirty (30) days after the termination date to remove the billboard from the County's property. (*Id.*)

On September 29, Adams responded to the April letter through its general counsel, Richard Zecchino. (R. p. 138.[1]) Adams expressly asserted that the lease gives it an indefinite right of renewal, stating that "the only party to the Lease with the power to terminate the Lease is the Lessee—which is Adams." (*Id.*) Adams pointed to lease's renewal provision:

> I direct your attention to the following language in the Lease, which reads:
>
> > After the original terms hereof, this lease shall continue in force from year to year, on the same terms, unless terminated at the end of the original term or any additional year thereafter, upon written termination **by Lessee to Lessor**, served not less than thirty (30) days before the end of such term or additional year.
>
> Pursuant to the clear and unambiguous bolded and underlined language above, the only party to the Lease with the power to terminate the Lease is the Lessee—which is Adams. *And, as you might expect, Adams has no desire or intention to terminate the Lease at this time. Accordingly, as of October 1, 2021, the Lease has automatically extended for another year on the same terms, and will continue doing so into the future unless and until Adams—as the Lessee—decides to provide notice of termination.*

---

[1] Adams observes on appeal that the April 1 termination letter did not contain the name "Adams." The observation has no significance—the letter was addressed to an employee representative of the sign company, and it reached the company's executives, who responded.

(*Id*. (italics added).)

On December 1, 2021, the County responded, stating that "Adams has failed to comply with the County's April 1, 2021 notice" of termination. (R. p. 141.) The County also refuted Adams's reliance upon the indefinite right of renewal asserted in its September 29 letter:

> Your claim that Adams has a unilateral perpetual right of renewal under the lease is wrong. *Carolina Cable Network v. Alert v. Alert Cable TV, Inc.*, 316 S.C. 98, 102-03 (1994) ("[T]he contract attempts to confer on CCN the indefinite right of renewal, and in light of the clear precedent of *Childs, supra*, this contract can only be construed as terminable at will. Where the contract is terminable at will, reasonable notice from either party is all that is required to terminate the contract.").

(R. p. 141.)

Adams's "Statement of the Case" obscures these straightforward facts. Adams contends that the County "attempted to terminate the Lease, first arguing it was terminated under its terms (MIS MSJ Ex. 6 at Sec. 2), and then pivoting, after the alleged date of termination, wrongly asserting the Lease did not explicitly provide the lessor with such a right, and therefore its termination right was implied." (Aplt. Initial Br. at 1.)

Wrong. First, the lease term that gives Adams an indefinite right of renewal is what makes the lease of indefinite (perpetual) duration, and thus terminable at will under governing law. Second, the County did not pivot from its position. When Adams's general counsel asserted in September 2021 that Adams held a unilateral perpetual right of renewal, the County responded in December with citation to the *Carolina Cable Network* decision, which construes the lease to be terminable at will. At summary judgment, where Adams shifted *its* theory and argued that a separate, equally conditional and indefinite lease term cures the problem created by Adams's indefinite right of renewal, the County refuted that erroneous argument.

After discovery, both parties moved for summary judgment on all counts of the County's amended complaint, which involved both the lease at issue on appeal as well as two other

billboards that Adams illegally rebuilt in April 2021. On Count 2, the County argued that the lease is terminable at will because it purports to give an indefinite right of renewal. Leases that attempt to confer the "indefinite right of renewal . . . can only be construed as terminable at will." *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 102-103, 447 S.E.2d 199 (1994).

Adams's 47-page summary judgment brief completely ignored *Carolina Cable Network*—even though the County has relied on it since 2021. (R. p. 141.)

Instead, Adams mischaracterized the County's argument: Adams posited that the County was claiming an implied right of termination because the agreement did not give the County, as lessor, an express right of termination. From that false premise, Adams argued that no implied right of termination could arise because the agreement did give the County, in another term, an express right of termination in the event "the property is improved by the erection of buildings thereon . . . ." (R. p. 156.) Adams further asserted that the County could never exercise this express right of termination because the County accepted restrictive easements that prevent building on the property. (*Id.*)

Adams repeated these arguments at the hearing on June 10, 2025. (R. pp. 111-116.) But it did not attempt to distinguish *Carolina Cable Network*. (*Id.*)

The circuit court granted the County summary judgment on Count 2, stating: "After careful consideration, the Court respectfully grants summary judgment as to the contract between the parties and terminates this agreement at the end of the current term based on Carolina Cable Network v. Alert Cable TV, Inc., 316 S.C. 98, 447 S.E.2d 199 (1994)." (R. p. 18, Order.)

Adams moved for reconsideration under Rule 59(e), SCRCP on July 3. Adams then attempted, for the first time, to distinguish *Carolina Cable Network*. (R. p. 315.) Explicitly

contradicting the position that Adams asserted in 2021 through its vice president and general counsel, Adams's litigation counsel asserted: "**The Lease does <u>not</u> provide Adams with a unilateral or indefinite right of renewal**, does not provide Adams with a unilateral right of termination, and it does not constitute or give rise to a perpetual contract." (Adams MFR at 2 (emphasis in original).) Adams also cited, for the first time, *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 386, 503 S.E.2d 184 (Ct. App. 1998). (R. pp. 315-316.)

The County moved for reconsideration, arguing that "[t]o follow *Carolina Cable Network*, rather than find that the contract terminates in October 2025, the Court should hold that the contract was terminated effective October 1, 2021, and that the County may remove the sign." (R. p. 325.)

On July 14, 2025, the circuit court denied both motions to reconsider, as follows:

> The Plaintiff, Beaufort County, South Carolina, and Defendant, Adams Outdoor Advertising Limited Partnership, requests the Court to reconsider the Order dated June 25, 2025 and in the Beaufort County Clerk of Court's office.
>
> Having duly considered the motion of the Plaintiff, this Court has determined that its original ruling of June 25, 2025 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. **The motions are hereby DENIED**.

(R. p. 21 (emphasis added).) This appeal followed.

Standard of Review

"An appellate court reviews a grant of summary judgment by applying the same standard as the circuit court under Rule 56(c)." *Easterling v. Burger King Corp.*, 416 S.C. 437, 445, 786 S.E.3d 443, 447 (Ct. App. 2016). Summary judgment is granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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." Rule 56(c), SCRCP. The burden is on the nonmoving party to "resist a motion for summary judgment" by producing "specific facts showing genuine issues

necessitating trial." *ABB, Inc. v. Integrated Recycling Grp. of SC, LLC*, 432 S.C. 545, 551-552, 854 S.E.2d 171, 174 (Ct. App. 2021) (quoting *NationsBank v. Scott Farm*, 320 S.C. 299, 302-303, 465 S.E.2d 98, 100 (Ct. App. 1995)). Mere denials are not enough. Rule 56(e), SCRCP.

"The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. Thus, "[a] respondent may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *Sims v. Amisub of South Carolina, Inc.*, 408 S.C. 202, 214, 758 S.E.2d 187, 194 (Ct. App. 2014).

However, the appellant is limited to arguments that it raised at summary judgment. A party may not raise new arguments in a Rule 59(e) motion. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). Likewise, "an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *Herron v. Century BMW,* 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (collecting cases).

Argument

I. This court should affirm because the lease is of indefinite duration, and therefore terminable at will under *Carolina Cable Network*.

Under *Carolina Cable Network*, the lease gives Adams an indefinite (perpetual) right of renewal and is thus terminable at will upon reasonable notice. At summary judgment, Adams identified no term that gives the lease a definite duration. This Court should therefore affirm.

A. The lease purports to give the lessee (Adams) an indefinite right of renewal, just as Adams's general counsel correctly argued in 2021.

The County pleaded Count 2 because in 2021 Adams argued that under "the clear and unambiguous" lease renewal provision, "the only party to the Lease with the power to terminate the Lease is the Lessee—which is Adams." (R. p. 138.). Adams emphasized that it "has no desire

or intention to terminate" the lease, and that the lease "has automatically extended for another year on the same terms, and will continue doing so into the future unless and until Adams—as the Lessee—decides to provide notice of termination." (*Id.*)

Adams is right. The lease, by its terms, gives Adams a perpetual right of renewal. But that also makes the lease a disfavored perpetual contract, terminable at will upon reasonable notice.

South Carolina has long disfavored perpetual contracts. *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 101, 447 S.E.2d 199, 201 (citing *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911)). This applies to contracts attempting to grant a "perpetual" or "indefinite right of renewal." *Id*. at 102, 447 S.E.2d at 202. Where a "contract attempts to confer on [a party] the indefinite right of renewal," the "contract can only be construed as terminable at will." *Id.* And "[w]here the contract is terminable at will, reasonable notice from either party is all that is required to terminate the agreement." *Id.* at 102-103, 447 S.E.2d at 202.

In *Carolina Cable Network*, the agreement allowed Carolina Cable Network (CCN) to pay Alert a monthly fee based on the number of Alert's cable subscribers, so that CCN could control advertising rates and provide advertising to Alert's viewers. *Id*. at 100, 447 S.E.2d at 200. Its initial term was "one year with the right of renewal by Carolina Cable Network at its expiration." *Id*. at 102, 447 S.E.2d at 201. After several renewals, Alert notified CCN that it would terminate the advertising agreement unless CCN agreed to an increase in the monthly per-subscriber fee. *Id*. at 104, 447 S.E.2d at 202. CCN rejected Alert's proposal, and advised that it would again exercise its renewal option. *Id*. at 100, 447 S.E.2d at 201. In early May, Alert gave CCN notice that it would terminate the agreement as of July 12, at the end of the current term. *Id*. at 104, 447 S.E.2d at 202. CCN later sued Alert for breach of contract, and a jury awarded CCN damages. *Id*. at 101, 447 S.E.2d at 201.

The Supreme Court reversed. Alert argued that CCN's "seemingly perpetual right of renewal is sufficient to make the terms of the agreement ambiguous and, therefore, terminable at will. This assertion is correct." *Id*. S.C. at 102, 447 S.E.2d at 202. But this was also CCN's downfall: "Plainly, the contract attempts to confer on CCN the indefinite right of renewal, and in light of the clear precedent of *Childs, supra*, this contract can only be construed as terminable at will." *Id*. The Court held that a contract terminable at will can be terminated upon reasonable notice from either party. *Id*. Because "Alert maintained correctly that CCN did not have the perpetual right to renewal," *id*. at 104, 447 S.E.2d at 203, and gave CCN reasonable notice of termination, the Supreme Court reversed the judgment and attendant damages award.

Carolina Cable Network controls here. Indeed, the parallels between that case and this one are remarkable. Both involve contracts with an initial term (1 year in *Carolina Cable*, 3 years in this case) and a provision giving one party a right to annually renew the contract indefinitely. In both cases, the other party to the agreement (Alert there, the County here) gave notice that the current term would be the last one. (*Id*. at 104, 447 S.E.2d at 202; R. p. 230.) In both, the party claiming a perpetual right of renewal stated that it would renew the agreement for another year. (*Compare id*. at 100, 447 S.E.2d at 201 ("CCN advised Alert that CCN would exercise its renewal option"), *with* R. p. 138 ("[T]he Lease has automatically extended for another year on the same terms, *and will continue doing so into the future unless and until Adams—as the Lessee—decides to provide notice of termination*.") (emphasis added).)

Moreover, both cases involve contracts lacking a "specific durational term." *Id*. at 105, 447 S.E.2d at 203 ("On the present facts, it is quite evident that the lack of a specific durational term ran afoul of our decision in *Childs, supra,* thereby creating as a matter of law an at-will agreement which could be terminated upon reasonable notice.").

Adams cannot run from the lease language that Adams in 2021 (correctly) argued "attempts to confer on [Adams] the indefinite right of renewal . . . ." *Id*. at 102, 447, S.E.2d at 202. Under governing law, the lease "can only be construed as terminable at will." *Id.* S.E.2d at 202. Thus, this Court should affirm the trial court's grant of summary judgment to the County.

B. Adams cannot evade *Carolina Cable Network* by revisionist history or by citing another lease term that also fails to provide a definite duration.

Adams argues that the lease "is not devoid of any term of duration" by ignoring Adams's assertion of its indefinite right of renewal that started this case, and by citing another lease provision giving an indefinite right to cancel the lease if a building is erected on the property. (Aplt. Br. at 10.) But Adams cannot rewrite history, and the question is not whether the other party to a contract *lacking* a "specific durational term" has a conditional right of termination. *Carolina Cable Network*, 316 S.C. at 105, 447 S.E.2d at 203. An indefinite right to renew a lease is not rendered definite by another indefinite right to cancel it, and Adams fails to cite any case showing otherwise. (See Aplt. Br. at 13-16.)

First, Adams falsely accuses the County of "creating a straw man," while employing a straw man itself. (Aplt. Br. at 10.) Adams states, "Contrary to the County's contentions, Adams does not assert that the Lease's provisions give Adams a perpetual right of renewal or that they prevent the lessor from ever terminating the Lease." (*Id.*)

Not so. As described above, Adams triggered Count 2 by refusing to abide by the County's April 1, 2021, notice to terminate the lease and refusing to remove its sign from County property. Adams expressly claimed that "the only party to the Lease with the power to terminate the Lease is the Lessee—which is Adams," and that the lease "has automatically extended for another year on the same terms, and will continue doing so into the future unless and until Adams" would decide otherwise. (R. p. 138.)

Adams has changed its own position and mischaracterized the County's. The County has never claimed "an implied right to terminate the Lease based on equity." (Aplt. Br. at 8.) Nor has the County said that the lease "only provides the lessee with the right of termination." (*Id.* at 7.) It is Adams who has injected an allegedly off-setting "right to terminate" concept, which is foreign both to the County's arguments and to the law. Since 2021, the County has consistently cited *Carolina Cable Network* to show that its indefinite right of renewal in favor of Adams makes it terminable at will. (*Compare* R. p. 141 *with* R. pp. 308-310.)

Second, Adams's reliance on a separate conditional lease provision to supply a specific durational term that the lease lacks is illogical and legally unsupported. The recent easements did not remove a provision that would save Adams from *Carolina Cable Network*'s rule.

In *Carolina Cable Network*, Alert had an express right to terminate the advertising agreement if certain conditions occurred. 316 S.C. at 102, 447 S.E.2d at 201-202. But Alert's right of termination did not give the agreement a specified duration. And without a specified duration, the "seemingly perpetual right of renewal is sufficient to make the terms of the agreement ambiguous and, therefore, terminable at will." *Id*.

The same is true here. Adams cites a conditional provision stating: "In the event the property is improved by the erection of buildings thereon . . . Lessor shall have the right to cancel this agreement by giving Lessee sixty (60) days advance written notice . . . ." (R. p. 162, ¶ 5.) Adams calls this an "independent right to terminate the agreement." (Aplt. Br. at 7.)

But that provision does not supply the lease with a "specific durational term," and that is all that matters under *Childs* and *Carolina Cable Network*.

The lease's duration remains indefinite for several reasons. As an initial matter, the lessor's right to cancel depends on erection of buildings, which may not occur. The lessor would have to

choose to build, and obtain building permits, before a right to cancel would arise. Separately, the lessor's ability to exercise its choice is conditioned upon approval by third parties. (R. pp. 262-264, Secs. 2.a, 3.c.i, 3.e. (requiring Navy approval); R. pp. 276-277, Sec. 2(F) (requiring South Carolina Battleground Preservation Trust, Inc.'s approval).)

There is nothing definite about these conditional future events.

Third, to the extent that Adams asserts that the easements prevent the County from removing Adams's billboard, it is mistaken. Under the easements, the County can demolish and remove non-historical structures (e.g., its building and parking lot) (R. pp. 263-264, ¶ c.i.-c.ii.), and expressly retains "all rights accruing from its ownership of the Protected Property" not expressly prohibited by the easements or inconsistent with their stated purpose of preserving the historical and cultural significance of the Port Royal Island Battlefield site. (R. p. 279 (Section 5. Reserved Rights).) There is no argument that Adams's billboard has any historical or cultural significance. Thus, the County is not prohibited from removing Adams's billboard.

Adams's attempts to evade *Carolina Cable Network* fail. Thus, this Court should affirm.

II. Adams's post-summary judgment arguments are waived and, in any event, fail as a matter of law.

Adams waived its attempt to distinguish *Carolina Cable Network* by arguing *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 386, 503 S.E.2d 184 (Ct. App. 1998), for the first time in its Rule 59(e) motion. Even if its argument is considered, the argument fails.

Adams also waived its argument that the County's April 2021 "attempted termination" of the lease was invalid because Adams first raised this argument in its initial appeal brief. In any event, this argument fails because the lease provision giving Adams an indefinite right of renewal made the lease terminable at will upon reasonable notice, and because the County was not required to explain the grounds for termination.

A. Adams waived its argument based on *Prestwick Golf*—which is inapposite because it did not involve a perpetual contract—by first raising it in a Rule 59(e) motion.

Adams's attempt to distinguish *Carolina Cable Network* is waived.

It is the appellant's burden to show from the record that an issue has been preserved. *Solley v. Navy Federal Credit Union, Inc.*, 397 S.C. 192, 213-14, 723 S.E.2d 597, 608 (Ct. App. 2012).

An argument raised for the first time in a Rule 59(e), SCRCP motion for reconsideration is waived. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (explaining that court of appeals should have refused to entertain a theory that was improperly raised for the first time in a Rule 59(e) motion).

Adams has known for years that the County's argument concerning the lease is based on *Carolina Cable Network*. The County cited the case in its December 1, 2021 letter to Adams's general counsel when it returned Adams's rent check and refuted Adams's claim to have a perpetual right of renewal. (R. p. 141.) In 2022, the County cited *Carolina Cable Network* in its original complaint (R. p. 31 ¶ 53) and its amended complaint (R. p. 49 ¶ 58). And the County cited the case on March 18, 2025, in its Notice of Motion and Motion for Summary Judgment. (R. p. 305.).

But Adams did not mention, much less try to distinguish, *Carolina Cable Network* in its summary judgment motion, or in its 47-page summary judgment brief, or during the June 10, 2025, summary judgment hearing.

Instead, Adams waited until its Rule 59(e), SCRCP motion to argue about *Carolina Cable Network,* or to raise the cases of *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 386, 503 S.E.2d 184 (Ct. App. 1998) and *Jespersen v. Minnesota Min. and Mfg. Co.*, 681 N.E.2d 67 (Ill. App. 1997). Thus, the argument is waived. *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482.

In any event, neither case helps Adams.

Prestwick is simply inapposite. It concerned an agreement for a tee-time schedule that gave members of a golf club (as opposed to non-members) exclusive tee-times, but provided that the schedule would end, and the course would be for members only, once the club reached 550 members. 331 S.C. at 388, 503 S.E.2d at 185-186.

This Court recited *Carolina Cable Network*'s holding that "a unilateral perpetual right of renewal in a contract is not valid," but held the rule was not at issue on its facts because "the schedule did not expire and never needed renewing." *Id.* at 391, 503 S.E.3d at 187. It also held that the tee-time schedule had a specific duration because it would "terminate upon the occurrence of a specific" event—the club reaching 550 members—and would thus not be deemed "perpetual in duration." 331 S.C. at 391-92, 503 S.E.2d at 187 (citing *Jespersen v. Minn. Mining & Mfg. Co.*,681 N.E.2d 67, 70 (1997)). This Court explained, "[j]ust because the rights of the parties were keyed to membership levels rather than calendar time does not mean that the schedule should be considered an indefinite period." *Id.* at 392, 503 S.E.2d at 187-88.

The question is whether an agreement provides for a specific duration. The *Prestwick* agreement stated that it would end "upon the occurrence of a specific event," so this Court held that it *did* provide a specific duration. *Prestwick*, 331 S.C. at 391-92, 503 S.E.2d at 187.

Contrary to Adams's statement, this Court did not hold that "if a right of termination is contingent on an objective event, rather than a specific calendar date of the term expiration" then the contract is "not perpetually renewable and is not terminable at will." (Aplt. Br. at 11.) Adams is wrong because no party in *Prestwick* had a right to terminate the tee-time schedule, and renewal of the agreement was not at issue—the schedule would simply terminate when the membership threshold was met. Thus, the agreement provided for a specific duration.

Here, there is no provision—like the 550-membership provision—that causes the lease to end "upon the occurrence of a specific event." *Prestwick*, 331 S.C. at 391-92, 503 S.E.2d at 187. Thus, the lease does not provide for a specific duration, and *Prestwick* is inapposite.

Nor does *Jespersen v. Minnesota Min. and Mfg. Co.*, 681 N.E.2d 67 (Ill. App. 1997) help Adams. As an initial matter, it is a non-binding case from Illinois. And *Jespersen* is not about an indefinite right to renew an agreement either. In any event, it helps the County, not Adams.

There, a sales distribution agreement between a distributor (Jespersen) and a manufacturer lacked an expiration date and contained provisions allowing the distributor to terminate the agreement. *Jespersen*, 681 N.E.2d at 70-71. The agreement allowed the manufacturer to terminate if Jespersen breached the agreement. *Id.* at 70. It also allowed Jespersen to terminate the agreement, for any reason, upon thirty days written notice to the manufacturer. *Id.* at 70-71.

The court held that the agreement was "terminable at will" for two reasons. *Id.*

First, it held that a durational term could not be discerned from the agreement because, "[i]nasmuch as the occurrence of a termination-triggering event . . . was within the complete control of Jespersen, it is impossible to determine whether or when Jespersen would institute a termination-triggering event." *Id.* at 70.

Second, *Jesperson* held that "where one party has the option or decision to either comply with the contract or not, the duration of the contract is indefinite and terminable at will." *Id.* at 70-71. Since one party (Jespersen) "had the option to either comply with the sales distribution agreement or not . . . the sales distribution agreement would remain in effect only as long as Jespersen decided to comply with the agreement." *Id.* at 71. Because it was impossible to ascertain "whether or when" this would happen, "the agreement was indefinite in duration and terminable at will." *Id.*

Jespersen applies against Adams, to the extent it applies at all. A durational term cannot be discerned from the lease because there is no "termination-triggering event" (i.e., an event that terminates the agreement when it occurs) in the lease. It cannot be ascertained whether or when any event that would allow for termination or cancellation might occur. Further, the agreement is terminable at will because Adams "had the option to either comply with [the lease] or not," *Jespersen*, 681 N.E.2d at 70-71, in deciding whether to renew.

This rule does not depend on "only one party" being able to terminate the agreement, as Adams contends. (Aplt. Br. at 12.) The court does not use the word "only." In any event, if *both* parties in *Jespersen* could choose to terminate the contract, that would make the contract terminable at will. Either way, the indefinite duration makes the contract terminable at will.

This is additional persuasive authority for sustaining the circuit court's judgment. *Sims v. Amisub of South Carolina, Inc.*, 408 S.C. 202, 214, 758 S.E.2d 187, 194 (Ct. App. 2014) (permitting respondent to raise any additional ground for affirming lower court's judgment, regardless of having been raised or ruled upon below).

Adams's (waived) attempt to distinguish *Carolina Cable Network* fails.

B. Adams's "attempted termination" argument is waived because it is new on appeal; it also fails as a matter of law.

Adams argues (Aplt. Br. at 6-7) that the County did not timely "attempt to terminate" the lease. This argument is likewise waived.

An argument raised for the first time on appeal is waived. *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733; *Herron*, 395 S.C. at 465, 719 S.E.2d at 642. Adams did not make this argument to the trial court, so it is waived. *Id.*; *Solley*, 397 S.C. at 213-14, 723 S.E.2d at 608.

It is also wrong because the County gave Adams written notice on April 1, 2021, that the lease would terminate in six months, at the end of the then-current lease period. (R. p. 230.) The

lease term that gives Adams an indefinite right of renewal is what makes the lease of indefinite (perpetual) duration, and thus terminable at will by either party per *Carolina Cable Network*, 316 S.C. at 102, 447 S.E.2d at 201. Adams identifies no legal principle or lease provision that would require the County to identify the source of its authority to terminate the lease at will for that termination notice to become effective.

Adams's argument is both waived and meritless.

III. Adams's argument about the trial court's denial of the parties Rule 59(e) motions is unsupported by any authority and shows no ground for reversal.

Lastly, in two paragraphs, Adams asserts that the lower court erred in not considering its motion for reconsideration arguments.

First, Adams abandoned this argument by failing to support it with authority. An argument raised in a brief but not supported by citation to authority is deemed abandoned. *Equivest Financial, LLC*, 422 S.C. at 505, 812 S.E.2d at 441 ("Short conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

Adams's third assertion of error consists of conclusory statements such as "[t]his is clear error and warrants reversal." Adams cites no authority for the proposition that a court's failure to expressly state that it considered a party's arguments on motion for reconsideration warrants reversal. Thus, Adams abandoned this argument.

In any event, Adams's motion for reconsideration raised primarily new arguments. As discussed above, Adams filed a Rule 59(e), SCRCP motion in which it attempted for the first time to distinguish *Carolina Cable Network* and cited *Prestwick Golf*. But "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman*, 301 S.C. at 456, 392 S.E.2d at 482.

Adams identifies no preserved arguments that the trial court failed to consider.

Conclusion

The trial court properly applied this Court's on-point decision in *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 447 S.E.2d 199 (1994). This Court should affirm.

Respectfully submitted,

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