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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No.: 2021-000977

David Mack Johnson, Sr.....Respondent,

-v-

Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, Great America Services Corporation, and Robert Dodge, Defendants,

Of Whom, Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, and Robert Dodge are the.....Appellants.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

COUNTER STATEMENT OF ISSUES ON APPEAL

I. Whether S.C. Code Ann. § 15-48-20(a) required the Circuit Court to immediately decide whether to enforce arbitration.

II. Whether the Appellants' arguments regarding the scope of the Arbitration Agreement are preserved for the Court's review.

III. Whether Appellant Cross River Bank appropriately preserved the issue of service of process.

COUNTER STATEMENT OF THE CASE

This Appeal arises from fraudulent misrepresentations that were allegedly made by Appellants Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, Great America Services Corporation, and Robert Dodge to the Respondent, David Mack Johnson, Sr., during pre-installation negotiations for a solar panel system purchased by Johnson.[1] (*See generally* Am. Compl.). Johnson filed his Complaint against Appellants on October 8, 2020, in the Colleton County Court of Common Pleas. (*See generally* Compl.). In his Complaint, Johnson alleged causes of action for breach of warranty and fraud. (*Id.*).

On December 16, 2020, Appellants Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, and Sunlight Financial, LLC moved to compel arbitration and to dismiss or stay under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 3-4, the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 through -240, and Rule 12 of the South Carolina Rules of Civil Procedure.[2] (Mot. Compel Arbitration). Appellants requested arbitration on the grounds that an arbitration agreement signed by Johnson existed. Appellants also asserted that Johnson's claims bore a significant relationship to the contract containing the Arbitration Agreement. (*Id.* at 2). Appellants Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, and Sunlight Financial, LLC filed a memorandum in support of their

[1] Appellants have represented that Palmetto Solar, LLC is the successor by merger with Palmetto South Carolina Solar I, LLC.

[2] Appellants Brightest Solar, Inc. and Robert Dodge joined in the motion by way of notice filed with the Circuit Court on December 21, 2020.

motion on December 31, 2020. (Mem. Supp. Mot. Compel Arbitration). The Circuit Court heard the Appellant's Motion to Compel on January 6, 2021, and in an Order filed January 8, 2021, the Circuit Court denied Appellant's motion as being premature, effectively postponing the request for arbitration. (*See generally* Hr'g Tr., Jan. 6, 2021; Order, Jan. 8, 2021).

On January 19, 2021, Appellants Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Sunlight Financial, LLC, Brightest Solar, Inc., and Robert Dodge filed untimely Motions to Reconsider the Circuit Court's January 8, 2021 Order. (Mots. to Reconsider). These motions were filed 11 days after electronic notification of the Order in violation of Rule 59(e), SCRCP. Additionally, there is no evidence that the Circuit Court was ever provided a copy of Brightest Solar, Inc. and Robert Dodge's motion as required by Rule 59(g), SCRCP. The Motions to Reconsider did not specifically contest the Circuit Court's discretion to deny Appellant's motion in favor of pre-arbitration discovery. (*Id.*). Neither did they specifically articulate how the alleged fraudulent conduct was within the scope of the Arbitration Agreement. Instead, Appellants renewed their arguments that there must have been fraud in the inducement of the Arbitration Agreement in order for it to be invalid. (*Id.* at 3-4). Appellants also conceded that the Circuit Court could properly postpone arbitration for the purposes of limited pre-arbitration discovery. (*Id.* at 5-6). On June 28, 2021, the Circuit Court heard the Motions to Reconsider. (Hr'g Tr., June 28, 2021).

On July 27, 2021, Johnson filed an Amended Complaint, adding an additional claim for breach of contract, along with additional factual allegations concerning the sales transaction. (Am. Compl. ¶¶ 20-25). On August 12, 2021, the Circuit Court denied Appellants' Motions to Reconsider, citing authorities for the proposition that a motion for reconsideration is not a vehicle to re-litigate previously raised issues. (Order, Aug. 12, 2021). Appellants filed their Joint Notice of Appeal on September 7, 2021. (Notice of Appeal).

STANDARD OF REVIEW

Generally, the determination whether a claim is subject to arbitration is reviewed *de novo*. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). Despite this, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007). Further, the Circuit Court's Order in essence is not a determination that Johnson's claims aren't subject to arbitration; rather, it is a hybrid determination that Appellants' motion was premature in light of the discovery posture of the case.

South Carolina does not have any precedential decisions specifically providing for the standard of review when a trial court temporarily denies a motion to compel arbitration in favor of pre-arbitration discovery. However, many other courts, when reviewing orders involving pre-arbitration discovery, employ a deferential abuse of discretion standard to assess a trial court's decision to permit or deny pre-arbitration discovery. *See Diggs v. Citigroup, Inc.*, 551 Fed. App'x 762, 766

(5th Cir. 2014); *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th Cir. 1999); *White v. Equity, Inc.*, 178 Ohio App. 3d 604, 607, 899 N.E.2d 205, 208 (Ohio Ct. App. 2008). Therefore, the Court should affirm the Circuit Court's decision to postpone arbitration in favor of pre-arbitration discovery unless its decision was "clearly unreasonable or arbitrary." *Id.*

ARGUMENT

The Circuit Court's January 8, 2021 Order is simple. In two lines, it denies Appellants' Motion to Compel Arbitration "as being premature."[3] While Appellants construe the Order as a general denial of their request to compel arbitration and a ruling on the enforceability and scope of the arbitration agreement, when read within the context of the parties' arguments at the January 6, 2021 hearing, it becomes obvious that the Circuit Court was deferring a decision on the merits of Appellants' motion until after such a time when pre-arbitration discovery could be completed. While it is true that courts are required to make a threshold inquiry into the existence and scope of an arbitration agreement, it is well within a trial court's discretion to delay the enforcement of arbitration and permit pre-arbitration discovery if it would be beneficial to the court's inquiry. Johnson introduced sufficient issues regarding the existence and scope of the Arbitration Agreement in opposition to Appellants' motion such that it was reasonable for the Circuit Court to temporarily deny Appellants' request, rendering this appeal premature.

[3] "Defendant Palmetto Solar, LLC's Motion to compel and enforce arbitration is denied. It is denied as being premature." (Order, Jan. 8, 2021).

Respondent respectfully requests that this Court affirm the Circuit Court's January 8, 2021 Order denying arbitration and its June 28, 2021 Order denying Appellants' Motions to Reconsider. First, South Carolina law did not prohibit the Circuit Court from denying a motion to compel arbitration in favor of pre-arbitration discovery. Second, the Circuit Court had sufficient reason to deny Appellants' Motion to Dismiss and Compel Arbitration in that Johnson requested that the Circuit Court temporarily deny the motion in order to develop facts relevant to his fraud allegations, which are conceivably beyond the scope of the Arbitration Agreement. Third, Appellants failed to raise issues falling under S.C. Code Ann. § 15-48-20(a) until their untimely Motions to Reconsider, and instead conceded that a proper remedy would be to direct the parties to engage in pre-trial discovery.

I. The factual background of this case created threshold inquiries for the Circuit Court as to unconscionability and the scope of the Arbitration Agreement, reasonably supporting the Circuit Court's denial of Appellants' motion.

On or about October 9, 2017, Johnson contracted with Appellants to purchase a solar panel system for his home. (Am. Compl. ¶ 6). At the time Johnson agreed to purchase the system, it was allegedly represented to him that it would pay for itself in ten years or less and that it would outproduce the daily energy needs for his home, amongst other claims for the system's effectiveness. (*Id.*). Some seven months later, on May 21, 2018, Johnson and Appellants signed a "Solar Installation Agreement – Loan". (Mot. to Compel, Ex. 1). The Installation Agreement contained terms concerning the obligations of Johnson with regards to the physical

installation of the system, the obligations of Appellants with regards to the physical installation of the system, conditions to installation of the system, and services excluded during the physical installation of the system. (*Id.*). While the Installation Agreement included a contract price, it did not contain terms explicitly concerning the performance and effectiveness of the system, although a "Workmanship Warranty" was attached to the Installation Agreement.[4] (*Id.* at 5). Regardless, the primary thrust of the entire agreement concerned and revolved around the physical installation of the system on Johnson's roof.

The Installation Agreement also contains an Arbitration Agreement. The Arbitration Agreement states that "[i]n the event of a dispute between You and the Installer under or relating to this Installation Agreement, either party may choose to resolve the dispute by binding arbitration . . . ." (*Id.* at 3). Additionally, the Arbitration Agreement provides that it survives and extends indefinitely into the future beyond the term of the Installation Agreement, and that it applies to the "Installer's affiliates and their officers, directors, members, managers, partners, independent contractors, and employees; and any third party co-defendant of a claim subject to this arbitration provision." (*Id.* at 4). Additionally, the Arbitration Agreement appears to contain a provision which purports to limit Johnson's damages to $1,000.00 or less. (*Id.* at 4).

Following the parties' execution of the Installation Agreement, the system was installed on the roof of Johnson's home in Islandton, South Carolina. (Am.

[4] The Installation Agreement does contain a provision informing the purchaser that his electricity consumption habits and his utility's rate plan will affect cost savings.

Compl. ¶ 11). The system did not perform as initially represented by Appellants and never reached the energy production levels promised by Appellants in the pre-installation negotiations. (*Id.*). Johnson filed his Complaint on October 8, 2020. (*See generally* Compl.).

At the January 6, 2021 hearing on Appellant's Motion to Compel Arbitration, Appellants argued that Johnson's action should be dismissed in favor of arbitration because the Installation Agreement contained an arbitration provision covering all claims related to the Installation Agreement, and Johnson signed the Installation Agreement. (Hr'g Tr., Jan. 6, 2021, p. 3, line 18 – p. 4, line 11). Counsel for the Palmetto Solar entities and Sunlight Financial, LLC informed the Circuit Court that he also represented Cross River Bank, but that it was not before the Circuit Court for the hearing. (*Id.* at p. 3, lines 9-15).

Counsel for Johnson argued that Johnson had alleged fraud, taking the alleged conduct outside of the Arbitration Agreement, and that the Arbitration Agreement was unconscionable. (*Id.* at p. 5, lines 6-11). Additionally, counsel requested that the Circuit Court temporarily deny the motion until the parties had an opportunity to engage in discovery. (*Id.* at p. 5, lines 12-13). This led to the Circuit Court denying Appellants' motion as "premature". (Order, Jan. 8, 2021).

On Appellants' Motions to Reconsider, Appellants did not specifically contend that the Circuit Court abused its discretion or lacked authority to deny the motion as premature given the procedural posture of the case. Rather, Appellants conceded that the Circuit Court could direct the parties to engage in discovery to determine

the validity of the Arbitration Agreement. (Palmetto Solar Mot. to Reconsider at 5). Appellants instead chose to argue that a party must point to fraud in the inducement of the arbitration agreement to avoid arbitration of the contract. (*Id.* at 3). Appellants also argued that under this Court's precedents Johnson failed to specifically challenge the Arbitration Agreement, requiring the Circuit Court to grant the motion. (Hr'g Tr., June 28, 2021, p. 5, lines 2-22). Counsel for Johnson again argued that the allegations of fraud would be supported by discovery. (*Id*. at 6, lines 17-22). The Circuit Court denied Appellants' Motions to Reconsider for presenting issues that could have been raised prior to judgment, and for only re-litigating previously raised issues. (Order, Aug. 12, 2021).

II. S.C. Code Ann. § 15-48-20(a) did not require the Circuit Court to immediately grant Appellant's motion.

Section 15-48-20(a) states that "if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised . . . ." In their Brief, Appellants argue that the Circuit Court was compelled by section 15-48-20(a) to immediately grant their motion, claiming that Johnson did not deny the existence of an agreement to arbitrate, necessitating immediate arbitration of his claims. (Br. of Appellants at 7). This argument is flawed for four key reasons.

First, by asserting that the Arbitration Agreement was unconscionable, Johnson did deny that a valid arbitration agreement existed. Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839,

843-44 (Ct. App. 1999). "Accordingly, a party may seek revocation of the contract under 'such grounds as exist at law or in equity,' including fraud, duress, and unconscionability." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007). Arbitration will be denied if a circuit court determines that no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a). By asserting that the arbitration agreement was unconscionable at the January 6, 2021 hearing, Johnson, while admitting that the Installation Agreement was signed and existed, simultaneously denied that a valid Arbitration Agreement ever existed, permitting the Circuit Court to find that pre-arbitration discovery was warranted and Appellants' motion was premature.

Second, Johnson denied that his fraud claims fell under any existing arbitration agreement, as South Carolina law's outrageous torts exception takes certain claims of fraud outside the scope of an existing arbitration agreement. Torts that are unforeseeable to the reasonable consumer in the context of normal business dealings are outside the scope of a broadly-worded arbitration agreement concerning service. *Aiken v. World Fin. Corp. of South Carolina*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2007). Under South Carolina law, fraudulent conduct can fall outside the terms of an arbitration clause, depending on the circumstances. *Partain v. Upstate Auto Group*, 386 S.C. 488, 689 S.E.2d 602 (2010). Appellants have not pointed to any South Carolina law requiring Johnson to have produced admissible evidence demonstrating that the arbitration agreement was inapplicable prior to the Circuit Court's decision. It was well within the Circuit Court's discretion to deny

Appellants' motion as premature before any development of the facts concerning Johnson's allegations of fraud could have occurred.

Third, nothing to the undersigned's knowledge within South Carolina statutory or common law prohibits a circuit court from permitting pre-arbitration discovery prior to adjudicating the issue of whether arbitration should be compelled. While section 15-48-20(a) does provide that circuit courts should "proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party", South Carolina courts have never explicitly defined what period of time constitutes a summary determination under the statute.

However, other courts routinely permit pre-arbitration discovery prior to making a final determination on the issue of arbitrability. *See Parilla v. IAP Worldwide Servs., V.I., Inc.*, 368 F.3d 269, 284 (3d Cir. 2004); *Deputy v. Lehman Bros., Inc.*, 345 F.3d 494, 511 (7th Cir. 2003); *Qwil PBC v. Landow*, 180 A.D.3d 593, 593-94, 119 N.Y.S.3d 116, 117 (N.Y. App. Div. 2020). Unsurprisingly, there are no South Carolina authorities prohibiting a circuit court's use of pre-arbitration discovery to assist in a final decision on a motion to compel arbitration, and Appellants have cited nothing lending binding authority to their claims.

Appellants contend that Johnson was required to present evidence at the January 6, 2021 hearing to meet a burden of proving the Arbitration Agreement was invalid. Appellants cite *Masters v. KOL, Inc.*, 431 S.C. 28, 37, 846 S.E.2d 893, 897 (Ct. App. 2020), for the proposition that the burden is on the party resisting arbitration to demonstrate that the claims at issue are unsuitable for arbitration.

This is true; however, the proposition gleaned from *Masters* pertains to scenarios in which the circuit court is making a final determination as to the arbitrability of the issues. *Masters* did not address section 15-48-20(a) or scenarios where the party opposing arbitration is seeking pre-arbitration discovery. And nowhere within the decision, or within 15-48-20(a), has the Court or the General Assembly created a threshold requirement for a party requesting pre-arbitration discovery to make an evidentiary showing prior to its approval.

Lastly, Appellants failed to raise its arguments as to section 15-48-20(a) to the Circuit Court prior to their untimely Motions to Reconsider. An issue may not be raised for the first time in a motion to reconsider. *Comm. Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999) ("Further, because the transcript of the proceedings below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not preserved for our review."); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) (holding that a party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not).

Additionally, Appellants Motions to Reconsider appear to have been untimely.[5] The ten-day deadline in Rule 59(e) is an absolute deadline. *Overland,*

[5] This issue was not presented to and ruled on by the Circuit Court, but is preserved for this Court's review as an additional sustaining ground. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 722 (2000) ("Under the present rules, a respondent-the "winner" in the lower court-may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.").

Inc. v. Nance, 423 S.C. 253, 256, 815 S.E.2d 431, 433 (2018). "The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal." *Id.* at 257, 815 S.E.2d at 433. As such, the Circuit Court was precluded from considering any of the issues or arguments raised by Appellants in their Motions to Reconsider. For similar reasons, all issues and arguments raised by Brightest Solar, Inc. and Robert Dodge in their Motion to Reconsider were not properly before the Circuit Court due to their apparent neglect in providing a copy of the motion to the Circuit Court.[6] *See Smith v. Fedor*, 422 S.C. 118, 126, 809 S.E.2d 612, 616 (Ct. App. 2017).

Appellants made no argument to the Circuit Court in their motion to compel arbitration or in the initial hearing before the Circuit Court that section 15-48-20(a) required it to immediately dismiss Johnson's action and compel arbitration. Appellants conceded that the Circuit Court could order pre-arbitration discovery. For these reasons, Appellant's argument that the Circuit Court was required to immediately grant their motion fails, and the Circuit Court's Orders should be affirmed.

III. The Circuit Court never ruled on whether Johnson's fraud claim was within the scope of the Arbitration Agreement, or whether the entire agreement was unconscionable, and Appellants did not argue the issues with appropriate specificity in their untimely Motions to Reconsider.

An issue is not preserved when a circuit court does not rule on the issue and the appellant fails to specifically raise the issue in a Rule 59(e) motion for

[6] The record contains no evidence that a copy was served on the Circuit Court.

reconsideration. *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991). Appellants seek to bootstrap an argument that the alleged conduct was within the scope of the Arbitration Agreement onto their arguments that the Installation Agreement was a valid, enforceable contract under South Carolina law. Johnson does not maintain that the Installation Agreement did not have an offer, consideration, and an acceptance. However, Johnson certainly challenges Appellants' position that the Arbitration Agreement was not unconscionable, and that the complained of conduct was within the scope of the arbitration agreement. The Circuit Court never ruled on these issues either way, and Appellants failed to specifically raise this to the Circuit Court in their Motions to Reconsider, making the issues unpreserved for the Court's review at this stage in the proceedings. Further, for the reasons discussed above, Appellants' Motions to Reconsider were untimely and therefore could not serve as a vehicle for advancing any such arguments.

Regardless, even if Appellants had preserved these issues, and even if they had been ruled on by the Circuit Court, the Circuit Court was still well within its discretion to postpone arbitration in order to permit pre-arbitration discovery. As a reason the Circuit Court should have granted their motion, Appellants assert that allegations of fraud void an arbitration agreement only when the fraud is directed at the making of the arbitration provision itself. Appellants' argument misapprehends and combines two separate aspects of contract law as they pertain to arbitration agreements.

Appellants' argument is based on language from *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 628, 667 S.E.2d 1, 4 (2008), in which the Court stated that general allegation of fraud in the inducement of a contract are insufficient to prevent the invocation of a contract's arbitration clause. This statement is again true; however, Johnson has not alleged fraud in the inducement of the contract or arbitration agreement as a reason that a valid, enforceable contract does not exist. Johnson's argument addresses a separate theory under South Carolina contract law; that is, whether certain types of fraudulent conduct are unforeseeable and outside the scope of an arbitration agreement. It is under the line of cases reaching from *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 644 S.E.2d 718 (2007), to *Parsons v. John Wieland Homes and Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 791 S.E.2d 128 (2016), that Johnson advances his arguments as to the scope of the Admission Agreement. These cases address a doctrine that is separate and distinct from that discussed in *New Hope Missionary Baptist Church*. And none of these cases require a showing that the fraudulent conduct was specifically directed to the formation of the arbitration agreement.

Further, the factual circumstances before the Circuit Court are not analogous to those that were before the Court in *New Hope Missionary Baptist Church*. There, the church entered an agreement with a contractor to oversee construction of a new church facility. *Id.* at 623, 667 S.E.2d at 2. After a sum was paid to the contractor as specified in the contract, the church brought a declaratory judgment action to determine the existence, validity, and enforceability of the contract. *Id.* at 624, 667

S.E.2d at 2-3. The church's complaint raised issues regarding the validity of the contract, including absence of meeting of the minds, lack of consideration, lack of authority to enter the contract, and ambiguity, and that the contract contained forged signatures. *Id.* at 624-25, 667 S.E.2d at 3. Thus, the complaint did not allege fraudulent conduct related to the performance of the contract or unconscionability. Instead, it alleged that there was fraud in the inducement of the contract. Here, Johnson has alleged a wholly different category of conduct that doesn't challenge the formation of the contract, and instead challenges that the subsequent conduct was outside the scope of the agreement. This makes *New Hope Missionary Baptist Church*'s reasoning inapplicable to the Appellants' Motion to Compel Arbitration and the Circuit Court's Orders.

Regardless, the enforcement, validity, and scope of the Arbitration Agreement are not issues properly before the Court, as they were never ruled on by the Circuit Court. The only question for the Court today is whether the Circuit Court abused its discretion in denying Appellants' motion in favor of pre-arbitration discovery. The resounding answer to this question should be no, as the Circuit Court was well within reason in seeking development of the record concerning Johnson's allegations of unconscionability and fraud prior to reaching a decision. The Circuit Court's Orders should be affirmed.

IV. <u>The Circuit Court never ruled on Cross River Bank's request for dismissal, and Cross River Bank failed to timely raise the issue in a Rule 59(e) motion</u>.

In the Palmetto Solar entities and Sunlight Financial, LLC's December 16, 2020 Motion to Compel Arbitration, footnote 1 indicates that Cross River Bank was also moving to dismiss under Rule 12, SCRCP. At the January 6, 2021 hearing on the motion, counsel for Palmetto Solar and Sunlight Financial, LLC did not advance any arguments in favor of dismissal of Cross River Bank, and instead represented to the Circuit Court that Cross River Bank was not properly before the court on that day, and that he was "really just here for Palmetto Solar and Sunline Financial." (Hr'g Tr., Jan. 6, 2021, p. 3, lines 12-15). The Circuit Court's Order makes no mention of Cross River Bank or its request for dismissal. (Order, Jan. 8, 2021).

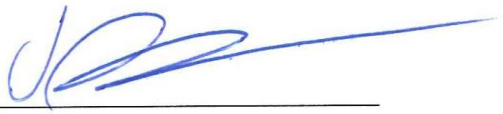
No motion for reconsideration was timely filed within the ten-day deadline. *See Altman v. Griffith*, 372 S.C. 388, 396, 642 S.E.2d 619, 623 (Ct. App. 2007) ("Where a party raises an issue, but the issue is never ruled on by the trial court, and the party fails to file a motion to alter or amend, the issue is not preserved."). Thus, the issue of whether Cross River Bank had been sufficiently served with process is not preserved for the Court's review, and the Circuit Court's Orders should be affirmed so far as they do not address the issue of service.

CONCLUSION

For the foregoing reasons, the Circuit Court's January 8, 2021 and August 12, 2021 Orders should be affirmed.

PARKER LAW GROUP, LLP

April 6, 2022
Hampton, South Carolina

By: 

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ATTORNEYS FOR THE RESPONDENT

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No.: 2021-000977

David Mack Johnson, Sr.....Respondent,

-v-

Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, Great America Services Corporation, and Robert Dodge, Defendants,

Of Whom, Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, and Robert Dodge are the.....Appellants.

CERTIFICATE OF SERVICE

This is to certify that I, Claudia Cartier, with the Parker Law Group, LLP., Attorney for the Respondent, have this date emailed a true and correct copy of the within ***Respondent Initial Brief to***:

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Via Email Only: ctappfilings@sccourts.org
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Re: Johnson v. Palmetto Solar, LLC, et al.
Appellate Case No.: 2021-000977

Dear Ms. Kitchings:

Please find enclosed for filing, Respondent's Initial Brief and Designation of Matter to be Including in the Record on Appeal in the above-referenced case.

By copy of this letter, Appellant's Initial Brief and Designation of Matter is being served on all counsel of record via email.

With kind regards, I am

Sincerely,

John E. Parker Jr.

JAY/cc
Enclosures as stated

cc: Matthew A. Abee, Esquire
William P. Tinkler, Esquire