

RECEIVED

Sep 13 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge  
Case No. 2016-CP-10-03468

---

Appellate Case No. 2021-001510  
Opinion No. 6060, Filed May 22, 2024

---

Charles Blanchard Construction Corp. Inc.....Plaintiff

v.

480 King Street, LLC ..... Defendant

---

480 King Street, LLC.....Third-Party Plaintiff, Respondent

v.

Glick/Boehm & Associates, Inc. ....Third-Party Defendant, Petitioner

---

**PETITION FOR WRIT OF CERTIORARI**

---

Kent T. Stair, Esquire  
Jordan N. Teich, Esquire  
Copeland, Stair, Valz & Lovell, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
(843) 266-8224  
**Attorneys for Petitioner Glick/  
Boehm & Associates, Inc.**

TABLE OF CONTENTS

CERTIFICATE OF COUNSEL .....3  
QUESTIONS PRESENTED FOR REVIEW .....3  
SPECIAL CONSIDERATIONS FOR GRANTING WRIT UNDER RULE 242(B), SCACR.....3  
STATEMENT OF THE CASE.....5  
ARGUMENT .....10  
    I.    The Court of Appeals erred in considering Respondent’s arguments not preserved upon Appeal in its finding that the Circuit Court erred in dismissing the entirety of Respondent’s action.....10  
    II.   Even presuming that Respondent’s unpreserved arguments were maintained for appeal, all of Respondent’s claims are subject to the Act’s expert affidavit requirement .....12  
    III.  To satisfy the Act’s expert affidavit filing requirement, an expert must provide testimony as to the professional’s performance pursuant to their standard of care in the expert’s *specific* field .....17  
    IV.  The Court of Appeals erred in failing to clarify its Order as to the dismissal of Respondent’s claims against Petitioner prior to remanding the matter to Circuit Court for “further proceedings” .....22  
CONCLUSION .....24

### **CERTIFICATE OF COUNSEL**

Counsel for Petitioner certifies that the Petitioner filed a Petition for Rehearing on June 17, 2024, and that the Court of Appeals denied the Petition by order dated May 22, 2024.

### **QUESTIONS PRESENTED FOR REVIEW**

1. Did the Court of Appeals err in considering an argument not preserved by Respondent upon Appeal in its finding that the Circuit Court erred in dismissing the entirety of Respondent's action?
2. Did the Court of Appeals err in finding that Respondent's Breach of Contract and Warranty claims are not subject to the contemporaneous affidavit filing requirement under the Frivolous Civil Proceedings Sanctions Act, when each claim resounded in Petitioner's performance as an architect?
3. Did the Court of Appeals err in finding that Respondent's expert affidavit was sufficient under Section 15-36-100 of the South Carolina Code, which permits experts to opinion only as to the standard of care of a professional in their specific field?
4. Did the Court of Appeals err in failing to clarify its May 22, 2024 Order as to the dismissal of Respondent's claims against Petitioner, prior to remanding the matter to Circuit Court for further proceedings?

### **SPECIAL CONSIDERATIONS FOR GRANTING WRIT UNDER RULE 242(B), SCACR**

The South Carolina Legislature adopted the expert affidavit requirement in the Frivolous Civil Proceedings Sanctions Act to shield professionals from spurious claims of negligence. The Legislature requires that in order to proceed against a licensed professional in the State of South Carolina, the plaintiff must provide an expert affidavit establishing the standard of care and a related deviation unless the claim is within the common knowledge of the jury. Expert testimony to establish the standard of care and a deviation therefrom, in claims against a professional, has further been required by common law and the rules of evidence. The Legislature mandates the contemporaneous filing requirement to force plaintiffs to set forth their contentions against professionals early in the case, and a plaintiff's responsibility to establish by expert testimony the standard of care and the professional's deviation from throughout the litigation to meet their

burden of proof at trial. It has become fundamental practice in this state that S.C. Code 15-36-100(A) mandates that the expert witness(es) selected by plaintiff must possess the requisite expertise in the area of practice or specialty about which the opinion on the standard of care is offered. In this matter, the Court of Appeals blurred the brightline interpretation which has been applied by the bench, bar, and professionals in this state since the institution of the Frivolous Civil Proceedings Sanctions Act (“Act”) by holding that in some circumstances depending on the work being performed, an engineer can testify as to an architect’s standard of care. This Court now has the opportunity to overrule the Court of Appeals and institute certainty and guidance for all in this state who rely upon the clear and unequivocal terms of the Act and its application.

This Writ was necessary because the Court of Appeals incorrectly applied a limited interpretation of the Act which, if applied to the numerous construction cases filed in this state in the future, will require intense factual analysis on a case-by-case basis, increased motion practice, and likely varying and disjointed results. The Court of Appeals undoubtedly failed to recognize the obvious consequences of its own decision: If the Court of Appeals holding is maintained, then essentially not only will a professional engineer be able to render opinions as to an architect’s standard of care, an orthopedist will be able to render opinions as to the standard of care of a medical doctor in a different field, such as a pulmonologist; real estate agents will be able to render opinions as to real estate appraiser’s standard of care, etc., just because they may provide licensed care to others in the same general area but despite their education or practical experience. This Court should grant this Writ to prevent what could become an absurd application across a multitude of professions here in South Carolina.

## STATEMENT OF THE CASE

This appeal involves the design and construction of a stair tower (the “tower”) located at 480 King Street, in Charleston, South Carolina, which provides elevator access to tenants of two apartment buildings. 480 King Street, LLC (“Respondent”), the building’s owner, engaged the architectural firm of Glick/ Boehm & Associates, Inc. (“Petitioner”) to serve as the “architect of record” for the construction of the stair tower. (Compl. at ¶ 3). Petitioner’s agreement with Respondent was to perform both an architectural design (prepare contract documents) and provide contract administration services of the contractor’s contract pursuant to an American Institute of Architects’ Standard Form of Agreement between an Owner and an Architect. In fact, the contract administration services performed by Petitioner were described by Respondent as the *interpretation of the contract documents*, visits to the site, reviewing the Contractor’s submittals, rejecting non-conforming work *deviating from Petitioner’s plans*, and *reporting to Respondent known deviations from the Contract documents*. (Compl. at ¶ 7) (emphasis added).

Charles Blanchard Construction Corp., Inc (“Blanchard”) constructed the stair tower. (Compl. at ¶ 6). Following numerous delays and issues with the construction of the tower, on July 6, 2016, Blanchard filed suit against Respondent, asserting claims related to non-payment. (App. Br. at p. 2). Respondent then asserted counterclaims against Blanchard, alleging Blanchard’s work was defective. (App. Br. at p. 2). On June 26, 2017, Respondent filed a separate case against Petitioner,<sup>1</sup> including Breach of Contract, Breach of Warranty, and Negligence all of which were founded upon the Architect’s alleged negligent performance of services under its Professional Services Agreement with Respondent. (Compl. at ¶¶ 5-29).

---

<sup>1</sup> Following a Motion to Consolidate, filed by Respondent, the two separate cases were consolidated via Form 4 Order on August 24, 2018. (Order dated August 24, 2018).

In actions for damages alleging negligence against certain professionals, including architects, the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, et. seq. (the “Act”) applies. *See* S.C. Code Ann. §§ 15-36-100(B) & -100(G)(6) & (17). Here, because Petitioner is an architectural firm organized and licensed under the laws of South Carolina, “the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act and the factual basis for each claim . . . .” S.C. Code Ann. § 15-36-100(B). If a plaintiff fails to comply with the Act’s affidavit requirement, the complaint “is subject to dismissal for failure to state a claim.” S.C. Code Ann. § 15-36-100(C)(1). Respondent did not submit an affidavit with the initial Complaint filed against Petitioner. Apparently realizing this critical omission, on August 10, 2017, Respondent filed a Motion for Extension of Time to file the required Affidavit by representing that Respondent’s retained expert was unable to review sufficient documents prior to filing the Complaint to properly furnish an affidavit. (Mot. dated Aug. 10, 2017). Petitioner in turn filed a timely Motion to Dismiss for failure to comply with the affidavit requirement on August 29, 2017. (Mot. dated August 29, 2017). On November 17, 2017, the Honorable J.C. Nicholson, Jr., conducted a hearing on these motions and thereafter issued an Order on December 7, 2017,<sup>2</sup> granting Respondent’s Motion for Extension of Time and denying Petitioner’s Motion to Dismiss. (Order dated Dec. 7, 2017). In his Order, Judge Nicholson allowed Respondent to “file [a supporting affidavit] within ten days of the date of this Order,” and further provided that “[u]pon the filing of the Affidavit by this date, the [Respondent] will have been deemed to be in compliance with the requirements of S.C. Code §15-36-100(B). [Petitioner] will then have 30 days from the date of the filing of the Affidavit to file any motion contesting the sufficiency of the Affidavit.” (Order dated Dec. 7, 2017 at p. 3).

---

<sup>2</sup> While the Circuit Court’s Order was entered on December 7, 2017, it is dated November 27, 2017.

On November 20, 2017, Respondent filed an affidavit from Louis Hackney, P.E., REWC, RRC, CDT, LEED AP, Respondent’s prior-retained expert (the “Affidavit”). In the Affidavit, Mr. Hackney suggested he was qualified to testify as to an architect’s “standard of care,” stating: “I have experience investigating and assessing the *design* and construction of commercial buildings in Charleston, South Carolina and my investigation of the 480 King Stair Tower is ongoing . . . I further reviewed the *architectural* drawings . . . prepared by [Petitioner].” (Aff. of Hackney at p. 1) (emphasis added). Mr. Hackney proceeded to opine that Petitioner breached the “standard of care” of an Architect, further stating: “. . . it is my professional opinion, to a reasonable degree of professional certainty that the Architect [Petitioner] deviated from the standard of care. . . .” (Aff. of Hackney at p. 2). On its face, through Mr. Hackney’s representations only, the Affidavit appeared to meet the requirements of the Act, and absent any information indicating otherwise, Petitioner did not immediately contest the Affidavit’s contents.

As the case progressed, Mr. Hackney was deposed three times, January 28, 2019, August 27, 2020, and September 4, 2020, and on these occasions, Counsel questioned Mr. Hackney twice regarding his qualifications. During Mr. Hackney’s August 27, 2020 deposition, he testified that he had never provided a professional opinion about the standard of care of an architect, prior to issuing his expert affidavit in this case, and had no intention of offering such professional opinion in this case. (Mot. dated Jun. 28, 2021, Ex. 3 at pp. 208-09 ll. 15-2). When further queried in his September 4, 2020 deposition, as to whether he would be offering an opinion as to the architect’s standard of his care, Mr. Hackney testified that while he felt comfortable opining as to specific details and/or lack of details as a design professional, he did *not* feel comfortable specifically talking about an architect’s standard of care. (Mot. dated Jun. 28, 2021, Ex. 4 at pp. 278-79 ll. 17-12; Ex. 5 at pp. 282-84 ll. 22-13). In sum, Mr. Hackney admitted on

multiple occasions that he was not intending to state, nor was he stating, any opinions that Petitioner Architect had violated the architect's standard of care, and that he was not qualified to express an opinion as to the standard of care of an architectural firm, thereby contradicting his Affidavit.

Once Petitioner became aware that Mr. Hackney was not stating an opinion as to an architect's standard of care, as not clearly previously represented, Petitioner promptly requested Leave to file a renewed Motion to Dismiss. (Req. for Leave to File Mot. to Dismiss dated Sept. 17, 2020). Petitioner's Request remained pending as COVID-19 took its hold over the pragmatic disposition of cases until a status conference could be scheduled on March 24, 2021. One day prior to the Circuit Court's March 24, 2021 status conference, counsel for Respondent consented to Petitioner filing a renewed Motion to Dismiss without the necessity of leave of court. (E-mail from Stair to Circuit Court and All Counsel of Record dated March 23, 2021). Therefore, with Respondent's consent, on June 28, 2021, Petitioner filed a second Motion to Dismiss on the basis that Respondent failed to file a proper expert affidavit; Petitioner now had clear confirmation from Mr. Hackney's testimony that he could not and would not opine as to the standard of care of an architect. (Motion dated Jun. 28, 2021). Respondent filed a response in opposition on November 19, 2021. (Resp. in Opp.).

The Circuit Court held a hearing on Petitioner's Motion on December 2, 2021. The Circuit Court heard arguments from both Respondent and Petitioner. The Circuit Court stated:

I mean, there's a reason the legislature laid out specific professions for which you must submit an affidavit stating the deviation from the standard of care **from that particular profession**.

\*\*\*

. . . respectfully, I have to go back to legislative intent. I don't get to, you know, legislate from the bench, I have to go by what's in the black and white statute.

\*\*\*

. . . [the Act] clearly delineates profession. And from there under that professional umbrella, then someone can speak to whether or not someone deviated the standard of care.

\*\*\*

I'm granting the motion to dismiss. I think that allowing [Mr. Hackney] to testify as to whether or not an architect reaches the standard of care, with any job that architect reformed, it's [sic] frankly flies in the face of the statute.

(Hearing Tr. dated Dec. 2, 2021 at p.15, ll. 20-23; p. 21 ll. 5-9; 11-14; 22-25) (emphasis added).

Via written Order (the "Order") dated December 16, 2021, the Circuit Court granted Petitioner's Motion to Dismiss. (Order dated Dec. 16, 2021). The Circuit Court held that because Petitioner is an architectural firm and Mr. Hackney's experience mostly lies in professional engineering, not architecture, Mr. Hackney was not qualified to opine as to Petitioner's performance in this matter, and therefore Respondent failed to satisfy the Act's affidavit requirement. (Order dated Dec. 16, 2021 at pp. 2-3) ("[T]he Defendant in this case is an architect and its services must be judged against the standard of care of an Architect."). Accordingly, the Circuit Court dismissed all of Respondent's claims against Petitioner, not just Respondent's claim for professional negligence, with prejudice. Respondent did not file a motion under South Carolina Rule of Civil Procedure Rule 59(e) contesting the Circuit Court's ruling. An appeal followed.

Via order rendered on May 22, 2024, the Court of Appeals affirmed in part, reversed in part, and remanded this matter to the Circuit Court for further proceedings. Notably, the Court of Appeals found that if all of the claims included in the Complaint were grounded in professional negligence and the affidavit failed to meet the requirements of Section 15-36-100, the Circuit Court would not have erred in dismissing the entire Complaint. *Charles Blanchard Construction Corp., Inc. v. 480 King, Street, LLC*, 443 S.C. 165, 170, 904 S.E.2d 182, 184 (Ct. App. 2024). However,

the Court of Appeals ultimately left the rest of the matter up for interpretation by holding that Respondent's breach of contract and warranty claims are *arguably* not subject to the contemporaneous affidavit filing requirement of Section 15-36-100.<sup>3</sup> *Id.* Petitioner requested the Court of Appeals rehear the appeal and alter its decision following the Court of Appeals' confusing and potentially detrimental holding for many professionals. The Court of Appeals denied Petitioner's petition. Therefore, Petitioner requests this Court grant writ of certiorari and remedy the errors in the Court of Appeal's decision.

### ARGUMENT

**I. The Court of Appeals erred in considering Respondent's arguments not preserved upon Appeal in its finding that the Circuit Court erred in dismissing the entirety of Respondent's action.**

The Court of Appeals held that the Circuit Court erred in dismissing the entirety of Respondent's action against Petitioner. *480 King, Street, LLC*, 443 S.C. 165, 170, 904 S.E.2d 182, 184 (Ct. App. 2024). However, the Court of Appeals overlooked the fact that Respondent's argument, including the dismissal of all claims against the Petitioner, is predicated on unpreserved issues and, therefore, should not have even been addressed by the Court of Appeals. Respondent failed to clearly raise the issue of whether its contract and warranty claims should not fall under the Act's purview and, therefore, the Court of Appeals should not have considered any of Respondent's arguments to that effect.

For an issue or an argument to be properly preserved for appellate review, it is well settled that it must have been raised to and ruled upon by the trial court. *See Holy Loch Distributors, Inc.*

---

<sup>3</sup> Throughout oral arguments, the Court of Appeals, displayed its distaste for Petitioner having brought a Motion to Dismiss as opposed to a Motion for Summary Judgment based on S.C. Code 15-36-100, however, the Court of Appeals seemingly failed to acknowledge that it had the power to convert Petitioner's Motion to Dismiss into a Motion for Summary Judgment as both parties were afforded a reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *See* Rule 12(b), SCRCP; *see also Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69, 73 (1999) (stating that conversion of a motion to dismiss into a motion for summary judgment is proper when the parties are afforded a reasonable opportunity to respond to such matters).

*v. Hitchcock*, 340 S.C. 20, 24, 531 S.E.2d 282, 284(2000). Simply, “[a]n issue that was not preserved for review should not be addressed by the Court of Appeals....” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Furthermore, in situations where it is not clear whether issues were raised or ruled upon, courts will find that those issues are not preserved. *See Malloy v. Thompson*, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) (“At a minimum, issue preservation requires that an issue be raised and ruled upon by the trial judge. The issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.”) (internal citations omitted); *Carolina First Bank v. Ashley Tower, LP*, 2005 WL 7084806 at \*2 (Ct. App. Nov. 21, 2005) (“[T]here is no way for this court to determine if the issues asserted on appeal have been raised to and ruled upon by the trial court. As such, we find none of the issues are preserved for our review.”).

Respondent failed to reference the Circuit Court’s dismissal of all of its claims beyond that for professional negligence even though the Circuit Court held that *all* of Respondent’s claims stem from the alleged negligence of Petitioner performing its scope of work as an architect. While Respondent merely cited to the Circuit Court’s Order finding that,

[i]n its Motion Defendant contends that the claims asserted against it by Plaintiff are all based upon its alleged negligent performance of professional services as an Architect, and that Plaintiff failed to file a proper Affidavit in support of those claims as required by S.C. Code Ann. §15-36-100(B). The Court agrees with those and other arguments presented by Counsel for Defendant and, as a result, grants the Motion.

(Order dated Dec. 16, 2021 at p. 2, R. at p. 93). Respondent took no further steps in its appeal to prove the Circuit Court erred in dismissing all causes of action it had asserted against Petitioner. In other words, Respondent’s briefing is void of any argument to support why the non-negligence causes of action should be maintained despite the dismissal of the professional negligence cause

of action asserted against Petitioner. Additionally, Respondent failed to file a Rule 59(e) motion challenging the Circuit Court's finding.

Simply, Respondent failed to preserve on appeal the ability to challenge dismissal of its warranty and breach of contract causes of action. The Court of Appeals overlooked Respondent's failure and nonetheless held that the Court is, "unable to agree that the breach of contract and breach of warranty claims were properly dismissed at this stage of the litigation." As such, the Court of Appeals erred in considering Respondent's arguments not preserved upon Appeal in its finding that Respondent's claims for Breach of Contract and Breach of Warranty against Petitioner are open for interpretation by the Circuit Court as separate and viable claims, and further that no expert affidavit is required to pursue such claims under the Act, thus reversing the Circuit Court's dismissal of all of Respondent's causes of action against Petitioner. Petitioner respectfully requests, therefore, that this Court grant the petition for writ of certiorari to correct the erroneous decision.

**II. Even presuming that Respondent's unpreserved arguments were maintained for appeal, all of Respondent's claims are subject to the Act's expert affidavit requirement.**

In actions for damages alleging negligence against certain professionals, including architects, the Act applies. *See* S.C. Code Ann. §§ 15-36-100(B) & -100(G)(6) & (17). Here, because Petitioner is an architectural firm organized and licensed under the laws of South Carolina, "the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act and the factual basis for each claim . . ." S.C. Code Ann. § 15-36-100(B). Respondent asserts that the Circuit Court erred in dismissing all "non-negligence based" causes of action against Petitioner because the Act only applies to situations where professional negligence is alleged. This is untrue. And while the Court of Appeals misapprehended the Act by holding that

Respondent's breach of contract and breach of warranty claims are not subject to the contemporaneous affidavit filing requirement of Section 15-36-100, the Court of Appeals also found, "that if all of the claims included in the complaint were grounded in professional negligence and the affidavit failed to meet the requirements of Section 15-36-100, the circuit court would not have erred in dismissing the entire complaint," thereby leaving this matter open for interpretation. *480 King, Street, LLC*, 443 S.C. 165, 170, 904 S.E.2d 182, 184 (Ct. App. 2024).

Based on the plain language of the Act, failure to file an expert affidavit with the Complaint necessitates dismissal of the Complaint as a whole. The Act dictates that "if an affidavit is not filed . . . and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim." S.C. Code § 15-36-100(C)(1) (emphasis added). The Act provides the sanction of dismissal of "*the complaint*" when there is non-compliance with its terms. The Act's choice of words here is abundantly clear – the Act does not reference dismissal of just negligence causes of action, and instead chooses to reference the "complaint" as a whole. To meet the intent conveyed by the Legislature within Section 15-36-100, the Complaint as a whole must be dismissed.

Further, South Carolina courts routinely hold that claims arising from a professional's scope of work pursuant to a standard of care, while not plead explicitly as "professional negligence," still fall under § 15-36-100's purview. *See, e.g., H & H of Johnston, LLC v. Old Republic Nat. Title Ins. Co.*, 405 S.C. 469, 748 S.E.2d 72 (Ct. App. 2013) (finding that a plaintiff's claim for breach of contract against its closing attorney was actually a claim for professional negligence and that plaintiff was required to comply with 15-36-100, even though it did not

explicitly plead professional negligence);<sup>4</sup> *see also David v. Savage*, No. 2:19-CV-3139-SAL, 2020 WL 12618896, at \*7 (D.S.C. July 6, 2020) (applying South Carolina law) (“Because this court concludes *that all of Plaintiff’s claims stem from and relate to the same factual allegations of legal malpractice*, it must determine whether the affidavit requirement in S.C. Code Ann. § 15-36-100 applies to the negligence claim. It finds that it does.”) (emphasis added); *In re Steinmetz*, No. ADV 10-80177, 2011 WL 4543894 at \*7 (Bankr. D.S.C. Mar. 18, 2011) (applying South Carolina law) (“Since *the essence of Plaintiffs’ Fifth Cause of Action is a claim for professional negligence* against a professional licensed by the state of South Carolina, South Carolina law requires that Plaintiffs file an affidavit of an expert witness.”) (emphasis added).

Respondent’s claims against Petitioner are all *rooted* in allegations that Petitioner was negligent in the performance of its duties as an architectural firm and as the “architect of record.” As exemplified by the appellate panel at the hearing, all alleged failures by Petitioner pursuant to its contractual requirements fold in some architectural professional work. (Oral Argument at 39:42-40:12, *Charles Blanchard Construction Corp., Inc. v. 480 King, Street, LLC*, 443 S.C. 165, 904 S.E.2d 182 (Ct. App. 2024), [https://media.sccourts.org/COA\\_Videos/2021-001510.mp4](https://media.sccourts.org/COA_Videos/2021-001510.mp4)). It is undisputed that Respondent brought a negligence claim against Petitioner along with claims for Breach of Contract and Breach of Warranty which cannot be distinguished. They are *all* based upon the same alleged failure to perform professional architectural services, whether in the design or in administering the construction contract which construction is pursuant to Petitioner’s design. Respondent asserted that Petitioner breached its contract with Respondent by failing to “properly design and prepare specifications for the stair tower.” (Compl. at ¶ 9, R. at pp. 72-73); Respondent

---

<sup>4</sup> Notably, the same case law cited to in Petitioner’s Final Brief and utilized by the Court of Appeals in its attempt to discern whether or not Respondent’s breach of contract and breach of warranty claims are grounded in professional negligence.

asserted that Petitioner breached its contract by “[f]ailing to act as a reasonably prudent design professional would act under similar circumstances.” (Compl. at ¶ 9, R. at pp. 72-73); Respondent asserted that Petitioner “breached [its] express and implied warranties by failing to design the stair tower free from defects and in compliance with applicable building codes and industry standards.” (Compl. at ¶ 20, R. at p. 75). Whether Petitioner failed to act as a “reasonably prudent design professional,” whether Petitioner “properly” created specifications, and whether Petitioner furnished plans “free from defects,” necessarily hinges on whether Petitioner’s architectural scope of work met the professional standard of care for an architect. It is axiomatic that an Architect’s breach of contract or breach of an implied warranty requires a showing of how an Architect failed in the performance of his or her licensed duties. In fact, during oral arguments, Respondent’s counsel conceded that the breach of contract breach of warranties claims might be sufficiently intertwined with the administration of professional services. (Oral Argument at 16:52-17:07, Charles Blanchard Construction Corp., Inc. v. 480 King, Street, LLC, 443 S.C. 165, 904 S.E.2d 182 (Ct. App. 2024), [https://media.sccourts.org/COA\\_Videos/2021-001510.mp4](https://media.sccourts.org/COA_Videos/2021-001510.mp4)).

Respondent simply reiterates its assertions against Petitioner in different ways in an attempt to fit the framework of multiple causes of action, nonetheless, both Respondent’s claim for Breach of Contract and Breach of Warranty require the support of an architect expert affidavit under the Act, which according to Respondent’s own expert’s testimony, Respondent lacks. Mr. Hackney was deposed on three separate occasions and questioned by respondent’s counsel regarding his qualifications; during Mr. Hackney’s August 27, 2020 deposition, he testified that he had never provided a professional opinion about the standard of care of an architect, prior to issuing his expert affidavit in this case, and had no intention of offering such professional opinion in this case. (Mot. dated Jun. 28, 2021, Ex. 3 at pp. 208-09 ll. 15-2, R. at pp. 210-211). When further queried

in his September 4, 2020 deposition, as to whether he would be offering an opinion as to the Architect's standard of his care, Mr. Hackney testified that while he felt comfortable opining as to specific details and/or lack of details as a design professional, he did *not* feel comfortable specifically talking about an architect's standard of care. (Mot. dated Jun. 28, 2021, Ex. 4 at pp. 278-79 ll. 17-12; Ex. 5 at pp. 282-84 ll. 22-13, R. at pp. 213-214; R. at pp. 216-218). In sum, Mr. Hackney admitted on multiple occasions that he was not intending to state, nor was he stating, any opinions that Petitioner Architect had violated the Architect's standard of care, and that he was not qualified to express an opinion as to the standard of care of an architectural firm, thereby contradicting his Affidavit.

Therefore, the Court of Appeals' only logical finding should have been that the Circuit Court did not err in dismissing Respondent's Complaint in its entirety because all of Respondent's claims are grounded in Petitioner's alleged non-performance of its standard of care as an architect. This result is in keeping with the unequivocal language of the Act which provides that when a plaintiff brings a professional negligence claim, all other claims brought along with it (including breach of contract and breach of warranty) are, likewise, subject to the Act's expert affidavit requirement. Any other result is contrary to the language the legislature promulgated to protect licensed professionals in this state.

Accordingly, the Court of Appeals erred in reversing the Circuit Court dismissal of Respondent's Complaint against Petitioner in its entirety, as each of Respondent's causes of action against Petitioner are integrally related to Petitioner's duties as an Architect and fit squarely within the Act's purview. As such, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to correct the erroneous decision.

**III. To satisfy the Act’s expert affidavit filing requirement, an expert must provide testimony as to the professional’s performance pursuant to their standard of care in the expert’s *specific* field.**

The Court of Appeals, during oral arguments, noted that it agreed with the circuit court “one hundred percent” in that Respondent is unable to bring in an expert that doesn’t have architectural expertise to be an architectural expert. (Oral Argument at 6:23-6:39, Charles Blanchard Construction Corp., Inc. v. 480 King, Street, LLC, 443 S.C. 165, 904 S.E.2d 182 (Ct. App. 2024), [https://media.sccourts.org/COA\\_Videos/2021-001510.mp4](https://media.sccourts.org/COA_Videos/2021-001510.mp4)). However, the Court of Appeals held that architectural and engineering services may at times overlap, particularly in the area of contract administration. (Oral Argument at 6:39-6:47 & 39:49-40:12, Charles Blanchard Construction Corp., Inc. v. 480 King, Street, LLC, 443 S.C. 165, 904 S.E.2d 182 (Ct. App. 2024), [https://media.sccourts.org/COA\\_Videos/2021-001510.mp4](https://media.sccourts.org/COA_Videos/2021-001510.mp4)). However, there was no legal or factual support for this diversion from the Act’s language.<sup>5</sup> In fact, to the contrary, the Act clearly delineates parameters for what experts are qualified to opine:

(A) As used in this section, “expert witness” means an expert *who is qualified as to the acceptable conduct of the professional whose conduct is at issue* and who:

(1) is licensed by an appropriate regulatory agency to practice his or her profession in the location in which the expert practices or teaches; and

(2)(a) is board certified by a national or international association or academy which administers written and oral examinations for certification in the area of practice or specialty about which the opinion on the standard of care is offered; or

---

<sup>5</sup> When asked by the Court of Appeals whether or not Respondent was able to discern, throughout the entire discovery process, whether an Architect or an Engineer was responsible for contract administration within Petitioner’s firm, Respondent conceded that they did not know whether an Architect or Engineer was responsible for performing contract administration on the Project. (Oral Argument at 13:09-14:11, Charles Blanchard Construction Corp., Inc. v. 480 King, Street, LLC, 443 S.C. 165, 904 S.E.2d 182 (Ct. App. 2024), [https://media.sccourts.org/COA\\_Videos/2021-001510.mp4](https://media.sccourts.org/COA_Videos/2021-001510.mp4)).

(b) has actual professional knowledge and experience *in the area of practice or specialty in which the opinion is to be given* as the result of having been regularly engaged in . . . .

§15-36-100(A)(1-2(b)). (emphasis added). Pursuant to Respondent’s own allegations, Petitioner Architect was interpreting the contract documents, reviewing the Contractor’s submittals, and otherwise rejecting work not in general conformance with the architectural design. (Compl. at ¶ 7). Based upon Respondent’s own admissions of Petitioner’s architectural scope of work on the Project, under the Act’s legislative intent, the alleged negligent acts of Petitioner Architect require an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue; simply put, Respondent is required to set forth an architect expert to opine as to the alleged deficiencies in Petitioner’s work on the Project.

There is an overwhelming amount of South Carolina law which clearly provides that to satisfy the affidavit filing requirement in the Act, an expert must provide relevant testimony on the performance of an allegedly negligent professional in their specific field. *See e.g., Doe v. Am. Red Cross Blood Servs.*, 297 S.C. 430, 435, 377 S.E. 2d 323, 326 (1989) (“[T]he standard of care that the plaintiff must prove is that the professional failed to conform to the generally recognized and accepted practices *in his profession.*”) (emphasis added); *Pittman v. Stevens*, 364 S.C. 337, 613 S.E.2d 378 (2005) (citing *Doe*); 18 S.C. Jur. Negligence § 58 (“In a professional negligence cause of action, the standard of care that the plaintiff must prove is that the *professional failed to conform to the generally recognized and accepted practices in his profession*, and if the plaintiff is unable to demonstrate that the professional failed to conform to the generally recognized and accepted practices in his profession, then the professional cannot be found liable as a matter of law.”); *Walker*, 324 S.C. at 354, 477 S.E.2d at 473 (“Although [a licensed residential builder] may be versed in building codes and in the inspection of buildings, *there is no evidence in the record*

*that she has any architectural experience or training . . . [t]he trial court did not abuse its discretion, therefore, in finding that Lain could not properly testify as to an architect's standard of care.*) (emphasis added). The Court of Appeals' finding here would disrupt this long-standing principle and have a spider web effect on all licensed professionals/workers in this state. Anyone from any profession would be able to opine as to another's separate and distinct professional standard of care and performance of their contractual duties unbeknownst to the professional whose standard of care is being called into question.

Notwithstanding, the Court of Appeals supported its conclusion herein with reference to the statutory definition of an engineer set forth in S.C. Code §40-22-20 (Supp. 2023), but, unfortunately, such reference was limited. First, the Court of Appeals misapprehended Mr. Hackney's ability to opine on an architect's standard of care in performing contract administration in its interpretation of the definition of the "Practice of Engineering." Read as a whole, one should find that Section 40-22-20(25), "Practice of Engineering" may include design coordination, but only as to how an *engineer's* design correlates with an *architect's* design and the coordination of the *engineering works and systems*, it does not open the door to an engineer to opine on an architect's design and design coordination. Under Section 40-22-20(25), the "Practice of Engineering" is:

any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as commissioning, consultation, investigation, expert technical testimony, evaluation, design and design coordination of engineering works and systems, design for development and use of land and water, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes,

work systems projects, and industrial or consumer products or equipment of control systems, chemical, communications, mechanical, electrical, environmental, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The mere execution, as a contractor, of work designed by a professional engineer or supervision of the construction of such work as a foreman or superintendent is not considered the practice of engineering. A person must be construed to practice or offer to practice engineering, within the meaning and intent of this chapter who:

- (a) Practices any branch of the profession or discipline of engineering;
- (b) By verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter; or
- (c) Holds himself out as able to perform or does perform any engineering service or work or any other professional service designated by the practitioner or which is recognized as engineering.

(emphasis added). First, Professional Engineers, along with Architects, are covered by the Act, but are distinguished as separate professionals who must stay within their lane pursuant to the educational degrees, licensing and regulation in which they are bound. Likewise, Architects are restricted to their own lane. For example, South Carolina Code Section 40-3-20(6),

Practice of architecture' means a service or creative work requiring architectural education, training, and experience and the application of the principles of architecture and related technical disciplines to the professional services or creative work as consulting, evaluating, planning, designing, specifying, coordinating of consultants, **administration of contracts, and reviewing of construction for the purpose of assuring compliance with the specifications and design,** in connection with a building or site development.

(emphasis added).

As such, despite Respondent's contention to the contrary, it *does* matter whether an engineer or architect was performing the contract administration services as set forth in Petitioner and Respondent's American Institute of Architects' Standard Form of Agreement. Petitioner is an

Architect, performing contract administration services related to its periodic review of construction compared to Petitioner's design; a professional engineer is not qualified to opine as to that scope of work performed by an Architect. Clearly, through a complete reading of both statutory definitions related to the practice of engineering and architecture, Mr. Hackney, a Professional Engineer, does not possess the ability to opine as to an architect's unique role of administrating the project construction contract which sets forth that the contractor is building pursuant to a design prepared by an architect. Allowing Mr. Hackney to indict Petitioner's contract administration work would be condoning Mr. Hackney to practice architecture without the proper licensing requirements.

Additionally, the definition of an engineer's practice provides that engineers may play a role in the coordination of *engineering* works and systems, it does not refer to the works and systems of any design professional, including the architect. As such, applying the definition of "Design coordination" to the facts here further misapprehends Respondent's Expert, Mr. Hackney's, allowable role in this matter. Section 40-22-20(7) sets forth the definition of "Design coordination" which, "includes the review and coordination of those technical submissions prepared by others, including as appropriate and without limitation, consulting engineers, architects, landscape architects, surveyors, and other professionals working under the direction of the engineer." (emphasis added). Mr. Hackney can only opine, as an engineer, on the scope of work of an architect *if* that architect is working at his discretion. Here, there was no engineer that Petitioner reported to, much less Mr. Hackney himself, therefore, Section 40-22-20(7) is wholly inapplicable.

For these reasons, and the reasons noted above, the Court of Appeals erred in reversing the Circuit Court's dismissal of this Complaint in its entirety, despite Petitioner's performance of

contract administration services on the project as an architect under its architectural contract. As such, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to correct the erroneous decision.

**IV. The Court of Appeals erred in failing to clarify its Order as to the dismissal of Respondent’s claims against Petitioner prior to remanding the matter to Circuit Court for “further proceedings.”**

Certain portions of the Court of Appeals’ Order are unclear as it currently stands, which will undoubtedly confuse the parties as well as the Circuit Court if the issues are remanded for “further proceedings.” First, the Court of Appeals stated that “the circuit court erred in dismissing the entirety of 480 King’s action;” however, the Court of Appeals failed to expand upon which portions of Respondent’s Complaint the Circuit Court erred in dismissing. *480 King, Street, LLC*, 443 S.C. 165, 171, 904 S.E.2d 182, 185 (Ct. App. 2024). The Court of Appeals confusingly provided that “[b]ased on the language of 480 King’s complaint and the record before us, we are unable to agree that the breach of contract and breach of warranty claims were properly dismissed at this stage of the litigation.” *Id.* at 170, 904 S.E.2d at 184. However, approximately three sentences above this holding, the Court of Appeals stated, “that if all of the claims included in the complaint were grounded in professional negligence and the affidavit failed to meet the requirements of Section 15-36-100, the circuit court would not have erred in dismissing the entire complaint.” *Id.* This statement is followed with a citation to a South Carolina case which supports Petitioner’s argument that all of Respondent’s claims are subject to the Act’s expert affidavit requirement. *Id.* Yet, the Court of Appeals concludes that Respondent’s breach of contract and breach of warranty claims are allegedly not subject to the Act’s affidavit requirement. *Id.* The Court of Appeals’ position, as currently written, leaves the door open for the Circuit Court to

interpret the Court of Appeals without any clear direction, leaving this exact conflict to undoubtedly arise again.

Second, in the Court of Appeals' holding that the Circuit Court erred in dismissing the entirety of Respondent's action, the Court of Appeals failed to clarify whether or not it intended to affirm the Circuit Court's dismissal of Respondent's Negligence claim. The Court holds that,

to the extent the circuit court dismissed 480 King's claims relating to contract administration services for which an engineer may be properly qualified, we reverse. However, we affirm the dismissal of 480's King negligent design and supervision claims to the extent they require testimony by an expert qualified to address an architect's standard of care.

*480 King, Street, LLC*, 443 S.C. 165, 172, 904 S.E.2d 182, 185 (Ct. App. 2024). Furthering the confusion, the Court of Appeals notes in footnote 2 that the Court of Appeals recognizes that,

it may be difficult to delineate the engineering and architectural categories. A properly supported motion for summary judgment may be required to aid this sorting process; the parties will also likely need to address whether 480 King's breach of contract and warranty claims are truly disguised claims for architectural negligence or claims about which a non-architect engineer may properly testify.

*Id.* at 172, 904 S.E.2d at 185 n.2. However, as set forth above, Respondent's asserted allegations against Petitioner in its Breach of Contract and Breach of Warranty claims arise out of Respondent's negligent design and supervision claims. Therefore, it is unclear which of Respondent's claims against Petitioner the Court of Appeals intends to affirm and which claims the Court of Appeals intends to reverse.

Further, the Court of Appeals failed to clarify whether Respondent's remaining claims require an expert affidavit to be filed contemporaneously with the action, instead asserting that Respondent "raised breach of contract and warranty claims *arguably* not subject to the

contemporaneous affidavit filing requirement of Section 15-36-100.” (emphasis added). *480 King, Street, LLC*, 443 S.C. 165, 170, 904 S.E.2d 182, 184 (Ct. App. 2024).

The Circuit Court clearly set forth in its decision that the Act delineates certain professions for which it applies to and protects, and plaintiff’s required expert can speak to whether or not someone deviated from the standard of care, but only if that expert falls into the same profession for which they seek to opine. (*See* Hearing Tr. dated Dec. 2, 2021 at p.15, ll. 20-23; p. 21 ll. 5-9; 11-14; 22-25). Further, the Circuit Court clearly and correctly held that allowing Mr. Hackney, a professional engineer, to testify as to whether or not an architect adheres to the standard of care, “flies in the face of the statute.” *Id.*

Without a clear and unequivocal direction by the appellate courts, the Circuit Court will be left with little to no guidance on how to conduct “future proceedings” upon remand. Further, Petitioner will be forced to expend significant additional costs and resources defending against claims which were properly argued, briefed, and dismissed by the Circuit Court. As such, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to correct the erroneous decision.

## **V. Conclusion**

Petitioner respectfully requests this Court grant the petition for writ of certiorari and reverse the Court of Appeals thereby upholding the lower court’s decision to dismiss all claims against Petitioner. The Court of Appeals overlooked Respondent’s failure to preserve issues on appeal and addressed all causes of action dismissed by the Circuit Court. Additionally, Respondent did not furnish the necessary affidavit of an Architect which details how Petitioner, an architectural firm, breached its standard of care in all aspects it was required to perform under contract related to the underlying project. Petitioner suggests the Court of Appeals overlooked or misapprehended the

aforementioned point which will thereby lead to a potentially devastating and inconsistent conclusion for licensed professionals in this state notwithstanding Petitioner. Therefore, this Court should grant the petition for writ of certiorari to correct overlooked and misapprehended points which lead to the Court of Appeals' erroneous decision.

This 13<sup>th</sup> day of September, 2024.

Respectfully submitted,

*s/ Jordan N. Teich*

Kent T. Stair, Esquire

Jordan N. Teich, Esquire

Copeland, Stair, Valz & Lovell, LLP

40 Calhoun Street, Suite 400

Charleston, SC 29401

(843) 266-8224

kstair@cslv.law

jteich@cslv.law

**Attorneys for Petitioner Glick/ Boehm &  
Associates, Inc.**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge  
Case No. 2016-CP-10-03468

---

Appellate Case No. 2021-001510  
Opinion No. 6060, Filed May 22, 2024

---

Charles Blanchard Construction Corp. Inc.....Plaintiff

v.

480 King Street, LLC ..... Defendant

---

480 King Street, LLC.....Third-Party Plaintiff, Respondent

v.

Glick/Boehm & Associates, Inc. ....Third-Party Defendant, Petitioner

---

**PROOF OF SERVICE**

---

I certify that I have served a copy of the Petitioner’s Petition for Writ of Certiorari on the following parties’ counsel, at the addresses listed below by depositing a copy of same in the United States Mail and electronic mail on September 13, 2024.

Jesse Sanchez, Esq.  
The Law Office of Jesse Sanchez  
751 Johnnie Dodds Blvd., Suite 200  
Mt. Pleasant, SC 29464  
[jesse@jessesanchezlaw.com](mailto:jesse@jessesanchezlaw.com)

-and-

Brent S. Halversen, Esq.  
Halversen & Halversen, LLC  
751 Johnnie Dodds Blvd., Suite 200  
Mt. Pleasant, SC 29464  
[brent@halversenlaw.com](mailto:brent@halversenlaw.com)

**Attorneys for Respondent 480 King Street, LLC**

**COPELAND, STAIR, VALZ & LOVELL, LLP**

By: *s/ Jordan N. Teich*

Kent T. Stair, Esquire

Jordan N. Teich, Esquire

Copeland, Stair, Valz & Lovell, LLP

40 Calhoun Street, Suite 400

Charleston, SC 29401

(843) 266-8224

kstair@cslv.law

jteich@cslv.law

**Attorneys for Petitioner Glick/ Boehm &  
Associates, Inc.**