

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2019-002099

RECEIVED
MAY 19 2020
SC Court of Appeals

Machelle Smith,.....Appellants,

v.

Columbia Sussex Corporation d/b/a Hilton Head Marriott
Resorts and Spa; Columbia Sussex Management, LLC; and
Columbia Properties Hilton Head, LLC.....Respondents.

**RESPONDENTS’ REPLY TO APPELLANT’S RETURN IN
OPPOSITION OF MOTION TO DISMISS APPEAL**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH
CAROLINA:

Pursuant to Rule 240, SCACR, Respondents Columbia Sussex
Corporation d/b/a Hilton Head Marriott Resorts and Spa; Columbia Sussex
Management, LLC; and Columbia Properties Hilton Head, LLC
 (“Respondents”) respectfully moved this Court for an Order dismissing the

above-captioned appeal. Respondent maintains that Appellant Machel Smith's ("Appellant") arguments are not preserved for appeal. Appellant filed her Return to Respondents' Motion to Dismiss, accompanied by a Motion to File Out of Time.¹ Respondent submits this Reply to Appellant's Return.

LAW/ANALYSIS

In her Return, Appellant contends that all arguments are preserved for appeal because Respondents raised the "issue" of immunity under the Innkeeper Statute and full briefing opposing the applicability of the Innkeeper Statute was not required by Appellant in order to preserve the "issue" for appeal. Appellant avers that the procedural and factual background of this appeal is distinguishable from the precedent cited in Respondents' Motion to Dismiss.

As an initial matter, while Appellant criticizes the applicability of the cases regarding preservation of issues cited by Respondents, Appellant has failed to cite any case law in her favor articulating or which could be construed to articulate support of her position. Specifically, Appellant has failed to cite any cases standing for the proposition that an issue raised by one party

¹ Respondents submit, with this Response, their Reply to Appellant's Motion to File Out of Time.

preserves all arguments in favor of or opposition of the issue. Appellant seemingly argues that an issue raised by one party is sufficient to preserve arguments in opposition of the moving party's position on the issue.

However, as our Supreme Court has noted: "Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate courts] with a platform for meaningful appellate review." Herron v. Century BMW, 395 S.C. 491, 465, 719 S.E.2d 640, 642 (2011) (quoting Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). "Imposing such a requirement on the appellant 'is meant to enable the lower court to rule properly after it has considered all **relevant facts, law, and arguments.**'" Herron, 395 at 465, 719 S.E.2d at 642 (quoting I'on, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)) (emphasis added).

Appellant made no argument to the Circuit Court in opposition of the application of immunity under the Innkeeper Statute prior to the ruling on Respondents' motion for summary judgment. The failure to do is fatal to the appeal. Appellant took no stance on Respondents' position, cited case law, and ultimate request for immunity at the summary judgment phase of this case.

Appellant’s position in response to the Motion to Dismiss is that Appellant was not required to articulate such arguments in opposition since the overarching issue of immunity, and the applicability of immunity under the Innkeeper Statute as analyzed against the facts of this case, was preserved by Respondents (not Appellant) for appellate review. However, under the preservation jurisprudence of this State, imposing the preservation requirements enables the lower court a fair opportunity to rule on the issues and to provide the appellate courts “with a platform for meaningful appellate review.” See Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012). The failure to present any argument in opposition of the applicability of Immunity under the Innkeeper Statute inhibited the lower court from considering “all **relevant facts, law, and arguments**” and provide this Court “with a platform for meaningful appellate review.” See Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012).

Appellant appears to make a distinction between “issue” and “argument,” and argues that because the Circuit Court ruled on the issue of immunity under the Innkeeper Statute, the matter—and Appellant’s position that the Innkeeper Statute is not applicable under these facts—is preserved for

review. However, Appellant has failed to cite any cases for the proposition of the difference between “issue” preservation and “argument” preservation. Indeed, without any argument made before the Circuit Court prior to a ruling on summary judgment, the lower court could not and did not consider any arguments as to why the Innkeeper Statute does not provide immunity to Respondents under the facts of this case. See Herron, 395 at 465, 719 S.E.2d at 642; see also Tucker v. Doe, 413 S.C, 389, 776 S.E.2d 121 (Ct. App. 2015) (finding argument unpreserved where Appellant failed to raise his argument on punitive damages to the circuit court and noting that appellant “provided no authority that an argument against precedent is preserved for appellate review when the argument was never raised at trial and the precedent was conceded.”)

Accordingly, Appellant’s Appeal, and the arguments contained in her initial brief to this Court, are not preserved for review and, therefore, Appellant’s appeal must be dismissed.

CONCLUSION

Based on the aforementioned, as well as the arguments articulated in Respondents’ Motion to Dismiss, Respondents respectfully request the Court dismiss the instant appeal.

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' REPLY TO
APPELLANT'S RETURN IN
OPPOSITION OF MOTION TO
DISMISS APPEAL**

Columbia, South Carolina

May 18, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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J. Cordell Maddox, Jr., Circuit Court Judge

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PROOF OF SERVICE

I hereby certify that I served Respondents' Reply to Appellant's Return
in Opposition of Motion to Dismiss Appeal upon all parties, by placing a copy
in the United States mail, postage prepaid, to all counsel of record on May 18,
2020, addressed to the following:

COUNSEL SERVED:

John E. Parker, Esquire
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Respectfully submitted,

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May 18, 2020

VIA UNITED STATES MAIL

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *Machelle Smith v. Columbia Sussex Corporation d/b/a Hilton Head Marriott Resorts & Spa; Columbia Sussex Management, LLC; and Columbia Properties Hilton Head, LLC*
Civil Action No. 2016-CP-07-0777
Claim No. 007164-006563-GD-01
C&L File No. 001831-00104

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Dear Ms. Kitchings:

Please find enclosed the original and one copy of the following:

1. Respondents' Reply to Appellant's Return In Opposition of Motion to Dismiss Appeal; and
2. Respondents' Response to Appellant's Motion to File Out of Time.

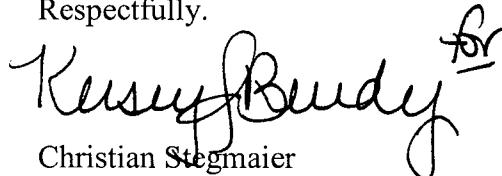
Please file the originals and return one copy to our office in the envelope provided for your convenience.

Pursuant to the Supreme Court's Order "re: Operation of the Appellate Courts During the Coronavirus Emergency" (2020-03-20-01), no additional copies are being provided. If any additional copies are required, please let us know.

By copy of this letter to Appellant's counsel, we are serving same on them.

Thank you for your attention to this matter.

Respectfully,

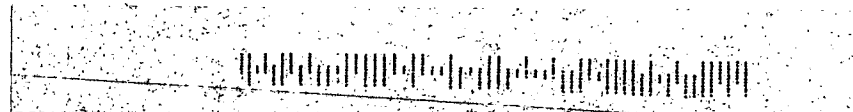
Handwritten signature of Christian Stegmaier in cursive, with a small "for" written above the end of the signature.

Christian Stegmaier

CS/net
Encl.

cc (via U.S. Mail and email):

John E. Parker, Esquire, Peters Murdaugh Parker Eltzroth & Detrick



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The Honorable Jenny A. Kitchings
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