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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
Court of Common Pleas, The Honorable William A. McKinnon

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Court of Appeals Case No. 2022-000580  
Unpublished Opinion No. 2025-UP-275, rehearing denied May 14, 2026

Supreme Court Case No. 2026-001324

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The Grapevine of Riverwalk, Inc..... Respondent,  
v.

Riverwalk River District Building 6, LLC, Mark Mather,  
GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and  
Assured Administration, LLC,..... Petitioners.

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**PETITION FOR A WRIT OF CERTIORARI**

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June 22, 2026

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## CERTIFICATION OF COUNSEL

Pursuant to Rule 242(d)(1) of the South Carolina Appellate Court Rules, the undersigned counsel for Petitioners certifies that the Court of Appeals filed its Opinion No. 2025-UP-275 in this matter on July 30, 2025 (the “Opinion”), affirming in part, reversing in part, and remanding the circuit court’s orders; the Petitioners timely petitioned for rehearing, which petition was finally ruled on by the Court of Appeals on May 14, 2026.

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## QUESTIONS PRESENTED FOR REVIEW

- I. Did the Court of Appeals err to find that Riverwalk’s contractual entitlement to a *non-jury* trial is a substantial right such that an interlocutory order affecting it must be immediately appealed pursuant to South Carolina Code § 14-3-330(2)?
  
- II. Did the Court of Appeals commit error of law on issue preservation as to the breach of contract issues, including by misconstruing Rule 50, SCRCP, and thereby fail to correct clear, preserved errors of law raised to and ruled upon by the trial court?
  
- III. Was Riverwalk entitled to judgment as a matter of law on Grapevine’s negligent misrepresentation claim when the Lease contains a textbook merger clause that unambiguously defeats the essential element of “reasonable reliance” and the trial court maintained jurisdiction to decide post-trial motions under Rule 54(b), SCRCP?

Petitioners Riverwalk River District Building 6, LLC, Mark Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and Assured Administration, LLC (“Riverwalk”) respectfully ask this Court to issue a writ of certiorari to review certain errors of law within the Court of Appeals’ final decision in this case.

There are significant reasons for this Court to grant a writ of certiorari to review the Opinion, which is under-woven by legally erroneous decisions on issue preservation, and which misconstrues a jurisdictional statute directly involving the question of what constitutes a substantial constitutional right. The Opinion does not merely misapply preservation rules – it transforms them into forfeiture traps to bar review of legal errors considered and decided by the trial court. Issue preservation is a minefield through which every trial attorney does his utmost to pass unscathed – and it is made all the more perilous without clear guidance from this Court. Here, the Opinion’s preservation rulings contradict this Court’s clear precedent, the statutory parameters on appellate jurisdiction, and the rules of procedure.

### STATEMENT OF THE CASE

This is a commercial lease dispute between sophisticated parties.<sup>1</sup> Petitioner Riverwalk owns a mixed-use building, which has commercial spaces on the ground floor and residential spaces above. Grapevine is a wine and craft beer shop, which leased from Riverwalk one of the commercial spaces.

There is a tight, unambiguous Commercial Lease Agreement which was heavily negotiated by both parties and ultimately signed (and initialed on every page) by Grapevine. (R. 1247-1297). Meaning, in addition to South Carolina law, the Lease is the law that the

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<sup>1</sup> The landlord under the Lease is Petitioner Riverwalk District Building 6 LLC (“Riverwalk”). The tenant under the Lease is Respondent The Grapevine of Riverwalk, Inc. (“Grapevine”).

parties chose to govern themselves.

At issue in this Petition are: (1) the Lease's clear and unmistakable all-caps jury trial waiver, (2) the Lease's option to purchase provision, (3) the Lease's textbook common-area terms, and (4) the Lease's clear merger clause. Also at issue in this Petition are the trial court's unequivocal errors of law in construing these provisions, and the Court of Appeals' affirmance of that error based – not on merit – but on mis-wielded preservation doctrines.

### **1. The Lease's Jury Trial Waiver**

This case was tried before a jury, which was error from the outset. The Lease states: THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER OR RELATING TO THIS LEASE. (R. 1269).

Pursuant to Rule 12(f) SCRPC and the Lease's all-caps language, Riverwalk moved to strike Grapevine's jury demand from its pleading after Grapevine filed its Second Amended Complaint. The amended complaint brought claims against Riverwalk for specific performance, breach of contract, breach of contract accompanied by fraud, amalgamation, fraudulent misrepresentation, unfair trade practices, tortious interference with contract, civil conspiracy, and negligent misrepresentation. (R. 133; 158).

Riverwalk's Motion to Strike was heard in conjunction with motions for summary judgment and ruled on by the circuit court in a brief order, which held: "*Defendants' Motion to Strike the Jury Demand and to Transfer Case to Non-Jury Roster is DENIED.*" (R. 1). Because Riverwalk did not take an immediate appeal from this denial of its Rule 12 Motion to Strike, the Court of Appeals found that it had failed to preserve the question for appellate review. However, as discussed below, the order denying the motion to strike did not affect a

substantial right in a manner requiring immediate appeal. *See* S.C. Code § 14-3-330(2). Indeed, the denial of a Rule 12 motion is almost never immediately appealable, and here the only party which could have claimed to have lost a substantial constitutional right would have been Grapevine, and only if Riverwalk's motion to strike had been *granted*. Riverwalk's entitlement to a non-jury trial is contractual, not substantial and constitutional, and the denial of a Rule 12 motion based on contract construction is not immediately appealable.

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Like the question of whether Grapevine waived its right to a jury trial, the lynchpin questions in this case each depend on contract construction.

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## **2. The Lease's Option to Purchase**

Grapevine's chief complaint against Riverwalk is that Riverwalk allegedly breached the Lease when it failed to convey Grapevine's space to Grapevine, pursuant to an "Option to Purchase" clause in the Lease, and notwithstanding that Grapevine never fulfilled the contractual requirements to transform the option into an enforceable purchase contract.

Paragraph 33 of the Lease contains the option to purchase in favor of Grapevine, to be exercised during the third lease year. (R. 1262). Paragraph 33 incorporates by reference a "Purchase and Sale Agreement," attached as Exhibit G to the Lease; this purchase agreement was to be executed when the option was exercised, and it was to govern the terms of purchase. (*Id.*). The "Purchase and Sale Agreement" attached to the Lease contains blank spaces to be filled out by the parties when the contract to purchase was made, and it requires a \$25,000 "deposit due upon execution of this Agreement," which was to be held in escrow. (R. 1281-97). It is undisputed that Grapevine neither executed the purchase contract nor

tendered the required monetary deposit. (R. 777:16–21; 779:7–15; 779–83). The Court of Appeals correctly found that Grapevine failed to transform its option into a purchase contract—agreeing with Riverwalk on the merits of this question—but it nonetheless upheld the jury verdict for breach of contract because of issue preservation.

### 3. The Lease’s Common Area Provisions

Grapevine also claims that Riverwalk wrongly refused to permit Grapevine to outright occupy the community sidewalks with tables and chairs for its wine and beer sales, and that Riverwalk wrongly refused to convey such right as part of its purchase option.

The space leased by Grapevine is one of many commercial units on the bottom floor of a mixed-use building. Above the commercial units are several floors of residential condominiums. A wide sidewalk runs around the building’s perimeter, providing access to the storefronts and to the residences. In a pictorial nutshell:



(R. 1320).

The Lease identifies the sidewalks and patios surrounding the building as “Common Areas.” (R. 1253 ¶ 12). The Lease states that Grapevine “shall have the *non-exclusive* right to use and enjoy, in common with Landlord, other tenants and their customers, employees and invitees, the Common Areas . . .”. (R. 1256 ¶ 15) (emphasis added). The Lease defines

Grapevine’s “Demised Premises” as “approximately 1,490 square feet . . . and *being located within the Building.*” (R. 1247 ¶ 1) (emphasis added).

In another pictorial nutshell, Grapevine claimed Riverwalk breached the Lease because it objected to Grapevine’s tables and chairs on the sidewalks, as well as its service of wine and beer on common areas that are owned and insured by Riverwalk:



(See R. pp. 1384-1386). Grapevine asserted that the Lease required Riverwalk to convey to Grapevine the right to exclusive use of the sidewalks, pursuant to the option to purchase. The jury awarded damages to Grapevine for Riverwalk’s alleged breach of the common area provisions, a decision the Court of Appeals affirmed for issue preservation reasons, only.

#### **4. The Lease’s Merger Clause**

In addition to breach of contract claims, Grapevine also sued a bevvvy of additional defendants for fraud and misrepresentation (*inter alia*). (R. 133). The claim that ultimately went to the jury was Grapevine’s cause of action for negligent misrepresentation— but only as to a single representation: that defendants allegedly misrepresented that Riverwalk’s bank required a two-year lease. The claim was based on statements purportedly made to Grapevine during lease negotiations.

The Lease contains a textbook “Merger Clause” which states:

**43. Entire Agreement.** This Lease contains the entire agreement between the parties hereto and cannot be altered or modified in any way except in writing signed by the parties hereto. All prior representations, discussions, covenants, or warranties of the parties with respect to the Demised Premises or the subject matter hereof are merged herein and superseded hereby.

(R. 1265).

### IMPORTANT PROCEDURAL HISTORY

The procedural history matters to this Petition because the Court of Appeals erred to find that Riverwalk failed to preserve several issues, in addition to the jury trial waiver question discussed above.

#### A. Trial

The matter came for a jury trial before the Honorable William McKinnon. Pertinent to this Petition, Riverwalk moved, again, at the beginning of trial for a non-jury trial. The court denied this motion. (R. 569; 573).

Also at the outset of trial, in response to arguments by Riverwalk, the trial court held that the Common Area provisions of the Lease are ambiguous as to whether Grapevine is entitled to put its chairs and tables in the community sidewalks. (R. 551 - 553:13; 605:13-14). Ambiguity is a question of law, and this early contract-construction ruling drove the common area claim to the jury. *See N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371 (2015).

At the close of Grapevine's evidence, Riverwalk Petitioners moved for directed verdict as to all causes of action. (R. 942 -1009). The trial court decided the breach of contract claims (*i.e.* option and common areas) were for the jury, but it granted directed verdict in favor of Petitioners on Grapevine's causes of action for breach of contract accompanied by fraudulent act, unfair trade practices, tortious interference with contract, amalgamation, and portions of the negligent misrepresentation claims. As to the impropriety of the tort claims, the trial court stated, "They negotiated a commercial lease . . . [Grapevine] didn't get what

[it] wanted. That doesn't mean it is a misrepresentation." (R. 961:6-8). After Petitioners rested their case, Grapevine moved for directed verdict on specific performance; the trial court deferred hearing or ruling on the motion until after the jury verdict. (R. 1101:19-20).

Ultimately, the only causes of action that went to the jury were: (1) Grapevine's claim of breach of contract by Riverwalk as to the Lease's option to purchase; (2) Grapevine's claim of breach of contract by Riverwalk as to the Lease's common space/patio provision; (3) negligent misrepresentation as to all defendants—but only as to a single representation: that defendants misrepresented the bank's two-year lease requirement; and (4) civil conspiracy as to defendants Riverwalk and GRH Development. (R. 1114:15–19; 1116:22–25; R. 19).

The jury returned a verdict in favor of Grapevine on all counts except civil conspiracy. It awarded damages against Riverwalk for breach of contract in the amounts of \$221,700 (Question 1, option to purchase) and \$141,124 (Question 2, common area use). It awarded \$96,800 in damages against all defendants for negligent misrepresentation. (R. 19).

## **B. After the Jury Verdict**

Importantly to this Petition, the trial judge had previously deferred hearing on Grapevine's claim for specific performance until after the jury verdict. (R. 1101:19-20). Thus, even after the jury verdict was rendered, not all claims in the action had been adjudicated. *See* Rule 54(b), SCRC.P.

After the jury was excused, the trial judge referenced the undecided specific performance claim, stating:

**THE COURT:** Let's get back on the record. Counsel, my inclination is to give y'all ten days for post-trial motions and that would include, if the Plaintiff wants to make the motion for specific performance. . . .  
*Let's just give y'all two full weeks.* We will say, post-trial motions by, that would be Friday, the 10th.

All counsel consented to this timeline.

Seven days after the jury was excused, Grapevine filed “PLAINTIFF’S MOTION FOR DIRECTED VERDICT / MOTION FOR SPECIFIC PERFORMANCE.” (R. 232).

Fourteen days after the jury was excused, Riverwalk filed post-trial motions, including for judgment notwithstanding the verdict. The Court of Appeals wrongly ruled that Riverwalk failed to preserve certain arguments because of the 10-day time limit for post-judgment motions, notwithstanding that the trial was not over, all claims in the action were not fully adjudicated, and Grapevine had a directed verdict motion pending. (Op. at 14).

Forty-six days after the jury was excused, the trial judge held a hearing on Grapevine’s directed verdict motion for specific performance and other post-trial motions. (R. 1188).

Four months after the jury was excused, the trial judge its order granting Grapevine’s “Motion for Directed Verdict/Motion for Specific Performance,” and granting Grapevine attorney fees and costs. (R. 8). The trial court ordered Riverwalk to convey the premises to Grapevine and ordered that Riverwalk could not restrict Grapevine’s “right to use” the Common Areas. Riverwalk filed a Rule 59 Motion as to this order within ten days. (R. 313).

**C. Appeal, Round 1**

Mindful of preservation pitfalls, Riverwalk served and filed a Notice of Appeal as to the trial court’s “Order Regarding Post-Trial Motions.” The Court of Appeals remitted the case, *sua sponte*, pursuant to *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986), returning jurisdiction to the trial court for consideration of Riverwalk’s Rule 59 Motion. (R. 15-17).

**D. Trial Court, Round 2**

Back in the circuit court, the trial judge issued its “Order on Rule 59 Motion and Final Judgment.” (R. 21). In this order, the court ordered Riverwalk to create a horizontal property

regime for its mixed-use building, and it dictated requirements for the master deed that was to govern numerous residential and commercial units not party to the action. (*Id.*).

Petitioners timely filed and served their Notice of Appeal on April 29, 2022. (R. 1521).

Meanwhile, Petitioner Riverwalk recorded a master deed with York County. Riverwalk then moved the trial court to Stay the enforcement of judgment; Grapevine opposed the motion and filed a motion to compel specific performance. (R. 321-477). On August 15, 2022, the trial court filed an order granting the Motion to Stay, subject to (*inter alia*) the requirement that Riverwalk post a bond in the amount of \$950,000 and also subject to the requirement that Riverwalk draft and record an amended master deed for its horizontal property regime that was to incorporate input from an attorney appointed by Grapevine. (R. 31). The court dictated that the amended master deed could “not [be] unduly restrictive of [Grapevine’s] rights, including the right to use the Common Area adjacent to its space, as established by the judgment in this case.” The court further ordered that effective August 1, 2022, Grapevine would have no further obligation to pay rent or any other charge.

#### **E. Appeal, Round 2**

After briefing and oral argument, the Court of Appeals issued its Opinion. It found that the question of jury trial waiver was not preserved because Riverwalk did not immediately appeal the denial of its Rule 12 Motion. It held that Riverwalk failed to preserve the questions of law pertaining to contract construction as to the Option and Common Areas because Riverwalk did not renew its Rule 50 motion at the close of all evidence; it therefore affirmed the jury verdict on breach of contract. It ruled that because Grapevine never properly exercised its Option to Purchase in accordance with the requirements of the Lease, there was no contract to specifically enforce; it therefore reversed the grant of specific

performance. As to negligent misrepresentation, the Opinion held that Petitioners did preserve the argument that “no evidence showed Grapevine relied on the representation,” but it nonetheless held that the issue was not preserved for appellate review because Petitioners’ JNOV was untimely because “the trial court had no discretion to extend this time to fourteen days.” Lastly, the Opinion reversed and remanded the award of attorney fees.

The parties filed Cross-Petitions for Rehearing, which the Court of Appeals denied.

### **SPECIAL CONSIDERATIONS FOR GRANTING A WRIT OF CERTIORARI**

This Petition directly involves the question of whether an entitlement to a non-jury trial is a substantial – or constitutional – right triggering immediate appeal obligations under S.C. Code § 14-3-330(2). Significantly, this Court’s precedent holds that a non-jury trial is not a substantial right, and the Opinion is therefore in conflict with this Court’s prior decisions. *e.g. Cobb v. South Carolina Dept. of Transportation*, 365 S.C. 360, 618 S.E.2d 299 (2005); *see also* Rule 242(b)(3) and (b)(4), SCACR (considerations in granting a writ of certiorari include “where substantial constitutional issues are directly involved” and where the Opinion “is in conflict with a prior decision of the Supreme Court.”).

Moreover, the Opinion’s preservation rulings are erroneous as a matter of law and result in injustice. They are contrary to the rules of procedure, statutory law, and this Court’s precedent. The practical consequence is serious: a party may raise a pure question of law, obtain an adverse ruling, proceed through trial, and still be told on appeal that the issue *vanished* unless counsel repeated the same legal argument, ritualistically, at precisely the “right” procedural moment. The United States Supreme Court has recently clarified that neither the rules nor preservation jurisprudence require that result. *See Dupree v. Younger*, 143 S.Ct. 1382 (2023) (discussed *infra*).

Is issue preservation a “special and important” reason to grant a writ of certiorari? **In this case, yes.** In addition to the substantial right question involved in the jury trial waiver preservation issue, the issue preservation errors here matter, jurisdictionally, and they are novel. For example, this Court has never decided when the post-trial motion “clock” starts ticking, if there are unadjudicated claims remaining after trial, as was the case with Grapevine’s cause of action for specific performance.<sup>2</sup> Moreover, as discussed in detail below, the United States Supreme Court has recently explained that directed verdict motions are required only to preserve factual issues—whereas legal issues (such as the contract construction questions pertaining to the Lease’s common area and option provisions) are preserved for appellate review as soon as they are raised and ruled upon by the lower court. *See* Rule 242(b)(1), SCACR (considerations in granting a writ of certiorari include where “there are novel questions of law.”).

Issue preservation is already a gauntlet – but to have inconsistent and unpredictable appellate court decisions on preservation puts trial attorneys in an impossible situation and leaves litigants without justice. In this case, for example, the Court of Appeals meticulously reversed the grant of specific performance, finding that Grapevine failed to exercise its option to purchase in accordance with the Lease’s clear requirements. And yet, the Opinion left intact the jury’s verdict on the same breach of contract claim—not because of the merits (which were lacking), but because of preservation.<sup>3</sup> As discussed below, the Opinion was

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<sup>2</sup> The Court of Appeals tackled the question in the case of *Holroyd v. Requa*, holding held that post-trial motions were not required to be filed until after the trial court had “ruled on all the claims presented.” 361 S.C. 43, 52-54, 603 S.E.2d 417 (Ct. App. 2004), *citing* Rule 54, SCRCP. The Opinion here reaches the opposite conclusion, finding Riverwalk’s post-trial motions, filed before adjudication of Grapevine’s specific performance claim, were unpreserved.

<sup>3</sup> That internal inconsistency is itself a compelling reason for review. The Opinion recognizes that Grapevine failed to satisfy the Lease’s option requirements yet leaves standing a damages verdict premised

wrong that the issue was unpreserved, and the lack of consistency and predictability leaves attorneys between a rock and a hard place.

**Issue preservation deserves the ink that jurists have spilled on it.** It is worthy of this Court's time and the attention of attorneys in this State. This Court should grant a writ of certiorari in this case to clarify the law on the unique preservation questions at issue in the Opinion - which are questions of law, statutory construction, and the rules of procedure.

### ARGUMENT

The Opinion's preservation decisions, woven throughout its sixteen-pages, are legally erroneous, result in injustice, and are an improperly harsh exercise of discretion.

The Opinion errs in three key ways. First, it treats Riverwalk's contractual entitlement to a non-jury trial as a substantial right requiring immediate appeal, in contrast to the jurisdictional statute. S.C. Code § 14-3-330. Second, it wrongly employs preservation doctrines to evade reversal of errors of law – particularly as to the Lease's option to purchase and its unambiguous common area provisions – that were raised to and ruled upon by the trial court. *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285-286 (2012) (because appellant had raised issue in its Complaint, at trial, and within a Rule 59 Motion on which the master ruled, “[o]ur core preservation requirements therefore have been met, and there is no procedural bar to us considering this question.”). Third, it treats Riverwalk's post-trial motion as untimely even though judgment had not been entered and the trial court had maintained jurisdiction to rule on post-trial motions, as it was permitted to do under Rules 54(b) and 59, SCRCP.

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on the opposite conclusion. Certiorari is necessary to prevent preservation doctrine from producing a judgment no court has found legally sound.

Importantly, Petitioners were not required by the rules to bring *any* post-trial motions, whatsoever, to preserve issues that had already been raised to and ruled upon by the circuit court. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772 (2004) (“our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”) (emphasis in original).

Additionally, this case had an unusual timeline, because final judgment here was not solely rendered by the jury. Because the gravamen of the case was for specific performance, final judgment in this action was not entered until several months after the jury was dismissed, subsequent to a series of successive orders filed in response to Grapevine’s directed verdict trial motions for specific performance. (R. 8, 21, 26). The Court of Appeals’ decision in *Holroyd v. Requa* examined a similar procedural timeline, in which appellant did not file post-trial motions until twenty-six days after the jury rendered its verdict; however, the parties (as here) had reserved one claim for post-trial adjudication by the court. 361 S.C. 43, 603 S.E.2d 417 (Ct. App. 2004). *Holroyd* found that post-trial motions were not required to be filed until after the trial court had “ruled on all the claims presented.” *Id.* at 52-54.

Here, this Court should grant a writ of certiorari to clarify that, until judgment on all claims is entered, the clock does not start ticking on the trial court’s jurisdiction to consider questions of law that control a case – either in response to arguments of counsel or on its own initiative. *See* Rule 59(d), SCRCP (“Not later than [20] days after entry of judgment, the court

of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party . . .”) (emphasis added). This is particularly true with regards to questions that had already been raised to and ruled upon by the lower court – **which are reviewable regardless of whether a post-trial motion was made** pursuant to S.C. Code § 14-3-330(1) (“provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.”).

**I. Immediate appeal is a statutorily restricted privilege, which was not available here.<sup>4</sup>**

The Opinion incorrectly finds that Petitioners did not preserve their Issue I, which argued that the circuit court erred by denying Riverwalk’s motion to strike Grapevine’s jury trial demand because the Lease contained a clear and conspicuous jury trial waiver. The erroneous basis for the Opinion’s decision is its perception that the denial of the motion to strike deprived Petitioners of a substantial right, therefore requiring immediate appeal. But the denial of the motion did not result in the deprivation of *any* party’s fundamental, constitutional right to a trial by jury. Instead, the trial court’s erroneous ruling as to this legal issue failed to enforce Riverwalk’s contractual right to a nonjury trial under the Lease. That distinction matters. The constitutional right protected by the immediate appeal doctrine is the right to a jury trial – not the asserted right to avoid a private contract. Treating the two as equivalent improperly expands interlocutory jurisdiction and undermines the policy against piecemeal appeals.

Appellate jurisdiction is governed by statute. South Carolina Code § 14-3-330 applies

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<sup>4</sup> This argument requests a grant of certiorari as to Section I of the Opinion.

to an appellate court's jurisdiction to review interlocutory orders. Intended to avoid piecemeal litigation, § 14-3-330(2) confines immediate direct appeal of an order "affecting a substantial right" to three exceptional circumstances, *none of which exist here* for the orders denying Riverwalk's motion to strike Grapevine's jury trial request:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: . . .

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action [not applicable here], (b) grants or refuses a new trial [not applicable here] or (c) strikes out an answer or any part thereof or any pleading in any action [not applicable here].

**In other words, under the plain language of S.C. Code § 14-3-330(2), immediate, direct appeal is a limited statutory privilege confined to orders violating a party's constitutional right to trial by jury.** Here, the lower court's erroneous orders denied Riverwalk's contractual entitlement to enforce the Lease's waiver provision—they did not violate any party's substantial rights.

The Court of Appeals wrongly believed that all "mode of trial" decisions must be immediately appealed. But not all "mode of trial" decisions involve a substantial right, and therefore not all mode of trial orders are immediately appealable. This Court repeatedly has held that immediate appeal is reserved for cases which "involve review of denials of trial by jury and are based on the public policy consideration of advancing the constitutional mandate to preserve the right to trial by jury inviolate." *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 78, 533 S.E.2d 575 (2000) (emphasis added) (acknowledging bifurcated trial as a "mode of trial" but declining to find that the issue was immediately appealable). Moreover, appellate courts must balance whether an immediate appeal is critical to protect an essential right against the strong policy of "avoiding piecemeal litigation." *Breland v. Love Chevrolet*

*Olds, Inc.*, 339 S.C. 89, 93-95, 529 S.E.2d 11 (2000) (holding that although the right to a particular venue is a “substantial right,” nonetheless “[r]equiring a defendant to wait until after trial to appeal the issue of proper venue is the most appropriate course to take where any error in that decision will not prejudice the defendant anymore than other interlocutory orders which, if in error, would require a new trial.”). Most “mode of trial” decisions, including the trial court’s denial of Riverwalk’s motion to strike Grapevine’s jury demand, do not meet this Court’s stringent test.

In *Cobb*, this Court dismissed the D.O.T.’s immediate appeal of an order denying its motion to transfer the case to the nonjury docket. 365 S.C. 360, 618 S.E.2d 299 (2005) (“[W]e turn to the issue whether such an order [denying transfer to the non-jury roster] is immediately appealable. If an order *deprives* a party of a mode of trial *to which that party is entitled as a matter of right*, the order is immediately appealable and failure to do so forever bars appellate review.”) (emphasis added). *Cobb* holds that an order is immediately appealable only if it deprives a party of a mode of trial to which that party is entitled as a matter of substantial right.<sup>5</sup> *Id.* at 365, 618 S.E.2d at 301-02.

The circumstances in this appeal are analogous to those in *Cobb*. Riverwalk does not have a substantial right to a non-jury trial, which must be preserved “inviolable.” The trial court’s order, essentially misconstruing the unambiguous Lease by denying Riverwalk a non-

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<sup>5</sup> A swift, lucid discussion of the distinction between an immediately appealable mode of trial decision, and one that must wait for appeal until final judgment, may also be found in *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co., Inc.*, 292 S.C. 575, (Ct. App. 1987), cited with approval by *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997). In *Rowe*, the parties failed to demand trial by jury within 10 days after service of the last pleading, as required by Rule 38(b), SCRCP. *Id.* at 576. The trial court therefore ruled that the parties had waived the substantive right to trial by jury. *Id.* The parties subsequently moved the trial court to transfer the case to the jury calendar, pursuant to Rule 39(b), SCRCP. *Id.* When the trial court denied this motion, the parties attempted an immediate appeal of the order denying transfer – arguing that their substantial right to a jury trial had been abridged. *Id.* But the Court of Appeals dismissed the appeal “as premature,” finding that because they were not entitled to a jury trial as a matter of right (having waived the right), an immediate appeal did not lie. *Id.*

jury trial, did not deprive Riverwalk of a constitutional right to a trial by jury. Pursuant to *Cobb*, if Riverwalk had immediately appealed the denial of its Rule 12 Motion to Strike Grapevine's jury demand, then the immediate appeal would have been dismissed; since it had preserved the issue by making the motion and receiving a ruling from the trial court, it was only proper for Riverwalk to wait for final judgment to appeal. See *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (order denying motion to dismiss for lack of personal jurisdiction was not directly appealable); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 402 S.E.2d 482 (1991) (avoidance of trial is not a substantial right entitling immediate appeal).

In short, the interlocutory orders concerning Grapevine's jury-trial waiver turned on contract construction, not on the deprivation of a fundamental right. They therefore fall under S.C. Code § 14-3-330(1), which permits review of intermediate orders after final judgment, rather than § 14-3-330(2), which is reserved for orders affecting substantial rights in the limited circumstances described by the statute.

This Court should grant a writ of certiorari to correct the Opinion. Riverwalk preserved the question of whether the lower court erred by not enforcing the Lease's clear jury trial waiver. The Lease is clear as a matter of law, and the circuit court did not have discretion to ignore it. "Whether a party is entitled to a jury trial is a question of law." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). Because Grapevine knowingly and voluntarily waived its right to a jury trial when it signed the Lease Agreement, the lower courts' errors should be reversed and this case remanded for a new, non-jury trial.

## II. The Opinion commits error of law on issue preservation as to the breach of contract issues, including by misconstruing Rule 50, SCRCP.<sup>6</sup>

On appeal, Riverwalk argued that it was entitled to judgment as a matter of law in its favor on Grapevine’s breach of contract claims.<sup>7</sup> Riverwalk’s arguments on each of these issues centered around the clear and unambiguous language of the Lease, which it argued the trial court misconstrued as a matter of law. Petitioners argued that the trial court’s errors of law on the construction of the Lease infected the trial and controlled the judgment.

But the Opinion wrongly finds the breach of contract arguments were not preserved because Riverwalk did not renew its motion for directed verdict as to these causes of action at the close of all the evidence. The Opinion **misapprehends the preservation doctrines pertaining to Rule 50, SCRCP, which are intended to preserve factual and evidentiary error by the trial court for appellate review**. See *Dupree v. Younger*, 143 S.Ct. 1382 (2023) (holding Rule 50, FRCP, motion was not required to preserve questions of law).

Additionally, the Opinion overlooks that the legal arguments related to the construction of the Lease were repeatedly raised to the trial court. And the trial court not only had multiple opportunities to rule on the construction of the Lease, but it did indeed rule – erroneously. Therefore, the trial court’s errors of law were preserved for appellate review, irrespective of any post-trial motions. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d

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<sup>6</sup> The arguments under this heading request a writ of certiorari on the Opinion’s Section II.

<sup>7</sup> The breach of contract claims were Issue II and Issue IV in Appellants’ Final Brief:

II. Was Riverwalk entitled to judgment as a matter of law because Grapevine unequivocally failed to exercise the option to purchase in conformance with the Lease’s clear requirements?

IV. Was it error of law to find that the commercial Lease Agreement allows one tenant exclusive use of “common areas”?

Petitioners’ Final Brief and Final Reply Brief, filed with the Court of Appeals on Dec. 28, 2023, are incorporated herein by reference.

731, 733 (1997) (“an issue . . . must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”).

**A. Rule 50, SCRC, is not the sole avenue to receive (and preserve) a ruling on the law – the rule exists to vet factual and evidentiary issues, not questions of law.**

Fundamentally, the parties disagreed about whether, as a matter of law, Grapevine properly exercised the Lease’s option simply by sending a letter giving notice “of its intent to exercise its purchase option.” (R. 1298). Riverwalk argued that the Lease by its plain language required a purchase contract and payment of an escrow deposit. This was Riverwalk’s argument beginning with its Answer, through summary judgment, and beyond trial.

The trial court incorrectly ruled that Grapevine had exercised its option simply by sending the letter – an underlying error of law that controlled the judgment in this case. The construction of an unambiguous contract is strictly a question of law for the court. *Lee v. Univ. of S.C.*, 757 S.E.2d 394, 397 (2014). Similarly, the question of whether the Lease permitted Grapevine to exclusively use the sidewalks, which were common areas as defined by the Lease, was a question of law. The trial court erred by finding the common area provisions to be ambiguous. *N. Am. Rescue Prods., Inc.* at 378, 769 S.E.2d at 240 (The question of whether a contract is ambiguous is a question of law for the court.).

**There is no requirement that a party move for a JNOV under Rule 50, SCRC, to preserve a purely legal error for appellate review.** Rule 50 is unique to jury trials; its origin is the dichotomy between the jury as the finder of fact and the judge as the keeper of the law.<sup>8</sup>

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<sup>8</sup> “Rule 56 aside, Younger insists that Rule 50 supports him. Under this Rule, a district court can grant judgment as a matter of law if it finds that ‘a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.’ Therefore, Younger says, a Rule 50 motion is an appropriate vehicle for raising purely legal issues once a case proceeds to trial. Maybe so, but this argument is beside the point: Even if a party *can* raise legal issues in a Rule 50 motion, nothing in the Rule requires her to do so.” *Dupree*, 143 S.Ct. at 1390 (cleaned up).

*Fickling v. City of Charleston*, 372 S.C. 597, 600, 643 S.E.2d 110, 112, n. 1 (Ct. App. 2007). The purpose of Rule 50 is to make sure that a jury decides the facts. “A motion for directed verdict goes to the entire case and may be granted only when the evidence raises no issue for the jury as to liability. . . . In deciding whether to grant or deny a directed verdict motion, the court is concerned only with the existence or nonexistence of evidence.” *Ecclesiastes Prod. Ministries v. Outparcel*, 374 S.C. 483, 490-91, 649 S.E.2d 494, 497-98 (Ct. App. 2007).

Likewise, a motion for JNOV under Rule 50, SCRCF, permits the trial judge to consider and rule on the question of whether the evidence in the record supports the jury’s verdict. *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 231-232, 603 S.E.2d 605 (Ct. App. 2004) (“In ruling on a motion for JNOV, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them.”). “The [appellate court] will reverse the trial court’s ruling [on a JNOV motion] only when there is no evidence to support the rulings or where the ruling are controlled by an error of law.” *Hinkle v. National Cas. Ins. Co.*, 354 S.C. 92, 96, 579 S.E.2d 616 (2003).

South Carolina’s Rule 50 “conforms to the Federal Rule.” Rule 50, SCRCF, n. 1. **Until recently, there was a split in the federal appellate circuits over whether a party must move under Rule 50, FRCP, to preserve an issue of law for appeal.** The United States Supreme Court, in *Dupree v. Younger*, considered with lively interest the question of whether or not a legal issue raised (and denied) in a summary judgment motion was adequately preserved for appellate review after trial and final judgment—notwithstanding that trial counsel had not made any motion raising the issue under Rule 50, FRCP. 143 S.Ct. 1382, 1387-88, 1391. In unanimously deciding that the question of law had been effectively preserved from the moment it was first raised and ruled upon, the *Dupree* Court analyzed the distinction between

questions of fact, the answers to which may evolve with evidence at trial, and questions of law, the answers to which are unaffected by the record. *Id.* at 1388-89 (“Factual challenges depend on, well, the facts, which the parties develop and clarify as the case progresses . . . A district court’s resolution of a pure question of law, by contrast, is unaffected by future developments in the case.”).

*Dupree* provides a thorough discussion of preservation and appealability, and this Court should read it in its entirety. Ultimately, the U.S. Supreme Court held:

From the reviewing court’s perspective, there is no benefit to having a district court reexamine a purely legal issue after trial, because nothing at trial will have given the district court any reason to question its prior analysis. We therefore hold that a post-trial motion under Rule 50 is not required to preserve for appellate review a purely legal issue resolved at summary judgment.

. . . **It also makes sense. Because a purely legal question is, by definition, one whose answer is independent of disputed facts, factual development at trial will not change the district court’s answer.** (Granted, the district court might backtrack, but if the question is purely legal, that is because of law books, not trial exhibits.) So what would a repeat-motion requirement for legal questions typically amount to? For litigants, a copy and paste of summary-judgment motions into post-trial format. For district courts, the tedium of saying no twice. There is no reason to force litigants and district courts to undertake that empty exercise.

*Id.*, at 1389-90 (emphasis added).

In the words of the United States Supreme Court: **This just makes sense.** The law is a constant, though the evidence may evolve. South Carolina courts agree. Once a party has received a ruling from the lower court on the law, he is not required to keep trying to change the judge’s mind. *Elam*, 361 S.C. 9, 602 S.E.2d 772. This Court should clarify that questions of law are preserved once raised to and decided by the circuit court—without requiring attorneys to repeat their arguments in a ritualistic fashion after the court has ruled.

**B. The issues of law were raised to and ruled upon by the trial court; they are thus preserved for this Court’s review.**

In this case, the law that governs the parties includes the Lease’s clear provisions and

the body of South Carolina law on contract construction and preemptive rights – all of which has remained unchanged from the day that Grapevine signed the Lease, through the multiple rounds of pleadings in which Riverwalk denied that Grapevine had complied with the Lease, through summary judgment on the questions, which the lower court denied, through legal arguments at trial, and beyond, into multiple rounds of post-trial motions.<sup>9</sup> The lower court had numerous opportunities to rule on these questions of law, and it did indeed rule.<sup>10</sup>

First, as to the common area provisions of the Lease, the trial court (after hearing extensive argument) erred as a matter of law when it ruled: “I find Paragraph 15 [‘Common Areas’] to be ambiguous.” (R. 605:13-14). The question of whether a contract is ambiguous is a question of law for the court. *N. Am. Rescue Prods., Inc.*, 411 S.C. at 378. **Trial counsel was not required to hound the trial court to change its mind** – once the trial judge ruled, the decision was capable of review on appeal. Moreover, this erroneous legal ruling by the trial court controlled its decision to submit the common area question to the jury, and thereby necessarily affected the judgment awarding \$146,124 for breach in regards to “the lease’s use of the patio/common space.” (R. 19). The appellate court had jurisdiction to review the error as a matter of statute. S.C. Code § 14-3-330(1) (permitting appellate court to “review any intermediate order or decree necessarily affecting the judgment not before appealed from”).

Likewise, the construction of the option to purchase provision and breach of contract

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<sup>9</sup> See App. Br. at 1-12 (beginning : “There is a *very* long backstory to this appeal, as the voluminous Record on Appeal forbodes. However, despite a lengthy trial which was book-ended by copious motions, the facts of real significance are few – and they are not disputed. Of paramount importance in this appeal is that Grapevine entered into a Commercial Lease Agreement (the ‘Lease’) with Riverwalk, to rent a 1,490 square foot commercial space on the first floor of Building 6. (R. 1247 ¶ B. 1).”

<sup>10</sup> Instances in which questions on Lease construction were raised to and/or ruled upon by the lower court: R. 8, 11 ¶ 4, 21-36, 129-130, 179, 190-194, 271-274, 282, 290-294, 551 - 553:13; 605:13-14, 947, 964: 24-25, 979, 989:20-992, 1001:21-1002, 1006:22-23, 1189-1197, 1223-1224, 1228-1231.

was raised so many times to the trial judge, beginning with pleadings and summary judgment, that the court indicated it was not going to change its mind and that further argument was a waste of time.<sup>11</sup>

Errors of law, once raised and ruled upon, are well within the reach of appellate review. S.C. Code § 14-3-330 (“if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from”). Petitioners respectfully ask this Court to grant a writ of certiorari to reverse the Opinion, hold that Issues II and IV were indeed preserved for appellate review, and reverse the lower court’s errors of law on these issues, because those errors controlled the ultimate judgment in this case and did not need to be raised repeatedly to be preserved for review.

**III. The question of whether there was any evidence to support Grapevine’s negligent misrepresentation claim was preserved and the trial court’s error should be reversed.<sup>12</sup>**

At the outset, the Opinion correctly finds that Petitioners did preserve “the argument that no evidence showed Grapevine relied on the representation.” (Op. at Sec. IV). In a nutshell: justifiable reliance on a representation, which justifiable reliance proximately causes a pecuniary loss, is an essential element of a claim for negligent misrepresentation. *McLaughlin v. Williams*, 665 S.E.2d 667, 670 (Ct. App. 2008). “[T]here is no right to rely . . . where there is no confidential or fiduciary relationship, and there is an arm’s length transaction between mature, educated people.” *DeHart v. Dodge City of Spartanburg, Inc.*, 427

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<sup>11</sup> R. 964: 24-25, 947: 11-14, 979: 3-4, 989:20-992, 1006:22-23 (“I don’t like to play hide the ball. So, I will just tell you what I am thinking now. The breach of contract claim is very, it is going to go to the jury.”), (“We are going to send to the jury the breach of contract claim.”), (“Based on my notes, what we are sending to the jury is, breach of contract”), (“It is going to the jury, the breach of contract, I am confident on.”).

<sup>12</sup> This argument requests a writ of certiorari as to the Opinion’s Section IV.

S.E.2d 720, 722 (Ct. App. 1993). Here, the Lease contains an explicit merger clause:

43. **Entire Agreement.** This Lease contains the entire agreement between the parties hereto, and cannot be altered or modified in any way except in writing signed by the parties hereto. *All prior representations, discussions, covenants, or warranties of the parties with respect to the Demised Premises or the subject matter hereof are merged herein and superseded hereby.*

(R. 1265) (emphasis added). As a matter of law, there could have been no justifiable reliance.

Grapevine's principals each initialed the page of the Lease on which this provision appears.

(R. 1265). South Carolina courts have long recognized that experienced businesspeople dealing at arms' length should be free to contract as they see fit. *See Bowaters Carolina Corp. v. Carolina Pipeline Co.*, 259 S.C. 500, 193 S.E.2d 129 (1972). The jury's verdict on this issue was controlled by error of law as to the Lease's clear merger clause and should be reversed. The preservation ruling on this claim is especially consequential because the merits are straightforward. A sophisticated commercial tenant cannot reasonably rely on an alleged pre-contract statement after signing a Lease that expressly supersedes all prior representations on the same subject matter.

But the Opinion concludes that Petitioners' arguments on negligent misrepresentation were not preserved because Petitioners' post-trial motion was ostensibly untimely; this conclusion misapprehended the procedural posture of the case. **The trial court had maintained jurisdiction to rule on both trial and post-trial motions**, and for parties to be heard on them, as it was permitted to do because judgment had not been entered. *See* Rule 54(b), SCRCPP; Rule 59(d), SCRCPP; *see also Holroyd*, 361 S.C. 43, 603 S.E.2d 417 ("The jury's verdict in this case did not constitute an adjudication of all the claims in the case . . . The trial court had not ruled on all of the claims presented at the time the jury rendered its verdict. The trial court also made no 'express determination' that there was no reason for delay in entering judgment on the claims that had been submitted to the jury. Accordingly, the time

for filing post-trial motions [had] not beg[un] to run . . . “).

Indeed, Grapevine submitted a trial motion—for directed verdict—seven days after the conclusion of trial. (R. 232). Under this unique posture, it was manifestly unjust for the Court of Appeals to find the issue unpreserved—particularly given the trial court’s and Grapevine’s consent to the timeline. See Reply Br. pp. 3-5; R. 1186, 1223-1224.

The posture here, where claims for relief remain pending for decision after trial, is a prickly one, and there is no clear instruction (beyond the rules of procedure) from this Court on preservation requirements. At a minimum, the question of whether this issue was preserved was capable of more than one interpretation, meaning the Court of Appeals should have decided in favor of preservation. See *Atl. Coast Builders & Contractors, LLC*, at 333, 730 S.E.2d at 287 (“[W]here the question of [issue] preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.” (Toal, C.J., concurring)). This Court should grant this Petition to clarify that post-trial motions are not untimely until 20 days after all causes of action have been adjudicated, pursuant to Rules 54(b) and 59, SCRPC.

## CONCLUSION

Petitioners respectfully request that this Court grant a writ of certiorari. The Opinion misconstrues the appellate jurisdiction statute, imposes preservation requirements that the rules do not demand, and permits legally erroneous rulings to control the judgment. Review is warranted to correct the injustice in this case and to provide needed guidance on recurring questions of preservation, Rule 50 practice, and the timing of post-trial motions where claims remain unresolved after a jury verdict.

**[signature block appears on the next page]**

Respectfully submitted,

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