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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2023-001739

Richard Young and Jason Greene ..... Respondents,

v.

John W. Beasley a/k/a John W. Beasley, Sr.
and Lillian Beasley in their individual capacities
and as Trustees or as Successors in trust under
the Beasley Living Trust dated August 14, 2018,
and any amendments thereto.....Appellants.

RETURN TO PETITION FOR REHEARING, *EN BANC*

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ARGUMENT

The Petition for Rehearing should be denied. Respondents fail to establish how the Court overlooked or misapprehended their argument and therefore they cannot meet the requirements for a rehearing, which are firmly established in South Carolina's jurisprudence. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, Shahin Vafai & Robert Muckenfuss, Appellate Practice in South Carolina 309 (1999) (citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933))); *see also Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011). Instead, "[i]n order to prevail on a petition for rehearing, [the petitioning parties] must demonstrate the Court overlooked or misapprehended their argument." *Kennedy*, 349 S.C. 531, at 564 S.E.2d at 322 (citing Rule 221(a), SCACR); *see also Herron v. Century BMW*, 395 S.C. at 466, 719 S.E.2d at 643. For the reasons set forth below, Respondents' arguments for a rehearing are without merit, which warrants the denial of their Petition for Rehearing.

I. Respondents are Incorrect to Suggest the Court of Appeals' Opinion Failed to Take into Account the Entirety of the Second Settlement Agreement.

Respondents allege the Court of Appeals failed to consider the Second Settlement Agreement in its entirety. (Petition for Rehearing, p. 1.) This allegation is demonstrably false. The Court of Appeals expressly stated: "We find, based on the language of the Second Settlement Agreement and the Release, the clear intention of the parties was to release Appellants from all indebtedness." (Opinion, p. 5.) Immediately thereafter, the Court of Appeals cited to the case of *Abel v. S.C. Dep't of Health & Envtl. Control*, 419 S.C. 434, 441, 798 S.E.2d 445, 448 (Ct. App. 2017) (emphasis added), for the proposition that "[t]he parties' intention must be gathered from

the contents of the ***entire agreement*** and not from any particular clause thereof." It is abundantly evident the Court of Appeals recognized the necessity to consider the entire Second Settlement Agreement and did so.

Respondents next allege that because the Note and Mortgage do not appear in the Second Settlement Agreement demonstrates it was "simply as agreement by the Respondents to forgo their right to pursue collection of the Confession of Judgment. not [sic] an agreement to either release or satisfy the Mortgage on the Property." (Petition for Rehearing, p. 3.) However, the Court of Appeals expressly acknowledged, but declined to adopt Respondents' argument: "Although we acknowledge Respondents' argument that the documents only release Appellants from the Confession of Judgment, meaning they are still obligated by the Note and Mortgage, we find the documents here clearly evince an intent to fully release Appellants from all debt owed to Respondents through all remedies." (Opinion, p. 5.) The Court of Appeals' Opinion then relied upon Paragraphs 5 and 16 of the Settlement Agreement to support this finding (amongst two other paragraphs), which are the same exact paragraphs Respondents appear to suggest the Court of Appeals did not consider. Clearly, the Court of Appeals read and considered the entire Second Settlement Agreement, because it cited to four key paragraphs, which is twice as many as Respondents' own Petition for Rehearing cites in support of its argument here. Further, the Court of Appeals did not overlook or misapprehend Respondents' argument; instead, it expressly acknowledged their argument and rejected it.

In sum, Respondents' contentions that the Court of Appeals failed to consider the entirety of the Second Settlement Agreement or their argument as to the alleged absence of references to the Note and Mortgage are without merit and warrant denial of their Petition for Rehearing.

II. The Court of Appeals Considered the *Lever* Case and Addressed It, Even if Not by Explicit Reference.

Respondents previously asserted the alleged applicability of *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 647 S.E.2d 214 (2007), both in briefing and in oral argument. Indeed, large portions of Section III(B) of Respondents' Final Brief that analyze *Lever* were copied-and-pasted into Section II of their Petition for Rehearing. *Compare* Final Brief of Respondents, pp. 19–21, *with* Respondents' Petition for Rehearing, pp. 4–5. And the Court of Appeals heard Respondents' arguments as to this case in oral argument. However, the purpose of a petition for rehearing is ***not*** "to have the case tried in the appellate court a second time." *See Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322. But that is exactly what Respondents are attempting here. Their redundant—indeed, nearly verbatim—analysis of the *Lever* case is simply asking for a second bite at the apple.

The only difference between Respondents' argument previously and the one asserted now is that the Court of Appeals' Opinion allegedly "made no analysis of *Lever* and its ancestors which the Respondents [] suggest is in error." (Petition for Rehearing, p. 5.) This allegation places form over substance. The Court of Appeals is not required to cite a specific case explicitly in order to address basic principles. The thrust of Respondents' analysis of *Lever* is that a creditor may pursue two remedies, until the debt is satisfied. (Petition for Rehearing, p. 4.) Although the Court of Appeals' Opinion may not cite *Lever* explicitly, it still addressed Respondents' argument and this basic principle from *Lever* through the following: "We agree with Respondents' argument that they can pursue multiple remedies as long as there is only one satisfaction." (Opinion, pp. 5–6.) In other words, the Court of Appeals agreed with the *Lever* principle but concluded that multiple remedies could no longer be pursued in this case, because the one satisfaction had already occurred—after all, the Court of Appeals found "that Respondents chose to forego all remedies against Appellants in exchange for the $50,000 payment, thus precluding Respondents from

seeking any further repayment from Appellants." (Opinion, p. 6.) Given the Court of Appeals addressed the *Lever* opinion's holding, even if not by explicit citation, the Court of Appeals did not overlook or misapprehend anything. Thus, Respondents cannot meet their burden for rehearing.

III. The Court of Appeals Did Not Exceed the Scope of Its Review.

Respondents allege the Court of Appeals exceeded the scope of its review by not merely reversing the grant of summary judgment in favor of Respondents—which Respondents incorrectly contend was the limit of the Court of Appeals' power—but by also reversing the denial of summary judgment to Appellants. (Petition for Rehearing, pp. 6–14.) Notably, this issue has nothing to do with whether "the Court overlooked or misapprehended their argument." *Kennedy*, 349 S.C. 531, at 564 S.E.2d at 322. Thus, Respondents' Petition for Rehearing can be denied on this basis alone. Regardless, Respondents' resort to a procedural technicality misses the forest for the trees.

Here, Respondents have not disputed the proper standard of review in this appeal is a *de novo* review. And in a *de novo* review, "a reviewing court is free to decide questions of law with no particular deference to the trial court." *Pers. Care, Inc. v. Theos*, 426 S.C. 78, 85, 825 S.E.2d 281, 284 (Ct. App. 2019) (quoting *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357, 363 (Ct. App. 2012)); *see also Meier v. Burnsed*, 438 S.C. 362, 369, 882 S.E.2d 863, 866 (Ct. App. 2022), *aff'd as modified sub nom. Est. of Meier by & through Meier v. Burnsed*, 445 S.C. 288, 914 S.E.2d 130 (2025) ("When the parties file cross-motions for summary judgment, the issue becomes a question of law for the [c]ourt to decide de novo.") (quoting *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021)). Further, "[w]here cross motions for summary judgment are filed, the parties concede the issue before [the Court of Appeals] should be decided as a matter of law." *Quicken Loans, Inc. v. Wilson*, 425 S.C. 574, 579, 823 S.E.2d 697,

700 (Ct. App. 2019) (quoting *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)); *see also Meier*, 438 S.C. at 369, 882 S.E.2d at 866. Here, the Court of Appeals simply decided the issue of contract interpretation as a matter of law. And it was certainly not constrained to merely find ambiguity in the contract; it acted within its authority to find the contract was clear and the issue on appeal should be decided in favor of Appellants. *See, e.g.*, *Buchanan v. The S.C. Prop. & Cas. Ins. Guar. Ass'n*, 417 S.C. 562, 569, 790 S.E.2d 783, 786 (Ct. App. 2016), *aff'd as modified sub nom. Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 819 S.E.2d 124 (2018) (reversing the grant of summary judgment to one party in an appeal from cross motions for summary judgment that the statute at issue was unambiguous). Thus, whether the Court of Appeals only reverses the grant of summary judgment to Respondents, by finding the Second Settlement Agreement, must be interpreted in favor of Appellants, or in addition, reverses the denial of summary judgment to Appellants, the outcome remains the same: judgment should be rendered in favor of Appellants. Despite efforts to the contrary, Respondents cannot successfully overcome their significant burden of establishing that the Court overlooked or misapprehended their substantive arguments based on their attempt to draw the Court's attention away from substance and direct it to inconsequential procedural arguments. The Court did not exceed the scope of its review and acted fully within its authority to issue a definitive conclusion of law in its *de novo* review.

CONCLUSION

Respondents' Petition for Rehearing fails to satisfy the well-settled standard governing such relief. Respondents do not identify any argument the Court overlooked or misapprehended; instead, they merely reassert positions the Court expressly considered and rejected. Their disagreement with the Court's analysis does not provide a basis for rehearing. Because the Court

of Appeals carefully reviewed the record, applied the correct legal principles, and acted within its authority in resolving this matter as a question of law, there is no justification for disturbing its Opinion. Accordingly, the Petition for Rehearing should be denied.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that this Return to Petition for Hearing was served on Respondents via e-mail to Respondents' counsel of record on June 1, 2026, as follows:

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