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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

ROGER M. YOUNG, CIRCUIT COURT JUDGE

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APPELLATE CASE NO. 2023-001655

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JAMES E. CARROLL,

*PETITIONER,*

VS.

ISLE OF PALMS PEST CONTROL, INC., SPM MANAGEMENT COMPANY, INC. AND TERMINIX SERVICES, INC.,

*DEFENDANTS,*

OF WHICH ISLE OF PALMS PEST CONTROL, INC., SPM MANAGEMENT COMPANY, INC., ARE

*RESPONDENTS.*

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# BRIEF OF RESPONDENT ISLE OF PALMS PEST CONTROL, INC

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## STATEMENT OF THE CASE

Petitioner James E. Carroll, Jr., purchased a home at 11 Tabby Lane on the Isle of Palms (the "Home") on November 1, 2002. In February of 2003, Petitioner entered into a Termite Inspection contract (the "Termite Contract") with Respondent Isle of Palms Pest Control, Inc. ("IOP"). (R. pp. 0054-0057). Pursuant to the terms of the Termite Contract, IOP was to treat the house for subterranean termites, reinspect annually for infestations and apply additional treatments so long as the Plaintiff paid the annual fee each year. (R. pp. 0055-0056). Petitioner paid the yearly annual reinspection fee and the Home was inspected annually. The Termite Contract includes the following limitation of damages provision:

> COVERAGE LIABILITY: If new damage occurs to the structure during the contract terms, the operator will, upon notification and inspection, arrange for necessary repairs and pay the cost for the materials and the labor. New damage is that damage done by Eastern Subterranean and Formosan Termites after the contract date/installation date of the Exterra program. Liability for repairs shall not exceed $250,000.

(R. p. 0056). While the termite contract is not signed, it is undisputed by the Petitioner that the Termite Contract is a valid contract that governs the relationship between the parties. (R. pp. 0059-0065). In addition, Petitioner conceded in his deposition that all inspections and treatment services performed by Respondents IOP and SPM Management Company, Inc. ("SPM"), which form the basis of Petitioner's claims, were performed under the Treatment Contract. (R. pp. 0059-0065). Thus, the Termite Contract sets forth the rights and obligations of the parties regarding any damages resulting from a termite infestation at the Home.

Pursuant to the provisions in the Termite Contract, IOP provided termite services at the Home from 2003 until 2011. On or about June 6, 2011, SPM incorporated and took over the termite services at the Home and continued to provide inspection and treatment services under the Termite Contract. SPM sold its assets to Terminix on or about May 14, 2013, at which time Terminix took over the termite services at the Home. More than six months later, in January of 2014, Terminix discovered termites at the Home.

Petitioner filed this action on November 3, 2015, alleging causes of action for negligence and breach of contract against IOP, SPM, and Terminix Services, Inc.[1] ("Terminix") for alleged termite infestation and resulting damage to the Home. The causes of action arise out of termite treatment services performed by Respondents SPM and IOP on the Home pursuant to a contract for inspection and treatment (Termite Contract). On or about July 27, 2016, Petitioner filed his Second Amended Complaint, which is the current operative pleading.

Prior to the commencement of a date certain trial in this case, Respondent SPM asserted Motions for Partial Summary Judgment ("MPSJ") requesting an Order granting

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1 Terminix has been dismissed from this action and is not a part of the appeal.

Summary Judgment on Plaintiff's Negligence claim, since the termite treatment (which is the basis of Petitioner's claim) was performed pursuant to a contract. (R. pp. 0029-0040). Respondent IOP joined in the motion. (R. pp. 68).

At the close of business on Monday, February 18, 2019, *the evening before trial,* Petitioner's counsel emailed a 192-page Response in Opposition ("Response") to chambers copying all counsel. However, the Response was not filed with the Clerk's office and was not made a part of the record. On February 20, 2019, the circuit court heard oral arguments on Respondents' MPSJ. Respondents argued, and the circuit court agreed, that where, as here, there are not duties owed except those arising out of and relating to the contract, a plaintiff's remedy is in contract, not tort. (R. pp. 0030-0040, 1052, lines 18-24). Accordingly, Respondents argued, and the circuit court agreed, that the basis for Petitioner's claim arises out of and relates to Respondents' performance or nonperformance of the Termite Contract. (R. pp. 0035, 1053, lines 11-17). Finally, Respondents argued, and the circuit court agreed, that Petitioner's contractual remedies are limited to $250,000 for repairs to new damage caused by termites as set forth in the Termite Contract. (R. p. 0040).

At the time of their hearing, Petitioner's Response still had not been filed with the Clerk's office and was not a part of the record. Following the hearing on the Motion, on February 21, 2019, the circuit court issued a written Order granting Respondents' MPSJ. Petitioner did not file any opposition to the MPSJ until February 22, 2022. The Order granting the MPSJ was filed on February 25, 2019.

On March 1, 2019, Petitioner filed a Motion to Reconsider and in his Motion, Petitioner identified specific regulations which it contended gave rise to extra contractual duties. These regulations were not identified in either Petitioner's Response to the MPSJ, nor in his oral

argument. In his Motion for Reconsideration, Petitioner also argued (for the first time) that (1) the economic loss rule ("ELR") only applies to products defect claims; and (2) the application of the ELR violates public policy. Respondents thereafter filed Responses in Opposition to the Motion for Reconsideration.

In a written order dated April 18, 2019, the circuit court denied Petitioner's Motion for Reconsideration holding Petitioner's motion "improperly contained arguments and previously available evidence not raised in its summary judgment briefing and otherwise ignored the standard for such motion." (R. p. 0004). The circuit court held numerous arguments were waived because Petitioner raised them for the first time on reconsideration. Likewise, the circuit court held the following previously available evidence was improperly introduced for the first time on in the Motion for Reconsideration:

- "The *entire* deposition of Cecil Hernandez, specifically directing this Court to "[s]ee his full transcript," whereas his original brief only identified excerpts from pages 14-18 and 30-34." (R. p. 0011).
- "The *entire* Deposition of James Wright, specifically directing this Court to six new exhibits or excerpts for consideration, whereas his original brief was *entirely devoid* of citations to that transcript." (R. p. 0011).
- "The *entire* Depositions of Maxcy P. Nolan, III, specifically directing this Court to eighteen exhibits or excerpts for consideration, whereas his original brief only included citations and excerpts to pages 80-81 and 152-153 of his November 29, 2016 deposition and 1-118 of his May 3, 2017 deposition." (R. p. 0011).
- "The *entire* 30(b)(6) Deposition of SPM and IOP, whereas his original brief only identified excerpts from pages 22-33 and 53-57." (R. p. 0011).

Finally, the circuit court held that even if it had taken Petitioner's new arguments and evidence into consideration, the circuit court would still find Petitioner's substantive

arguments insufficient. (R. p. 0012). The Order denying Reconsideration contained the following pertinent provisions:

- "The economic loss rule bars a plaintiff from recovering in tort where he fails to receive the benefit of his bargain, or where his expectancy interests are frustrated. *See Sapp v. Ford Motor Co.*, 687 S.E.2d 47, 49 (S.C. 2009). This is especially true in situations where, as here, a contract between the parties contemplates possible foreseeable problems and allocates the risk of that problem occurring. *See Palmetto Linin Service, Inc. v. UNX, Inc.*, 205 F.3d 126, 130 (4th Cir. 2000)." (R. p. 0012).

- "The Court finds that the evidence in this case establishes that the Termite contract governs the relationship between the Plaintiff and SPM. Plaintiff, an educated businessman, entered into an arm's length transaction with Defendant IOP (and successor SPM) agreed to inspect and treat the Home for termites and repair any damages resulting from termites up to $250,000." (R. pp. 0012-0013).

- "The Termite Contract specifically contemplated possible foreseeable problems and allocated the risk of that problem occurring. The Court finds this scenario falls squarely within the parameters of the economic loss rule. The Court further finds that it properly determined the limited exception to the economic loss rule articulated in *Kennedy* does not apply to the instant case because the South Carolina Supreme Court has repeatedly held that its holding in *Kennedy* is limited to residential housing construction only. *See, e.g., Sapp v. Ford Motor Co.*, 687 S.E.2d 47 (S.C. 2009)." (R. p. 0013).

- "As such, the Court finds the evidence Plaintiff now seeks to introduce is irrelevant because South Carolina law does not recognize a tort duty under these circumstances. Accordingly, even if the Court were inclined to consider Plaintiff's newly raised arguments and evidence (which it is not), it would reject them as meritless." (R. p. 0013).

Petitioner thereafter filed a Notice of Appeal and on August 9, 2023, the South Carolina Court of Appeals issued a decision stating that "we have considered Carroll's memorandum and exhibits. Even considering these submissions, we hold the circuit court did not err in granting the motion for partial summary judgment. . . . Viewing this evidence in the light most favorable to Carroll, we find none of this evidence established the existence

of a duty owed by Respondents to Carroll that was separate and apart from the contract. Rather, the testimony Carroll relies upon pertained to Respondents' failure to perform according to the terms of the Termite Contract. As to the expert testimony regarding the application of termiticide and the violation of regulations and industry standards, this testimony also relates to Respondents' conduct with respect to its duties under the Termite Contract. Thus, we hold the circuit court did not err in finding the evidence did not establish the existence of a duty owed to Carroll that was separate and distinct from the contract." *Carroll v. Isle of Palms Pest Control, et al.*, 441 S.C. 1, 17-18, 892 S.E.2d 161, 170 (Ct. App. 2023). The Court of Appeals also upheld the $250,000 Limitation of Remedy. *Id.* at 17, 892 S.E.2d at 169.

Petitioner thereafter requested that this Court grant certiorari to review the Court of Appeals' decision and the Court granted his request. As such, IOP offers the following in response to Petitioner's arguments.

## ARGUMENT

### I. The Court of Appeals Did Not Err in Applying the ELR Such that it Barred Petitioner's Tort Claims.

The Court of Appeals noted that Petitioner argues the ELR does not apply to his claims because the rule precludes tort liability when a defective product causes injury to the product itself and whether it applies to services is not settled law. In his brief, Petitioner *now* argues that the issue of whether the ELR applies to services is, in fact, settled law in South Carolina and that it has been settled in his favor. For the following reasons, Petitioner's reliance on the South Carolina cases he cites in support of that conclusion is misplaced and his position is erroneous.

Petitioner cites multiple South Carolina cases for the proposition that the ELR applies *only* to defective products cases and *not* negligence in the provision of services resulting in damage to property. *See* *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009); *Kershaw Cty. Bd. Of Educ. v. USG*, 302 S.C. 390, 396 S.E.2d 369 (1990); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989); *Sea Side Villas II Horizontal Prop. Regime v. Single Source Roofing Corp.*, 64 F. App'x 367 (4th Cir. 2003). However, none of those cases states definitively that the ELR does not apply to the provision of services, whether negligent or otherwise.

"The [ELR] is a creation of the modern law of products liability." *Sapp*, 386 S.C. at 147, 687 S.E.2d at 49. It provides that there is no tort liability for a product defect if the damage suffered by the plaintiff is only to the product itself. Thus, tort liability only lies where there is damage done to other property or personal injury. The purpose of the ELR is to define the line between recovery in tort and recovery in contract. Contract law seeks to protect the expectancy interests of the parties, whereas tort law seeks to protect safety interests and is

rooted in the concept of protecting society as a whole from physical harm to person or property. In most instances, a negligence action will not lie when the parties are in privity of contract. *Id.* When, however, there is a special relationship between the alleged tortfeasor and the injured party not arising in contract, the breach of that duty of care will support a tort action. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995); *Myrtle Beach Pipeline Corp. v. Emerson Electric Co.*, 843 F. Supp. 1027 (D.S.C. 1993).

As the Court of Appeals noted in its opinion, in *Kennedy* the Supreme Court established a narrow exception to the ELR in the context of residential home building and held the rule did not bar recovery in tort when a builder violates an applicable building code or deviates from industry standards. 299 S.C. at 347, 384 S.E.2d at 738; *see also Sapp*, 386 S.C. at 148, 687 S.E.2d at 49 (explaining the court in Kennedy created a "narrow exception to the economic loss rule to apply solely in the residential home [building] context"). As this Court explained in *Kennedy*, if a builder performs construction in such a way that he violates a contractual duty only, then his liability is only contractual, but if he acts in a way as to violate a legal duty, his liability is both in contract and in tort." *Kennedy*, 299 S.C. at 346, 384 S.E.2d at 737.

In *Tommy L. Griffin*, this Court held design professionals were not insulated from liability "when the relationship between the design professional and the plaintiff [wa]s such that the design professional owe[d] a professional duty to the plaintiff arising separate and distinct from any contractual duties between the parties." 320 S.C. at 55, 463 S.E.2d at 89. This Court stated as follows:

> In our view, the Kennedy application of the [ELR] rule maintains the dividing line between tort and contract while recognizing the realities of modern tort law. [T]he question of whether [a] plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty [the] plaintiff claims the defendant owed. A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie. A breach of a duty arising independently of any contract duties between the parties, however, may support a tort action.

*Id.* at 54-55, 463 S.E.2d at 88 (footnote omitted).

Other South Carolina cases support the Court of Appeals' decision in this matter contrary to Petitioner's interpretation of the ELR. In *Koontz v. Thomas*, 333 S.C. 702, 511 S.E.2d 407 (Ct. App. 1999), the court applied the ELR to a professional negligence claim against an architectural firm and upheld the circuit court's conclusion that the rule barred such claims because the alleged breaches of duty in that case were contractual in nature. The court noted that its inquiry was whether the duties arose from the parties' contract or independently therefrom.

In *Dixon v. Texas Co.*, 222 S.C. 385, 72 S.E.2d 897 (1952), this Court stated that the plaintiff could bring an action only for breach of contract because the breach of duty complained of arose solely from contract and constituted nonfeasance rather than misfeasance. Further, the Court noted that when there is no duty except such as the contract creates, the plaintiff's remedy is for breach of contract, but when the breach of duty alleged arises out of a liability independently of the personal obligation undertaken by contract, it is a tort.

In *Duc v. Orkin Exterminating Co.*, 729 F. Supp. 1533 (1990), the United States District Court granted summary judgment as to the plaintiff's allegations of negligence, holding the plaintiff could not recover on his negligence cause of action because the defendant owed him

no legal duties independent of the contract. The court stated, "South Carolina courts have recognized the distinction between contract and tort causes of action and have held that in order for a plaintiff to state a claim in tort, he must allege a duty owed him by the defendant separate and distinct from any duty owed under a contract." Id. at In granting summary judgment, the court reasoned that the contract created and defined the duties and liabilities of the parties and that the plaintiff "alleged no breach of duty by [the defendant] that [wa]s independent of the contract." *Id.* at 1535.

No South Carolina case stands for the proposition that the ELR does not apply to the provision of services. As such, the Court of Appeals properly determined that the decision of the circuit court to grant IOP's MPSJ was correct under the facts of the case and applicable law. The wholesale prohibition Petitioner claims is the rule simply does not exist. If it did, every service provider who, in exchange for valuable consideration, enters into a valid and enforceable contract with another party to provide a service could be held responsible in tort for damages specifically contemplated by the contract (and in spite of the fact the parties had agreed to an allocation of risk in the contract). Petitioner's theory, if adopted, would create an exception that subsumes, and effectively eliminates, the ELR, thus thwarting the important public policy considerations that led to its adoption.

While Petitioner offers up a "smattering" of cases from other jurisdictions that allegedly support his position that negligent services are not subject to the ELR, Respondent IOP notes that other jurisdictions have addressed the ELR with results contrary to Petitioner's desired interpretation. *See Donatelli v. D.R. Strong Consulting Engineers, Inc.*, 312 P.3d 620 (Wash. 2013)(holding professional negligence claims by residential property owners against their contracted engineer can result in the recovery of economic damages

only); *Jardel Enters., Inc. v. Triconsultants, Inc.*, 770 P.2d 1301 (Colo. App. 1988)(the court refused to permit a restaurant owner to bring a negligence claim against a subcontractor for lost profits resulting from the delayed opening of the restaurant when the subcontractor misread the building plans and constructed the building foundation in the wrong location); *City Express, Inc. v. Express Partners*, 959 P.2d 836 (Haw. 1998)(in a construction context, purely economic losses cannot be recovered in tort from design professionals by those in privity of contract with those professionals); *Maine Rubber Int'l v. Environmental Mgmt. Group*, 298 F.Supp.2d 133 (D. Me. 2004)( Maine includes service contracts (not including fiduciary relationships) within the purview of the ELD); *Valley Forge Convention and Visitors' Bureau v. Visitors' Services, Inc.*, 28 F.Supp.2d 947 (E.D. Pa. 1998)(ELD also applies to service contracts).

Lastly, Petitioner takes the position that the termite damage to the House is damage to "other property" and not damage to the product itself, thus making the ELR inapplicable. In this case, the parties *specifically contracted* for termite treatment on the House and the agreement contained a very specific limitation of remedies provision. Adopting Petitioner's approach, unless there was damage to the termite treatment itself (*i.e.* the "product"), the ELR would *never* apply to claims arising out of the treatment of the House and it would obviate an agreed upon contractual limitation provision. Nothing in South Carolina jurisprudence supports that position.

## II. The Court of Appeals Correctly Determined that Respondent IOP Did Not Owe Petitioner Any Duties Other Than Those Arising From the Contract.

Petitioner contends that Respondent IOP owed him professional duties other than those arising from the contractual relationship. It is well-settled under South Carolina law

that to pursue a tort claim and a breach of contract claim concerning the same conduct, a plaintiff must allege a duty owed to him by the defendant separate and distinct from any duty owed under a contract. *See Kennedy*, 299 S.C. 335, 384 S.E.2d 730 (1989); *Duc*, 729 F. Supp. 1533 (D.S.C. 1990); *Dixson*, 222 S.C. 385, 72 S.E.2d 897 (1952) ("where there is no duty except such as the contract creates, the plaintiff's remedy is for breach of contract"); *Seebaldt v. First Fed. Sav. & Loan Ass'n*, 269 S.C. 691, 239 S.E.2d 726 (1977) (same); *Tommy L. Griffin*, 320 S.C. 49, 463 S.E.2d 85, 88 (1995) (same). Where there is no duty except any the contract creates, the plaintiff's remedy is for breach of contract. *Investors Premium Corp. v. Burroughs Corp.*, 389 F. Supp. 39 (D.S.C. 1974). It is only when the breach of duty alleged arises out of a liability independent of the personal obligation undertaken by the contract, it is a tort. *Id.* Any doubt as to whether an action is in contract or tort must be resolved in favor of contract. *See V.P. Randolph & Co. v. Walker*, 78 S.C. 157, 59 S.E. 856 (S.C. 1907).

This distinction was expressly recognized in the context of performance under a termite treatment contract in *Duc*, where the homeowner brought suit against Orkin to recover the costs for repairing the water-damaged floor to his home. He sued Orkin for breach of contract, but also asserted a cause of action in negligence, contending that Orkin had a contractual duty to inspect his house annually and to report to him any evidence of water damage discovered during the inspection. The homeowner claimed that Orkin did not make annual inspections as required by the contract or, if it did, it failed to notice or report to the homeowner any evidence of water damage. Orkin filed a motion for summary judgment and the district court expressly recognized the distinction between contract and tort causes of action and ruled that the duties and liabilities between the plaintiff and Orkin "were created and defined by the contract and the guarantee." *Duc*, 729 F. Supp. at 1535. The

district court further explained that, "[a]s a general rule, there must be some active negligence or misfeasance to support the tort" that is "distinct from the breach of contract." *Id.* Because plaintiff failed to allege a breach of duty owed by Orkin that was independent of the contract, his claim for negligence was dismissed as a matter of law. *Id.* At 1533.

In an attempt now to avoid the same result, Petitioner argues that Respondent IOP engaged in independent acts of negligence by violating certain state regulations and/or industry standards governing the application of pesticide. The fact that there may have been an alteration in treatment protocol over the dozen years or so the contract was in place does not change the fact that the obligations regarding that treatment arise solely from the Termite Contract. Further, Petitioner expressly conceded the conduct complained of all relates to termite treatment at the House:

> . . . and while one might think that it all rises out of the contract itself, the contract itself specifically said he wasn't going to put termiticide in the ground. So he went off on his own and engaged in a whole different – yeah, it was all related to termites, but not – there's really – to keeping termites out of the property, but that the agreement didn't call for that. It called for bait stations, and furthermore, the bait station records were not kept...

(R. pp. 1048, lines 22-25, 1049, lines 1-5).

Although he efforts to do so, Petitioner cannot legitimately divorce Respondent IOP's treatment of the House using bait stations from the treatment using termiticide – they both emanate from central purpose of the contract, which was to treat the House for termites. Further, the language that Petitioner cherry-picks from South Carolina regulations which states "Treatment and inspection must be performed in accordance with these regulations and with the terms of the written agreement or contract for so long as the contract is valid" does not create a cause of action for negligence. To the contrary, this language contemplates

that the regulations will be incorporated into the contract and any material breach of regulations would be evaluated under the terms of the contract as a potential breach of contract, not a negligence cause of action. Furthermore, in Petitioner's Second Amended Complaint, he alleges as part of the Breach of Contract cause of action that Respondent IOP "failed to abide by promises set forth in the bond [Termite Contract] [and] violated treatment and inspection standards. (R. p. 0023 §21). In his own pleadings, Petitioner acknowledges that claims related to violation of standards or regulations are part of a breach of contract cause of action. Accordingly, akin to the court's holding in *Duc*, Petitioner failed to allege (and Respondent IOP does not owe) Petitioner any legal duties separate and distinct from those set forth in the Termite Contract.

Petitioner attempts to couch contractual obligations as something else (professional duties, state requirements, industry standards, etc.) in an effort to create tort liability. No matter how many times he does so or invokes the word "negligence" with respect to Respondent IOP's conduct, the fact remains that all of the acts and omissions complained of arise directly from Respondent IOP's performance and/or non-performance of its contractual obligations in treating the House for termites. Had it not been for the contract, Respondent IOP would have had no duty to inspect or treat the House for termites at all and, consequently, no responsibility to prevent new damage arising from an infestation.

## III. The Court of Appeals Correctly Determined that the Circuit Court's Failure to Consider Petitioner's Filings Was Not an Abuse of Discretion.

The exercise of a court's discretion implies conscientious judgment, not arbitrary action, and takes account of the law and particular circumstances of the case, being directed by the reason and conscience of the judge to a just result. *Horn v. Davis Elec. Constructors,*

*Inc.*, 312 S.C. 363, 440 S.E.2d 398 (Ct. App. 1994). An abuse of discretion occurs when (1) a judge's ruling has no evidentiary support, or (2) the judge makes an error of law. *Henderson v. Puckett*, , 316 S.C. 171, 440 S.E.2d 398 (Ct. App. 1994). "Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling." *First Savings Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994).

Petitioner contends that the Court of Appeals erred in affirming the circuit court's failure to consider the Response, Petitioner's materials offered in opposition to Respondents' MPSJ. As the Court of Appeals noted, Rule 56, *SCRCP*, requires that supporting materials must be on file when they are relied on at a summary judgment motion hearing. The fact that Petitioner's Response was not filed at the time of the hearing is not in dispute and, as such, the circuit court did not abuse its discretion in refusing to consider any evidence contained therein. It was within the circuit court's discretion to consider the Response and Petitioner has made no showing that the circuit court abused its discretion simply because it granted the MPSJ in Respondents' favor.

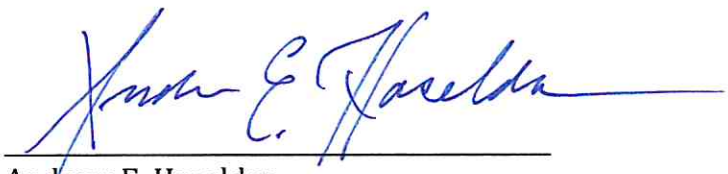
More importantly, the Court of Appeals reviewed and considered the Response as it impacts Petitioner's opposition to Respondent IOP's MPSJ. As the Court of Appeals properly noted, nothing in the two hundred pages of submissions established "the existence of a duty owed to [Petitioner] that was separate and distinct from the contract." 441 S.C. at 18, 892 S.E.2d at 170.

## IV. The Court of Appeals Correctly Determined that the Limitation of Remedy to $250,000 Was Proper and that Petitioner Had Abandoned Any Argument Otherwise.

As the Court of Appeals properly determined, Petitioner offered no legal support for his contention that he should not be bound by the $250,000 contractual remedy he agreed to and, as such, that argument was abandoned on appeal. *See* *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005)(An issue is deemed abandoned on appeal when the appellant fails to provide any supporting authority and only offers conclusory statements). As Petitioner's "argument" on this issue contains nothing different or dispositive this time, this argument should be deemed abandoned per *Mulherin-Howell*.

## CONCLUSION

Based on the foregoing analysis, Respondent IOP respectfully requests that this Court fully affirm the decision of the Court of Appeals and the circuit court's orders granting partial summary judgment.



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December 5, 2024