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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

Appellate Case No. 2024-001403

Charles Blanchard Construction Corp. Inc.……Plaintiff

v.

480 King Street, LLC ….…… Defendant

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

v.

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

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BRIEF OF RESPONDENT 480 KING STREET, LLC

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COUNTER-STATEMENT OF THE CASE

This appeal centered on whether the Circuit Court erred in dismissing the entirety of Respondent 480 King Street, LLC's lawsuit against Petitioner Glick/Boehm & Associates, Inc., pursuant to the contemporaneous affidavit requirements for professional negligence actions.[1] The Court of Appeals reversed the Circuit Court in part, finding that 480 King Street's expert, a professional engineer, may be properly qualified to offer opinions relating to the contract administration services rendered by the Petitioner. The Court of Appeals further found that dismissal of 480 King's Breach of Contract and Breach of Warranty claims was improper given that such claims need not be subject to the contemporaneous affidavit filing requirement of section 15-36-10, stating, "Based on the language of 480 King's complaint and the record before us, we

[1] See South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10, et seq.

are unable to agree [with the lower court] that the breach of contract and breach of warranty claims were properly dismissed at this stage of litigation." In addition, the Court of Appeals affirmed the Circuit Court's dismissal of 480 King's negligent design and supervision claims to the extent said claims require testimony by an expert qualified to address an architect's standard of care.

Relevant Facts and Procedural History

On July 6, 2016, general contractor Charles Blanchard Construction Corp., Inc. ("Contractor") filed a lawsuit against 480 King Street, LLC ("480 King") asserting claims of non-payment related to certain construction services provided by Contractor ("CBC Lawsuit"). (App. p. 7). On August 4, 2016, 480 King filed an Answer and Counterclaim asserting, *inter alia*, claims for cost overruns and construction defects associated with Contractor's work, which entailed the construction of a new stair tower behind certain commercial property located in downtown Charleston, South Carolina. (App. p. 47).

On June 26, 2017, 480 King filed a separate lawsuit against Petitioner Glick/Boehm & Associates, Inc. ("GBA") asserting separate and distinct claims for Breach of Contract, Breach of Warranty, and Negligence relating to construction contract administration services that GBA provided during construction of the subject project ("GBA Lawsuit"). (App. p. 73). GBA is a multi-disciplinary firm that heralds itself as specializing, *inter alia*, in architecture, planning, and interior design.[2] The CBC Lawsuit and GBA Lawsuit were later consolidated via Form 4 Order,

[2] See http://www.gbaarchitecture.com/history, stating "Glick/Boehm & Associates was founded in 1981 as a multi-disciplinary firm specializing in Architecture, Planning and Interior Design," and noting that "[C]lients now benefit from over 100 years of combined principal experience in programming, planning, architectural design, interior design **and** construction contract administration services." (Emphasis added).

entered on August 24, 2018 following 480 King's Motion to Consolidate (Order, App. p. 94; Motion, App. p. 190).

On August 10, 2017, 480 King filed a Motion for an Extension of Time pursuant to S.C. Code § 15-36-100(c)(1), wherein it requested an extension of time, for good cause, to file the requisite expert witness affidavit as to its professional negligence claim against GBA.[3] (App. p. 100). 480 King asserted that good cause for an extension existed because, *inter alia*, its expert witness had not yet had an opportunity to review over eight thousand (8,000) documents relating to the commercial project and because the statute of limitation loomed at the time the Complaint was filed. (App. p. 101; p. 271, line 24 to p. 272, line 16).

Thereafter, on August 29, 2017, GBA filed its Answer, generally denying all three causes of action asserted against it, along with a Motion to Dismiss 480 King's Complaint, contending that 480 King had "failed to file an affidavit from an 'expert' setting forth specific allegations of professional negligence against GBA" and that no good cause existed to allow the filing of the affidavit after the Summons and Complaint. (Answer, App. p. 84; Motion to Dismiss, App. p. 103).

On September 7, 2017, 480 King's trial counsel emailed GBA's trial counsel a copy of the Affidavit of professional engineer Louis Hackney, P.E., REWC, RRC, CDT, LEED AP, and informed him that the Affidavit would be filed pending the Court's ruling on the Motion for Extension of Time. (Email, App. p. 237; Affidavit, App. p. 304)

[3] Under S.C. Code § 15-36-100(c)(1), parties may seek an extension of time, for good cause, to file the requisite expert witness affidavit in professional negligence actions. By contrast, 480 King's Breach of Contract and Breach of Warranty claims do not require an affidavit under this statute, which is specifically titled, "Complaint in actions for damages alleging ***professional negligence***; contemporaneous affidavit of expert specifying ***negligent act or omission***." (Emphasis added).

On November 17, 2017, the Honorable J.C. Nicholson, Jr., heard 480 King's Motion for Extension of Time and GBA's Motion to Dismiss. (Transcript, App. p. 269). The Court found that good cause existed to allow 480 King extra time to procure and file its expert witness affidavit, noting, *inter alia*, the voluminous number of records that had been provided to the expert. (Order, App. p. 91). The Court also found no prejudice to GBA in granting the motion. (Order, App. p. 92). In addition, the Order stated that "Defendant will then have thirty days from the date of the filing of the Affidavit to file any motion contesting the sufficiency of the Affidavit." (App. p. 93). Notably, the language providing GBA a thirty-day period to contest the sufficiency of the affidavit had been incorporated into the Order at the request of GBA's trial counsel. (Email, App. pp. 250-256). GBA did not appeal this Order and did not file a motion contesting the sufficiency of the Affidavit within thirty days of 480 King's timely-filed Affidavit as required by the Order. (Affidavit, R p. 304).

On September 17, 2020—two years and nine months *after* the circuit court's thirty (30) day deadline had expired—GBA filed a Request for Leave to File Motion to Dismiss and Motion to File Sanctions, attacking the sufficiency of the Mr. Hackney's Affidavit. (Request for Leave, App. p. 192). GBA did not, however, formally request a hearing on its Request for Leave. Instead, GBA waited *another* nine months and simply filed its Motion to Dismiss and Motion for Sanctions on June 28, 2021, having failed to obtain leave in the interim. (App. p. 198).

On November 19, 2021, 480 King filed a Memorandum in Opposition to GBA's Motion to Dismiss and Motion for Sanctions, asserting that GBA's Motion should be denied because, *inter alia*, (1) GBA was time-barred from contesting the sufficiency of the affidavit because it had failed to do so within the thirty-day time period specified in Judge Nicholson's order, (2) Mr. Hackney, a professional engineer, meets the criteria for serving as an expert witness under S.C. Code § 15-

36-100(A)(3), and is qualified to offer an expert opinion as to GBA's performance of contract administration services, possessing the necessary scientific, technical, or specialized knowledge, and having performed the same type of services himself, and (3) the Complaint asserts separate claims for Breach of Contract and Breach of Warranty, neither of which require an Affidavit from an expert witness in order to survive a Motion to Dismiss. (Memo, App. p. 228). The Affidavit clearly identified Mr. Hackney as a Professional Engineer.

On November 19, 2021, GBA filed a Memorandum in Support of its Motions. (App. p. 222). GBA's Motion argued that, "although Glick/Boehm questioned ***then*** [in November of 2017] whether an Engineer (and particularly this Engineer, Mr. Hackney) is qualified to express an opinion concerning the standard of care of an architect," GBA "did not contest [the affidavit's] 'sufficiency' by filing a further motion to dismiss" within the time period afforded by the Court because it "appeared" to GBA from Mr. Mr. Hackney's affidavit that he was providing an opinion as to the standard of care for an architect. (Motion to Dismiss, App. p. 200).[4]

A hearing on GBA's Motions were held on December 2, 2021 before the Honorable Jennifer B. McCoy, wherein Judge McCoy granted GBA's Motion to Dismiss 480 King's Complaint—dismissing all three causes of action brought against GBA, including the breach of contract and breach of warranty claims that do not require an Affidavit under the subject statute—and denying GBA's Motion for Sanctions. (Transcript, App. p. 281). A corresponding order on

[4] Curiously, despite offering the above reasoning to justify its two year and nine-month delay in challenging the sufficiency of Mr. Hackney's affidavit, GBA's Petition now argues that professional engineers may not offer an opinion as to *any* services carried out by an architect, such as construction contract administration services, regardless of whether such services are commonly rendered by professional engineers and architects alike.

GBA's motions was entered on December 16, 2021. (Order, App. p. 95). Thereafter, on December 22, 2021, 480 King appealed the Circuit Court's order.

After briefing by the parties, the Court of Appeals heard oral arguments on December 5, 2023. On May 22, 2024, the Court of Appeals issued an Opinion wherein it affirmed the Circuit Court's order in part, reversed it in part, and remanded the case for further proceedings. Specifically, the Court of Appeals found that based on the language of 480 King's Complaint and the record before it, the Circuit Court had erred in dismissing the entirety of 480 King's action, which included claims for Breach of Contract and Breach of Warranty (in addition to the claim for Professional Negligence) and determined that said claims need not be subject to the contemporaneous filing requirement of Section 15-36-100.

The Court of Appeals noted that under Section 15-36-100(A), an "expert witness" means "an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue," and that although this subsection incudes numerous additional requirements, none specify that the expert witness must be a professional in the same exact field as the defendant. The Court of Appeals also noted that Section 15-36-100(A)(3) allows the submission of an affidavit from an individual who "has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both." The Court noted that the statutory definitions of the "Practice of engineering" and "Design coordination" further clarify the expert's ability to satisfy the affidavit requirements for an expert witness pursuant to section 15-36-100, citing S.C. Code §40-22-20 (Supp. 2023) (defining the "Practice of engineering" as requiring education training, and experience in "design and design coordination" and "the review of construction for the purpose of monitoring compliance with drawings and specification" and "Design coordination" as

including "the review and coordination of those technical submissions prepared by others, including….architects." (Order, App. p. 387). (Emphasis added).

In rendering its decision, the Court of Appeals acknowledged 480 King's argument that architectural and engineering services at times overlap, particularly in the area of contract administration, and further acknowledged that 480 King's expert testified as to his experience providing construction contract administration services, the very services at issue in the Complaint. Accordingly, the Court of Appeals reversed the Circuit Court in part, finding that under the Act, 480 King Street's expert, a professional engineer, may be properly qualified to offer opinions relating to the contract administration services rendered by the Petitioner. In addition, the Court of Appeals affirmed the Circuit Court's dismissal of 480 King's negligent design and supervision claims to the extent that they require testimony by an expert qualified to address an architect's standard of care.

Contrary to Petitioner's contention, the Court of Appeals did not ignore the "clear and unequivocal terms of the Act and its application." To the contrary, the Court of Appeals conducted a proper analysis of the law and attendant facts as they applied to Petitioner's Motion to Dismiss and Motion for Sanctions and corrected errors made by the Circuit Court including its misapplication of S.C. Code § 15-36-100 with regard to 480 King's claims involving contract administration services, and the dismissal of Breach of Contract and Breach of Warranty claims, which are not encompassed by the Act.

Counter-Statement as to Certain Representations Made in the Petition

Respectfully, Petitioner's Brief, and particularly the statements set forth in its "Statement of the Case," contain representations that are not supported by the record and are otherwise

misleading. To the extent these representations have any bearing on this Honorable Court's evaluation of the instant matter, Respondent briefly addresses them here.

First, Petitioner misrepresents Respondent's Complaint as one "founded upon" or "rooted" solely in negligence. (Petition, p. 5 and p. 14). This is incorrect. Even a cursory review of 480 King's Complaint establishes that it asserted three (3) separate and distinct causes of action, asserting claims against GBA for Breach of Contract, Breach of Warranty, and Professional Negligence. (Complaint, App. p. 73, see also 480 King's Final Brief, Argument II, App. pp. 329-330).

Second, Petitioner attempts to misconstrue 480 King's Professional Negligence claim by limiting its application to the performance of architectural design services, whereas the Complaint *specifically* asserts that GBA was negligent in performing construction contract administration services, and not merely architectural design services. (App. pp. 74 and 79). 480 King's expert witness, a professional engineer, meets the criteria for serving as an expert witness under S.C. Code § 15-36-100(A)(3), because he is qualified to offer an expert opinion as to Respondent's performance of construction contract administration services, and possesses the necessary scientific, technical, and/or specialized knowledge, having performed the same type of services himself. (MIO to Motion to Dismiss, App. p. 234; Affidavit, ¶ 10, App. p. 305; See also Hearing Transcript, App. p. 295, line 24 to p. 299, line 4, addressing Mr. Hackney's qualifications under the statute). As even Petitioner was forced to acknowledge in its Final Brief to the Court of Appeals, Mr. Hackney testified, "I feel comfortable talking about the standard of care that a professional would provide in either giving or completing <u>construction administration services</u>, whether that be an architect or an engineer. Those services are similar across the board of

professionals, and I feel confident and comfortable talking about them." (Respondent GBA's Final Brief, App. p. 363).

Third, Petitioner misrepresents the procedural history of this case, claiming that "counsel for Respondent consented to Petitioner filing a renewed Motion to Dismiss without the necessity of court leave." (Petitioner's Brief, p. 5). To the contrary, 480 King's trial counsel stated that 480 King would challenge any such relief, "To be clear, your request for 'leave of court,' is a motion seeking court relief-and—it will be opposed." (MIO to Motion to Dismiss, Exh. 4, Email dated March 23, 2021, App. p. 263). While 480 King's trial counsel acknowledged the procedural reality that "court permission" is not a prerequisite for filing a motion and that he could not prevent Petitioner's counsel from electronically submitting documents to the court system, he absolutely did not consent to the relief sought in Petitioner's motion and expressly stated his opposition to the motion. (December 2, 2021 Hearing Transcript, App. p. 299, line 4 to p. 300, line 8).

Fourth, Petitioner's contention that it "acted promptly" and had no way of knowing in 2017, or several ensuing years, that Mr. Hackney "was not stating an opinion as to an architect's standard of care" is directly contradicted by the record and Petitioner's own admissions. Petitioner was made aware by the September 7, 2017 affidavit that Mr. Hackney was a licensed professional engineer with specialized knowledge and experience in providing construction contract administration services, and not an architect. (See 480 King's Memo in Opposition; App. pp. 228-234; and Hackney Affidavit, App. pp. 304-305). Further, Petitioner specifically alleged that after reading Mr. Hackney's affidavit in November of 2017, it questioned whether Mr. Hackney was qualified to present an expert opinion in this case. (Motion to Dismiss, App. p. 200). Petitioner further alleged that it had "some questions as to the sufficiency of the affidavit [even] prior to Mr. Hackney's [Deposition] testimony." (Motion to Dismiss, App. p. 204, ¶ 11).

Despite purporting to have said doubts and/or questions in November of 2017, Petitioner failed to contest the sufficiency of the affidavit within the time period afforded by the Circuit Court. Petitioner did not even bother to hold Mr. Hackney's first deposition until over a year later in January of 2019 (See Motion to Dismiss, App. p. 200, at footnote 1). Thereafter, Petitioner waited over one more year to file its Request for Leave to file a Motion to Dismiss on September 17, 2020. (App. p. 192). It then waited an additional nine months to file its Motion to Dismiss on June 28, 2021, having failed to obtain leave in the interim. (App. p. 198). Contrary to Petitioner's representations, there is absolutely no reason for Petitioner's three-and-one-half year delay in contesting the sufficiency of Mr. Hackney's affidavit, which meets the criteria set forth under S.C. Code § 15-36-100(A)(3) as it relates to construction contract administration services.

Finally, Petitioner misconstrues and misrepresents the Court of Appeals' findings, hyperbolically stating that "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 Proceedings Sanctions Act." (Petitioner's Brief, p. 42, emphasis added). As set forth below, the Court of Appeals did no such thing. It correctly found that Mr. Hackney was qualified to offer an opinion as to 480 King's claims relating to contract administration services because, as a professional engineer with experience providing construction contract administration services, he "has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both." S.C. Code § 15-36-100(A)(3), emphasis added. Petitioner conveniently disregards the statute's explicit catch-all language and clear South Carolina precedent providing for qualified experts based on specialized knowledge and experience, exclusive of an expert's credentials.

STANDARD OF REVIEW

"Questions of statutory interpretation are questions of law, which [appellate courts] are free to decide without any deference to the court below." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). This Court has consistently held that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Id.* (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* Consequently, when interpreting a statute, this Court "must follow the plain and unambiguous language in a statute and [has] 'no right to impose another meaning.'" *Id.*

This Court has further recognized that it is "confined to what the statute says, not what it ought to say," and has "no right to modify a statute's application 'under the guise of judicial interpretation.'" *Grier*, 397 S.C. at 540, 725 S.E.2d at 698 (quoting *Coker v. Nationwide Ins. Co.*, 251 S.C. 175, 182, 161 S.E.2d 175, 178 (1968)). When a statute is clear on its face, it is "improvident to judicially engraft extra requirements to legislation" even if doing so may further the intent behind the statute. *Id.* (citing *Berkebile v. Outen*, 311 S.C. 50, 55-56, 426, S.E.2d 760, 763 (1993)).

Critically, "statutes in derogation of the common law are to be strictly construed." *Eades v. Palmetto Cardiovascular & Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018) (citing *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011)). "Under this rule, a statute restricting the common law will 'not be extended beyond the clear intent of the legislature.'" *Grier*, 397 S.C. at 536, 725 S.E.2d at 696 (quoting *Crosby v. Glasscock Trucking*

Co., 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000)). Statutes that limit a claimant's right to bring suit are subject to this rule. *Id.*, citing 83 C.J.S. Statutes § 535.

"In *Grier*, this Court reviewed subsection (B) of 15-36-100 and found the statute restricted a plaintiff's common law right to bring a malpractice claim, requiring the Court to strictly construe the statute's requirements." *Eades*, 422 S.C. at 201, 810 S.E.2d at 850. Even where an expert witness does not satisfy the particularized requirements of 15-36-100(A)(1) or (A)(2), he may still be qualified under subsection (A)(3) if he has "scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both." *Eades*, 422 S.C. at 203, 810 S.E.2d at 851 (quoting S.C. Code 15-36-100(A)(3) (Emphasis added).

ARGUMENTS

I. Preliminary Matter: Petitioner's Brief Fails to Address Controlling Precedent Directly Contradicting Its Position.

At the outset, this Court should note that Petitioner's brief notably fails to meaningfully address or even cite this Court's controlling precedents in *Eades v. Palmetto Cardiovascular & Thoracic, PA*, 422 S.C. 196, 810 S.E.2d 848 (2018) and *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 725 S.E.2d 693 (2012). These two cases directly interpret the key statutory provisions at issue in this appeal - specifically, the requirements for expert witness affidavits under Section 15-36-100. Petitioner's failure to address these controlling decisions is telling, as both cases fundamentally contradict Petitioner's central arguments.

Eades expressly rejected the very argument Petitioner advances here - that an expert must practice in the exact same field as the defendant. This Court held in *Eades* that Even where an expert witness does not satisfy the particularized requirements of 15-36-100(A)(1) or (A)(2), he may still be qualified under subsection (A)(3) if he has "scientific, technical, or other specialized

knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both." *Eades*, 422 S.C. at 203, 810 S.E.2d at 851 (quoting S.C. Code 15-36-100(A)(3)).

Similarly, *Grier* directly contradicts Petitioner's argument that an expert affidavit must address matters beyond what is explicitly required by the statute. In *Grier*, this Court strictly construed the statute to require only what is plainly stated in the text, rejecting attempts to impose additional requirements. 397 S.C. at 538, 725 S.E.2d at 697. There is no language in the statute which states that an expert witness must have the same exact credentials as a Defendant.

Instead of engaging with this Court's established precedent regarding expert qualifications and the scope of Section 15-36-100, Petitioner asks this Court to impose requirements that neither the statutory text nor this Court's prior interpretations support. As demonstrated below, properly applying *Eades* and *Grier* confirms that the Court of Appeals correctly decided this case.

II. The Court of Appeals Correctly Determined 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 correctly reversed the Circuit Court's dismissal of 480 King's breach of contract and breach of warranty claims because those claims are not subject to the contemporaneous affidavit filing requirement under S.C. Code § 15-36-100. This statute is specifically titled "Complaint in actions for damages alleging *professional negligence*; contemporaneous affidavit of expert *specifying negligent act or omission*." (Emphasis added). The plain language of the statute addresses only professional negligence claims, not contract or warranty claims.

This Court has consistently held that "statutes in derogation of the common law are to be strictly construed." *Eades*, 422 S.C. at 201, 810 S.E.2d at 850. Section 15-36-100 restricts a plaintiff's common law right to bring a malpractice claim by imposing the affidavit requirement.

As this Court stated in *Grier*, "section 15–36–100 restricts a plaintiff's common law right to bring a malpractice claim by imposing this [affidavit] requirement. Consequently, the language in the statute is to be strictly construed, and section 15–36–100 cannot extend any further than what the General Assembly clearly intended." Grier, 397 S.C. at 538, 725 S.E.2d at 697.

Nothing in the text of Section 15-36-100 indicates that the General Assembly intended to require a contemporaneous expert affidavit for breach of contract or breach of warranty claims. The statute's language explicitly limits its application to "actions for damages alleging professional negligence," and subsection (B) requires an affidavit specifying "at least one negligent act or omission." Had the General Assembly intended to extend this requirement to breach of contract or breach of warranty claims, it could have easily done so with explicit language, as it has in other statutes where it sought to expand the scope beyond a single cause of action. It did not.

Notably, the General Assembly's deliberate choice of language in the statute's title and text demonstrates its intent to limit the affidavit requirement to professional negligence claims. Section 15-36-100(C)(2) further confirms this intent by stating: "The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." This shows that even within the realm of negligence claims, the General Assembly carefully delineated when an affidavit is required and when it is not. If the General Assembly had intended to extend the requirement to claims beyond professional negligence, it would have specified so with similar clarity.

Following this Court's guidance in *Grier* and *Eades*, we must adhere to the plain language of the statute and avoid judicially engrafting additional requirements not clearly specified by the

legislature. *Grier*, 397 S.C. at 540, 725 S.E.2d at 698. The Court of Appeals correctly determined that 480 King's breach of contract and breach of warranty claims are not subject to the contemporaneous affidavit filing requirement of Section 15-36-100. Accordingly, the Opinion should be affirmed as to these causes of action.

III. Mr. Hackney's Affidavit is Sufficient Under Section 15-36-100(A)(3) Because He Possesses the Necessary Scientific, Technical, or Specialized Knowledge - A Position Directly Supported by This Court's Earlier Decisions.

Even if an expert affidavit were required for all of 480 King's claims against GBA, Mr. Hackney's affidavit satisfies the requirements of Section 15-36-100(A)(3). This provision creates a pathway for qualification for experts who may not meet the specific requirements of subsections (A)(1) or (A)(2) but nonetheless possess valuable knowledge and experience relevant to the case.

In *Eades*, this Court explicitly recognized - in a decision that Petitioner's brief conspicuously fails to address – that even where an expert witness does not satisfy the particularized requirements of 15-36-100(A)(1) or (A)(2), he may still be qualified under subsection (A)(3) if he has "scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both." *Eades*, 422 S.C. at 203, 810 S.E.2d at 851 (quoting S.C. Code 15-36-100(A)(3)). This holding directly contradicts Petitioner's central argument that only an architect can provide an expert affidavit regarding services performed by an architectural firm.

The General Assembly deliberately included subsection (A)(3) as an alternative pathway for expert qualification. This subsection allows for experts who have "scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, **or** both." S.C. Code § 15-36-100(A)(3) (Emphasis added). The inclusion of this subsection demonstrates the

legislature's recognition that experts from outside a defendant's exact professional field may nonetheless possess valuable specialized knowledge relevant to evaluating the defendant's conduct, including knowledge acquired by experience. Had the legislature intended to limit expert testimony to only those who practice in the same field as the defendant, it would not have included subsection (A)(3) at all, as subsection (A)(2) would have fully addressed expert qualifications.

Mr. Hackney's affidavit thoroughly establishes his qualifications and explains his professional opinions regarding GBA's performance. The affidavit clearly states that he is "a Professional Engineer and am registered in the State of South Carolina" and also holds registrations in North Carolina, Florida, Louisiana, Ohio and Mississippi. (Affidavit, ¶ 3). Critically, Mr. Hackney specifically affirms his *experience* in the exact type of services at issue in this case, stating that "As a Professional Engineer, I am routinely responsible for property condition assessments, structural and nonstructural failure analysis, building envelope evaluations, damage assessments, and engineering investigations of both new and existing construction involving numerous types of structures. *I also have experience performing contract administration services and preparing planning reports, designs, specifications, cost opinions, and contract documents for new construction and repair projects.*" (Affidavit, App. p. 304, ¶ 4, emphasis added).

Mr. Hackney's affidavit further demonstrates his specific investigation of the project at issue, stating that he has "examined the plans and construction documents of the 480 King Stair Tower building to investigate the nature of the construction and the deficiencies and damage associated therewith" and has "further reviewed the architectural drawings for the 480 King Stair Tower prepared by Glick/Boehm & Associates, Inc. ('Architect') in addition to the Architect's

contract with 480 King Street, LLC, which included contract administration services." (Affidavit, App. p. 304, ¶ 5).

Most significantly, Mr. Hackney directly addresses GBA's failure to meet the standard of care in performing contract administration services, concluding that "it is my professional opinion, to a reasonable degree of professional certainty, that the Architect deviated from the standard of care in *failing to properly complete contract administration services* as part of its contractual duties so as to prevent the aforementioned improper and code violating construction methods to occur and this deviation from the standard of care caused damage to 480 King Street, LLC..." (Affidavit, ¶ 10).

This affidavit clearly satisfies the statutory requirements by establishing Mr. Hackney's qualifications to opine on contract administration services, which he himself has experience performing, and by specifying at least one negligent act or omission - GBA's failure to properly complete contract administration services as required by its contract with 480 King.

Further, as even Petitioner was forced to acknowledge in its Final Brief to the Court of Appeals, Mr. Hackney testified, "I feel comfortable talking about the standard of care that a professional would provide in either giving or completing construction administration services, whether that be an architect or an engineer. Those services are similar across the board of professionals, and I feel confident and comfortable talking about them." (Respondent GBA's Final Brief, App. p. 363; App. p. 220:22 to 221:9).

Petitioner's argument that only an architect can opine on services performed by an architect improperly restricts the plain language of Section 15-36-100(A)(3), which allows for experts who possess "scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's

study, experience, or both." The statute does not require that the expert possess the same professional license or title as the defendant.

IV. The Statutory Definitions of "Practice of Engineering" and "Design Coordination" Further Support Mr. Hackney's Qualifications to Opine on GBA's Contract Administration Services.

Furthermore, as the Court of Appeals correctly notes, S.C. Code § 40-22-20 defines the "Practice of engineering" as requiring education, training, and experience in "design and design coordination" and "the review of construction for the purpose of monitoring compliance with drawings and specifications" and "Design coordination" as including "the review and coordination of those technical submissions prepared by others, including . . .architects." (Order, App. p. 387). These statutory definitions further support Mr. Hackney's ability to offer expert opinions on GBA's performance of construction contract administration services.

The General Assembly, through these statutory definitions, has explicitly recognized that professional engineers like Mr. Hackney routinely perform "the review of construction for the purpose of monitoring compliance with drawings and specifications" - which is precisely the type of contract administration services at issue in this case. (S.C. Code § 40-22-20(25)). Moreover, the legislature acknowledged that engineers engage in the "review and coordination" of technical submissions prepared by architects. (S.C. Code § 40-22-20(7)). This statutory recognition of the overlapping competencies between engineers and architects in the area of construction review and contract administration directly contradicts Petitioner's argument that only an architect can opine on an architect's performance of such services.

Mr. Hackney's affidavit confirms his experience in precisely these areas, stating that he has experience "performing contract administration services" and is "routinely responsible for property condition assessments, structural and nonstructural failure analysis, building envelope evaluations, damage assessments, and engineering investigations of both new and existing

construction." (Affidavit, App. p. 304, ¶ 4). His affidavit further demonstrates his specific review of the architectural drawings and contract at issue in this case. (Affidavit, App. pp. 304-305, ¶ 5).

Contract administration services involve monitoring whether construction complies with plans and specifications - a task that both architects and engineers perform according to their respective statutory definitions. The legislature's recognition of this area of professional overlap further supports the conclusion that Mr. Hackney, as a professional engineer with experience in contract administration, possesses the "scientific, technical, or other specialized knowledge" necessary to opine on GBA's performance of those services under Section 15-36-100(A)(3).

This acknowledgment of overlapping competencies in the statutory definitions reflects practical reality in the construction industry, where both architects and engineers may perform contract administration services. Petitioner's argument would create an artificial and unworkable distinction not supported by the statutory language or industry practice.

V. The Court of Appeals Provided Clear and Proper Direction for the Circuit Court on Remand.

Contrary to Petitioner's assertions that the Court of Appeals' opinion lacks clarity, the Court of Appeals in fact provided clear guidance for the Circuit Court on remand. The Court of Appeals distinguished between claims that could proceed with Mr. Hackney's expert affidavit and those that could not, reflecting both a thorough analysis of the statute and a clear understanding of the professional services at issue.

The Court of Appeals recognized three distinct situations in this case:

1. Claims for breach of contract and breach of warranty that do not require an expert affidavit under Section 15-36-100;

2. Professional negligence claims relating to contract administration services for which Mr. Hackney, as a professional engineer with experience in contract administration, is qualified to provide expert testimony under Section 15-36-100(A)(3); and
3. Professional negligence claims relating to architectural design and supervision that the Court found require testimony by an expert qualified to address an architect's standard of care. (Order, App. p. 387).

This nuanced approach acknowledges both the plain language of the statute and the reality of professional practice. It recognizes that while some professional services are uniquely architectural, other services - particularly contract administration - involve overlapping competencies between architects and engineers.

The alleged lack of clarity is not attributable to the Court of Appeals' opinion, but rather to Petitioner's insistence on viewing all claims through the lens of architectural design. Petitioner attempts to characterize all of 480 King's claims as claims for architectural negligence, ignoring both the distinct breach of contract and breach of warranty claims and the specific contract administration services at issue in the professional negligence claim.

The Court of Appeals appropriately guided the Circuit Court to permit 480 King's breach of contract and breach of warranty claims to proceed without an expert affidavit, as those claims are not subject to Section 15-36-100. It further directed that professional negligence claims related to contract administration services could proceed with Mr. Hackney's expert affidavit, as he qualifies under Section 15-36-100(A)(3) to testify about such services. Finally, it affirmed the dismissal of professional negligence claims related to architectural design and supervision.

This guidance provides a clear roadmap for the Circuit Court on remand, ensuring that 480 King's viable claims can proceed while limiting claims that truly require an architect's expertise.

The Court of Appeals' decision reflects the proper application of both the letter and the spirit of Section 15-36-100, allowing claims to proceed when supported by appropriate expert testimony while protecting defendants from unsupported claims of professional negligence.

VI. Respondent 480 King Street, LLC's Arguments are Clearly Preserved, Having Been Raised to and Ruled Upon by the Circuit Court and the Court of Appeals.

Petitioner's contention that Respondent 480 King's arguments were not preserved are indisputably contradicted by the record. First, 480 King clearly argued to the Circuit Court that its Breach of Contract and Breach of Warranty Claims do not require an expert affidavit in order to survive Petitioner GBA's Motion to Dismiss, noting, *inter alia*, that "Glick's motion made no mention that 480 King has lodged breach of contract and warranty claims against Glick as 480 King and Glick were operating under a contract to perform contract administration services." (Memorandum in Opposition to Motion to Dismiss, App. p. 235). Respondent 480 King specifically argued that "an Affidavit of an expert witness is not needed to make a breach of contract or warranty claim," and that "480 King has Contractual Claims pending against Glick that warrant a jury trial irrespective of its Negligence claim against Glick." (Memorandum in Opposition, App. p. 232).

The Circuit Court, in turn, ruled upon these arguments, stating, "The Court read and considered all of these written submissions and thereafter, on December 2, 2021, heard argument from counsel for both parties." (Order, App. pp. 95-96, emphasis added). Having done so, the argument was clearly preserved for appellate review. See *Holy Loch Distributors, Inc. v. Hitchcock*, 340 S.C. 20, 24, 531 S.E.2d 282, 284 (2000), cited in GBA's own Petition and Final Brief, noting the well-settled principal that an issue or argument must have been raised to and ruled upon by the trial court in order to be preserved.

Further, 480 King specifically raised these same issues on appeal to the Court of Appeals in Section II of its Final Brief, stating, "The Circuit Court erred in finding that [480 King's] claims against Glick/Boehm and Associates, Inc. are all based upon [GBA's] alleged negligent performance of professional services as an architect. (480 King's Final Brief, App. pp. 329-330). In support of its argument, Respondent 480 King further noted that the Complaint asserts three separate and distinct claims against GMA, that its Breach of Contract and Breach of Warranty claims do not require a supporting affidavit under S.C. Code § 15-36-100, and that its professional negligence claim specifically involves GBA's performance of construction contract administration services, and not merely architectural design services. (Ibid., App. pp. 329-330, see also Argument I of 480 King's Final Reply Brief, App. pp. 341-343). These issues were clearly preserved. Accordingly, Respondent 480 King respectfully requests that this Honorable Court look beyond Petitioner's attempts to side-step the Court of Appeals' unanimous decision, deny the Petition, and remand this case for a trial on the merits.

VII. A Defendant Who Fails to File a Motion to Dismiss Contemporaneously With Its Initial Responsive Pleading Is Barred From Subsequently Filing a Rule 12(b)(6) Motion Based on the Sufficiency of an Expert Affidavit.

A. The Plain Language of Section 15-36-100 Requires Contemporaneous Filing.

Contrary to Petitioner's argument, the plain language of section 15-36-100 unambiguously requires contemporaneous filing of motions challenging expert affidavits. Both section 15-36-100(E) and (F) specifically require that challenges to expert affidavits be raised "by motion to dismiss filed contemporaneously with [the defendant's] initial responsive pleading." This Court has consistently held that statutes must be applied according to their plain language without judicial modification. *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 538, 725 S.E.2d 693, 697

(2012) ("The language in the statute is to be strictly construed, and section 15-36-100 cannot extend any further than what the General Assembly clearly intended.").

While Petitioner attempts to create ambiguity by arguing that the Rules of Civil Procedure allow for subsequent 12(b)(6) motions, this Court must recognize that section 15-36-100 is a specific statutory scheme that controls over general procedural rules. Section 15-36-100 does not "alter" the Rules of Civil Procedure; it establishes specific statutory requirements for challenging expert affidavits that operate within the broader procedural framework. In fact, the statute explicitly acknowledges its interaction with the Rules of Civil Procedure by repeatedly stating in subsections (C)(1), (E), and (F) that "the filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a)." This demonstrates that the legislature carefully considered how the statute would interact with the Rules and made explicit provisions when departures were intended.

The repetition of this language in three separate subsections underscores the legislature's intent to establish specific procedural requirements for these challenges, including the timing of when such motions must be filed. Here, the statute's structure and repeated language addressing procedural timelines reflect a deliberate legislative choice that should not be judicially modified or ignored.

B. Petitioner's Attempt to Separate the Defense from the Motion Contradicts Statutory Intent.

Petitioner contends that Rule 12(b)(6) defenses may be raised at any time, even if not initially raised by motion. This argument fails to recognize the specialized nature of section 15-36-100 challenges.

The statute does not merely create a general "failure to state a claim" defense - it establishes a specific procedural mechanism for challenging expert affidavits that explicitly requires

contemporaneous filing. This is evident from the statutory structure itself, which repeatedly uses the same language in subsections (C)(1), (E), and (F) to specify both when and how defendants must raise these challenges. The legislature's decision to include this timing requirement in multiple subsections dealing with different aspects of expert affidavit challenges demonstrates that contemporaneous filing is an integral part of the statutory scheme, not an incidental procedural detail.

Moreover, Petitioner's interpretation would render significant portions of the statute meaningless. The language in sections 15-36-100(C)(1), (E), and (F), specifying that a defendant must allege defects "by motion to dismiss filed contemporaneously with its initial responsive pleading" would be rendered superfluous if defendants could ignore this timing requirement and raise the same challenge later. This Court has long recognized that statutory interpretations that render portions of statutes meaningless or redundant should be avoided.

The legislature's purpose in requiring contemporaneous filing is evident: it ensures that defects in expert affidavits are identified early in litigation, giving plaintiffs prompt notice and an opportunity to cure deficiencies before substantial time and resources are invested. This purpose would be fundamentally undermined if defendants could withhold challenges to expert affidavits until deep into litigation, as Petitioner did in this case by waiting nearly three years after the filing of the affidavit to file its motion.

C. Petitioner Conflates Rule 12(h)(2) Preservation with the Specific Requirements of Section 15-36-100.

Petitioner's reliance on Rule 12(h)(2) to argue that failure to state a claim defenses are preserved beyond the initial pleading ignores the specific procedural requirements of section 15-36-100. While Rule 12(h)(2) applies to general failure to state a claim defenses, it does not override

the explicit statutory requirement for contemporaneous filing of motions challenging expert affidavits under section 15-36-100.

Courts may not "judicially engraft extra requirements to legislation" or ignore explicit requirements, even if doing so might serve the underlying purpose of the statute. *Grier*, 397 S.C. at 540, 725 S.E.2d at 698. The legislature's decision to impose a strict timing requirement for challenging expert affidavits reflects a policy choice to provide plaintiffs with early notice of such challenges and an opportunity to correct deficiencies.

D. The Court of Appeals' Limited Exception in this Case was Erroneous and Should Be Reversed.

In the present case, the Court of Appeals created a "good cause" exception that appears to extend beyond the statutory text. The Court reasoned: "There was good cause for GBA to contest the sufficiency of the expert's affidavit after further information was uncovered in his three depositions; therefore, Judge McCoy did not err in allowing GBA to make the motion." App. p. 386.

Respectfully, this "good cause" exception warrants reconsideration in light of the statutory language. Section 15-36-100(C)(1) provides that "upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires," while section 15-36-100(E) states that "the trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice requires." These provisions apply specifically to (1) the plaintiff's time to file the initial expert affidavit in cases where time constraints prevented contemporaneous filing, (2) the plaintiff's time to cure a defective affidavit after a motion to dismiss has been filed, and (3) the defendant's time to respond to such a cure—not to extend the time for a defendant to file the initial motion to dismiss itself. The statute contains no provision allowing a court to extend the time for a defendant to file its

initial motion challenging the sufficiency of an expert affidavit beyond the contemporaneous filing requirement.

This Court has previously held that "when a statute is clear on its face, it is 'improvident to judicially engraft additional requirements to legislation' just because doing so may further the intent behind the statute." *Grier*, 397 S.C. at 540, 725 S.E.2d at 698. Here, the creation of a "good cause" exception for the timing of a defendant's motion to dismiss extends the language beyond its plaint language.

The circumstances of this case highlight the challenges created by such an extension. Judge Nicholson specifically ordered that GBA would have thirty days from the date of filing of Mr. Hackney's affidavit to contest its sufficiency. (Order, App. p. 93). Despite this explicit court order, GBA waited more than two years and nine months before challenging the affidavit's sufficiency. GBA acknowledged that it had some question as to the sufficiency of the affidavit even prior to Mr. Hackney's Deposition testimony (Motion to Dismiss, App. p. 204, ¶ 11), suggesting that the delay was not necessitated by a lack of information.

The contemporaneous filing requirement serves important purposes, including ensuring that defendants promptly identify perceived deficiencies in expert affidavits, giving plaintiffs timely notice and opportunity to address such deficiencies, and promoting judicial efficiency. These critical statutory purposes would be fundamentally undermined if defendants could withhold challenges to expert affidavits for years, only to raise them after parties have invested substantial time and resources in litigation, conducted extensive discovery, and prepared for trial.

Given the Court of Appeals' erroneous creation of a "good cause" exception not supported by the statutory text, this Court should reverse that portion of the Court of Appeals' opinion and find that Petitioner failed to timely file a Rule 12(b)(6) motion to dismiss challenging the expert

affidavit. This Court should hold that section 15-36-100 requires strict compliance with the contemporaneous filing requirement, and that Petitioner's failure to comply with this requirement bars it from challenging the sufficiency of Mr. Hackney's affidavit nearly three years after it was filed. Accordingly, Respondent should not be barred from pursuing all three of its claims against Petitioner, including its claim for professional negligence. The Court of Appeals correctly determined that 480 King's breach of contract and breach of warranty claims are not subject to the affidavit requirement, but erred in allowing Petitioner's untimely challenge to proceed. This Court should therefore reverse the Court of Appeals' creation of a "good cause" exception and reinstate all of Respondent's claims.

E. Petitioner's Argument Regarding S.C. Code § 15-36-10(I) is Misplaced.

Petitioner argues that section 15-36-10(I), which states that the Act "shall not alter the South Carolina Rules of Civil Procedure," allows defendants to ignore the contemporaneous filing requirement. This argument misconstrues the relationship between the statute and the procedural rules.

Section 15-36-100 does not "alter" the Rules of Civil Procedure; it establishes specific statutory requirements for challenging expert affidavits that operate within the broader procedural framework. In fact, the statute explicitly acknowledges its interaction with the Rules of Civil Procedure by repeatedly stating that "the filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a)." S.C. Code 15-36-100 (C)(1), (E), and (F). This demonstrates that the legislature carefully considered how the statute would interact with the Rules and made explicit provisions when departures were intended.

F. Even If Subsequent Motions Were Permissible, Petitioner Waived This Right.

Even if this Court were to find that the contemporaneous filing requirement is not absolute, the facts of this case demonstrate that Petitioner waived any right to a subsequent challenge by failing to timely contest the affidavit after being expressly granted leave to do so. Judge Nicholson's Order explicitly provided that "Defendant [Glick/Boehm] 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, App. p. 93). Despite this clear and unambiguous instruction, Petitioner waited nearly three years before challenging the affidavit's sufficiency.

Petitioner's claim that it had no way of knowing that Mr. Hackney was not stating an opinion as to an architect's standard of care is directly contradicted by the record. By Petitioner's own admission, it "questioned then [in November 2017] whether an Engineer (and particularly this Engineer, Mr. Hackney) is qualified to express an opinion concerning the standard of care of an architect." (Motion to Dismiss, App. p. 200). Petitioner's decision to disregard both the statutory timing requirement and the court-ordered deadline cannot be excused by claiming ignorance of facts it admittedly knew.

G. Petitioner's Claim of 480 King's Consent is Misleading and Contradicted by the Record.

Petitioner's assertion that "counsel for 480 King consented to Glick/Boehm filing a renewed Motion to Dismiss without the necessity of court leave" mischaracterizes the record. As shown in the email exchange, 480 King's counsel merely acknowledged the procedural reality that "You are free to file your motion. You do not need 'Court permission' to file a motion." (Email from Brent Halversen to Kent Stair, March 23, 2021, App. p. 304). In the same exchange, 480 King's counsel explicitly stated, "To be clear, your request for 'leave of court,' is a motion seeking court relief-and—it will be opposed." (Email dated March 23, 2021, App. p. 263).

This exchange cannot reasonably be construed as consent to the substance or timeliness of Petitioner's motion. Rather, it simply acknowledges the practical reality that Petitioner could physically file documents with the court. At the hearing, 480 King's counsel reinforced this position, stating: "So, of course, as Mr. Stair had gone on a status conference and said to, Your Honor, judge I'd like permission to file a motion. And I said, no, I object, Your Honor, I won't let him do that. You'd look at me like I had three heads on. So I said, Ken you can file whatever motion you want. Okay. I don't consent to the relief you're talking about. So I don't even think I can consent to changing what's in Judge Nicholson's order, which was mandatory that he had to file this in 30 days." (Hearing Tr. dated Dec. 2, 2021 at App. pp. 299:24-300:8).

The plain language of section 15-36-100 requires contemporaneous filing of motions challenging expert affidavits. This requirement serves important functions, including providing early notice of potential deficiencies, allowing for timely correction, and promoting judicial efficiency by resolving threshold issues at the outset of litigation.

Petitioner failed to comply with this requirement, waited nearly three years to challenge Mr. Hackney's affidavit despite admittedly having concerns about his qualifications from the beginning, and disregarded a court-ordered deadline for raising such challenges. Even if the Court were to find that contemporaneous filing is not strictly required in all circumstances, the facts of this case do not justify Petitioner's excessive and unexplained delay, especially given the explicit court order providing a deadline for challenging the affidavit.

For the foregoing reasons, this Court should hold that a defendant who decides not to file a motion to dismiss contemporaneously with its initial responsive pleading on the ground that the affidavit required by section 15-36-100 is defective may not subsequently base a Rule 12(b)(6) motion to dismiss on the failure to file a sufficient affidavit under that section. The Court should

reverse the portion of the Court of Appeals' opinion that created an unsupported "good cause" exception to the contemporaneous filing requirement, and find that Petitioner's failure to timely challenge Mr. Hackney's affidavit pursuant to both the statute and Judge Nicholson's explicit order bars its subsequent challenge nearly three years later. Accordingly, all of Respondent's claims against Petitioner, including its professional negligence claim, should be reinstated, and the case should be remanded for further proceedings on the merits of all three claims.

CONCLUSION

For the foregoing reasons, Respondent 480 King Street, LLC respectfully requests that this Honorable Court affirm the Court of Appeals' decision reversing the Circuit Court's dismissal of Respondent's claims. The Court of Appeals correctly determined that breach of contract and breach of warranty claims are not subject to the contemporaneous affidavit filing requirement, and that Mr. Hackney, as a professional engineer with experience in contract administration services, satisfies the requirements of Section 15-36-100(A)(3) to offer expert testimony regarding such services.

The Court of Appeals' careful analysis recognized what this Court has previously established in *Eades* and *Grier*: that Section 15-36-100 must be strictly construed as a statute in derogation of the common law, and that subsection (A)(3) provides a pathway for expert qualification based on "scientific, technical, or other specialized knowledge," without mandating that the expert practice in the same field as the defendant.

Respondent respectfully submits, however, that this Honorable Court should reverse the Court of Appeals' creation of a "good cause" exception to the statute's contemporaneous filing requirement. The plain language of Section 15-36-100 requires that challenges to expert affidavits be raised "by motion to dismiss filed contemporaneously with the defendant's initial responsive

pleading" - a requirement Petitioner ignored for nearly three years after the statutory deadline and after a court-ordered thirty-day window had expired. This delay not only contravenes the Legislature's clear intent and undermines judicial efficiency but also constitutes a waiver of Petitioner's right to seek dismissal on this basis. While Petitioner has forfeited its opportunity to challenge the sufficiency of Mr. Hackney's affidavit for purposes of dismissal under the statute, it still retains the ability to challenge his qualifications and testimony at trial through normal evidentiary procedures - the proper forum for such objections at this stage of the proceedings.

Mr. Hackney's affidavit thoroughly establishes his qualifications and experience in the exact services at issue, identifies GBA's specific failures in performing contract administration services, and provides the factual basis for his opinions. The statutory definitions of "Practice of engineering" and "Design coordination" further confirm that engineers like Mr. Hackney routinely perform the very services about which he offers his expert opinion.

Respondent respectfully requests that this Honorable Court affirm the Court of Appeals' substantive holdings while reversing its creation of an unsupported "good cause" exception, thereby maintaining the integrity of the statutory scheme, promoting judicial efficiency, and allowing Respondent's meritorious claims to proceed. Such a ruling would preserve the Legislature's careful balance between protecting professionals from frivolous litigation and ensuring plaintiffs with legitimate claims have their day in court.

[Signature on following page]

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March 26, 2025
Mount Pleasant, South Carolina

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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

Appellate Case No. 2024-001403

Charles Blanchard Construction Corp. Inc.……Plaintiff

v.

480 King Street, LLC ….…… Defendant

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

v.

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

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Brief of Respondent 480 King Street, LLC complies with Rule 242(i), SCACR.

Respectfully submitted,

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March 26, 2025
Mount Pleasant, South Carolina