THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2016-000636
Case No. 2005-CP-40-6132

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SC Court of Appeals

Norwest Properties, LLC, ... Appellant,

v.

Michael T. Strebler, Lisa W. Strebler, and Paul Mitchell, ... Defendants,

OF WHOM Michael T. Strebler and Lisa W. Strebler are, ... Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES

1. Appellant's "special damages" and "failure to plead" argument has no merit, because the issue was tried by implied consent.

2. Appellant's "special damages" and "failure to plead" argument is not preserved for appeal.

3. Appellant's "special damages" and "failure to plead" argument is barred by the law of the case doctrine.

4. Appellant's "measure of damages" argument has no merit, because the issue of "special damages" was tried by implied consent.

5. Appellant's "measure of damages" argument is not preserved for appeal.

6. Appellant's "measure of damages" argument is barred by the law of the case doctrine.

7. Appellant's "contemplation" argument is not preserved for appeal.

8. Appellant's "contemplation" argument is barred by the law of the case doctrine.

9. Appellant's "possession and use" argument has no merit.

10. Appellant's "possession and use" argument is not preserved for appeal.

11. Appellant's "possession and use" argument is barred by the law of the case doctrine.

12. Appellant's "sufficiency of the evidence" argument has no merit.

13. Appellant's "sufficiency of the evidence" argument is not preserved for appeal.

STATEMENT OF THE CASE

This is a breach of contract case. Appellant (Buyer) contracted with Respondents (Seller) to buy an undeveloped residential lot. A subsequent survey revealed that an adjoining landowner (Defendant Mitchell) had made improvements on his property that slightly crossed the property line. The parties' contract dealt expressly with this scenario and gave Buyer two options: (1) terminate the contract in writing; or (2) close the sale as scheduled. (Agmt. at 2, ¶ 8; 5/19 Order at 7-8, 8-9). Buyer did neither. Rather, it filed a lis pendens on the property, brought an action for specific performance against Seller, and joined Defendant Mitchell, seeking an order that required Mitchell and Seller to remove the improvements that crossed the property line. (See Amd. Cmplnt.). Seller appeared and defended *pro se* throughout the trial court proceedings – his answer sought an award of costs and damages. (Answ. to Amd. Cmplnt.at 2). The trial court ruled that Buyer, not Seller, had breached the contract and, therefore, Buyer was not entitled to any relief against Seller or Defendant Mitchell. (5/19 Order, *passim*). Buyer does not appeal this order or challenge it on appeal. (Notice of Appeal w/Att.; Init. App. Br., *passim*).

The trial court also ruled that Seller was entitled to an award of damages against Buyer pursuant to Paragraph 20 of the sales contract, with the amount of those damages to be determined at a subsequent hearing. (5/19 Order at 6-9, 15). Buyer made a 59(e) motion, which the trial court denied. (12/31 59(e) Order). Buyer does not appeal this order or challenge it on appeal. (Notice of Appeal w/Att.; Init. App. Br., *passim*). Thereafter, the trial court held a hearing on the damages issues and issued an order awarding damages to Seller. (2/29 Order). Buyer timely appealed this damages order without first making a 59(e) motion.

BACKGROUND FACTS & PROCEDURAL HISTORY

At trial, Seller argued in his opening statement that Seller "should be awarded damages." (11/9 Tr. at 6). Buyer made no response to this argument. Also at trial, Seller testified about his damages:

> [Buyer]: [I]s it appropriate in my testimony to ask for damages, as I sit here?
>
> THE COURT: Well - - *in your Pleadings did you ask for damages*?
>
> [Buyer]: *Yes, I did*, Your Honor.
>
> THE COURT: Okay, you can go ahead and talk about it.
>
> [Buyer]: *Defendant* would like - - *in the Pleadings has asked for damages*. Defendant has been damaged to the extent that he has costs of ownership beyond August 31, 2005, the contractual closing date. These costs are *financial carrying costs, property taxes, homeowner's association fees, maintenance costs, and costs of administration.* And further, the defendant requests damages for resources expended in defending this action.
> Thank you, Your Honor.
>
> THE COURT: All right.

(11/9 Tr. at 115) (emphasis added). **Importantly,** Buyer did not object to this testimony nor dispute that Seller's pleadings had requested these damages. (11/9 Tr. at 115-116). In particular, Buyer did not argue that Seller's claimed damages were "special damages" that could not be recovered because Seller did not plead "special damages." Therefore, these damage issues were tried by implied consent. (See Arg. I(A), *infra*).

The trial court thereafter issued its order on the merits, ruling against Buyer and in favor of Seller. The trial court's order included the following findings and conclusions:

1. "[Seller] in his Answer requested costs and damages, <u>including</u> *property taxes* on the property for the years 2006, 2007, 2008, and 2009, as well as

the *holding costs* of such property. Such costs and damages are supported by *Paragraph 20* of the Contract between [Buyer] and [Seller]." (5/19 Order at 2) (all emphasis added).

2. Seller did not breach the sales contract, but Buyer breached the contract in several different ways. (5/19 Order at 6-13). Buyer fraudulently induced Seller to enter the contract and thereby "injured [Seller]." (*Id.* at 9-10).

3. Seller shall "be awarded his costs and damages in this case in accordance with *Paragraph 20* of the Contract. [Seller] shall submit those actual amounts with supporting documentation to the Court for final determination of the amount of this award." (*Id.* at 15) (emphasis added).

Buyer filed a motion to reconsider, alter, or amend. (59(e) Motion). Buyer also submitted a memorandum in support of this motion. (6/25/10 Memo.). **Importantly,** Buyer did not mention or challenge any of the above-noted rulings by the trial court, and it never argued that Seller's claimed damages were "special damages" that could not be recovered because Seller had not pled "special damages," nor did it argue that such damages were not recoverable under Paragraph 20 of the contract. (59(e) Motion and 6/25/10 Memo., both *passim*). The trial court denied Buyer's motion, again finding *inter alia* that Seller was entitled to an award of "costs and damages in this case in accordance with *Paragraph 20* of the Contract" and that "[Buyer] fraudulently induced [Seller] to enter into the contract." (59(e) Order at 2 and 5) (emphasis added). **Importantly,** Buyer did not appeal either of these orders and does not challenge either order on appeal. (Notice of Appeal w/Att.; Init. App. Br., *passim*). Therefore, these orders are the law of this case and binding on appeal. (See Args I(B)-III, *infra*).

Seller moved for an award of costs and damages in the amount of $48,713.00, which included the following claims:

1. Real estate taxes of $6,842.00

2. Homeowner Association Fees of $2,560.00

3 Cost of Capital ("carrying costs") of $30,637.00

4. Litigation costs of $350.00

(Def. Damages Motion w/Exhs.) Buyer filed a memorandum in opposition, which opposed the motion on the following grounds only:

1. The motion incorrectly stated that Seller's answer included a request for property taxes as damages. (Buyer's Memo. in Opp. at 2). **Importantly**, the memorandum did not mention or challenge the trial court's prior order that Seller's answer had requested these damages. (*Id., passim*). Therefore, this order is the law of this case and binding on appeal. (See Args. I(B)-III, *infra*).

2. The requested damages could not be awarded, because the damages are "special damages" that must be pled specifically, and Seller did not do so. (Buyer's Memo. at 2-4). **Importantly,** this memorandum is the first time that Buyer raised the "special damages/pleading" issue that is the cornerstone of its appellate argument. Therefore, this argument is not preserved for appeal, because it could have and should have been raised during the trial or, at the very least, in the 59(e) motion that challenged the order issued after trial. (See Arg. I(B), *infra*). **Also importantly**, the memorandum did not mention or challenge the trial court's prior order that awarded these damages to Seller with only the amount to be determined at a later hearing. (Buyer's Memo., *passim*). Therefore, this order is the law of this case and binding on appeal. (See Args. I(B)-III, *infra*).

3. As to the claims for real estate taxes and home association fees, Buyer argued that these damages could not be recovered, because Seller "retained possession of the property at issue and continued to enjoy its use." (Buyer's Memo.

at 4-5). **Importantly,** this memorandum is the first time that Buyer made its "possession and use" argument to the trial court, which it continues to make on appeal. Therefore, this argument is not preserved for appeal, because it could have and should have been raised during the trial or, at the very least, in the 59(e) motion that challenged the order issued after trial. (See Arg. III, *infra*). **Also importantly,** the memorandum did not mention or challenge the trial court's prior order that awarded these damages to Seller with only the amount to be determined at a later hearing. (Buyer's Memo., *passim*). Therefore, this order is the law of this case and binding on appeal. (See Arg. III, *infra*).

At the hearing on Seller's motion, Buyer made the same arguments. (7/29 Tr., *passim*). **Importantly,** Buyer did not mention or challenge the trial court's prior order that awarded these damages to Seller with only the amount to be determined at a later hearing. (*Id., passim*). Therefore, this order is the law of this case and binding on appeal. (See Arg. II, *infra*). **Also importantly,** Buyer did not argue in its memorandum or at the hearing that the "costs of carry" and "homeowner association fees" were not "within the contemplation of the parties" at the time of the contract. (Seller's Memo. in Opp. and 7/29 Tr., both *passim*). Therefore, its appellate argument on "contemplation of the parties" is not preserved for appeal. (See Arg. II, *infra*).

The trial court issued an order granting Seller's motion in the amount of $40,388.00, which was the total amount requested by Seller less the amount requested for *pro se* attorney's fees. (*Compare* 2/29 Order at 2 *with* Seller's Motion at 3, requesting total damages of $48,713.00, which included *pro se* fees ("professional time") of $8,325.00). In so ruling, the court noted its prior (and unappealed) rulings that Seller's Answer had

requested these damages, that Seller had testified to these damages at trial, and that these damages were recoverable under the sales contract. (2/29 Order at 1-2). The court also noted Buyer's prior 59(e) motion and its order denying that motion. (*Id.* at 2). As to the motion to approve the amount of damages, the trial court ruled only that:

> *In accord with evidence submitted* by [Seller], this Court awards damages to [Seller] in the amount of $40,388.00. Pro se litigants are not entitled to attorney's fees.

(*Id.* at 2) (emphasis added). **Importantly,** this order did not mention or rule on Buyer's "special damages" argument, or its "possession and use" argument, and Buyer did not file a motion to obtain a ruling on these arguments. Therefore, these arguments are not preserved for appeal. (See Args. I(B) and III, *infra*).

ARGUMENT

I. Buyer's "special damages" argument has no merit and is not properly before this Court for appellate review.

Buyer principally argues that the trial court erred in awarding any damages to Seller, except for $350.00 in litigation costs, because all of those damages are "special damages," and Seller failed to plead "special damages" in his answer. (Init. App. Br., Arg. I at 6-7). This argument has no merit, because the "special damages" issues were tried by implied consent. In any event, Buyer's arguments are not properly before this Court for appellate review.

A. The "special damages" issues were tried by implied consent.

It is axiomatic that if a party fails to object to evidence on an issue not raised in the pleadings, the issue is tried by implied consent and must be treated in all respects as if it were raised in the pleadings. *E.g., Upchurch v. Upchurch*, 624 S.E.2d 643, 648 (S.C. 2006); *McComb v. Conard*, 715 S.E.2d 662, 667 (S.C. App. 2011). As noted earlier,

Seller's opening statement and trial testimony raised all damage issues now challenged by Buyer, but Buyer did not object at trial. Thus, the issue was tried by implied consent and, therefore, Buyer's "failure to plead" argument has no merit.

B. Buyer's "special damages" arguments are not preserved for appeal or otherwise properly before this Court for appellate review.

The trial court's order on the merits specifically held that Seller had pleaded for and was entitled to an award of the damages now challenged by Buyer on appeal. (5/19 Order at 2, 15). Buyer did not appeal this order and does not challenge it on appeal. (Notice of Appeal; Init. App. Br., *passim*). Therefore, this order is the law of the case and precludes Buyer's appellate arguments. *Judy v. Martin*, 674 S.E.2d 151, 153 & n.4 (S.C. 2009) (a "prior unappealed order [becomes] the law of the case"); *McCall v. State Farm Mut. Auto. Ins. Co.*, 597 S.E.2d 181, 184 (S.C. App. 2004) (same); see also *Buckner v. Preferred Mut. Ins. Co.*, 177 S.E.2d 544, 544 (S.C. 1970) (an unappealed ruling in an order is the law of the case and, right or wrong, requires affirmance).

Buyer made a 59(e) motion but did not make any "special damages/failure to plead" arguments. (59(e) Motion and 59(e) Memo., both *passim*). Assuming arguendo that these damages had not been tried by implied consent, it was incumbent upon Buyer to raise this issue in its 59(e) motion. Having failed to do, this issue is not preserved for appeal. *Wogan v. Kunze*, 623 S.E.2d 107, 120 (S.C. App. 2005) (when trial court rules on issue not raised by parties, appellant must make a 59(e) motion or the issue is not preserved for appeal).

The trial court denied Buyer's 59(e) motion and again noted that Seller was entitled to an award of costs and damages. (59(e) Order at 2). Buyer did not appeal this order and does not challenge it on appeal. (Notice of Appeal; Init. App. Br., *passim*). Therefore, this order is the law of the case and precludes Buyer's appellate arguments. *Judy v. Martin*, 674

S.E.2d 151, 153 & n.4 (S.C. 2009) (a "prior unappealed order [is] the law of the case"); *McCall v. State Farm Mut. Auto. Ins. Co.*, 597 S.E.2d 181, 184 (S.C. App. 2004) (same); see *Buckner v. Preferred Mut. Ins. Co.*, 177 S.E.2d 544, 544 (S.C. 1970) (an unappealed ruling in an order is the law of the case and, right or wrong, requires affirmance).

After the denial of Buyer's 59(e) motion, Seller moved to determine the amount of the costs and damages awarded by the court in its prior orders. (Seller's Damages Motion). For the first time in the case, Buyer argued that Seller's claimed (and awarded) damages were "special damages" that were not pled by Seller and therefore could not be awarded. (Buyer's Memo. in Opp. at 2-4). As shown above, this argument has no merit, is not preserved for appeal, and is barred by the law of the case doctrine. In any event, the trial court's order granting Seller's motion did not mention or rule explicitly on this argument. (Damages Order at 2). Buyer did not make a 59(e) motion to obtain a ruling and, therefore, Buyer's "special damages/failure to plead" argument is not preserved for appeal. *Noisette v. Ismail*, 403 S.E.2d 122, 124 (S.C. 1991) (if trial court "[does] not rule explicitly on [appellant's] argument," it is not preserved for appeal unless appellant makes a 59(e) motion); *McMaster v. Columbia Bd. of Zoning Appeals*, 719 S.E.2d 660, 662 n.3 (S.C. App. 2011) (trial court did "not specifically address" the issue and appellant did not make a 59(e) motion); *Chastain v. Hiltabidle*, 673 S.E.2d 826, 829-830 (S.C. App. 2009) (trial court did not "specifically rule on [an] issue" and appellant did not make a 59(e) motion); *Floyd v. Floyd*, 615 S.E.2d 465, 474 (S.C. App. 2005) (trial court "[did] not address the specific argument" and appellant did not make a 59(e) motion). [1]

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[1] In its Argument II, Buyer argues the trial judge failed to apply the proper measure of damages. (Init. App. Br. at 7-8). This argument hinges on Buyer's "special damages/failure to plead" argument, and it fails for the same reasons. Buyer raised this argument for the first time in its memorandum in opposition to Seller's motion to determine the amount of damages. (Buyer's Memo. at 3-4). As with its "special damages"

II. Buyer's "contemplation" argument is not preserved for appeal and is barred by the law of the case doctrine.

In its Argument III, Buyer argues that the trial court erred in awarding damages for "carrying costs (a/k/a "holding costs")" and "homeowner association fees," because these damages were not within the contemplation of the parties at the time of the contract. (Init. App. Br. 10). Buyer never made this argument to the trial court and, therefore, it is not preserved for appeal. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 762 S.E.2d 693, 695 (S.C. 2014) ("It is axiomatic that an issue cannot be raised for the first time on appeal."); *Pye v. Estate of Fox*, 633 S.E.2d 505, 510 (S.C. 2006) (same).

Assuming Buyer made this argument to the trial court, the court did not rule on it (Damages Order) and Buyer did not make a 59(e) motion to obtain a ruling. Thus, the argument is not preserved for appeal. *Noisette v. Ismail*, 403 S.E.2d 122, 124 (S.C. 1991) (if trial court "[does] not rule explicitly on [appellant's] argument," it is not preserved for appeal unless appellant makes a 59(e) motion); *McMaster v. Columbia Bd. of Zoning Appeals*, 719 S.E.2d 660, 662 n.3 (S.C. App. 2011) (trial court did "not specifically address" the issue and appellant did not make a 59(e) motion); *Chastain v. Hiltabidle*, 673 S.E.2d 826, 829-830 (S.C. App. 2009) (trial court did not "specifically rule on [an] issue" and appellant did not make a 59(e) motion); *Floyd v. Floyd*, 615 S.E.2d 465, 474 (S.C. App. 2005) (trial court "[did] not address the specific argument" and appellant did not make a 59(e) motion).

Moreover, the trial court ruled in its merits order that Seller was entitled to an award of these damages. (5/19 Order at 2, 15). Buyer did not appeal this order and does not

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argument, this came too late to preserve the issue for appeal. Moreover, and again as with the "special damages" issue, the trial court did not rule specifically on this argument (Damages Order, *passim*), and Buyer did not make a 59(e) motion to obtain a ruling. Thus, the issue is not preserved for appeal.

challenge it on appeal. (Notice of Appeal; Init. App. Br., *passim*). Therefore, this order is the law of the case and precludes Buyer's appellate argument. *Judy v. Martin*, 674 S.E.2d 151, 153 & n.4 (S.C. 2009) (a "prior unappealed order [is] the law of the case"); *McCall v. State Farm Mut. Auto. Ins. Co.*, 597 S.E.2d 181, 184 (S.C. App. 2004) (same); see *Buckner v. Preferred Mut. Ins. Co.*, 177 S.E.2d 544, 544 (S.C. 1970) (an unappealed ruling in an order is the law of the case and, right or wrong, requires affirmance).

III. Buyer's "possession and use" argument is not preserved for appeal, is barred by the law of the case doctrine, and has no merit.

In its Argument III, Buyer argues that the trial court erred in awarding "property taxes" as damages, because Seller continued to possess and use/enjoy the property while paying the taxes. (Init. App. Br. 11). This argument is not preserved for appeal, because the trial judge did not rule on it (Damages Order), and Buyer did not make a 59(e) motion to obtain a ruling. *Noisette v. Ismail*, 403 S.E.2d 122, 124 (S.C. 1991) (if trial court "[does] not rule explicitly on [appellant's] argument," it is not preserved for appeal unless appellant makes a 59(e) motion); *McMaster v. Columbia Bd. of Zoning Appeals*, 719 S.E.2d 660, 662 n.3 (S.C. App. 2011) (trial court did "not specifically address" the issue and appellant did not make a 59(e) motion); *Chastain v. Hiltabidle*, 673 S.E.2d 826, 829-830 (S.C. App. 2009) (trial court did not "specifically rule on [an] issue" and appellant did not make a 59(e) motion); *Floyd v. Floyd*, 615 S.E.2d 465, 474 (S.C. App. 2005) (trial court "[did] not address the specific argument" and appellant did not make a 59(e) motion).

Moreover, the trial specifically ruled in its prior order on the merits that Seller was entitled to an award of damages based on "property taxes." (5/19 Order at 2, 15). Buyer did not appeal this order and does not challenge it on appeal. (Notice of Appeal; Init. App. Br., *passim*). Therefore, this order is the law of the case and precludes Buyer's appellate

argument. *Judy v. Martin*, 674 S.E.2d 151, 153 & n.4 (S.C. 2009) (a "prior unappealed order [is] the law of the case"); *McCall v. State Farm Mut. Auto. Ins. Co.*, 597 S.E.2d 181, 184 (S.C. App. 2004) (same); see *Buckner v. Preferred Mut. Ins. Co.*, 177 S.E.2d 544, 544 (S.C. 1970) (an unappealed ruling in an order is the law of the case and, right or wrong, requires affirmance).

In any event, Buyer's argument has no merit. At trial, Seller testified that he would have sold the property to Buyer subject to Defendant Mitchell's easement. (11/9 Tr. at 130). This would have avoided the payment of any property taxes. When Buyer brought this action, it precluded any sale of the property during the pendency of the action and Seller therefore had to pay the taxes during the pendency of the sale.[2]

The trial court filed its 59(e) order on January 12, 2011. (See file stamp on 59(e) order). Thus, the 30-day time limit to appeal this order (and the earlier merits order) ran no earlier than Friday, February 11, 2011. Seller, therefore, could not begin to sell this property until February 11, 2011, at the earliest. Buyer did not appeal these orders, and it is undisputed that Seller shortly thereafter negotiated a sale of the property and sold the property in April 2011 for the same price that had been offered to Buyer. (Exh. D. to Buyer's Memo. in Opp. to Motion for Damages). In short, Seller sold the property as soon as possible.

At trial, Seller testified that he wanted to sell the property after Buyer did not close the sale, but his wife did not want him to sell the property and, therefore, at the time of

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[2] Buyer filed a lis pendens against the property which also precluded any sale of the property. Buyer argues that Seller also filed a lis pendens, so its lis pendens was irrelevant. (Init. App. Br. 11). This argument is a red herring. Buyer's lis pendens was filed before Seller's and, therefore, Seller's lis pendens had no additional effect on the ability to sell. Moreover, the pendency of Buyer's action itself precluded any meaningful or reasonable opportunity to sell the property, regardless of any lis pendens. No reasonable person would buy the property during the pendency of an action for specific performance wherein the plaintiff (Buyer here) sought an order compelling the sale of the property to the plaintiff.

trial, his "present plan" was to keep the property (*i.e.*, his plan at the time of trial in November 2009 when Buyer's action remained pending and precluded any sale of the property). (11/9 Tr. at 143). Buyer seizes upon this testimony to argue that Buyer's "independent decision to keep the property necessitated the payment of property taxes." (Init. App. Br. 11). At the damages hearing, however, Seller testified that he always intended to sell the property but could not due to the pendency of Buyer's action, and he sold the property "as soon as possible" after the "litigation had ended" (*i.e.*, after the trial court issued its 59(e) order and Buyer did not appeal from it or the prior merits order). (7/29 Tr. at 9-10).

At most, there was conflicting evidence on whether Seller retained the property because he wanted to or because he had no choice due to the pendency of Buyer's action against him. The best evidence on this issue is Seller's actual conduct, *i.e.*, the undisputed fact that he sold the property as soon as possible after the litigation had ended. This was an action at law tried by a judge without a jury. Thus, as admitted by Buyer on appeal, the applicable standard of review is whether any evidence supports the trial judge's decision to award "property taxes" as damages. (Init. App. Br. 5-6). The evidence supports a finding that Seller retained the property due to the pendency of Buyer's action and, therefore, Buyer's "independent decision" argument has no merit.

IV. Buyer's "sufficiency of the evidence" argument is not preserved for appeal and has no merit.

In its Argument III, Buyer argues that Seller's evidence on the amount of damages was insufficient, because he "provided *only a damages summary with unsupported figures*" and, as to carrying costs, he provided "*no documentation* as to the amount of financing or proof of the amount of interest." (Init. App. Br. at 9) (emphasis added). In connection with

this argument, Buyer noted the trial court's statement in the prior merits order that "[Buyer] shall submit those actual amounts *with supporting documentation* to the Court." (Init. App. Br. at 9, n.6) (emphasis added by Buyer). Though unclear, it appears to be Buyer's argument that the trial court's order required "documentation" of all damages but Seller failed to provide it.

Buyer never argued to the trial court that "documentation" was required to prove the amount of Seller's damages, never argued that Seller failed to provide the required "documentation," and never argued that a "damages summary with unsupported figures" was insufficient. (See Buyer's Memo. in Opp. to Motion for Damages and 7/29 Tr., both *passim*). Thus, Buyer's appellate arguments are not preserved for appeal. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 762 S.E.2d 693, 695 (S.C. 2014) ("It is axiomatic that an issue cannot be raised for the first time on appeal."); *Pye v. Estate of Fox*, 633 S.E.2d 505, 510 (S.C. 2006) (same).

Moreover, the trial court did not mention or rule upon any "documentation" or "damages summary" issue in the appealed order on damages, and Buyer did not make a 59(e) motion to obtain a ruling. Thus, the issue is not preserved for appeal. *Noisette v. Ismail*, 403 S.E.2d 122, 124 (S.C. 1991) (if trial court "[does] not rule explicitly on [appellant's] argument," it is not preserved for appeal unless appellant makes a 59(e) motion); *McMaster v. Columbia Bd. of Zoning Appeals*, 719 S.E.2d 660, 662 n.3 (S.C. App. 2011) (trial court did "not specifically address" the issue and appellant did not make a 59(e) motion); *Chastain v. Hiltabidle*, 673 S.E.2d 826, 829-830 (S.C. App. 2009) (trial court did not "specifically rule on [an] issue" and appellant did not make a 59(e) motion);

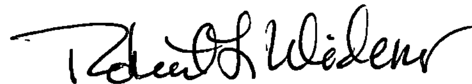
Floyd v. Floyd, 615 S.E.2d 465, 474 (S.C. App. 2005) (trial court "[did] not address the specific argument" and appellant did not make a 59(e) motion).

In any event, Buyer's argument has no merit. As noted earlier, this is an action at law tried by a judge without a jury, so the question is whether "any evidence" supports the trial court's damage award. Seller testified at the damages hearing that he had suffered damages in the amounts set forth in his motion. (7/29 Tr. at 4-5, 9-11). This was sufficient evidence based on his personal knowledge of those damage amounts, and the trial court awarded damages "[i]n accordance with [this] evidence presented by [Buyer]."(Damages Order at 2). Thus, Buyer's appellate argument has no merit.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm the appealed order.

Respectfully Submitted,



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Columbia, SC
August 31, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas
Joseph M. Strickland, Master In Equity

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SEP 02 2016
SC Court of Appeals

Appellate Case No. 2016-000636

Norwest Properties, LLC, ... Appellant,

v.

Michael T. Strebler, Lisa W. Strebler and Paul J. Mitchell, ... Defendants,

Of Whom Michael T. Strebler, Lisa W. Strebler are .... Respondents.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of McNair Law Firm, certify that I served the **Initial Brief of Respondent** and **Designation of Matter to Be Included in Record on Appeal**, by placing a true and correct copy of each in the U.S. Mail, sufficient postage pre-paid to Appellant's counsel at the addresses shown below, on August 31, 2016:

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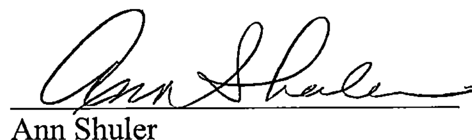

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SC Court of Appeals

Honorable Jenny Abbott Kitchings
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S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Norwest Properties, LLC -v- Michael. T. Strebler and Lisa W. Strebler
Appellate Case No. 2016-000636

Dear Ms. Kitchings:

Enclosed for filing, please find the original and two copies of the Initial Brief of Respondents and the Designation of Matter to Be Included in Record on Appeal. Please file the brief and designation in your office and return the file stamped extra copies to me in the return envelope provided.

Thank you for your assistance in this matter.

Respectfully yours,

McNAIR LAW FIRM, P.A.

Robert L. Widener

RLW/as
Enclosures

cc: Kathleen Chewning Barnes, Esquire
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