Rel: October 16, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2026-0190

Commercial Properties, Inc.

v.

Ourania Charalambidou, Dionysios Mitsios, and Montgomery Civic Ballet, Inc., d/b/a Montgomery Ballet Studios

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SC-2026-0191

Ourania Charalambidou, Dionysios Mitsios, and Montgomery Civic Ballet, Inc., d/b/a Montgomery Ballet Studios

v.

Commercial Properties, Inc.

Appeals from Montgomery Circuit Court
(CV-21-900117)

SELLERS, Justice.

These consolidated appeals involve two commercial leases executed by Commercial Properties, Inc. ("the landlord"), and Montgomery Civic Ballet, Inc., doing business as Montgomery Ballet Studios ("the Ballet"). Dionysios Mitsios ("Danny") is the executive director of the Ballet, and Ourania Charalambidou ("Rania") is his wife. In appeal no. SC-2026-0191, the Ballet, Danny, and Rania appeal from separate orders of the Montgomery Circuit Court ("the trial court"), striking as untimely their response to the landlord's motion for a partial summary judgment and subsequently denying the resubmission of that response. We affirm. In appeal no. SC-2026-0190, the landlord cross-appeals from the trial court's February 3, 2026, order certifying its motion for a partial summary judgment as final pursuant to Rule 54(b), Ala. R. Civ. P., while, at the

same time, purportedly dismissing the entire case. We affirm in part, reverse in part, and remand.

I. Facts

The landlord and the Ballet entered into two separate lease agreements in May 2008 and January 2012, respectively, pursuant to which the landlord leased to the Ballet two suites located in a shopping center owned and managed by the landlord. The lease agreements contained a provision for indemnification by the tenant, a default provision, and a provision outlining when the tenant would be liable for attorney fees and costs incurred by the landlord.[1] In December 2020, the Ballet vacated the premises based on the landlord's alleged failure to eliminate mold that existed in the leased premises.

In January 2021, the Ballet, Danny, and Rania filed a multicount complaint against the landlord, alleging that Danny and Rania had suffered personal injuries after being exposed to mold in the leased premises. The Ballet also claimed that the mold had caused damage to its personal property, including its costumes. The landlord answered the

[1]The Ballet, Danny, and Rania do not challenge the provisions of the lease agreements upon which the landlord relied in seeking a partial summary judgment; therefore, we do not quote or discuss them.

complaint and filed a counterclaim, seeking unpaid rent under the lease agreements and defense and indemnity from the Ballet on the claims asserted by Danny and Rania. The landlord thereafter sent the Ballet a letter demanding that the Ballet defend and indemnify it on the claims asserted by Danny and Rania, as required by the lease agreements. The Ballet did not respond to that demand.

In February 2023, the landlord filed a motion for a partial summary judgment, supported by various documents. The motion for a partial summary judgment addressed only the claims involving the Ballet, and not Danny's and Rania's claims against the landlord. In that motion, the landlord sought

> "(1) an interlocutory judgment declaring that [the Ballet] owes [the landlord] $65,827.50 in unpaid rent, the judgment to become a final judgment after the amount of prejudgment interest and fees are submitted to [the trial court]; (2) [an] interlocutory judgment declaring that [the] Ballet owes [the landlord] defense and indemnity on the claims asserted against it by [Danny and Rania], the claims to become a final judgment at the time all claims in this matter are adjudicated and the total amount of attorneys' fees are submitted; and (3) [a] final judgment against the Ballet and in favor of [the landlord] on [the] Ballet's claims against it. There are no issues as to any material fact, and [the landlord] is entitled to [a] judgment as a matter of law on these claims."

On March 25, 2025, the trial court entered an order setting a hearing on the partial-summary-judgment motion for April 21, 2025, at 10:00 a.m.[2] On April 18, 2025, the Ballet, Danny, and Rania filed their response in opposition to the partial-summary-judgment motion. Before the hearing commenced, the landlord filed a motion to strike the response as untimely. Following the hearing, the trial court entered an order granting the motion to strike, thus leaving the motion for a partial summary judgment unopposed. However, the trial court did not enter an order on the partial-summary-judgment motion -- presumably because of an oversight.

On October 20, 2025, the landlord moved the trial court to enter an order on its motion for a partial summary judgment. The trial court entered an order setting the matter for a hearing on December 3, 2025, noting that all "pending motions" would be heard at that time. The

[2]According to the landlord, the delay between the filing of the motion for a partial summary judgment in February 2023 and the scheduling of the hearing in March 2025 was not caused by any action or inaction on behalf of the parties. Rather, the landlord points out that Judge Johnny Hardwick, the original circuit-court judge assigned to hear the matter, was assaulted while the action was pending and suffered severe injuries that kept him from his duties. Shortly after setting the April 21, 2025, hearing, Judge Hardwick retired, and the case was assigned to Circuit Court Judge Tiffany McCord.

Ballet, Danny, and Rania filed a "response" to the landlord's motion for an order on the partial summary judgment, and they resubmitted the same response that the trial court had previously deemed untimely. The landlord filed a motion to strike the response, arguing that the trial court had already entered an order striking it as untimely.

On December 22, 2025, following a hearing, the trial court entered an order denying the "renewed" response filed by the Ballet, Danny, and Rania and entering a partial summary judgment in favor of the landlord. The Ballet, Danny, and Rania moved the trial court to certify the partial summary judgment in favor of the landlord as final pursuant to Rule 54(b), Ala. R. Civ. P.

On February 3, 2026, the trial court entered an order certifying the partial summary judgment in favor of the landlord as final pursuant to Rule 54(b) and indicating that "this case is dismissed." This appeal and cross-appeal followed.

II. Standard of Review

> "This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a

> judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004)."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038 (Ala. 2004). A trial court's decision to strike an untimely submission offered in response to a motion for a summary judgment is reviewed under an excess-of-discretion standard of review. Speer v. Pin Palace Bowling Alley, 599 So. 2d 1140 (Ala. 1992).

III. Discussion

A. Appeal No. SC-2026-0191 -- Timeliness of Opposition

In their appeal, the Ballet, Danny, and Rania ("the plaintiffs") do not challenge the merits of the partial summary judgment entered in favor of the landlord.[3] Rather, they challenge only the April 21, 2025, order striking as untimely their response to the partial summary-judgment motion and the December 22, 2025, order denying that same response. The plaintiffs first claim that their response was timely

[3]For the first time in their reply brief, the plaintiffs attempted to challenge the merits of the partial summary judgment. However, we will not consider their arguments. See Lloyd Noland Hosp. v. Durham, 906 So. 2d 157, 173 (Ala. 2005) ("It is a well-established principle of appellate review that we will not consider an issue not raised in an appellant's initial brief, but raised only in the reply brief.").

because, they say, it was filed three calendar days before the April 21, 2025, hearing. However, the plaintiffs fail to acknowledge the interplay between Rule 56(c)(2), Ala. R. Civ. P., and Rule 6(a), Ala. R. Civ. P., concerning the computation of periods specified in the rules. Rule 56(c)(2) provides that a "motion for summary judgment, with all supporting materials, including any briefs, shall be served at least ten (10) days before the time fixed for the hearing" and that responses in opposition to a summary-judgment motion must be served two days before the hearing on the motion. The version of Rule 6(a) in effect at the time the partial-summary-judgment motion was filed provided that, in computing any period specified in the rules, "the day of the act, event, or default from which the designated period of time begins to run shall not be included" and that, when a filing must be accomplished within 11 days or less, "intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation." Therefore, pursuant to Rule 56(c) and Rule 6(a), the day of the hearing on the partial-summary-judgment motion (April 21) and the Saturday and Sunday preceding the hearing (April 19 and 20) are excluded from computation; thus, any response in opposition was due on Thursday, April 17, 2025, two business days before the

hearing. See Elliott Builders, Inc. v. Timbercreek Prop. Owners Ass'n, 128 So. 3d 755, 765 (Ala. Civ. App. 2013) (indicating that Rule 56(c)(2) "requires that matters in opposition to a summary-judgment motion must be filed and served two days (i.e., two business days, see Rule 6(a), Ala. R. Civ. P.) before the hearing on the motion"). Accordingly, the filing of the response on the Friday before the scheduled hearing on Monday was untimely.

The plaintiffs also contend that, by striking their response in opposition to the landlord's partial-summary-judgment motion, they were denied the opportunity to be heard on both the partial-summary-judgment motion and the motion to strike their response. The plaintiffs cite Moore v. Prudential Residential Services Ltd. Partnership, 849 So. 2d 914, 926 (Ala. 2002) ("Rule 56(c)(2), Ala. R. Civ. P., gives the nonmoving party certain rights to notice and a hearing after a summary-judgment motion has been filed."). However, it is clear that the plaintiffs had notice of both the April 21, 2025, hearing on the motion for a partial summary judgment and the motion to strike that was filed and ruled upon on that same date. To the extent that counsel for the plaintiffs failed

to attend that hearing, we will not fault the trial court for that absence.[4] Furthermore, although the plaintiffs assert that the requirements of Rule 56(c)(2) are procedural in nature and that a trial court is afforded broad discretion in their application, they never invoked the very rules that would have allowed the trial court to exercise such discretion. As the landlord points out, the plaintiffs never invoked Rule 56(f), permitting a continuance based on evidentiary matter being unavailable, or Rule 6(b), permitting an enlargement of the period to respond for "cause shown." Accordingly, we find no merit in the plaintiffs' argument that they were denied an opportunity to be heard on both the motion for a partial summary judgment and the motion to strike their response.

The plaintiffs also challenge the trial court's December 22, 2025, order denying their "renewed" response to the landlord's request for an

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[4]In their initial brief, the plaintiffs state that it was not clear whether the April 21, 2025, hearing took place or not because, they say, there is no transcript of that hearing. The record, however, indicates that the hearing was scheduled on that date at 10:00 a.m. and that the order granting the motion to strike was filed at 11:06 a.m. According to the landlord, the hearing occurred, and, it says, during the hearing the trial court granted its motion to strike the response and heard its argument on the partial-summary-judgment motion. To the extent that the plaintiffs argue that the mere striking of the response deprived them of a hearing, they cite no authority to support such an argument. See Rule 28, Ala. R. App. P.

order on its motion for a partial summary judgment. As previously indicated, the trial court entered an order striking the response to the partial-summary-judgment motion, but it failed to issue a ruling on the partial-summary-judgment motion. The landlord thereafter moved the trial court to enter an order on the partial-summary-judgment motion. The trial court entered an order setting the matter for a hearing on December 3, 2025, noting that all pending motions would be heard at that time. The plaintiffs thereafter filed a response, at which time they resubmitted their response in opposition to the partial-summary-judgment motion that had been previously struck. In that response, the plaintiffs stated:

> "Due to this Honorable Court's most recent Order stating all pending motions will be heard, as well as the [landlord's] Motion for Summary Judgment having not been ruled on, [the Ballet, Danny, and Rania] believe that their Response [in opposition] should be accepted at this time, making the previous Motion to Strike moot. Thus, [the Ballet, Danny, and Rania] are filing their response to the [landlord's] motion for [a partial] Summary Judgment contemporaneously with this Response."

On December 22, 2025, the trial court entered an order denying the plaintiffs' "renewed" response. We find no error in that respect. It is clear that, when the trial court scheduled the December 3, 2025, hearing, there

were no pending motions and that the trial court had already entered its April 21, 2025, order striking as untimely the plaintiffs' response in opposition to the landlord's partial-summary-judgment motion. It is further clear that the December 3, 2025, hearing was merely a hearing on the landlord's request for an order on its partial-summary-judgment motion and not an invitation for the plaintiffs to submit for reconsideration the same response that the trial court had already deemed untimely. As the trial court acknowledged during the December 3, 2025, hearing: "So I just owe [the landlord] an order" on the motion for a partial summary judgment that the landlord "already argued." Accordingly, the April 21, 2025, order striking as untimely the plaintiffs' response in opposition to the partial-summary-judgment motion and the December 22, 2025, order denying that same response are affirmed. It is settled law that a trial court has the discretion to exclude as untimely any submission in opposition to a motion for a summary judgment that is not served upon the opposing party at least two days before the hearing scheduled on the motion. Speer, supra.

B. Appeal No. SC-2026-0190 -- Trial Court's Error in Dismissing Entire Case

In its cross-appeal, the landlord argues that the trial court erred by dismissing the entire case. As previously indicated, the trial court entered an order on December 22, 2025, granting the landlord's motion for a partial summary judgment. In response, the Ballet, Danny, and Rania moved the trial court to certify that order as final pursuant to Rule 54(b). On February 3, 2026, the trial court entered an order certifying the partial summary judgment in favor of the landlord as final pursuant to Rule 54(b) and further stating that "this case is dismissed." The landlord argues that the February 3, 2026, order erroneously purports to dismiss the entire case. We agree. The February 3, 2026, order certifying the partial summary judgment as final pursuant to Rule 54(b) while, at the same time, purporting to dismiss the entire case is legally inconsistent. As the landlord asserts, its motion for a partial summary judgment addressed only those claims concerning the Ballet, specifically the Ballet's claims against the landlord for property damage and the landlord's counterclaims against the Ballet seeking unpaid rent under the lease agreements and defense and indemnity for the claims of Danny and Rania. Thus, Danny and Rania's individual claims against the landlord remained pending. Additionally, although the trial court

entered a partial summary judgment in favor of the landlord, it left unresolved and pending a determination of damages owed to the landlord. Accordingly, the trial court erred in purportedly dismissing the entire case.

IV. Conclusion

In appeal no. SC-2026-0191, we affirm the April 21, 2025, order, striking as untimely the response in opposition to the landlord's motion for a partial summary judgment, and the December 22, 2025, order, denying the resubmission of that response. In appeal no. SC-2026-0190, we affirm the February 3, 2026, order certifying the partial summary judgment in favor of the landlord as final. However, we reverse that order to the extent that it dismisses the entire case, and we remand the cause for proceedings consistent with this opinion.

SC-2026-0190 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

SC-2026-0191 -- AFFIRMED.

Stewart, C.J., and Wise, Cook, and Parker, JJ., concur.