

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Circuit Court Judge

Appellate Case No. 2025-001031
Case No. 2021-CP-07-01085

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SC Court of Appeals

R.V. Resort and Yacht Club
Owners' Association, Inc.,
Securitas Services, Inc., Mike
Morales, and Sunset, Inc.,

Respondents,

v.

Turner's Marina, LLC,

Appellant.

APPELLANT'S REPLY BRIEF

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ARGUMENT

Respondents' Final Brief is built on a single premise: that Turner's Marina, LLC ("Appellant") is a party with "buyer's remorse" trying to escape a settlement it signed. That is not this appeal. Appellant does not ask this Court to undo the December 13, 2023 Mediated Settlement Agreement (R. pp. 338–340) ("Settlement Agreement"). Appellant asks this Court to either enforce it *as written* or to declare it unenforceable as agreement to agree. With either finding this Court should reverse the two Orders that directed Appellant to execute recordable instruments containing a substantial number of material terms that appear nowhere in the Settlement Agreement, and one of which, by its own express language, *supersedes* the Settlement Agreement wherever the two conflict.

The Settlement Agreement is thirteen numbered paragraphs on three pages. What the trial court ordered Appellant to sign is an eighteen-section Amended and Restated Easement (R. pp. 65–72) and a ten-section Second Amendment to Lease with seven recitals incorporated as operative terms (R. pp. 23–32). The gap between the two is this appeal.

I. Appellant Narrows Issue 1: The 2009 Amendment to Rule 43(k) Makes the Signed Writing Binding - According to Its Terms, and No Others.

Respondents are correct that Rule 43(k), SCRPC, was amended in 2009 to add a third method of compliance. (Resp. Br. 7–8.) The Rule now provides that no agreement of counsel affecting the proceedings is binding unless reduced to a consent order or written stipulation entered in the record, *or* made in open court and noted upon the record, "or reduced to writing and signed by the parties and their counsel." Rule 43(k), SCRPC; *see* Note to 2009 Amendment; *Viviano v. Jeffers*, 447 S.C. 33, 923 S.E.2d 649 (Ct. App. 2025).

Appellant does not press formal non-compliance with Rule 43(k) as to the signatories to the Settlement Agreement. The point Appellant preserves - and the point that matters - is what compliance with Rule 43(k) accomplishes. Rule 43(k) tells a court *when* a writing is binding. It does not tell a court *what* the writing says, and it confers no authority to enforce obligations or “write in” terms that the writing does not contain. Respondents invoke the Rule as though it were a warrant for the relief the trial court granted. It is the opposite. Having satisfied Rule 43(k), the parties are bound to the three-page document they signed - no more and no less. The Rule that makes the writing binding is the same Rule that fixes its outer limits.

Respondents’ own authority confirms the point. *Viviano* holds that where Rule 43(k) is satisfied, the Rule’s terms are mandatory and a party may not resort to contract or equitable principles to vitiate *those terms* - the terms of the signed writing. Respondents ask this Court to enforce something else entirely.

II. Respondents’ Preservation Objection Does Not Reach the Issues That Decide This Appeal.

Respondents devote two of their six argument headings to preservation. (Resp. Br. 6–9.) Appellant addresses the objection directly.

As to Issues 1 and 2 of Appellant’s Final Brief - non-compliance with Rule 43(k) and “agreement to agree” - Appellant recognizes that those labels were not placed before the trial court in those terms, and Appellant does not ask this Court to reach them as independent grounds for reversal. They are addressed above only to answer Respondents’ argument that Rule 43(k) affirmatively *supports* the Orders on appeal.

Respondents’ preservation objection has no application, however, to Issues 3 through 5 - the construction and enforcement of the Settlement Agreement, which is the whole of what the

trial court decided and the whole of what Appellant appeals. Every objection Appellant presses here was made below, in writing, and expressly ruled upon.

The easement. The scope of the § 9 “update” was the central contested question from January 2024 forward. Appellant raised it in its own Motion to Enforce Mediation Settlement Agreement, dated February 23, 2024 (R. pp. 335–340), which tendered a proposed Amended Easement expressly preserving the “paved roads” limitation to the newly granted terminus; argued it at the April 11, 2024 hearing (R. pp. 647–731); and briefed it in its May 3, 2024 Memorandum in Support (R. pp. 435–436), its May 13, 2024 Memorandum (R. pp. 482–495) and its May 31, 2024 Memorandum (R. pp. 502–506). The trial court *expressly ruled* on it:

“This Court does not adopt the position of the Plaintiff since there is no language in Section 9 of the Settlement Agreement restricting or limiting the easement to ‘roads’ or ‘paved roads’ as Plaintiff now asserts.”

(Easement Order at 4, R. p. 62.)

The lease. The same is true of every lease objection argued here. Appellant’s May 13, 2024 Memorandum objected, section by section, to the restaurant hours provision, the Affirmation of Tenant’s Rights provision and the treatment of the Recreational Facilities, the pool provision, and the “Whereas” recitals, and stated the governing complaint plainly: Respondents “seek to restrict the Plaintiff to the fullest extent possible by adding verbiage to the Amended Lease that is not included in the Settlement Agreement.” (R. pp. 482–495.) Appellant renewed each objection in its May 31, 2024 Memorandum (R. pp. 502–506). The trial court then ruled on each in the Lease Order under separate headings: “Restaurant Hours of Operation Issue,” “Claim of Control Over Additional Properties,” “Claim that Settlement Agreement Strips Right of Owners to Use Pool,” and the “Whereas” provisions. (Lease Order at 3–8, R. pp. 15–20.) Appellant raised them again by Rule 59(e), SCRC motion. (R. pp. 507–509.)

An issue is preserved when it is raised to and ruled upon by the trial court. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). A party “need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Here there is no question of labels. Appellant does not dispute the preservation principle Respondents draw from *Scoggins*. It simply has no application to what Appellant argues.

Nor does Appellant’s own Motion to Enforce foreclose the appeal. (Resp. Br. 7.) Appellant moved to enforce the Settlement Agreement *as Appellant reads it*, tendering its own proposed instruments. Appellant’s position has not changed by a word. There is no inconsistency between asking a court to enforce an agreement and objecting to instruments that go beyond it. That is precisely what competing motions to enforce are for - and Respondents filed one too.

III. The Governing Principle: An Instrument Enforcing a Settlement May Do No More and No Less Than the Settlement Says.

The trial court stated the correct rule. Twice in the Lease Order it declined to act because it “does not have the authority to change or rewrite the parties[’] Settlement Agreement to add new language,” and “does not have the authority to add language to the parties[’] written Settlement Agreement.” (Lease Order at 6, 8, R. pp. 18, 20.) In the Easement Order it declined to adopt Appellant’s reading because doing so “would [require] the Court . . . to insert the words ‘road’ or ‘paved road’ into the Settlement Agreement, terms not used by the parties.” (Easement Order at 4, R. p. 62.) That is settled law. A court “must enforce an unambiguous contract according to its terms, regardless of the contract’s wisdom or folly, or the parties’ failure to guard their rights carefully.” *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). “It is not the function of the court to rewrite contracts for parties.” *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm’n*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988). “In the enforcement of an

agreement, the court does not have the authority to modify terms that are clear and unambiguous on their face.” *Patricia Grand Hotel, LLC v. MacGuire Enters., Inc.*, 372 S.C. 634, 641, 643 S.E.2d 692, 695 (Ct. App. 2007); *accord Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007) (quoted at length in both Orders).

The rule cuts in both directions or it is not a rule. Yet in both Orders it was applied in one direction only. Every request by Appellant was refused on the ground that the court could not add language; every instrument tendered by Respondents was adopted notwithstanding that it added a great deal. The result is a one-way ratchet: the Settlement Agreement’s silences were read as fatal to Appellant and as permissive for Respondents.

The correct disposition is not complicated. Where the Settlement Agreement speaks, the recordable instruments must reproduce what it says. Where it is silent, the instruments must be silent, leaving the underlying 1984 Easement, the 1981 Lease, and the 1981 Covenants to operate as they always have. Measured against that standard, both instruments the trial court ordered Appellant to execute fail.

IV. The Trial Court Erred Because the Easement Order Rewrote § 9 of the Settlement Agreement and Expanded the Scope of a Right-of-Way Access Easement Over Paved Roads to a General Unrestricted Access and Use Easement.

Section 9 of the Settlement Agreement reads in its entirety:

“9. The 1984 easement recorded at Book 397 at Page 1612 will be updated to include granting access to the Association, Owners of the Property, and each of their guests, lessees, invitees and licensees to Parcel “B”. The Parties agree that Parcel B is referenced in Plat Book 148 at Page 60.”

(R. p. 340.)

A. “Updated to include” Is Additive; the Ordered Instrument “Replace[s] and Supersede[s].”

The trial court’s stated reason for adopting Respondents’ draft was that “there is no language in Section 9 . . . restricting or limiting the easement to ‘roads’ or ‘paved roads.’” With

respect, that reasoning proves too much. There is likewise no language in § 9 *granting* an easement over the entirety of Parcel B, and no language deleting the paved-roads limitation of the instrument being updated. Section 9 does not create an easement from scratch. It says the 1984 easement “will be *updated* to include” certain access.

Those words carry their ordinary meaning. To “update” an instrument is to modify it; to update it “to include” something is to *add*. Neither word means “revoke and replace.” Every term of the 1984 Easement that § 9 does not address survives the update - including the granting clause’s express limitation to “the paved roads,” and the further recital that “[t]his Easement is restricted to the paved roadways only.” (R. pp. 401–402.)

Furthermore, the settlement agreement was solely focused on the “recreational area” currently under the 99-year lease and under the existing easement there was no access to this portion of land shown as Parcel “A” as shown on the Plat referenced in the settlement agreement. The entire granting of the updated easement was to allow for passage to the recreated area where no easement or access has ever been granted.

The instrument the trial court ordered Appellant to execute does not update the 1984 Easement. It abolishes it. Section 6 declares that it is “specifically intended by the Grantor and Grantee to *replace and supersede* that Original Easement,” and § 16 adds an integration clause superseding “any prior agreements, representations, warranties, or communications.” (R. pp. 65–72.) The words “replace,” “supersede,” “restate,” and “entire agreement” appear nowhere in § 9. To reach the trial court’s result, one must read into § 9 a clause that says: *notwithstanding the paved-roads limitation of the Original Easement*. Reading silence as deletion is not construction; it is insertion.

B. The 1984 Easement only allowed General Access from the Entrance of the RV Resort Yacht Club to the “Boundary of the Lots” and was Expressly Limited to Paved Roads.

The 1984 Easement provides:

“For and in connection of the sum of TEN AND 00/100 (\$10.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, non-exclusive right-of-way, on, over, and across the paved roads located on that certain property owned by Grantor as more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference.”

“This Easement is granted to allow and facilitate general access from the entrance of the RV Resort and Yacht Club to the boundary of the lots...”

“This Easement is restricted to the paved roadways only. Grantor may, at its option, change the location of the roadways, provided that the Grantor shall always provide access as stated above with said access sufficient for motor vehicle traffic.” (R. at ROA 402).

The Trial Court erred by ignoring express purpose and scope of the scope of the

1984 easement. Under South Carolina law, the controlling element in construing a deed is the grantor’s intent, found within the four corners of the instrument. *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 582–83 (2009). The parties’ Agreement contemplated an update to add a parcel to the existing easement framework; it did not authorize rewriting the original scope from a paved-roads right-of-way into a parcel-wide access easement.

C. Respondents’ “Then Nothing Changed” Premise Is Demonstrably Wrong.

Respondents’ central merits argument is that Appellant’s reading “fails for a second reason,” because “there would be no change whatsoever in the 1984 Easement, which was already limited to paved roads,” and “[s]uch a construction is non-sensical and illogical.” (Resp. Br. 16.) The premise is false on the face of the four instruments. Section 9 effects at least three substantive changes without disturbing the paved-roads limitation:

- 1) **It changes the servient description.** The 1984 Easement burdened property described by metes and bounds on Exhibit “A,” keyed to Plat Book 29 at Page 184. (R. pp. 406, 789–

795.) Section 9 identifies the burdened land as “Parcel B” as shown on the 2017 Boundary and As-Built Survey recorded at Plat Book 148, Page 160. (R. p. 796.) Respondents themselves concede the two are not coextensive, acknowledging that the 2017 plat shows Appellant’s acreage “excluding only a sliver of land to the Northwest adjacent to the Marina.” (Resp. Br. 16.) The update therefore extends the right-of-way to the paved roads within Parcel B as presently configured.

- 2) **It changes the class of beneficiaries.** The 1984 Easement ran to the POA, the lot owners, and “their guests, lessees, invitees, and licensees *of Grantee employed to operate and maintain the improvements* constructed on property described in Exhibits ‘A’ and ‘B’.” (R. p. 401; *see* Resp. Br. 13.) Section 9 grants access to “the Association, Owners of the Property, and each of their guests, lessees, invitees and licensees” - without the qualifier. Whether Sunset, Inc.’s restaurant patrons, employees and suppliers fell within the 1984 class is precisely what this litigation was about, as Respondents’ own affidavits confirm. (Sibley Aff., R. p. 419; Lockman Aff., R. p. 512.) Section 9 resolved that dispute. That is a real and substantial change.
- 3) **It confirms access to Parcel B as a distinct parcel.** Section 9’s second sentence exists to fix the identity of Parcel B by reference to the 2017 Survey - a parcel that did not exist as such in 1984. And Parcel “A” being the parcel to which access was needed.
- 4) The 1984 Easement was granted to ONLY allow for access from the Marina entrance (Jenkins Island Rd) to the boundary of the Lots. This granted access in a direct line on the paved roads from the public road to the boundary of the lots starting at lot 1 and lot 65. The Respondents continually leave out all limiting language in the 1984 Easement in order to unlawfully expand their rights.

This was the solitary instrument of the 1984 easement and sole purpose.

Section 9 therefore does substantial work on Appellant's reading. Respondents' argument that only a parcel-wide servitude can give § 9 meaning collapses once the two instruments are placed side by side. And even if § 9 accomplished less than Respondents would like, that would be a reason to construe it narrowly - not a license to supply the missing term.

D. The Ordered Instrument Contains Eight Material Terms Found Nowhere in § 9.

Respondents assert that the trial court "adopt[ed] almost verbatim the language agreed to by the parties." (Resp. Br. 9, 14.) That is accurate only as to § 2(a), and only if the deletion of "paved roads" is overlooked. A comparison of § 9 with the eighteen-section Amended and Restated Easement (R. pp. 65–72) discloses the following terms with no counterpart anywhere in the Settlement Agreement:

§ 2(a) - converts a right-of-way over "the paved roads" into a "permanent, perpetual" right-of-way "on, over, and across" the whole of Parcel B.

§ 2(b) - expands the beneficiary class from the six categories named in § 9 to fourteen, adding "successors, successors in title, agents, employees, servants, contractors, administrators, [and] mortgagees."

§ 2(c) - declares the easement appurtenant to all 200 RV lots, the roadways, tennis courts, pools, buildings, parking, open spaces and well site shown on Plat Book 29, Page 184, and to Parcel A.

§ 4 - grants the POA an unrestricted right to "assign its rights and obligations, if any, . . . in whole or in part."

§ 5 - rewrites the 1984 relocation clause. The 1984 Easement required only that relocated access be "sufficient for motor vehicle traffic" (R. p. 402); the ordered instrument

requires access “for motor vehicles, recreational vehicles, pedestrians, golf carts, and bicycles.”

§ 6 - declares the instrument to “replace and supersede” the Original Easement.

§ 15 - creates a prevailing-party attorney’s fee entitlement in any action to enforce the easement.

§ 16 - adds an integration clause superseding all prior agreements and communications.

A ninth such term - § 14, a “Drafting Agreement” clause - was included in the instrument ordered executed on August 5, 2024, and then *deleted by the trial court itself* on Rule 59(e) review. (R. pp. 84–88; *see* Resp. Br. 6.) That deletion is a concession. An instrument said to embody a “clear and unambiguous” two-sentence settlement term contained at least one provision that could not survive scrutiny. The same infirmity attaches to the eight terms above; they were simply not the subject of the Rule 59(e) ruling.

Section 15 illustrates the problem starkly. The parties settled a three-year lawsuit without any fee-shifting provision. The Order nonetheless requires Appellant to execute, and to record against its own land in perpetuity, a covenant exposing it to Respondents’ attorney’s fees. No party bargained for that.

The burden imposed is not incidental. Parcel B is a working marina containing slips, a fuel dock, a launching ramp, a bath house, fuel storage facilities, an access road, a marina office and parking areas. A perpetual, assignable servitude “on, over, and across” all 1.41 acres, running to fourteen enumerated classes of beneficiaries, is categorically different from a right of passage over paved roads. The scope of an express easement is “determined by the nature of the right and the intention of the parties creating it,” *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997), and “[t]he language of an easement determines its extent,” *Binkley v. Rabon*

Creek Watershed Conservation Dist., 348 S.C. 58, 558 S.E.2d 902 (Ct. App. 2001). The holder of an easement “cannot materially increase the burden of the servient estate or impose thereon a new and additional burden.” *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973). And restrictions on the use of land “are to be strictly construed, with all doubts resolved in favor of the free use of property.” *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). (This authority was inadvertently cited in Appellant’s Final Brief at 7 under an incorrect caption and reporter page; the correct citation is as given here.)

E. The Ordered Instrument’s Own § 5 Presupposes a Roadway Easement.

The internal evidence in Respondents’ own draft confirms the point. Section 5, captioned “Modification of Roadways,” preserves to Appellant the right to “change the location of the *paved roadways* from time-to-time,” provided access is maintained. (R. pp. 65–72.) That provision is carried forward from the 1984 Easement, and it has no work to do under a parcel-wide grant: if the POA and the thirteen other classes named in § 2(b) may travel “on, over, and across” every square foot of Parcel B, relocating a roadway neither adds nor subtracts anything. A drafter who believed the easement was no longer tied to roadways would not have retained a roadway-relocation clause.

V. The Lease Order Suffers From the Same Defect, and in One Respect a Worse One.

Respondents defend the Lease Order on the ground that “the Court incorporated almost verbatim the language of the parties used in the Settlement Agreement.” (Resp. Br. 10.) A comparison of the Second Amendment to Lease (R. pp. 23–32) with ¶¶ 1–13 of the Settlement Agreement shows otherwise. The comparison matters because the 1981 Lease permits “no modification, release or discharge or waiver of any provision hereof unless in writing signed by both parties.” (1981 Lease ¶ 19, R. p. 41.) What Appellant was ordered to sign is that writing.

A. Section 9 of the Second Amendment Subordinates the Settlement Agreement to the Second Amendment.

The instrument the trial court ordered Appellant to execute contains the following provision:

“9. *Conflict* - In the event of any conflict of the provision of this Addendum and the Settlement Agreement, the provisions of this Addendum shall control.”

(Second Amendment to Lease § 9, R. p. 30.)

The trial court’s task was to enforce the Settlement Agreement. It ordered Appellant to execute, and to record, an instrument that by its own terms *displaces* the Settlement Agreement wherever the two conflict. No provision of the Settlement Agreement authorizes such a clause, and Respondents do not contend otherwise.

Two consequences follow. First, if the Second Amendment said only what the Settlement Agreement says, § 9 would be surplusage; its presence is the drafter’s own acknowledgment that the two documents diverge. Second, and more seriously, § 9 operates prospectively to make every divergence binding and to extinguish Appellant’s ability ever again to invoke the agreement it actually signed. A court enforcing a settlement cannot order a party to execute an instrument that supersedes the settlement being enforced. This provision alone requires reversal of the Lease Order.

B. Section 7 Substitutes “this Addendum” for “this Settlement Agreement,” and the Trial Court Read ¶ 8 Backwards.

Paragraph 8 of the Settlement Agreement provides:

“8. The Association and Sunset, Inc. acknowledge and affirm that Turner’s Marina is the rightful holder of the 99-Year Lease and the rights and responsibilities arising therefrom *not otherwise addressed in this Settlement Agreement* and they agree to not bring upon the leased property any means of restricting lessee from use and enjoyment of the leasehold property.”

(R. p. 340) (emphasis added).

Section 7 of the Second Amendment reproduces that sentence with one substitution: the rights affirmed are those “not otherwise addressed in *this Addendum*.” (R. pp. 23–32.) That is not a stylistic change. Because the Addendum addresses a great deal the Settlement Agreement did not - the Premises (§ 6), the parking reconfiguration terms (§ 3.II), the “Whereas” recitals elevated to operative terms (§ 1) - substituting “Addendum” for “Settlement Agreement” enlarges the carve-out and correspondingly shrinks what is affirmed to Appellant. One word, changed by no one who signed.

The trial court’s ruling on this paragraph compounds the error. It reasoned that “there is nothing in the Settlement Agreement that refers to those areas at all” - the laundry room, mail room and exercise room - and therefore that ¶ 8 “simply affirms that Plaintiff is the rightful holder of the Lease- nothing more.” (Lease Order at 5–6, R. pp. 17–18.) But silence is ¶ 8’s *trigger*, not its defeater. Paragraph 8 affirms Appellant’s rights under the 99-Year Lease *precisely as to those matters the Settlement Agreement does not address*.

The 1981 Lease is in the Record as Exhibit 1 to the very instrument the trial court ordered Appellant to execute. It defines the demise: “The premises described in the above legal description are hereinafter referred to as the *Recreational Facilities* which include, among other things, a swimming pool, two tennis courts, decking, bathhouse, and *certain portions of the Clubhouse complex*.” (1981 Lease ¶ 1, Deed Book 325 at Page 954, R. p. 34.) The next paragraph provides that “[t]his is an *exclusive* Lease to the Lessee.” (*Id.* ¶ 2.) The Settlement Agreement addresses the bathhouse (¶ 4), the pool (¶ 5), the tennis-court parking area (¶¶ 2, 6), and the restaurant and Ship’s Store (¶ 7). It says nothing about the laundry room, the mail room or the exercise room. Under ¶ 8’s own terms, those are precisely the rights affirmed. The trial court’s reading leaves ¶ 8 with no operative content whatever.

C. Section 6 Adds “Not Part of the Premises” and “Exclusively Held, Owned.”

Paragraph 7 of the Settlement Agreement has Appellant affirm that “the restaurant and former ship store are not part of the 99-Year Lease,” and that “the ownership and lease rights to the restaurant space and Ship Store space are *controlled by* the Association.” (R. p. 339.) Section 6 of the Second Amendment has Appellant affirm that those spaces are “not part of *the Premises* or subject to the 1981 Lease,” and that the ownership and lease rights are “*exclusively held, owned and controlled by the Landlord.*” (R. p. 28.)

Both additions matter. “The Premises” is the defined term in § 1 of the 1981 Lease whose scope the parties disputed and did not settle; the Addendum’s recitals say so expressly. Appellant affirmed that two specific spaces are outside the Lease; it did not affirm a construction of the defined term that governs everything else in the building. And Appellant affirmed the Association’s *control*; it did not affirm exclusive *ownership*. A settlement is not a quitclaim.

D. Section 5 (Pool) Rewrites a Negotiated Definition.

Paragraph 5 of the Settlement Agreement makes the pool “available to all non-Commercial Patrons of *the complex*” and provides that “slip lease holders at the marina and *RV renters* and their guests are not included in the definition of Commercial Patrons,” with “Commercial Patrons includ[ing] the commercial activities of the marina, including any boat clubs, jet ski rentals, tours, charter fishing and the like.” (R. p. 339.)

Section 5(a) of the Second Amendment changes “the complex” to “the *RV complex*”; changes “RV renters” to “*RV lot renters*”; recasts the definition of Commercial Patrons as “those *enjoying the commercial activities of the marina operated by the Tenant, either directly or through leases, agreements, or licenses from the Tenant, including but not limited to any boat clubs, jet ski rentals, tours, charter fishing, parasailing, and other similar activities*”; and adds an entirely new sentence: “*Commercial Patrons are not allowed to use the pool.*” (R. pp. 27–28.) Section 5(b)

likewise converts “marina slip owners and the RV renters” into “marina slip lease holders and the RV owners/renters.”

Every one of those changes alters who may use the pool - the precise subject the parties negotiated and defined. And the trial court sustained its reading by reference to § 12.5 of the 1981 Covenants and ¶ 9 of the 99-Year Lease, the latter of which reserves to Lot Owners the right “to use, occupy and enjoy” the Recreational Facilities. (Lease Order at 6, R. p. 18; 1981 Lease ¶ 9, R. p. 38.) Appellant does not contend those instruments are irrelevant to the parties’ underlying rights. Appellant contends that if the Owners’ pool rights arise from ¶ 9 of the Lease and from the Covenants rather than from ¶ 5 of the Settlement Agreement, then the Second Amendment has no warrant to rewrite ¶ 5’s negotiated definitions in order to say so. The remedy is straightforward: reproduce ¶ 5.

E. Restaurant Hours: The Second Amendment Moves a Definition the Parties Made Agreement-Wide.

Paragraph 6 of the Settlement Agreement provides: “*As used in this agreement, Business Hours are agreed to be Tuesday through Sunday 5:00pm to 10:00pm and Sunday 10:30am to 2:00pm.*” (R. p. 339.) The parties placed that definition in a stand-alone sentence and made it agreement-wide by its own words.

The Second Amendment does not carry that sentence forward. It relocates the definition into the parking provision, where “Business Hours” is “defined as” the same schedule solely for purposes of Spots 5 and 6. (Second Amendment § 3.I.b, R. p. 25.) The trial court then held that “the use of the term ‘Business Hours’ is only applied when describing the use of the parking spaces.” (Lease Order at 3, R. p. 15.) The instrument was drafted to produce that conclusion, and the conclusion was then used to justify the instrument.

The trial court's two supporting reasons do not withstand examination. That ¶¶ 2(c) and 2(d) reserve two spaces for the restaurant "24/7/365" says nothing about hours of public operation; a restaurant needs parking for staff, contractors and deliveries at hours when it is closed, which is exactly what Appellant explained below. (R. pp. 482–495.) And that ¶ 2(h) makes unreserved spaces available "without restriction or reservation" likewise says nothing about when the restaurant may open. What the parking provisions *do* show is that every patron-facing reservation is time-bounded: Spots 5 and 6 are reserved for "restaurant patrons and guests *during Business Hours*" (¶ 2(b)), and Spots 19–21 are reserved "Tuesday through Sunday 6:00pm to 10:00pm and Sunday 10:30am to 2:00pm" (¶ 2(e)). Parties allocate patron parking within a window because they expect patrons within that window.

At a minimum, a term that required three hearings, two competing drafts and a ten-page order to construe is not one whose meaning is "perfectly plain and capable of legal construction" on its face. *Ecclesiastes*, 374 S.C. at 497–98, 649 S.E.2d at 501–02. What the trial court could not do was find the term unambiguous and then adopt the version of the instrument that changed where the term sits.

F. The Parking Terms and the Recitals.

Three further departures warrant note. **First**, ¶ 6 conditions reconfiguration of the parking area on "the Owner's approval in this change of use." The Second Amendment renders this "subject to the *RV Lot Owners'* approval." (§ 3.II.a.) "Owner" is not a defined term in the Settlement Agreement, and Appellant is the owner of the land on which the spaces sit. If the term were truly unambiguous, no addition would have been necessary.

Second, ¶ 6(a) provides that upon reconfiguration "there will be three new replacement spaces - and up to seven spaces as contemplated above - in a single line." The Second Amendment

adds the conclusion “*resulting in ten (10) spaces in a row for Restaurant use.*” (§ 3.II.b.) A cap of “up to seven” has become a guaranteed total of ten. That is arithmetic the parties did not perform.

Third, ¶ 4 states in full: “The bathrooms are available to everyone.” The Second Amendment states that “[t]he restrooms *located on the first floor of the Rec. Bldg.* are available to everyone.” (§ 4.) A location limiter has been added to an unqualified sentence.

Finally, the recitals. Section 1 of the Second Amendment makes the seven “Whereas” provisions “important and material terms and conditions of this Addendum” - converting recitals into operative terms. Those recitals then characterize the underlying disputes, including “the definition of the leased premises (“Premises”) described in the 1981 Lease under § 1” and whether the Restaurant and the Ship’s Store were “part of the Premises.” (R. pp. 23–24.) Appellant objected to those recitals below as factually inaccurate (R. pp. 482–495, 502–506), and the trial court adopted Respondents’ version with only date and party corrections. (Lease Order at 7–8, R. pp. 19–20.) Recitals elevated to operative terms, describing disputes the Settlement Agreement resolved only in part, are not a transcription of ¶¶ 1–13.

G. A Correction, and What It Confirms.

Respondents correctly point out that ¶ 8 of the Second Amendment to Lease is a standard “Binding Effect” clause, not a drafting provision. (Resp. Br. 12.) Appellant accepts the correction. The “Drafting Agreement” provision referred to at page 10 of Appellant’s Final Brief is § 14 of the Amended and Restated Easement (R. pp. 65–72) - the provision the trial court struck on Rule 59(e) review. (R. pp. 84–88.) The correction, respectfully, strengthens rather than weakens Appellant’s position: the trial court’s own deletion of § 14 establishes that the instruments it ordered executed contained terms the parties had not agreed to. Section 9 of the Second

Amendment, § 15 of the Amended Easement, and the provisions catalogued above are of the same character. They were simply not the subject of the Rule 59(e) ruling.

VI. Respondents Cannot Supply the Missing Terms by Affidavit.

Respondents ask this Court, “if this Court should find the subject language somehow is ambiguous,” to consider the Affidavits of Christopher Sibley and Linda Lockman for the proposition that the easement was always meant to cover “all of Parcel B - not just the paved roads,” and that the fifty-percent rent reduction in ¶ 1 was given “in consideration of the Plaintiff granting this expanded easement.” (Resp. Br. 16–17, citing R. pp. 419, 512.)

Respondents cannot have it both ways. They have insisted throughout - and the trial court expressly held - that § 9 is “clear, direct, specific and unambiguous” and that “[t]here is no need to refer or rely upon the Affidavits of Neil Turner, Christopher Sibley or any testimony.” (Easement Order at 4, R. p. 62.) Having obtained that finding, Respondents may not now use extrinsic evidence to supply the one term their draft depends upon and § 9 omits. “The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the written instrument.” *In re Estate of Holden*, 343 S.C. 267, 539 S.E.2d 703 (2000); *accord Ecclesiastes*, 374 S.C. at 497–98, 649 S.E.2d at 501–02 (extrinsic evidence admissible only once ambiguity is found).

The consideration argument fails for the additional reason that it appears nowhere in the writing. Paragraph 1 recites a rent reduction. It does not say the reduction was exchanged for ¶ 9, and it could not - the reduction was consideration for a thirteen-paragraph global settlement of a three-year lawsuit, including Appellant’s covenants as to armed guards (¶ 10), gates (¶¶ 11–12), pool access (¶ 5), parking (¶ 2), the Restaurant and Ship’s Store (¶ 7), and dismissal with prejudice

(¶ 13). Nor is there anything improper in Appellant performing the paragraphs that are not in dispute while contesting the construction of those that are. That is not “cherry-picking”; it is compliance.

CONCLUSION

Appellant asks this Court to hold the parties to the agreement they signed. Where the Settlement Agreement speaks, the recordable instruments must say what it says. Where it is silent, they must be silent. Measured against that standard the Amended and Restated Easement adds a parcel-wide grant, eight new classes of beneficiaries, an unrestricted right of assignment, a supersession clause, an integration clause and a fee-shifting covenant; and the Second Amendment to Lease narrows ¶ 8’s affirmation by a single substituted word, converts an affirmation of control into an adjudication of exclusive ownership, rewrites ¶ 5’s negotiated definitions, relocates an agreement-wide definition into a parking clause, and - by its own § 9 - subordinates the Settlement Agreement to itself. The trial court did not enforce the parties’ settlement. It made them a new one.

Appellant respectfully requests that this Court REVERSE the August 5, 2024 Order Granting Defendants’ Motion to Enforce Settlement as to Amended Easement, REVERSE the August 5, 2024 Order Ruling on Plaintiff’s and Defendants’ Motions to Enforce Settlement Agreement, REVERSE the April 25, 2025 Order denying Appellant’s Rule 59(e) motion as to both, and REMAND with instructions that any recordable instrument conform to the Settlement Agreement - reproducing its terms where it speaks, omitting what it does not contain, and leaving the 1984 Easement, the 1981 Lease and the 1981 Covenants otherwise in force.

Respectfully submitted,

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