

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Roger M. Young, Circuit Court Judge
Civil Action No.: 2015-CP-10-05944

S.C. SUPREME COURT

Appellate Case No. 2023-001655

James E. Carroll, Jr.Petitioner,

v.

Isle of Palms Pest Control, Inc., SPM Management Company, Inc. and Terminix Service, Inc.,
.....Defendants,

Of which Isle of Palms Pest Control, Inc. and SPM Management Company, Inc. Respondents.

**RESPONDENT SPM MANAGEMENT COMPANY, INC.'S
PETITION FOR REHEARING**

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Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent SPM Pest Control, Inc. ("SPM") hereby files this petition for rehearing. SPM respectfully requests a rehearing of Opinion No. 28291 (S.C. Sup. Ct. filed July 23, 2025) (Shearouse Adv. Sh. No. 27 at pp. 21-33) ("Op. No. 28291") and/or the issuance of a new opinion on the issues outlined herein.

In Opinion No. 28291, this court reversed the circuit court's grant of partial summary judgment in favor of IOP/SPM holding that the economic loss rule does not apply because the Termite Contract does not involve the sale of a product. Op. No. 28291 at pp. 27-30. This Court also held that IOP/SPM breached a duty of care separate from the duties found in the Termite Contract because IOP/SPM changed its treatment protocol from bait stations to termiticide without advising Mr. Carroll. Op. No. 28291 at 30-31. Finally, this Court held that the \$250,000 limitation of liability provision in the Termite Contract will only apply if the verdict is solely based on Mr. Carroll's breach of contract cause of action. Op. No. 28291 at pp. 31. With the exception of clarifying the law in South Carolina that the economic loss rule applies to products liability cases only, these conclusions were, respectfully, incorrect.

ARGUMENT

- I. The Court failed to consider Mr. Carroll's admission that the Termite Contract was a valid contract that governed the performance of IOP/SPM at all times relevant to this claim, and that Mr. Carroll was advised of and consented to the change in treatment protocol.

Opinion No. 28291 concludes that IOP/SPM breached a duty of care separate from the duties found in the Termite Contract because it changed its treatment protocol from bait stations to termiticide over the dozen or so years that the contract was in effect without advising Mr. Carroll. (Op. No. 28291 at 30-31). The Court reasoned that if IOP/SPM had simply abandoned the contract altogether instead of continuing to inspect and treat for termites using a different method, then Plaintiff would be limited to a breach of contract claim only. (Op. No. 28291 at 30-31). In

reaching its decision, the Court overlooked the critical admission by Mr. Carroll that the Termite Contract is a valid contract that governed the performance of IOP/SPM during all times relevant to this claim. Specifically, during his deposition, Mr. Carroll confirmed the validity of the Termite Contract:

Q: But you've referred several times today to a "termite bond" and I just want to make sure I understand. When you refer to a "bond" –

A: I'm referring to this right here.

Q: When you're holding up Exhibit 18, the Exterra –

A: Yes, sir.

Q: --contract?

A: Yes, Sir.

Q: Okay.

A: That's all we've gone on. Even though it wasn't signed, it was – it was what was given to me. It's what I've been paying on since Day One.

Q: Right. We already established that.

A: Yes, sir.

Q: That you believe this is a valid contract, even though you've not signed a copy with your signature?

A: Yes, sir.

(R. p. 0065). Moreover, during his deposition, Mr. Carroll repeatedly confirmed that he understood the Termite Contract governed the performance of IOP/SPM at all times relevant to this claim, and that the Termite Contract applied to cover repairs for damage to the Subject Residence caused by termites:

A: When Terminix bought the company, they came out and did an inspection and charged me. They didn't say anything. And then the next year they came out and did an inspection and said, "You've got termites." And I said, "Well great, take care

of it.” And I said, “it’s under bond.”

...

A: He showed me in the – on the baseboard. And then we went around the outside of the house and she showed me the expansion joint and he goes, “This is your source of where they’re coming in at.” And again, my attitude was well, fix it because you’ve got it under bond.

...

Q: Do you remember having any conversations about the termites they found, at this time?

A: Let me think about this. I – my only conversation was, and I was adamant from Day One, from the first time that termites were talked about and found, that my house was under bond and y’all take care of it. And I mean – so any conversation, it was always that direction: That I was adamant that it was the termite company’s responsibility.

...

A: When termites were found – I’ve said it a million times and I’m going to say it one more time, a hundred more times. When the termites were found I said, “Y’all fix it; you got the bond.”

...

A: No, sire. This started – once they did this and said there’s termites and I said I want y’all to fix it, I’m under bond, they go – well, again, I’m trying not to say that.

(R. pp. 0060 – 0064). Moreover, during the deposition of Mr. Sottile, he testified that he did, in fact, independently advise Mr. Carroll that he switched the treatment protocol from bait stations to termiticide to provide Mr. Carroll with additional protections against termite infestations, and that Mr. Carroll agreed to the change in treatment protocol and continued to pay his annual service fee.

A: I was doing it to protect [my customers] and protect myself.

...

Q: Did you independently tell [Mr. Carroll] what you were doing in terms of termiticide and all of that stuff?

A: Oh, yeah. I explained everything to him. He wouldn’t have entered the contract had I not done it. You know what I mean?

Q: No.

A: Well, he would not have entered the contract without understanding – I mean, he p

aid for it. You know what I mean?

Q: Right.

(R. pp. 0846, 0850).

To limit the scope of the Termite Contract to the installation and use of bait stations as the only allowable method to treat the Subject Residence for termites ignores Mr. Carroll's admission that the Termite Contract is a valid contract that governed the performance of IOP/SPM's services at all times relevant to this claim. (R. pp. 0060 – 0065). In addition, it ignores the testimony of Mr. Sottile's that he started using termiticide to provide additional protection for the Subject Residence, and that he independently advised Mr. Carroll of the change in treatment protocol, and Mr. Carroll agreed to it and continued to pay his annual service fee. (R. pp. 0846, 0850). It is undisputed that Mr. Carroll's core concern when entering into the Termite Contract was to have IOP/SPM treat the Subject Residence for termites to prevent termite infestation, the method of which Mr. Carroll expressly conceded that he did not care to know about. That was the benefit of his bargain and an essential element to the contract. In allegedly failing to adequately treat the Subject Residence for termites, Mr. Carroll has alleged a breach of the terms of the contract, the remedy for which is permissibly limited by the contract language itself.

In light of the foregoing, SPM respectfully requests that the Court grant a rehearing to reconsider its holding that IOP/SPM owed Mr. Carroll a duty of care separate and distinct from the duties set forth in the Termite Contract. SPM specifically requests that the Court consider the evidence in the record confirming that IOP/SPM inspected and treated the Subject Residence for termites annually for over a decade pursuant to a valid and enforceable contract that governed the performance (and non-performance) of IOP/SPM, and that Mr. Carroll was advised of and consented to the change in treatment protocol from bait stations to termiticide. As such, IOP/SPM

did not owe Mr. Carroll an independent duty of care, and Mr. Carroll's damages are permissibly limited to the \$250,000 limitation of liability provision in the Termite Contract.

CONCLUSION

For the reasons set forth herein, SPM respectfully requests for the reasons set forth herein, and for the reasons and arguments set forth in SPM's appellate briefs, all of which should be deemed incorporated herein, that this Court grant rehearing.

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PROOF OF SERVICE

I certify that I have served a copy of the Brief of Respondent in Opposition of Writ for Certiorari on counsel for the Petitioner and Co-Respondents by electronic mail to the following addresses:

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