

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

---

Appellate Case No.: 2014-002202

---

Shangrila Affiliates, LLC,

Respondent,

v.

D&B Partnership, LLC,

Appellant.

---

MEMORANDUM

---

M. Amanda Shuler, Esquire  
WHETSTONE PERKINS & FULDA, LLC  
Post Office Drawer 980  
Kingstree, SC 29556  
Ph. (843) 355-2800  
Fax (843) 355-2802  
ATTORNEYS FOR THE APPELLANT

Other counsel of record:  
Steven S. McKenzie  
Matthew J. Burgess  
Coffey, Chandler & McKenzie, P.A.  
Attorneys for Respondent  
Post Office Box 1292  
Manning, South Carolina 29102

RECEIVED  
OCT 31 2014  
SC Court of Appeals

This matter is before the court on Appellant D&B Partnership, LLC's appeal from the Order of the Honorable W. Jeffrey Young remanding the case to the Williamsburg County Magistrate. This matter was before the Williamsburg County Magistrate on the application of ejectment filed by Appellant D&B Partnership, LLC, (hereinafter referred to as "D&B"). D&B entered into a lease agreement with Respondent Shangrila Affiliates, LLC (hereinafter referred to as "Shangrila") on May 17, 2012 whereby Shangrila agreed to lease a convenience store from D&B. The terms and conditions of the lease were reduced to writing in a twenty-seven (27) page document. The Williamsburg County Magistrate ruled in favor of D&B and Shangrila appealed.

Shangrila alleged in its grounds for appeal that the Order was unconstitutionally vague, that the Order was not supported by the testimony of the expert witness, and the magistrate's court was without subject matter jurisdiction to hear the case. D&B argued that the issues raised on appeal were not properly preserved as Shangrila failed to file a rule 59(e) motion to reconsider.

The appeal was heard before the Honorable W. Jeffrey Young on June 5, 2014. On June 26, 2014, Judge Young issued his order remanding the case to the magistrate's court to clarify its ruling. D&B filed a rule 59(e) Motion to Alter or Amend Judgment on July 17, 2014 again arguing that the issues raised before the circuit court were not preserved for appellate review. (A copy of which is attached). Argument on the motion was heard before the Honorable W. Jeffrey Young on Sept 11, 2014. The Motion to Alter or Amend was denied on September 11, 2014. This decision was the final decision of the circuit court judge on an issue of law. A written order was not generated but the Honorable W. Jeffrey Young rule that the issues before the circuit

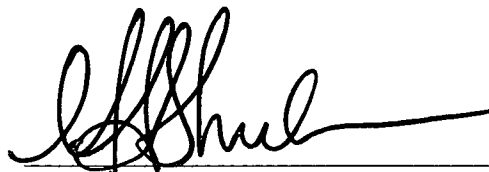
court were properly preserved for appellate review. This appeal followed.

This Appeal follows the appeal from the final decision on an issue of law from the circuit court. According to SCACR 201 an “[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision.” SCRCP Rule 72 states “[a]ppeal may be taken . . . from any final judgment.” As the ruling on the issue of law raised in the Motion to Alter or Amend was the final decision of the circuit court, this would end the case and would be the final judgment of the court.

The Court of Appeals may review issues of law raised on appeal before the circuit court. The circuit court maintains a broad scope of review in deciding an appeal of a magistrate's order. The Court of Appeals, has a more limited standard in reviewing cases under appeal from the circuit court. The Court of Appeals must uphold findings of fact if there is any supporting evidence and absent an error of law, the circuit court's holding is to be affirmed. See McNair v. United Energy Distributors, 699 S.E.2d 723, 390 S.C. 44 (Ct. App. 2010) citing Bowers v. Thomas, 373 S.C. 240, 244, 644 S.E.2d 751, 753 (Ct.App.2007).

The Appellant is asking the Court to review an issue of law: whether the issues raised by the respondent before the circuit court were properly preserved for appellate review. Therefore, this issue is immediately appealable and is properly before the Court.

October 30, 2014



---

M. Amanda Shuler, Esquire  
WHETSTONE PERKINS & FULDA, LLC  
Post Office Drawer 980  
Kingstree, SC 29556  
Ph. (843) 355-2800  
Fax (843) 355-2802  
ATTORNEYS FOR THE APPELLANT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF WILLIAMSBURG )  
 )  
 Shangrila Affiliates, LLC )  
 Plaintiff, )  
 vs. )  
 )  
 D&B Partnership, LLC )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 THIRD JUDICIAL CIRCUIT

CASE NO.: 2013\_-CP-45-091

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

RECEIVED  
 07/17/2014  
 CLERK OF COURT  
 JUDICIAL CIRCUIT  
 WILLIAMSBURG

Plaintiff's Attorney: Steven S. McKenzie, Bar No. _____ Address: 2 N. Brook Street Manning, SC 29102 Phone: 803-460-8013 Fax _____ E-mail: steve@sskmlaw.com Other: _____	Defendant's Attorney: M. Amanda Shuler, Bar No. 76277 Address: PO Box 980 Kingstree, SC 29556 Phone: 843-355-2800 Fax 843-355-2802 E-mail: mshuler@attorneyssc.com Other: _____
--	--

**MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)  
 **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)  
 **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

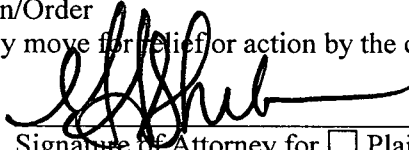
**SECTION I: Hearing Information**

Nature of Motion: Motion to Reconsider  
 Estimated Time Needed: 15 minutes      Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant      Date submitted: 07/17/2014

**SECTION III: Motion Fee**

**PAID – AMOUNT:** \$ \_\_\_\_\_  
 **EXEMPT:** (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status     State Agency v. Indigent Party
- Sexually Violent Predator Act     Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication     Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

<p style="text-align: center;"><b>JUDGE'S SECTION</b></p> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 **MOTION FEE COLLECTED:** \$ \_\_\_\_\_  
 **CONTESTED – AMOUNT DUE:** \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) THIRD JUDICIAL CIRCUIT  
COUNTY OF WILLIAMSBURG ) 2014-CP-45-00091

SHANGRILA AFFILIATES, LLC, )  
 )  
 APPELLANT, )  
 )  
 V: )  
 )  
 D&B PARTNERSHIP, LLC, )  
 )  
 RESPONDENT. )  
 \_\_\_\_\_ )

NOTICE OF MOTION AND  
MOTION TO ALTER OR AMEND  
JUDGMENT

FILED  
2014 JUL 17 AM 11:48  
WILLIAMSBURG  
SOUTH CAROLINA

**TO: THE HONORABLE W. JEFFREY YOUNG, CIRCUIT COURT JUDGE AND  
STEVEN S. MCKENZIE, ATTORNEY FOR THE APPELLANT:**

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through its undersigned attorneys, will move on the tenth day hereafter, or as soon thereafter as counsel may be heard, if so permitted by the Honorable W. Jeffrey Young, for an Order reconsidering and amending the Court's Order dated June 26, 2014 and received by Counsel for the Respondent on July 8, 2014.

The Respondent moves before this Honorable Court for a reconsideration of its ruling in this action based upon the following:

1. The Respondent makes this motion pursuant to SCRCP 59(e). The motion is timely as the Respondent received the Court's Order on July 8, 2014.
2. The Order of the Court states "Remanded to the Lower Court to clarify its ruling on the definition of "Structural Alterations" and its finding of fact on the issue."

The Respondent argued in his Brief and in oral argument that this issue was not

properly preserved for appeal. This Honorable Court has not ruled on whether this issue was properly preserved for appeal in its Order and Judgment.

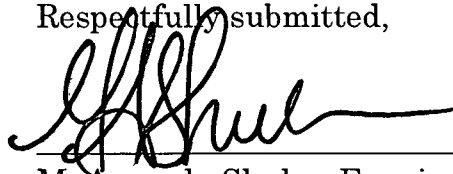
5. The Respondent argued that Shangrila failed to properly preserve the issues presented for appellate review. On all of the grounds raised on appeal, the magistrate judge was not given an opportunity to rule with finality. The Appellant could not raise the sufficiency of the magistrate court's ruling at trial, so a Rule 59(e) motion would be necessary in order to preserve the issue for review. The issue of the sufficiency of the magistrate court's order was not raised before the magistrate court. The Appellant did not file a motion to reconsider in order to preserve the issues for review. This is critical to preserve the issue for appellate review. If an issue is raised but not ruled upon, a party must file a Rule 59(e) motion to preserve an issue that a trial court fails to rule upon. Johnson v. Lloyd, Opinion No. 27383 (Decided April 24, 2014) citing Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). The South Carolina Supreme Court stated in Wilder Corporation v. Wilke, "it is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised and ruled upon by the trial judge to be preserved for appellate review." 330 S.C 71, 71, 497 S.E.2d 731, 733 (1998).

In Ion, LLC v. Town of Mt. Pleasant, the South Carolina Supreme Court addressed the importance of preserving issues for appeal. The Court stated "[t]he losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." 338 S.C. 406, 417, 526 S.E.2d 716, 724 (2000). The issue preservation requirement exists to

provide the lower court the opportunity to rule after having considered all relevant facts, law and arguments. Id. The requirement also serves as an incentive for a party to prepare the case thoroughly. "It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." Id. citing Brown v. Singletary, 226 S.C. 482, 85 S.E.2d 738 (1955). Based upon the well settled law in South Carolina, it would be error for this Court to grant the Appellants appeal as the issue has not be raised and ruled upon by the trial court. The Appellant did not file a Rule 59(e) motion to allow the magistrate court the opportunity to rule upon the sufficiency of the order, therefore, this issue is not properly preserved.

Therefore, the Respondent requests that this Honorable Court reconsider its ruling and issue a ruling on whether the issue was properly preserved for appeal.

Respectfully submitted,



M. Amanda Shuler, Esquire  
WHETSTONE PERKINS & FULDA, LLC  
Post Office Drawer 980  
Kingtree, SC 29556  
Ph. (843) 355-2800  
Fax (843) 355-2802  
ATTORNEYS FOR THE RESPONDENT

Kingtree, SC

July 17, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Appellate Case No.: 2014-002202

**RECEIVED**

OCT 31 2014

**SC Court of Appeals**

Shangrila Affiliates, LLC,

Respondent,

v.

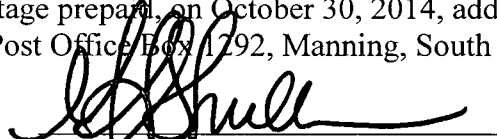
D&B Partnership, LLC,

Appellant.

PROOF OF SERVICE

I certify that I have served the Memorandum on Shangrila Affiliates, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on October 30, 2014, addressed to his attorney of record, Steven S. McKenzie, Post Office Box 1292, Manning, South Carolina 29102.

October 30, 2014



M. Amanda Shuler, Esquire  
WHETSTONE PERKINS & FULDA, LLC  
Post Office Drawer 980  
Kingstree, SC 29556  
Ph. (843) 355-2800  
Fax (843) 355-2802  
ATTORNEYS FOR THE APPELLANT

Other counsel of record:  
Steven S. McKenzie  
Matthew J. Burgess  
Coffey, Chandler & McKenzie, P.A.  
Attorneys for Respondent  
Post Office Box 1292  
Manning, South Carolina 29102

WHETSTONE PERKINS & FULDA, LLC

ATTORNEYS AND COUNSELORS AT LAW

CHARLES W. WHETSTONE, JR.  
CHERYL F. PERKINS  
JOHN ERIC FULDA

P.O. BOX 8086  
COLUMBIA, SOUTH CAROLINA 29202

601 DEVINE STREET  
IN THE VISTA  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE (803) 799-9400

FAX (803) 799-2017

WWW.ATTORNEYSSC.COM

FIRM@ATTORNEYSSC.COM

KINGSTREE  
M. DUANE SHULER  
M. AMANDA SHULER  
112 W. MAIN STREET  
P.O. BOX 980  
KINGSTREE, SC 29556  
(843) 355-2800  
FAX (843) 355-2802

MYRTLE BEACH  
JOHN L. BREEDEN, JR.  
905 2ND AVE. NORTH  
N. MYRTLE BEACH, SC 29582  
(843) 251-7339

M. DUANE SHULER  
JOHN L. BREEDEN, JR.  
AUGUST G. SWARAT, II  
DRELTON "DJ" CARSON  
M. AMANDA SHULER  
CHARLES W. WHETSTONE, III

OF COUNSEL  
PALMER FREEMAN, JR.

October 30, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
OCT 31 2014  
SC Court of Appeals

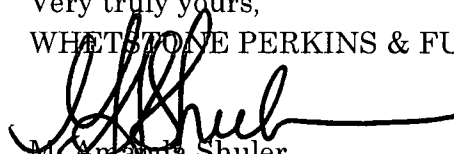
RE: D&B Partnership, LLC v. Shangrila Affiliates, LLC  
Notice of Appeal

Dear Madam Clerk:

Please find enclosed herewith the original and two (2) copies of the Memorandum and Proof of Service as requested in your October 24, 2014 letter. Please file the original and return the copies to my office in the self-addressed stamped return envelope provided.

Should you have any questions or concerns, please do not hesitate to contact my office.  
With warm regards, I am,

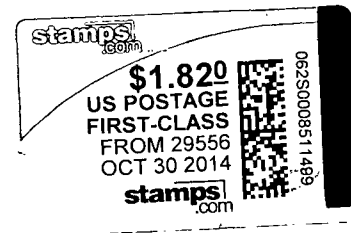
Very truly yours,  
WHETSTONE PERKINS & FULDA, LLC

  
M. Amanda Shuler  
[mshuler@attorneyssc.com](mailto:mshuler@attorneyssc.com)

MAS/bts

cc: Steven S. McKenzie, Esquire  
D & B Partnership, LLC

M. AMANDA SHULER  
WHETSTONE PERKINS & FULDA, LLC  
112 W. MAIN STREET  
POST OFFICE BOX 980  
KINGSTREE, SOUTH CAROLINA 29556



THE HONORABLE JENNY ABBOTT KITCHINGS  
Clerk Of The South Carolina Court Of APP  
PO BOX 11629  
COLUMBIA SC 29211-1629

**RECEIVED**

OCT 31 2014

**SC Court of Appeals**