RECEIVED

Aug 10 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Court of Appeals Case No. 2022-000580
Supreme Court Case No. 2026-001324
Circuit Court Case No. 2018-CP-46-03726

The Grapevine of Riverwalk, Inc.,

Petitioner-Respondent,

v.

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

Respondents-Petitioners.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
Graydon V. Olive, IV (SC Bar No. 105319)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Petitioner-Respondent

INDEX

INTRODUCTION

Petitioners Riverwalk River District Building 6, LLC, Mark S. Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and Assured Administration, LLC (collectively, "Riverwalk"[1]) submitted its Petition for a Writ of Certiorari asking this Court to ignore several procedural errors Riverwalk committed at the circuit court level. Respondent The Grapevine of Riverwalk, Inc. ("Grapevine") respectfully submits that the court of appeals applied well-established standards of issue preservation and civil procedure consistent with this Court's precedents. Accordingly, Grapevine asserts the court of appeals correctly decided that Riverwalk failed to preserve for appellate review the issues presented in its Petition. Alternatively, Grapevine also asserts that Riverwalk's arguments in its Petition fail on the merits. Therefore, Grapevine respectfully requests that this Court deny Riverwalk's Petition.

COUNTER QUESTIONS PRESENTED FOR REVIEW

I. Did the court of appeals err in ruling that Riverwalk failed to preserve for appellate review the jury trial issue?

II. Did the court of appeals err in ruling that Riverwalk failed to preserve for appellate review the breach of contract issues regarding the Lease's option to purchase and use of common areas?

III. Did the court of appeal err in ruling that Riverwalk failed to preserve for appellate review the negligent misrepresentation issue?

STATEMENT OF THE CASE

This case arises from a commercial lease dispute between Grapevine and Riverwalk. Grapevine initiated this litigation in December 2018 and demanded a jury trial. (R. pp. 39-51.) Riverwalk answered and also demanded a jury trial. (R. pp. 82-94.) In March 2020, Grapevine

[1] To match the Petition for a Writ of Certiorari, this Return refers to all petitioners collectively as "Riverwalk."

amended its Complaint and again demanded a jury trial. (R. pp. 96-118.) Again, Riverwalk answered and also demanded a jury trial. (R. pp. 96-132.)

In January 2021, Grapevine filed its Second Amended Complaint to add claims for negligent misrepresentation. (R. pp. 134-157.) For the first time, Riverwalk sought to strike Grapevine's demand for a jury trial. (R. pp. 158-177.) After fully briefing the issue and presiding over a hearing, the circuit court issued its Order dated March 10, 2021 denying Riverwalk's Motion to Strike. (R. pp. 1-2.) The parties proceeded with a jury trial in the York County Court of Common Pleas before the Honorable William A. McKinnon. (R. pp. 1-7.) Relevant to this Return, the jury found in Grapevine's favor on its claims for breach of contract and negligent misrepresentation. (R. pp. 19-20.)

Trial concluded on Friday, August 27, 2021. (R. pp. 532, 1178-1189; R. pp. 19-20.) The circuit court mistakenly informed the parties they had "two full weeks"—i.e. fourteen days or until Friday, September 10, 2021—to make posttrial motions. (R. p. 1186:4-24.) Riverwalk filed its posttrial motions fourteen days later on Friday, September 10, 2021. Riverwalk sought, in part, a new trial because it was denied its contractual right to a non-jury trial. (R. pp. 288-289.) Riverwalk also renewed its Motion for a Directed Verdict, but only as to the civil conspiracy and negligent misrepresentation claims (R. pp. 1122-24.) Regarding the negligent misrepresentation claim, Riverwalk only asserted that the record lacked any evidence that established Grapevine's detrimental reliance on Mr. Williams's misrepresentations. (1122-24.)

Riverwalk's posttrial motions were untimely because they filed after the ten days allowed for such motions under Rule 59(b) of the South Carolian Rules of Civil Procedure. Nevertheless the circuit court considered Riverwalk's motions and denied them. (R. pp. 288-89.) In its ruling on the breach of contract claims, the circuit court required, in part, that Riverwalk amend its Master Deed to contain terms that were not unduly restrictive of Grapevine's rights to use the common areas adjacent to its premises. (R. p. 33.)

Riverwalk attempted to appeal. (R. pp. 1512-22.) Neither of Riverwalk's Notices of Appeal referred to Riverwalk made no mention of the circuit court's Order dated March 10, 2021 that denied Riverwalk's Motion to Strike. (R. pp. 1512-13, 1521-22.) Likewise, Riverwalk's failed to include a copy of the order with its Notices of Appeal. (R. pp. 1512-22.)

On July 30, 2025, the court of appeals issued Unpublished Opinion No. 2025-UP-275 on July 30, 2025. Relevant to this Return, the court of appeals affirmed the circuit court decisions to (1) deny Riverwalk's Motion to Strike Grapevine's Jury Trial Demand, (2) submit to the jury Grapevine's breach of contract claims, and (3) deny Riverwalk's posttrial motion for judgment notwithstanding the verdict ("JNOV"). The court of appeals found that Riverwalk failed to preserve for appellate review all three issues because Riverwalk (1) did not immediately appeal the circuit court's Order dated March 10, 2021 denying Riverwalk's Motion to Strike Grapevine's Jury Trial Demand, (2) failed to renew its motion for directed verdict regarding Grapevine's breach of contract claims at the close of all evidence, and (3) filed untimely motions for JNOV. Riverwalk's Petition followed.

STATEMENT OF FACTS

Grapevine is a wine and craft beer shop owned by David and Melanie Sills. (R. pp. 624-25, 628-30.) David Williams was an employee of Riverwalk's lead developer and acted on Riverwalk's behalf. Ms. Sills informed Mr. Williams that Grapevine was interested in purchasing property rather than leasing space. (R. p. 636; R. p. 1323.) Ms. Sills also informed Mr. Williams that Grapevine was "looking for approximately 1400-1500 square feet on an end where *we could have patio space*." (R. p. 636; R. p. 1323 (emphasis added).) Between 2010 and 2014, Grapevine explored two potential opportunities with Mr. Williams, but neither of those opportunities culminated in a deal. Grapevine passed on these opportunities primarily because the Sills wanted to own their own space.

In early 2014, Mr. Williams again contacted the Sills to inform them of a new opportunity with Riverwalk. (R. pp. 644-45; R. pp. 1328-40.) Riverwalk's proposed design showed an outdoor dining area denoted for Grapevine's use. (R. pp. 1328-40; R. p. 647.) After learning that the opportunity with Riverwalk was for leasable space, the Sills again declined the opportunity to seek their own property. (R. pp. 651-52.) Mr. Williams indicated Riverwalk could not offer a purchase due to "something with [Riverwalk's] lender." (R. p. 652.)

A few weeks later, Mr. Williams proposed that to enter a lease with Riverwalk that included an option to purchase after two years (the "Lease"). (R. pp. 1341-48, R. pp. 653-54.) Mr. Williams misrepresented that Riverwalk's lender required the two-year lease before allowing Grapevine to purchase the premises. (R. pp. 1341-1348; R. p. 653.) Ms. Sills testified that the Sills had no reason to doubt Mr. Williams's misrepresentation regarding the Lease, they relied on Mr. Williams's misrepresentation regarding the two-year lease requirement before Grapevine could purchase the premises, and the *only* reason Grapevine entered the Lease was the purchase option. (R. p. 659.)

During litigation, a representative for Riverwalk's lender, Anthony Swainey, testified that it did not require a two year lease before Grapevine could purchase the premises. (R. p. 854.)? Mr. Williams also admitted that he lied when he said that Riverwalk's lender required a two-year lease before Grapevine could purchase the premises. Riverwalk was motivated to get Grapevine to enter the Lease because its lender required it to have at least two tenants signed up before it would loan Riverwalk money for the project.

When Grapevine received the Lease, there were various blank exhibits or placeholders that Mr. Williams indicated would be "forthcoming." (R. p. 663.) Nevertheless, Grapevine agreed to enter into the Lease with Riverwalk in June 2014 based upon Riverwalk's representations about the two-year lease requirement, the option to purchase after two years, and the ability to use the patio common area,. (R. pp. 655-56, 658, 723-24; R. pp. 1247-97.) Riverwalk finalized its loan with its lender "shortly after Grapevine signed the lease" on July 30, 2014. (R. p. 865.)

As discussed, the Lease included an option to purchase the premises during the third lease year. The option to purchase was contingent upon Grapevine providing at least 120 days' advance written notice and provided a purchase price of $270,000. Paragraph 33 of the Lease expressly provided that the option was to be exercised "in accordance with the Purchase and Sale Agreement as provided in Exhibit G." Exhibit G to the Lease was a purchase and sale agreement template that required, among other things, execution of the agreement and payment of a $25,000 deposit into escrow upon execution. Riverwalk's Mark Mather asked Ms. Sills to keep the option to purchase the premises confidential because Riverwalk "did not extend that option to other tenants." (R. p. 1357.)

Additionally, Mr. Williams and the Sills "constantly talked about how [there] would be an outdoor area, the garage doors, the view of the river." (R. p. 660-61.) Mr. Williams indicated it was common "in any lease" for all tenants to use "the common areas." (R. p. 840.) Riverwalk also provided the Sills with documents that showed Grapevine using the patio common area next to the proposed premises. (R. pp. 840-41.) Riverwalk's architect, Alan Aschenbrenner, testified the outdoor dining space was intended for a wine shop, and Grapevine was the only wine shop Riverwalk negotiated with in this development. (R. pp. 802-11.) Accordingly, the Sills understood the Lease's common area description allowed Grapevine to use the patio area next to its premises. (R. p. 762.)

Indeed, Paragraph 15 of the Lease granted a non-exclusive right for Grapevine to use and enjoy the common areas with Riverwalk, other tenants, and their customers. (R. pp. 1247-97.)

After construction of the project was completed, the Lease commenced on February 2, 2016. The parties' relationship was relatively harmonious throughout the first two years of the Lease. Grapevine utilized the outdoor patio common area next to its premises by providing tables and seating for use by both customers and non-customers. (R. pp. 1247-97) For nearly three years, Riverwalk permitted Grapevine's use of the outdoor patio common area. Riverwalk simply required Grapevine to maintain all proper licenses, clean up any trash and debris in the area, and secure insurance on the areas it used. (R. pp. 687-88.) Riverwalk also used marketing materials that showed pictures of Grapevine with people having a good time using the patio tables and chairs. (R. p. 843.)

Grapevine complied with Riverwalk's conditions for its use of the outdoor patio common area. (R. pp. 726-29; R. pp. 1382-88.) Nevertheless, on March 18, 2019—the due date for Riverwalk's Answer in this litigation—Riverwalk informed Grapevine that it could no longer use the outdoor patio common area as it had done for nearly three years. (R. p. 662; R. pp. 1379-80.) Grapevine promptly removed all tables and chairs from the outdoor patio common area.

Mr. Williams testified that he did not feel that Grapevine's use of tables and chairs in the outdoor patio common area violated the Lease. (R. p. 843.) Mr. Williams also conceded that Riverwalk's marketing documents and advertisements were misleading if the Lease did not permit Grapevine to use the outdoor patio common area. (R. pp. 845-46.) Contrary to Riverwalk's assertions, Grapevine never claimed any exclusive right to use any portion of the common areas. (R. pp. 725; Petition p. 19.) Moreover importantly, the circuit court never ruled that Grapevine was entitled to exclusive use of the common areas. (R. pp. 725; Petition p. 19.)

On July 26, 2017, Grapevine's attorney sent a letter to Riverwalk stating that the letter "CONSTITUTES NOTICE, pursuant to paragraph 33 of the Lease, of [Grapevine's] intent to exercise its purchase option" and proposed a closing date of February 2, 2018. (R. pp. 688-90; R. p. 1298.) The letter also requested that Riverwalk take the necessary steps to create a horizontal property regime. (R. pp. 688-690; R. p. 1298.) Riverwalk did not respond.

After two or three follow-up emails, another employee of Riverwalk's lead developer, Travis Hege, eventually responded on October 13, 2017. (R. pp. 1391-402.) Mr. Hege apologized for the delayed response and informed that he would be in touch once he determined what Riverwalk needed to do to complete Grapevine's purchase of the premises. (R. pp. 1391-402.) On October 26, 2017, Grapevine's attorney asked Mr. Hege to confirm the February 2nd closing date. (R. pp. 1391-402.) Grapevine's attorney also offered his assistance and informed Mr. Hege that he had experience setting up horizontal property regimes. (R. pp. 1391-402.)

In response, Mr. Hege again apologized for the delay and informed Grapevine's attorney that they were working on the documents. (R. pp. 1391-402.) Mr. Hege also informed Grapevine's attorney that he would provide an update once he heard back from Riverwalk's lender and attorney. (R. pp. 1391-402.) Instead, Todd Brockman contacted Grapevine's attorney and presented himself as Riverwalk's attorney. (R. pp. 693-94.) Mr. Brockman requested that Grapevine's attorney "direct any future emails to [his] attention." (R. pp. 693-94.)

Over the next several months, the parties and their attorneys communicated with each other about the aspects of establishing the premises as a condominium under the Horizontal Property Regime Act so that Grapevine could purchase the condominium pursuant to the Lease's option to purchase. (R. pp. 693-701; R. pp. 1358-61.) However, nothing ultimately changed regarding the lack of progress to close on Grapevine's purchase of the premises pursuant to the Lease.

Mr. Mather acknowledged the ease of the closing, stating that Grapevine's purchase of the premises was "[n]ot anything more than a home closing." (R. p. 1305.) Eventually, on April 12, 2018, Mr. Mather proposed a closing date of April 17, 2018. Ultimately, Riverwalk did not use that date, and Riverwalk never set a closing date. (R. pp. 701-07, 709-12; R. pp. 1305, 1363-87.) Mr. Mather could never explain why Riverwalk could not agree to proposed closing dates. (R. pp. 1090-94.)

However, at the time Grapevine sought to exercise its right to purchase, the premises was valued at $430,000, substantially higher than the Lease's purchase price of $270,000. Additionally, Riverwalk's lender would have required Riverwalk to release the premises as collateral for Riverwalk's loan. (R. p. 852-67.) Therefore, Riverwalk's lender would have required Riverwalk to provide additional collateral or an additional guarantor for the loan to replace the premises because Riverwalk would own less of the building. (R. pp. 852-67.) Accordingly, it was not in Riverwalk's financial interest to sell the premises to Grapevine because the sale would have increased both Riverwalk's risk and costs. Usurpingly, Mr. Swainey testified Riverwalk, *never* followed through with the required request for a partial release of the collateral. (R. p. 857.)

Accordingly, it is undisputed that Grapevine never executed the purchase and sale agreement attached as Exhibit G to the Lease or tendered the $25,000 earnest money deposit required by Exhibit G. Ms. Sills testified that Grapevine could not execute the purchase and sale agreement because Riverwalk had not created the necessary documents. Ms. Sills elaborated that Grapevine did not "have the information to fill in" the aforementioned blanks and placeholders in the Lease that Mr. Williams assured were "forthcoming." (R. p. 663.) In an attempt to protect its own interests at the expense of Grapevine's interests, Riverwalk refused to perform under the

Lease's option to purchase. Instead, Riverwalk chose to frustrate Grapevine's attempts to exercise its right to purchase the premises under the Lease's option to purchase.

STANDARD OF REVIEW

Appellate courts apply the same standard as the circuit court "[w]hen reviewing the denial of a motion for directed verdict or JNOV." *Fettler v. Gentner*, 396 S.C. 461, 466, 722 S.E.2d 26, 29 (Ct. App. 2012) (quoting *Pridgen v. Ward*, 391 S.C. 238, 243, 705 S.E.2d 58, 61 (Ct. App. 2010). Appellate courts are "required to view the evidence and inferences that reasonably can be drawn from the evidence in the light most favorable to the nonmoving party." *Id.* (quoting *Pridgen*, 391 S.C. at 243, 705 S.E.2d at 61.

"The motions should be denied when the evidence yields more than one inference or its inference is in doubt." *Id.* (quoting *Pridgen*, 391 S.C. at 243, 705 S.E.2d at 61. "An appellate court will only reverse the [circuit] court's ruling when there is no evidence to support the ruling or when the ruling is controlled by an error of law." *Id.* (quoting *Pridgen*, 391 S.C. at 243, 705 S.E.2d at 61.

Additionally, "[a]n action for specific performance of an option contract lies in equity." *Alexander's Land Co., L.L.C. v. M & M & K Corp.*, 390 S.C. 582, 591, 703 S.E.2d 207, 212 (2010). "In equity actions an appellate court can review the record and make findings based on its view of the preponderance of the evidence." *Id.* at 592, 703 S.E.2d at 207 (quoting *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 290–91 (2000).

ARGUMENT

I. The court of appeals properly determined that Riverwalk failed to preserve for appellate review the jury trial issue.

"Orders affecting the mode of trial affect a substantial right as defined in section 14-3-330(2) of the South Carolina Code (1976), 'and must, therefore, be appealed immediately.'"

Frampton v. S.C. Dep't of Transp., 406 S.C. 377, 385, 752 S.E.2d 269, 274 (Ct. App. 2013) (quoting *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997)). "Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue." *Id.* at 386, 752 S.E.2d at 274 (quoting *Lester*, 327 S.C. at 266, 491 S.E.2d at 241).

"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." *Frampton*, 406 S.C. at 386, 752 S.E.2d at 274 (quoting *Cobb v. S.C. Dep't of Transp.,* 365 S.C. 360, 363, 618 S.E.2d 299, 300 (2005). "Issues regarding mode of trial must be raised in the [circuit] court at the first opportunity, and the order . . . is immediately appealable." *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993). "The failure to timely appeal the interlocutory order . . . effects a waiver of appeal rights." *Id.*

In *Frampton*, the appellant moved to transfer the case to the non-jury docket, and the circuit court denied that motion. *Frampton*, 406 S.C. at 386, 752 S.E.2d at 274. The appellant never appealed that order. *Id.* At trial, the appellant again raised the issue of a non-jury trial to the circuit court, and the circuit court again denied the appellant's request to transfer the case to the non-jury docket. *Id.* The court of appeals found that the appellant failed to preserve for appellate review the non-jury trial issue because the appellant "did not immediately appeal the trial court's order affecting the mode of trial, which is a substantial right" *Id.*

The circumstances in *Frampton* are nearly identical to the circumstances here. Riverwalk did not move to strike Grapevine's jury trial demand until it answered Grapevine's Second Amended Complaint. The circuit court denied Riverwalk's Motion, and Riverwalk did not immediately appeal that order. Instead, Riverwalk attempted to assert its alleged right to a non-jury trial during a pretrial hearing. Yet again, the circuit court declined to transfer the case to the non-jury docket. Riverwalk yet again chose not to immediately appeal that decision.

Orders that affect the mode of trial affect a substantial right. The circuit court's denial of Riverwalk's Motion to Strike Grapevine's Jury Trial Demand affected the mode of trial. Therefore, Riverwalk must have immediately appealed the decisions to preserve the issue for appellate review.

It is undisputed that Riverwalk failed to immediately appeal the circuit court's Order denying Riverwalk's request to strike Grapevine's jury trial demand. Riverwalk's attempts to distinguish its contractual right to a non-jury trial from a substantial right are without merit. The circuit court's order clearly affected a substantial right by affecting the mode of trial. Thus, Riverwalk was required to immediately appeal the circuit court's order yet failed to do so. Accordingly, the court of appeals found that Riverwalk failed to preserve the issue for appellate review. Therefore, this Court should deny Riverwalk's Petition as to this issue.

A. Alternatively, Riverwalk waived the jury trial issue by consenting to a date-certain jury trial before moving to strike Grapevine's jury trial demand.

"Waiver is the voluntary and intentional relinquishment of a known right." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999) (quoting *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994). Waiver "may be implied from circumstances indicating an intent to waive." *Provident Life & Acc. Ins. Co.*, 317 S.C. at 478, 451 S.E.2d at 928. "Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver." *Id.*

Grapevine demanded a jury trial when it commenced this action on December 10, 2018. Riverwalk also demanded a jury trial in its answer filed March 25, 2019. On March 25, 2020, Grapevine filed its First Amended Complaint and again demanded a jury trial. Yet again, Riverwalk expressly demanded a jury trial in its Answer filed April 9, 2020.

Riverwalk waited over two years to assert any right to a non-jury trial when it filed its Motion to Strike on January 29, 2021. (R. pp. 158-177.) By that time, the case had already been scheduled—with Riverwalk's consent—for a date-certain jury trial set to begin on February 16, 2021. (R. p. 570:20 – p. 572:3; R. p. 220.) The only reason the trial did not proceed on that date was because of the disruptions caused by the coronavirus.

Nevertheless, Riverwalk had already expressly waived any right to a non-jury trial by repeatedly demanding a jury trial. For two years, Riverwalk acted in a way that was completely irreconcilable with any assertion of a right to a non-jury trial. Under these circumstances, the circuit court properly rejected Riverwalk's last second attempt to resurrect an alleged right to a non-jury trial on the eve of the jury trial to which it had already consented. Accordingly, the circuit court properly denied Riverwalk's Motion to Strike Grapevine's jury trial demand. Therefore, this Court should deny Riverwalk's Petition as to this issue for this additional alternative reason.

B. Regardless, Riverwalk did not properly appeal the circuit court's decision to deny Riverwalk's Motion to Strike Grapevine's Jury Trial Demand.

1. Riverwalk's Notices of Appeal did not include the circuit court's Order denying Riverwalk's Motion to Strike Grapevine's jury trial demand.

"In appeals from lower courts, the notice of appeal shall contain [t]he date of the order, judgment, or sentence from which the appeal is taken . . . ." Rule 203(e)(1)(C), SCACR. "The notice filed with the appellate court shall be accompanied by [a] copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing." Rule 203(d)(1)(B)(ii), SCACR. A "mere clerical error in a Notice of Appeal does not warrant dismissal of the appeal." *Weatherford v. Price*, 340 S.C. 572, 577, 532 S.E.2d 310, 313 (Ct. App. 2000).

In *Weatherford*, the circuit court entered an order of judgment for the respondent after a non-jury trial. *Id.* 575, 532 S.E.2d at 311. The circuit court subsequently denied the appellant's motion for reconsideration. *See. id.* at 577, 532 S.E.2d at 313. The appellant's ensuing Notice of Appeal failed to mention the original order of judgment and referred only to the order denying the motion for reconsideration. *Id.* Critically, the appellant attached a copy of the original order to the Notice of Appeal. *Id.* at 578, 532 S.E.2d at 313. Moreover, the appellant's Notice of Appeal referred to order denying the motion for reconsideration of the original order. *Id.* at 577, 532 S.E.2d at 313. Under the circumstances, the court of appeals found that the appellant's omission was merely clerical, and it therefore had jurisdiction to hear the appeal. *Id.* at 578, 532 S.E.2d at 313.

Unlike the circumstances of *Weatherford*, the circumstances here are not mere clerical errors. In *Weatherford*, the appellant clearly evidenced an intent to appeal the original order by attaching it to the notice of appeal. Moreover, the *Weatherford* appellant's Notice of Appeal referenced the order denying reconsideration of the original order in the notice of appeal, which clearly reflected the appellant's intent to appeal the original order.

Unlike the *Weatherford* appellant's Notice of Appeal, Riverwalk's Notices of Appeal do not reference the circuit court's Order dated March 10, 2021 order in any way. (R. pp. 1512-13, 1521-22.) Riverwalk also failed to attach a copy of that order to its Notices of Appeal. (R. pp. 1512-22.) Unlike the *Weatherford* appellant, Riverwalk failed to reflect any conceivable intention to challenge the circuit court's Order denying its Motion to Strike. (R. pp. 1512-22.)

Accordingly, Riverwalk's error is not a mere clerical error because it failed to provide any intent to appeal the circuit court's Order filed March 10, 2021. Therefore, this Court should deny Riverwalk's Petition as to this issue for this additional alternative reason.

2. Riverwalk's posttrial motions were untimely.

"The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter." Rule 59(b), SCRCP.[2] "The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." *In re Beard*, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004). "Although trial judges retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e), SCRCP, motion is filed, after ten days that jurisdiction is lost." *Ness v. Eckerd Corp.*, 350 S.C. 399, 402, 566 S.E.2d 193, 195 (Ct. App. 2002).

Riverwalk's posttrial motions were not filed within the ten days mandated by Rule 59(b) of the South Carolina Rules of Civil Procedure. Although the circuit court attempted to give the parties fourteen days to make posttrial motions, it did not have any authority to allow motions for a new trial beyond the ten-day limit in the South Carolina Rules of Civil Procedure. Therefore, Riverwalk's posttrial motion for a new trial was untimely and Riverwalk failed to preserve for appellate review its alleged right to a non-jury trial. Accordingly, this Court should deny Riverwalk's Petition as to this issue for this additional alternative reason.

II. The court of appeals properly determined that Riverwalk failed to preserve for appellate review the breach of contract issues.

"[A] motion for JNOV under Rule 50(b), SCRCP is a renewal of a directed verdict motion." *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006). "When a party fails to renew

[2] Rules 59(b) and 59(e), SCRCP were recently amended to allow parties twenty days after the jury is discharged to file their posttrial motions for a new trial. *In re* Amendments to the South Carolina Rules of Civil Procedure, Appellate Case No. 2025-002127. These amendments took effect after both the circuit court and the court of appeals filed their opinions in this matter. *In re* Rule Amendments, Appellate Case No. 2025-002127 (providing that the amendments became effective April 30, 2026). Accordingly, the previous ten day requirement still applies in this case.

a motion for a directed verdict at the close of all evidence, he waives his right to move for JNOV." *Id.*

Riverwalk renewed its motion for a directed verdict only as to Grapevine's claims for civil conspiracy and negligent misrepresentation. Riverwalk did not renew its motion for a directed verdict as to Grapevine's claims for breach of contract. Accordingly, the court of appeals found that this issue was not preserved for appellate review. Therefore, this Court should deny Riverwalk's Petition as to this issue.

A. Alternatively, Riverwalk's posttrial motions were untimely.

"The motion for [JNOV] shall be made promptly after the jury is discharged, or in the discretion of the court not later than 20 days thereafter." Rule 50(e), SCRCP[3] "When a defendant moves for a directed verdict under Rule 50, SCRCP at the close of the plaintiff's case, he must renew that motion at the close of all evidence. . . . Otherwise, [appellate] court[s are] precluded from reviewing the denial of the motion on appeal." *Id.* 19–20, 640 S.E.2d at 496.

As discussed above in Section I.B.2, Riverwalk's posttrial motions were untimely because they were not made within the ten days allowed under the South Carolina Rules of Civil Procedure. The circuit court attempted to allow the parties fourteen days for their posttrial motions for JNOV, but the circuit court did not have any authority to allow more than ten days for those motions. Therefore, Riverwalk's posttrial motion for JNOV was untimely, and Riverwalk failed to preserve for appellate

[3] Rules 50(e), SCRCP was recently amended to allow parties twenty days after the jury is discharged to file their posttrial motions for NOV. *In re* Amendments to the South Carolina Rules of Civil Procedure, Appellate Case No. 2025-002127. These amendments took effect after both the circuit court and the court of appeals filed their opinions in this matter. *In re* Rule Amendments, Appellate Case No. 2025-002127 (providing that the amendments became effective April 30, 2026). Accordingly, the previous ten day requirement still applies in this case.

review the breach of contract issues. Accordingly, this Court should deny Riverwalk's Petition as to this issue for this additional alternative reason.

B. Regardless, the circuit court properly submitted to the jury the breach of contract issues regarding the option to purchase and use of common areas.

1. Riverwalk was not entitled to judgment as a matter of law on whether it breached the Lease regarding the option to purchase.

Riverwalk argues the circuit court erred by submitting to the jury the question of whether Riverwalk breached the Lease's option to purchase. Riverwalk therefore argues that the evidence on this issue did not yield more than one inference, or that the inferences related to the issue were never in doubt. Given the evidence presented Riverwalk's spurious argument has no merit.

The record is replete with evidence and inferences that support the jury's verdict that Riverwalk breach the Lease's option to purchase. At all times Grapevine made it clear that it would only enter a deal with Riverwalk if it could purchase the premises. Mr. Williams testified the Sills were "always very clear that they wanted to purchase their space." (R. p. 838.)

Grapevine ultimately agreed to enter the Lease with Riverwalk because it included the option to purchase, and Grapevine only agreed to the two-year lease because Mr. Williams misrepresented that Riverwalk's lender required it. This deliberate misrepresentation was designed solely so that Riverwalk could obtain the two tenants its lender required before issuing the construction loan.

Riverwalk acknowledged that Grapevine sent a letter exercising its rights to purchase the premises. (R. pp. 795-98.) Yet Riverwalk insists that it had no obligation to perform under the option to purchase despite (1) Grapevine's letter exercising its right to purchase, (2) Grapevine's additional efforts to set up a closing, and (3) Grapevine's attempts to get Riverwalk to execute the necessary documents to complete the purchase. Moreover, Riverwalk repeatedly sought to ignore or frustrate the requirements of the Lease's option to purchase. Riverwalk used its own actions in obstructing the Lease's option to purchase to support its claim that Grapevine could not enforcing the Lease's option to purchase.

Riverwalk clearly had no desire to follow through with the Lease's option to purchase, and Riverwalk did all it could to prevent Grapevine from exercising its right to purchase the premises for many self-serving reasons. First, it was not in Riverwalk's financial interest to sell the premises to Grapevine under the Lease's option to purchase. Because Riverwalk would own less of the building, Riverwalk's lender would have required Riverwalk to replace that portion of the loan's collateral with additional collateral or an additional guarantor for the loan. (R. pp. 852-67.) Therefore, selling the premises to Grapevine would have simultaneously increased both Riverwalk's risk and costs.

Moreover, the purchase price under the Lease was $270,000. (R. p. 656.) At the time Grapevine sought to exercise its right to purchase, the premises was valued at $430,000. By performing under the Lease's option to purchase, Riverwalk would have increased its exposure *and* lost approximately $160,000 in value. (R. p. 934.) Allowing Grapevine to exercise its right to purchase the premises under the Lease's option to purchase was clearly not in Riverwalk's financial interest. Unsurprisingly, Mr. Swainey testified that Riverwalk *never* followed through with its required request for a partial release of the collateral to Grapevine. (R. p. 857.) Riverwalk simply never had an intent to honor or perform under the Lease's option to purchase.

Indeed, Riverwalk continues to provide manufactured reasons it should escape the consequences of the Lease's option to purchase. This Court should not condone such actions based upon self-serving and financially motivated reasons. Riverwalk's excuses are particularly distasteful because it uses its own actions to support its assertion that Grapevine failed to perform under the Lease. Such arguments are specious at best; more accurately, Riverwalk's arguments that Grapevine didn't execute the Lease's option to purchase are recognized as evidence of

Riverwalk's intent to deceive Grapevine. Riverwalk merely wanted Grapevine as a tenant to secure its construction loan. The Lease's option to purchase was only included to induce Grapevine into entering into the Lease, and Riverwalk had no intent to perform under the Lease's option to purchase.

Under these circumstances, it is clear there were facts and issues in dispute related to whether Riverwalk breached the Lease's option to purchase. Accordingly, the circuit court properly submitted this issue to the jury. Therefore, this Court should deny Riverwalk's Petition as to this issue for this additional alternative reason.

2. Riverwalk was not entitled to judgment as a matter of law on whether it breached the Lease regarding the use of common areas.

Initially, we note that Riverwalk presents an absolute misstatement of the circuit court's ruling regarding the use of common areas. Grapevine never asserted or attempted to exercise any exclusive right over any common area. (R. p. 725.) Accordingly, the circuit court at no point ruled that Grapevine could exclusively use the patio and common areas. Unsurprisingly, Riverwalk fails to provide a citation to the record on this issue of exclusivity because it did not happen. There is absolutely no finding that Grapevine had an exclusive right to use of the common areas. Riverwalk has simply made up this argument because it is unhappy with the result, as evidenced by the lack of supporting citations.

In reality, the circuit court found that the Lease's terms were ambiguous regarding use of common areas. (R. p. 605.) Accordingly, the circuit court submitted the question to the jury, and the jury found that Riverwalk breached the Lease regarding Grapevine's use of the outdoor patio common area. As a result, the jury awarded damages of $146,124 on this specific cause of action. (R. p. 19, R. pp. 898-911, 919-30; R. pp. 1479-1504.) The circuit court aptly foresaw Riverwalk's potential attempts add additional rules or restrictions to the use of common areas to harass

Grapevine, tempt Grapevine to give up this litigation, or force Grapevine to give up its right to purchase the premises under the Lease's option to purchase. Accordingly, the circuit court simply required Riverwalk to amend its Master Deed to contain terms that were not unduly restrictive of Grapevine's rights to use the common areas adjacent to its premises. (R. p. 33.) The circuit court's ruling on this issue was necessary to support the equities between the parties, and the circuit court's ruling was supported by the evidence.

The record is replete with evidence that supported the jury's verdict. The record established Grapevine permitted non-customers to use their chairs and tables. (R. pp. 725-726.) "It happened all the time." (R. p. 715.) The circuit court also heard significant testimony about Riverwalk's behavior in essentially holding the patio common area hostage after Grapevine initiated this litigation.

The record also established that Grapevine highly valued an outdoor seating area, and Riverwalk used this desire to entice Grapevine into entering the Lease. (R. p. 632.) Ms. Sills informed Mr. Williams that Grapevine was looking for approximately 1400-1500 square feet where they could have patio space. (R. p. 636; R. p. 1323.) Eventually, Mr. Williams informed Ms. Sills about the opportunity to locate a wine shop in Riverwalk. (R. pp. 644-45; R. pp. 1328-40.) The proposed design showed the space *with an outdoor dining area that was denoted for use of the wine shop***.** (R. pp. 1328-40; R. p. 647.) Riverwalk's architect, Mr. Aschenbrenner, testified the outdoor dining space was intended for a wine shop, and Grapevine was the only wine shop Riverwalk negotiated with in this development. (R. pp. 802-11.)

Paragraph 15 of the Lease granted a non-exclusive right to use and enjoy the common areas, and Riverwalk allowed Grapevine's use of the patio common area for nearly three years. Usurpingly, Ms. Sills understood the common area description in the Lease to allow the use of the patio area. (R. p. 762.) It was not until March 18, 2019—the day Riverwalk's Answer was due—

that Riverwalk issued a letter to Grapevine indicating it could no longer use the outdoor patio areas as it had done for years. (R. p. 662; R. pp. 1379-80, R. pp. 600-601; R. pp. 627-628.) Grapevine removed all tables and chairs at that time.

Further, Riverwalk used Grapevine's use of the patio common area to advertise and build up its general development of this area. (R. p. 731.) Riverwalk stated on its website that Grapevine was "an area where you can enjoy wine, beer, artisan cheese and desserts in the company of friends and neighbors." (R. p. 628; R. pp. 1311-1323.) Riverwalk's website contained representations of the patio area's use by Grapevine until this litigation commenced. (R. pp. 1311-22.) This makes it difficult, if not impossible, to argue Grapevine never had the right to use the patio common area.

Based upon these facts, the circuit court properly determined that Lease's language regarding the use of common area was ambiguous. Accordingly, the circuit court submitted to the jury the question of whether Riverwalk breached the Lease regarding Grapevine's use of common. The circuit court also properly denied Riverwalk's motion for JNOV regarding whether Riverwalk breached the Lease as to Grapevine's use of the common areas. Therefore, this Court should deny Riverwalk's Petition as to this issue for this additional alternative reason.

III. The court of appeals properly determined that Riverwalk failed to preserve for appellate review the negligent misrepresentation issue.

"A motion for a [JNOV] is a renewal of the directed verdict motion and cannot raise grounds beyond those raised in the directed verdict." *Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992). At the close of all the evidence, Riverwalk renewed its motion for directed verdict on Grapevine's negligent misrepresentation claim. Riverwalk's only basis for the motion was that the record lacked any evidence that established Grapevine's detrimental reliance on Mr. William's misrepresentations regarding Riverwalk's lender requiring a two year lease.

Accordingly, the court of appeals found that Riverwalk failed to preserve for appellate review any other argument on this issue. Therefore, this Court should not consider any other argument Riverwalk presents regarding negligent misrepresentation. For the reasons discussed below, Riverwalk failed to preserve for appellate review even that argument.

A. Riverwalk's posttrial motions were untimely.

A "motion for [JNOV] shall be made promptly after the jury is discharged, or in the discretion of the court *not later than 10 days thereafter*." Rule 50(e), SCRCP (emphasis added). As discussed in Sections I.B.2 and II.A., Riverwalk's posttrial motion for JNOV on this issue was untimely. Riverwalk filed its posttrial motions fourteen days after the jury issued its verdict pursuant to the circuit court's instructions. Under the applicable South Carolina Rules of Civil Procedure at that time, the circuit court did not have the discretion to extend the time for making such motions beyond ten days. Accordingly, the court of appeal properly found that Riverwalk failed to preserve this issue for appellate review because its motion for JNOV was untimely. Therefore, this Court should deny Riverwalk's Petition as to this issue for this additional alternative reason.

B. Regardless, the circuit court properly submitted to the jury the negligent misrepresentation issue.

"A duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction." *Winburn v. Insurance Co.* 287 S.C. 435, 441, 339 S.E.2d 142, 146 (Ct. App. 1985). The record is replete with evidence that established that Grapevine relied to its detriment on Mr. Williams's misrepresentations. First, Mr. Williams informed the Sills that Riverwalk's lender required a two-year lease. The lender's representative, Mr. Swainey, testified that the lender did not require a two year lease before the Sills could purchase the premises. Riverwalk profited from this negligent misrepresentation, and Grapevine was forced to pay years of rent it otherwise would not have paid. Grapevine could have continued its search for other properties to purchase instead. The record established that the only reason Grapevine agreed to the Lease was because of the option to purchase.

Additionally, Mr. Williams discussed Grapevine's need and desire for outdoor seating while trying to entice Grapevine into entering the Lease. Mr. Williams indicated it was common "in any lease" for all tenants to use the common areas. (R. p. 840.) Mr. Williams also had marketing brochures prepared and showed them to the Sills portraying outdoor use of adjacent patio space with tables and chairs. (R. pp. 840-41.) Riverwalk used marketing materials that showed pictures of Grapevine with the patio tables and chairs in use and people having a good time. (R. p. 843.) Mr. Williams testified that he did not feel that Grapevine's use of tables and chairs on the patio areas was a violation of the Lease. (R. p. 843.) Mr. Williams also conceded that the marketing documents and advertisements were misleading as to the uses Riverwalk allowed. (R. pp. 845-46.)

Mr. Williams candidly admitted that he made false statements. Based upon this testimony, it is undeniable that Mr. Williams's misrepresentations—made on Riverwalk's behalf—constituted negligent misrepresentations undertaken to get Grapevine to enter the Lease with Riverwalk. Riverwalk was motivated to get Grapevine to enter the Lease because its lender required at least two tenants to be signed up before agreeing to loan Riverwalk money for the project.

It is clear Grapevine relied to its detriment on these statements and entered the Lease with the option to purchase. Grapevine turned down prior offers because there was no ability to purchase. (R. pp. 651-52.) Riverwalk lied about the terms of the ability to purchase in this case for its own financial benefit, attributed the misrepresentations to its lender, and now seeks to avoid liability for those misrepresentations.

Each of these misrepresentations were false when they were made. Nothing more is required to support a claim for negligent misrepresentation. This is quintessential negligent misrepresentation.

The record clearly contained evidence that established negligent misrepresentation was a jury issue. Accordingly, the circuit court properly denied Riverwalk's motion for JNOV as to Grapevine's negligent misrepresentation claim. Therefore, this Court should deny Riverwalk's Petition as to this issue for this additional alternative reason.

CONCLUSION

Riverwalk failed to preserve for appellate review the issues it presents in its Petition. Accordingly, Grapevine respectfully requests that this Court affirm the court of appeal's order and deny Riverwalk's Petition. Regardless, Riverwalk's arguments in its Petition fail on the merits. Therefore, Grapevine asks that this Court deny Riverwalk's Petition for those additional alternative reasons.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/Stephen L. Brown
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
Graydon V. Olive, IV (SC Bar No. 105319)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488
Attorneys for Petitioner-Respondent

Charleston, South Carolina

August 10, 2026