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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Unpublished Opinion No. 2025-UP-275, rehearing denied May 14, 2026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. ............................................................ Petitioner-Respondent,
v.

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

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**RESPONDENTS-PETITIONERS'**
**RETURN TO**
**PETITIONER-RESPONDENT'S PETITION FOR A WRIT OF CERTIORARI**

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July 22, 2026

Respondents-Petitioners (collectively, "Riverwalk") hereby respectfully oppose the Petition for a Writ of Certiorari as to the Court of Appeals' Unpublished Opinion No. 2025-UP-275 (the "Opinion"), which was filed by Petitioner-Respondent The Grapevine of Riverwalk, Inc. ("Grapevine") on June 15, 2026.

## Introduction

Initially, Grapevine identifies nothing special or novel or compelling about the Court of Appeals' Unpublished Opinion No. 2025-UP-275 (the "Opinion") of the sort which might propel this Court to review it under Rule 242, SCACR. Instead, Grapevine's argument hinges on its claim that the Court of Appeals "overlooked and misapplied" facts and South Carolina law when it reversed the trial court's grant of specific performance.[1] (Petition, p. 10). Contrary to Grapevine's argument, however, the Opinion overlooks nothing: instead, it applies this Court's established precedent, with detailed analysis, to facts that were undisputed at trial. The undisputed facts are simple: The parties' lease contained an option to purchase which required Grapevine to exercise the option by submitting a purchase contract, along with an earnest money deposit. (R. 1262, 1281-97). Grapevine admitted it neither tendered a purchase contract nor made an earnest money deposit.[2] The Opinion relies on this Court's precedent to find that Grapevine therefore failed to exercise its option. It cites *Ingram v. Kasey's Assoc.*, 340 S.C. 98, 531 S.E.2d 287 (2000) and *Alexander's Land Co., L.L.C. v. M & M & K Corp.*, 390 S.C. 582, 703 S.E.2d 207 (2010), each of which incorporated extensive reviews of the law on option contracts in South Carolina. As the Opinion holds, both cases

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1 This is Issue III in the Court of Appeals' Opinion. On reversing specific performance, the Opinion also reversed and remanded the attorney fee award, which is the Opinion's Issue V.

2 "Q: At any time during the third lease year did Grapevine ever tender a contract in the form of Exhibit G to its landlord in order to exercise a purchase? A: No" (R. 777:16–21); "Q: And you never tendered purchase money, right? A: Right." (R. 779:7–15; *see also* 779–83).

are clear: "It is well settled in South Carolina that option contracts are strictly construed in favor of the optionor and against the optionee." Opinion, p. 11, *quoting Alexander's Land Co.*, 390 S.C. at 595, 703 S.E.2d at 214 (*quoting Ingram*, 340 S.C. at 108, 531 S.E.2d at 292). Moreover, "if the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required." *Id*. The unanimous Opinion shows careful review by the Court of Appeals of the trial record on this issue and attentive application of established law.

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. It goes without saying that the application of recognized, precedential South Carolina law to undisputed evidence within a particular record on appeal does not involve a federal question, and nor does it directly involve a substantial constitutional issue. There was no dissent from the Court of Appeals' detailed and well-reasoned decision on specific performance. And Petitioner does not argue that the Opinion applied the *wrong* law, nor that the Opinion actually conflicts (as a matter of law) with a prior decision by this Court.

Instead, the thrust of the Petitioner's argument is that the Court of Appeals misapplied or overlooked facts. An asserted misapprehension of facts by the Court of Appeals does not transform this dispute into a state-wide concern, and it is not grounds for certiorari review by this Court. *See* Rule 242(b), SCACR.

This Court should deny Grapevine's Petition for a Writ of Certiorari.

## RE-STATEMENT OF THE CASE[3]

Grapevine tries to reframe this case into broad questions of equity and tort, but at bottom this is a commercial lease dispute between sophisticated parties.[4] Respondent Riverwalk owns a mixed-use building, which has commercial spaces on the ground floor and residential spaces above. Petitioner 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 parties chose to govern themselves.

### A. Restated Procedural Background

Grapevine's Petition—including the flavor of its arguments and its Statement of the Case—ignores that **the trial court dismissed the vast majority of Grapevine's tort claims**. Grapevine's Second Amended Complaint, on which the case went to trial, contained a torrent of torts. It brought causes of action against Riverwalk for specific performance and breach of contract, but also for breach of contract accompanied by fraudulent acts and breach of the implied covenant of good faith and fair dealing — as well as additional causes of action against not only Riverwalk, but also Mark Mather,[5] GRH Development Resources, LLC, The

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3 Riverwalk otherwise incorporates by reference the Statement of the Case within its own Petition for Writ of Certiorari, filed with this Court on June 22, 2026.

4 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").

5 Despite Grapevine's Petition's numerous accusations against Mark Mather, he is not a part of this appeal; the trial court granted a JNOV as to the jury's finding against Mather, a ruling which Grapevine did not appeal.

Greens of Rock Hill, LLC, and Assured Administration, LLC, for fraudulent inducement, fraud/fraudulent misrepresentation, unfair trade practices, tortious interference with contractual relations, civil conspiracy, and multiple claims for negligent misrepresentation. (R. 133-56).

Of Grapevine's ten causes of action, only the breach of contract, civil conspiracy, and one negligent misrepresentation claim survived to go the jury. Specifically, the jury considered: (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, which the trial court found ambiguous;[6] (3) negligent misrepresentation as to all defendants—but only as to a single claim: 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; *see also* R. 19).

Prior to trial, the circuit court granted Riverwalk's motion for summary judgment as to Grapevine's claims for fraudulent inducement, fraud/fraudulent misrepresentation, and breach of the duty of good faith and fair dealing. (R. 1). During trial, at the close of Grapevine's evidence, the trial judge granted directed verdict in favor of Riverwalk 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. (R. 942 –1009). 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) (emphasis added).

6 The trial court's errors of law in construing the Lease, and the Court of Appeals' error in finding the errors unpreserved, are the subject of Riverwalk's Petition for a Writ of Certiorari.

Significantly to the Petition, the jury decided that there was no civil conspiracy between Riverwalk and GRH Development. (R. 19).

Grapevine appealed none of these trial court decisions, which eliminated its tort claims on the facts, and yet its Petition sounds in tort and conspiracy under the guise of "equity." In addition to making defunct-tort-based arguments in its Petition to this Court, Grapevine also inappropriately changes "Question 3" on its recap of the jury form, transforming "<u>a</u> negligent misrepresentation" into "<u>any</u> negligent misrepresentation." (*Compare* R. 19 *with* Petition, p. 3). This alteration wrongly suggests to this Court that the jury had a much broader negligence question before it than the single claim that survived.

The jury awarded Grapevine a total of $464,624.00 in damages, finding breach of the option to purchase and common area provisions of the Lease, as well as negligent misrepresentation as to the bank's leasing requirement.

After the case was tried to the jury, Grapevine made a directed verdict motion for specific performance. (R. 232). As discussed *infra*, the trial court granted "specific performance" on a non-existent contract, creating the terms of transfer out of whole cloth in a series of successive post-trial orders. (R. 1, 8, 21, 26, 31, 36).

Grapevine also moved for attorney's fees and costs in the amount of $578,478.22, based on Paragraph 38 of the Lease, which states that tenant may file an action against landlord "for its **actual damages**, together with attorneys' fees and costs, as its **sole and exclusive remedy**." (R. 1263-64) (emphasis added). Grapevine had pursued ten causes of action against five defendants, seeking consequential, punitive, and statutorily enhanced damages, and billing six partner attorneys, five associates, five paralegals, and a legal assistant—in total, seventeen billing legal professionals, not including expert witnesses and vendors.[7] The trial court awarded the fees, with a 30% reduction of the total. (R. 8).

Riverwalk appealed, with its driving arguments being that the trial court erred as a matter of law as to its construction of the Lease. The Court of Appeals reversed as to the trial court's grants of specific performance and attorney's fees, but it found Riverwalk's remaining issues to be unpreserved – an error that is the subject of a Petition for Writ of Certiorari by Riverwalk.

**B. Restatement of the Facts**

There is a ***very*** long backstory to this appeal, as the voluminous Record 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 ground floor of Riverwalk's Building 6. (R. 1247 ¶ B. 1).

Grapevine agreed to lease the space while the mixed-use development project was in its nascent stages; construction had not yet even begun on Building 6 when the Lease was executed. (R. 745:4-8). Before signing the Lease, Grapevine extensively negotiated its terms with Riverwalk. (R. 759-62). The principals of Grapevine are sophisticated businesspeople; they have several other successful Grapevine store locations, as well as quite a few other commercial holdings. (R. 755:11 – 758:16). Among other negotiated terms, the Lease contains an option to purchase in favor of Grapevine, as well as a restrictive provision barring Riverwalk from leasing space to other wine shops or craft beer stores. (R. 1262 ¶ 33; 1268 ¶

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[7] R. 261-270, Affidavit of Steven A. Meckler at p. 6 ¶10.

57; 1279). When they signed the Lease in 2014, both principals of Grapevine initialed every page, including its exhibits. (R. 763:15–18) ("Q: And at the time you and your husband initialed each page and executed that document you were satisfied with the form of the document, correct? A: Yes"). Two years later, on completion of the construction of Building 6 in 2016, Grapevine executed a "Tenant Acceptance Letter" in which it confirmed that the Lease was in full force and effect, and that it had not been modified in any way. (R. 1302).

Grapevine's Petition focuses on the provision in the Lease governing the option to purchase, but it interjects a "spin" on evidence and testimony that the trial court by-and-large rejected, focusing on "representations" allegedly made to Grapevine's principals during negotiations and prior to execution of the Lease. In reality, the trial court decided most of the facts argued in the Petition when it rejected Grapevine's causes of action for fraud, unfair trade practices, bad faith, tortious interference with contract, amalgamation, negligent misrepresentation (except the statement that Riverwalk's bank required a lease), and civil conspiracy.[8] As the trial judge said, repeatedly:

- "But they were negotiating a[t] arms length over a commercial contract." (R. 949: 12-13).
- "This is[] a commercial contract between sophisticated parties. I just don't see a misrepresentation. I mean, I certainly don't see something that can be reasonably relied upon by a commercial entity that is an assertion . . . that a condo regime presently exists." (R. 954: 8-14).
- "They negotiated a commercial lease. I mean there is no, they didn't get what they wanted. That doesn't mean it is a misrepresentation." (R. 961: 6-8).

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8 *See* R. 943-989; 1114:15-19; 1116:22-25 (rejecting Grapevine's misrepresentation arguments pertaining to the outdoor space, the existence of a condominium regime, and the option to purchase, *inter alia*).

- "But it is not, there is no way under the circumstance that reliance is reasonable. This is a commercial lease with sophisticated partes." (R. 961: 19-21).
- "This is a negotiated commercial lease, it is very clear what is in it." (R. 962: 14-16).
- "I am not going to send punitive damages claim to the jury on that single statement, in the context of a commercial lease negotiation." (R. 1110: 15-17).

In its Petition, 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" 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 Commencement Date of the Lease, which marked the beginning of the first lease year, was February 2, 2016. (R. 228 ¶ 8; 1248 ¶ 4). About mid-way through the second lease year, on July 26, 2017, Grapevine sent a letter to Riverwalk which stated that the Lease contained an option to purchase and that

> THIS LETTER CONSTITUTES NOTICE, pursuant to paragraph 33 of the Lease, of

[Grapevine's] intent to exercise its purchase option . . . .

(R. 1298). The letter asked Riverwalk to take the steps necessary to create a horizontal property regime, of which the Grapevine unit would be a part. Riverwalk subsequently sent to the Grapevine a draft Master Deed on January 30, 2018. (R. 1358). Because the Master Deed would affect the entire mixed-use project, consisting of multiple condominium regimes, Riverwalk's attorney would not have recorded it until just before a real estate closing was set to occur. (R. 1024 – 1025:8).

For the next several months, Grapevine continued to send emails to Riverwalk, requesting that a closing date be identified. (R. 1362-77). Aside from its repeated emails insisting on closing, it is undisputed that the Grapevine did nothing further to exercise its option beyond sending its notice of intent letter of July 26, 2017.

On October 5, 2018, well before the third lease year was to expire in February of 2019, Grapevine's attorney sent a letter to Riverwalk "as formal written notice that Landlord is in breach of the Lease, including but not limited to Section 33 . . . ." (R. 1299). Grapevine filed this lawsuit shortly thereafter, in December of 2018, before the expiration of the third lease year. (R. 39).

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.[9]

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[9] This inconsistency by the Court of Appeals, in the name of issue preservation rather than merit, is a subject of Riverwalk's Petition for a Writ of Certiorari. This Court should grant Riverwalk's Petition to establish South Carolina law on issue preservation, particularly with respect to directed verdict and post-trial motions, and to reverse the Court of Appeals' error in finding that an issue of law, raised and ruled upon, was nonetheless not preserved in this instance.

## ARGUMENT

Grapevine argues that the Court of Appeals erred in reversing the trial court's decision to grant specific performance because, Grapevine contends, it was "ready, willing, and able to close" on the property. The problem, however, is that there was no purchase contract between the parties on which to "close," or for the court to specifically enforce. The trial court ultimately and erroneously specifically "enforced" ***an imaginary contract***, improperly speculating on what the court thought should be the terms of transfer, and wrongly imposing unbargained-for provisions, not only on the parties to this litigation but also on non-parties.[10]

The Opinion correctly reversed the lower court's grant of specific performance, because the grant was contrary to South Carolina law, which holds that an option is a mere unilateral right – it is not a contract for the purchase of land capable of specific performance. "Before specific performance can be decreed, it is first necessary to determine whether there is a contract between the parties or not. If there is no contract, then there is nothing to enforce. It would be *speculative* for a Court to say what would have been the rights of the parties if they had made a contract." *Finklea v. Carolina Farms Co*, 196 S.C. 466, 471-472, 13 S.E.2d 596, 599 (1941) (emphasis added).

The trial court's successive orders directing "specific performance" are loaded with speculation about the supposed obligations of the parties and the terms of conveyance. Ultimately the trial court wrongly created a one-sided, Grapevine-centric purchase contract

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10 The subject property is one unit in a large, mixed-use condominium development. The trial court wrongly allowed Grapevine to dictate terms of the master deed which controls the entire development, including its common element provisions and declarant control terms. (R. 32-33). In its Petition, Grapevine wrongly characterizes the drafting and recording of a master deed, creating and controlling a horizontal property regime for a multi-building, multi-unit, mixed-use development, as a "simple task" and a mere "formality." *See* notes 11 and 12, below.

(and master deed) out of thin air.[11] The speculative creation by the trial court of obligations that had to be "specifically performed" resulted from the plain reality that there was not an existing contract to enforce. The Opinion recognizes this reality and reverses.

The trial court's error in inventing a purchase contract was all the more egregious given that the Lease between Grapevine and Riverwalk *included* a detailed real estate purchase agreement, which was intended to control the transaction. Grapevine never executed, tendered, or provided the necessary consideration for, the contemplated purchase agreement, despite the Lease's clear requirement that the Option to Purchase must be exercised "in accordance with the Purchase and Sale Agreement as provided in Exhibit G." (R. 1262; 1282 - 97). In other words, **Grapevine never brought the intended purchase contract into being, which the Lease's option provision required it to do.** Within its Petition, Grapevine argues that Riverwalk made it "impossible" for Grapevine to execute the purchase contract because, according to Grapevine, it had no way of sufficiently identifying the premises prior to the recordation of a master deed. This argument is entirely undermined by the reality that Grapevine had no difficulty putting a *lis pendens* on the property, when it filed suit before the expiration of the option period. (R. 52-54).

That Grapevine did not consider itself bound by the Option's intended purchase agreement is manifested in the very different purchase and sale terms that Grapevine sought to "specifically enforce." The Purchase and Sale Agreement that was intended by the Lease (the "PSA") identifies in detail the rights and obligations of the parties in a way that is <u>vastly</u>

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11 As examples: the court wrongly allowed Grapevine to dictate to Riverwalk the terms of a master deed governing an <u>entire</u> horizontal property regime, including non-parties; it disregarded the plain meaning of "Common Elements" within a condominium regime; and it ignored rights and obligations on the part of the bank (also not a party). *See* Appellants' Reply Brief, filed December 28, 2023, at pp. 15-20.

different from the terms that Grapevine demanded and the trial court erroneously and speculatively "specifically enforced."[12] As one important example, the Lease's PSA has provisions that dictate the remedies of the parties in the event that Riverwalk "shall be unable to give title or to make conveyance, or to deliver possession of the Unit." (*See* R. 1286 - 1288, ¶ 4.3). In such a circumstance, the intended remedy was an extension of the closing date, a cap on the funds that Riverwalk was obligated to expend in its effort to generate title, <u>and the bargained-for remedy to Grapevine of reimbursement of its escrow deposit in the event closing could not occur</u>. (R. 1287) ("If at the expiration of the extended time, the Seller has failed to remove any defects in title, deliver possession, or make the Unit conform, as the case may be . . . the Deposit shall be promptly refunded and all other obligations of all parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto."). Further—***if*** it had been effectuated by the payment of an earnest money deposit—the PSA obligates Riverwalk only to furnish a quitclaim deed; the trial court ordered a general

12 The trial court's first order dictates an inflexible closing date, changes the purchase price set forth in the Option provision, decides what happens to the Lease, pronounces Grapevine's "right to jointly use the Common Areas," makes no mention of common expenses, and dictates terms of the "condominium documents" that were to control the entire horizontal property regime, including regime members who were not party to the Lease or the litigation. (R. 8-14). The second order requires a general warranty deed, reduces the purchase price, and—shockingly—limits encumbrances to "matters of record not objected to by Buyer." (R. 21-25). In compliance with the first two orders, Riverwalk recorded a Master Deed, creating a Horizontal Property Regime. (R. 349—400). But Grapevine did not like the Master Deed, and so it filed a motion to "compel compliance with final judgment." (R. 328). The court's third order then altered the entire condominium regime by requiring Riverwalk to collaborate with Grapevine as to what Grapevine believed to be "essential terms" of Riverwalk's horizontal property regime and to amend the Master Deed in accordance with Grapevine's wishes (thereby affecting units not parties to this action). As it happened, Grapevine did not like the length of the declarant control period, nor the references to Building 6 as part of the larger multi-unit "River District" development, nor the possibility of additional property being submitted to the regime (a common practice), nor the right of first refusal by declarant, nor the plat, nor the uniform restrictions on use of common elements, nor the unit numbers, nor the encroachment easements (*inter alia*). (*See* R. 338 - 39). It demanded that Riverwalk change its development scheme, without any right to do so, and the trial court erroneously deemed this to be "specific performance." **The Court of Appeals correctly reversed.**

warranty deed in the name of "specific performance." Moreover, the PSA contemplates multiple encumbrances and use restrictions, but the trial court speculatively ordered that title be encumbered only by "matters of record not objected to by Grapevine," an outrageous requirement to which no reasonable seller would ordinarily agree. (R. 21-25).

The differences between the Lease and its Option's contemplated PSA and the imaginary contract which Grapevine demanded, and which the trial court invented and "specifically" enforced, are hallmarks of *why* specific performance was neither a proper nor a just remedy, here. The differences also underscore the reality that Riverwalk breached <u>nothing</u>, because no purchase contract ever came into existence.[13] The Court of Appeals was right to reverse specific performance where there was no contract to specifically enforce.

**Even in its Petition for Writ of Certiorari, Grapevine fails to identify a contract between the parties that was capable of specific enforcement.** *Campbell v. Carr*, 361 S.C. 258, 264, 603 S.E.2d 625 (Ct. App. 2004) ("in order to compel specific performance, a court of equity must find . . . there is clear evidence of a valid agreement."). It appears that Grapevine wants this Court to specifically enforce the *option*. But an option is not a purchase contract, and an option is not capable of specific enforcement. In the case of *Hutto v. Wiggins*, the Court sought to answer the question: "Is [the subject agreement] an option to purchase running from Wiggins to Hutto, or is it a contract of sale and purchase?" 175 S.C. 202, 203, 178 S.E. 869, 870 (1935). The Court focused on mutuality of obligation, asking if each party could have each compelled the other to act—and noting that the owner of the land could <u>not</u> have forced the

[13] *See* Riverwalk's Petition for a Writ of Certiorari, in which Respondents-Petitioners respectfully request that this Court reverse the Court of Appeals' errors on issue preservation with regard to Grapevine's breach of contract claims.

holder of the option to exercise it.[14] The Court held that, "[a] test in determining in which of the categories [either option or purchase contract] a particular instrument is to be placed is said to be, 'Could the agreement be specifically enforced?'" *Id.* at 205.

**The Opinion correctly applies this Court's precedent, which unequivocally holds that an option is not a contract for sale capable of specific enforcement.** Instead, an option is a unilateral right to make a possible future purchase contract:

> An option is to be distinguished from a sale, or a contract, or agreement or offer to sell. The chief difference between a contract to sell and purchase real property, and an option to purchase said property lies in the fact that, while the former creates a <u>mutual</u> obligation on the part of one party to sell and the other to purchase, the option merely gives the right to purchase, at a fixed price, within a fixed time, without imposing any obligation to do so.

*Alexander's Land Co. v. M & M & K Corp.*, 390 S.C. 582, 596, 703 S.E.2d 207, 216 (2011), *quoting Faulkner v. Millar*, 319 S.C. 216, 220, 460 S.E.2d 378, 380 (cleaned up).

An option is not a purchase contract; it is an exclusive right to make a future agreement. And, as a preemptive right and restraint on the alienability of real property, South Carolina law and public policy requires that an option be strictly construed and complied with exactly. *Alexander's Land Co.*, 703 S.E.2d at 214. As the Opinion correctly held, the Lease is clear that Grapevine could exercise its option only "in accordance with the Purchase and Sale Agreement as provided in Exhibit G," which PSA unambiguously requires an earnest money deposit of $25,000. (Op. at 10-12). On this, the law applied by the Opinion is clear: "[T]he transition of an option into a contract of purchase and sale can only be effected by an unqualified and unconditional acceptance of the offer in accordance with the terms and

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14 If the shoe were on the other foot, Riverwalk could **not** have brought an action to force Grapevine to purchase the property; this lack of mutuality was the *Hutto* Court's reason for reversing the lower court's order of specific performance.

within the time specified in the option contract." *Ingram v. Kasey's Associates*, 340 S.C. 98, 108, 531 S.E.2d 287. "[I]f the option requires performance in a certain manner . . . **exact compliance with the terms of the option are required**." *Alexander's Land Co.*, at 595, 703 S.E.2d at 214 (emphasis added).

The Opinion correctly holds that the execution of the Purchase and Sale Agreement (in conjunction with the $25,000 purchase money deposit) was a condition of the Lease's option provision that was necessary to transform Grapevine's option into a valid contract for sale. (R. 1262 ¶ 33, 1281—97). Because Grapevine never fulfilled this condition, the option never became an enforceable purchase contract, as a matter of law. (Op. at p. 12); *Alexander's Land Co.* at 596, 703 S.E.2d at 214 ("A condition precedent is an act which must occur before performance by the other party is due."). This is a simple and straightforward calculus because Grapevine ***admitted*** that it never executed nor tendered the intended purchase contract, nor the earnest money that would have been required to bring the PSA to life.

Another way to look at the facts, here, is to take the Lease and its option provision out of the equation. What if these same parties came to the court arguing about whether Grapevine's notice letter, and its successive emails demanding a closing, were a purchase contract capable of specific performance? Through that lens, it is clear that the elements of a valid, mutual, enforceable contract were lacking: there was no consideration, no meeting of the minds, no acceptance of the offered terms, and no mutually binding purchase agreement to specifically enforce. *See Cotter v. James L. Tapp Co.*, 267 S.C. 647, 654-56, 230 S.E.2d 715, 715-19 (1976) ("When an individual grants an option . . . he is entitled to strict compliance with time limits and other terms of the option.").

Throughout its Petition, Grapevine urges the Court to find that the trial court was right to invent a contract and specifically enforce it, because—according to Grapevine—this was the fair and equitable thing to do. Grapevine blames Riverwalk for its own failure to perform, alluding that Grapevine certainly would have been willing to tender a purchase contract and escrow the $25,000 purchase deposit if only Riverwalk had hurried up and formed a complicated, multi-building, multi-million-dollar condominium regime for the sake of one unit. Grapevine's reasoning is backwards—the optionee's proper exercise of its option is what triggers the optionor's obligation to perform. *Alexander's Land Co.* at 596, 703 S.E.2d at 214 ("Since the Buyer never satisfied the condition precedent . . . no duty arose on the part of the Seller to convey the real property."). The essence of Grapevine's argument is an admission that it never paid the required deposit nor executed the PSA, both of which it was obligated to do in order to transform its option into an enforceable contract.

In an effort to justify the use of "equity" to "specifically enforce" a non-existent contract, Grapevine's Petition dedicates a lot of space to casting alleged facts in its favor and generally villainizing Riverwalk Respondents as acting "willfully" and "intentionally," and being "financially motivated" tellers of "untruths."[15] (Pet., *passim*). The Petition is driven by what Grapevine thinks would be "fair," despite that South Carolina law holds that "harsh" results[16] are often necessary in option cases. *Cotter*, 267 S.C. at 656, 230 S.E.2d at 719 ("harsh

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15 Importantly, neither the jury nor the trial court "found" the "facts," or the intent, argued by Grapevine. **The trial court specifically rejected Grapevine's claims for fraud and misrepresentation, and the jury rejected its claim of civil conspiracy between Riverwalk and GRH.** (R. 1; 19; 943—89).

16 Respectfully, the Opinion's reversal of the trial court is not a "harsh" nor an "unfair" result—it is a correct application of South Carolina law to contract terms to which Grapevine agreed but now thinks are inequitable. Grapevine bargained for the option provision, acknowledged that it is unambiguous, initialed every page of the Lease, including the page on which the option appears and every page of the intended PSA, and yet it admitted that it did not take the steps necessary to effectuate the option. (*See* Appellants' Brief, filed Dec. 28, 2023, at pp. 1-4, 5-6, 23-32).

results in option cases are necessary to further more compelling considerations of public policy”).

Moreover—minus the polarizing characterizations interjected by Grapevine—what the facts argued on pages 13-15 of the Petition really demonstrate is that **Grapevine never properly exercised its option, through no fault of Riverwalk**. The facts show:

1. Half a year before the Option period commenced, Grapevine notified Riverwalk that it was going to exercise its option. (R. 1298). The law is unequivocal, and the Opinion correctly finds, that the Grapevine’s letter giving notice of a future intent, without earnest money or a purchase contract, was just that: notice of its future intent to exercise the option. *Cotter*, at 654-56, 230 S.E.2d at 715-19 (“Defendant could have given written notice every day in the month of February 1975, and such notice still would not have satisfied a requirement to [comply exactly with the terms of the option].”).
2. Riverwalk acknowledged this statement of future intent, and it began to take steps to be ready to convey the property, in the future, assuming Grapevine exercised its option. (R. 1304-05).
3. At the beginning of the third lease year, early in the option period, Grapevine grew impatient, becoming more and more insistent on closing; but it nonetheless did not pay earnest money nor execute the PSA, nor otherwise take the prerequisite steps to transform its option into a purchase contract.
4. Meanwhile, Riverwalk, in anticipation of a potential future sale, was acting to draft a master deed and plat for a complex, multi-building, multi-party, multi-million-dollar horizontal property regime. This was not an easy process, and Riverwalk ran into various delays involving the bank, its attorneys, and its engineer (precisely the sort of

delays contemplated by the intended PSA, which Grapevine never tendered or executed). (R. 1358-62).

5. Grapevine continued to demand a closing date and to demand that Riverwalk record a master deed, despite not having tendered earnest money or the purchase contract.

6. Riverwalk was communicating with Grapevine; these communications do not indicate that Riverwalk had some nefarious purpose – instead, they show that Riverwalk was navigating difficult plat issues with surveyors, condominium questions with its attorneys, and loan issues with its bank. (R. 1363-1443; 1506-11; 1010, 1016-45).

7. Grapevine *still* had not put forward earnest money or the purchase contract, although it continued to demand that Riverwalk record the master deed and convey the property. *Alexander's Land Co*. at 596, 703 S.E.2d at 214 ("Since the Buyer never satisfied the condition precedent . . . no duty arose on the part of the Seller to convey the real property.").

8. Riverwalk did not record the master deed, for any number of rational reasons that have nothing to do with "misconduct" and everything to do with the complexities of a multi-building mixed-use development. (R. 1024-25).

9. <u>Before</u> the expiration of the third lease year (*i.e.* before the expiration of the option period), and without having tendered the earnest money deposit or executed the purchase contract, Grapevine went ahead and sued Riverwalk for specific performance, fraud, and unfair trade practices. (R. 39-51).

10. **Grapevine also put a *lis pendens* on the leased premises, demonstrating that it was perfectly capable of identifying the property, and thus undermining its claim to this Court that it could not execute the PSA because it had no way of filling in the blanks**

**to identify the property for purchase.** (R. 52-54).

11. Grapevine's lawsuit had a chilling effect on the parties' relationship, and the atmosphere grew even colder when Grapevine amended its complaint to bring a barrage of tort claims against a multitude of additional defendants. (R. 95-117).
12. The parties proceeded to litigate, through discovery, trial, and appeal.

In sum, the facts that Grapevine argues, including its accusation that Riverwalk was financially motivated to tell "untruths" about its intent to convey the property: (a) are immaterial to the question of whether or not Grapevine properly exercised the Option, and (b) were expressly rejected by the trial court when it granted directed verdict and dismissed Grapevine's causes of action for fraud and misrepresentation. (R. 1; 943- 89). The facts simply lay bare the reality that Grapevine did not have a specifically enforceable contract for sale.

Grapevine asks the Court to override in the name of "equity" the clear requirements for exercise of the option—and Grapevine's own testimony that it never submitted purchase money or a purchase contract—based on its own, unproven assertions, which the trial court rejected, that Riverwalk was acting "willfully for financial gain" and should not "be rewarded for its misconduct."[17] (Pet. 6). Grapevine misses the point: Grapevine concedes

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[17] Grapevine's reliance on the case of *Mullins v. Benton* is entirely misplaced. 309 S.C. 85, 419 S.E.2d 838 (Ct. App. 1992). In that case, the parties had an independent option contract, which expressly required that both the optionor and the optionee obtain an appraisal of the property, which appraisals would then form the basis for potential exercise of the option. But the optionor refused to obtain an appraisal. The lower court ordered the optionor to comply with his contractual obligation to obtain an appraisal, and this Court affirmed that discrete relief. However, the *Mullins* Court <u>reversed</u> the grant of specific performance, holding, **"**we find the master acted prematurely in ordering specific performance of an anticipated contract to buy and sell real property. It is still a matter of speculation whether [optionee] will exercise the option once the purchase price is determined. The courts will only enforce an option consummated by acceptance. Acceptance of the option creates a bilateral contract between the giver and the holder of the option which is binding on both parties." *Mullins*, 419 S.E.2d at 840. In other words, the *Mullins* Court applied the same law on options as the Opinion, and it arrived at the same conclusion that the Court of Appeals did: there can

that it never tendered the $25,000 purchase money deposit "due upon execution of this Agreement," nor executed a purchase and sale agreement at all, let alone "the Purchase and Sale Agreement as provided in Exhibit G," which was required by the Lease's option provision.[18] (R. 1262, 1281 - 1297). For these reasons, the Opinion is right that "there was no meeting of the minds and therefore no valid contract to enforce."

The Court of Appeals correctly applied established South Carolina law to the facts to find that "the transition of an option into a contract of purchase and sale can only be effected by an unqualified and unconditional acceptance of the offer in accordance with the terms and within the time specified in the option contract . . . if the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required." *Ingram,* 340 S.C. at 108, 531 S.E.2d at 292. **Without proper compliance by Grapevine, its option did not transform into a purchase contract. Without an enforceable purchase contract, the remedy of specific performance is not available.** *Royal v. Free Kindergarten Ass'n of Charleston*, 914 S.E.2d 856 (Ct. App. 2025), *citing Time Warner Cable v. Condo Servs., Inc.*, 381 S.C. 275, 281, 672 S.E.2d 816, 819 (Ct. App. 2009) (the first element of specific performance is that "a valid contract exists between the parties"); *Finklea v. Carolina Farms Co.*, 196 S.C. 466, 471-72, 13 S.E.2d 596, 599 (1941) ("Before specific performance can be decreed, it is first necessary to determine whether there is a contract between the parties or not."); *Yawkey v. Lowndes*, 150 S.C. 493, 513, 148 S.E. 554, 560 (1929) ("If there is no contract, then there is nothing to enforce.").

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be no speculative specific performance of an option until it is unequivocally exercised in accordance with its terms, thereby transforming it into an enforceable bilateral purchase contract.

18 "Q: At any time during the third lease year did Grapevine ever tender a contract in the form of Exhibit G to its landlord in order to exercise a purchase? A: No" (R. 777:16–21); "Q: And you never tendered purchase money, right? A: Right." (R. 779:7–15; *see also* 779–83).

This Court should deny Respondent's Petition for Writ of Certiorari.

## II. The Opinion correctly reversed the award of attorney fees when it reversed the grant of specific performance.

Grapevine deploys preservation as its grounds to request review of the Opinion's reversal and remand on attorney fees. But the Opinion correctly reversed the award of fees when it reversed the grant of specific performance. The attorney's fees provision relied upon by the trial court appears in the Lease, along with the option provision that Grapevine wrongly sought to specifically enforce, and it allows attorney's fees in the event of "default by Landlord." (R. 1263-64, § 38). The trial court awarded the fees in conjunction with its orders granting specific performance, which the Opinion has reversed. Quite simply, because the Opinion correctly reversed that underlying relief, it is likewise proper for it to reverse and remand the associated award for attorneys' fees, which were generated by six partners, five associates, two experts, five paralegals, and a legal assistant, in pursuit of Grapevine's ten causes of action against five defendants.

As to preservation, Grapevine wrongly urges an overly stringent application of the preservation rules. It was sufficient to preserve the issue of the reasonableness of Grapevine's attorney fees that Riverwalk (1) raised to the trial court the argument that Grapevine's fees were unreasonable and unsupported,[19] including under the *Blumberg* factors, and (2) that the trial court then ruled that it had carefully considered each of those factors in rendering its award—specifically arriving at is ruling notwithstanding that "Plaintiff's billing statements

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19 Citing *Blumberg*, Riverwalk argued to the trial court: "With due respect to Plaintiff's Counsel, the fee affidavit submitted in support of Plaintiff's motion is not reasonable. While it is impossible for Defendants to determine the precise nature of the legal services provided by each of the seventeen lawyers, paralegals and support staff whose fees are claimed as part of Plaintiff's fee application, the staffing levels assigned to this case by Plaintiff's Counsel appear excessive. It is also troubling that Plaintiff now claims Defendants somehow 'complicated' this case by defending it." (R. 300-306).

make it difficult to determine and delineate the work completed in furtherance of the breach of lease claims." (R. 10, *citing Blumberg v. Nealco, Inc.*, 427 S.E.2d 659 (1993)). Because the question was thus raised to and ruled upon by the trial court, the issue of reasonableness of the fees, including in light of the redacted invoices, was thereby preserved—and the Opinion properly reversed and remanded.

Riverwalk was not required under the preservation rules to further prod the trial court for more rulings on reasonableness and the *Blumberg* factors, although Grapevine wrongly urges this Court to find that they were. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772 (2004) ("[O]ur 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). Riverwalk nonetheless did ask for reconsideration (a "may wish" situation under *Elam*), arguing that "the court failed to consider that the plaintiff also pursued claims against multiple defendants, most of whom had no contractual relationship with the plaintiff. As a result, the court's award of attorney's fees and costs places a disproportionate burden upon Defendant Riverwalk River District Building 6, LLC to pay attorney's fees and costs ***for which it has no contractual obligation*** and it disproportionately awards to Plaintiff attorney's fees and costs that it has no contractual or statutory right to recover." (R. 314). The trial court rejected this argument, denying the motion to reconsider. (R. 27-28). This argument, as well, is therefore preserved, and it also sustains the Opinion's reversal of the fee award.

Ultimately, the trial court's errors each boil down to error of law in its construction of the Lease, and the issue of attorney's fees is no exception. Because the Court of Appeals correctly reversed the trial court's error as to specific performance, it also correctly reversed and remanded the award of attorney's fees. Grapevine's Petition for a Writ of Certiorari should be denied.

## CONCLUSION

This Court should deny Grapevine's request for review of the Court of Appeals' Opinion for the reasons set forth herein and because Grapevine identifies no special or important issue worthy of this Court's consideration.

Respectfully submitted,

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