

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Oct 20 2025**

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Master-In-Equity

Hon. Deadra L. Jefferson, Circuit Court Judge  
Hon. Mikell R. Scarborough, Master-In-Equity

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Opinion No. 6106 (S.C. Ct. App. refiled July 30, 2025)

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TCC of Charleston, Inc., Petitioner-Respondent,

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam, Respondents-Petitioners,

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RETURN TO TCC OF CHARLESTON,  
INC.'S PETITION FOR A WRIT OF  
CERTIORARI

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## INTRODUCTION

TCC of Charleston, Inc.’s (“TCC”) Petition presents no novel legal question warranting certiorari review. Each issue turns on the proper application of settled statutory law and controlling precedent to a fact-bound record that the Court of Appeals carefully reviewed and correctly resolved. The Petition also reframes facts, sworn filings, and procedural rulings below contrary to the record. Certiorari should be denied.

## COUNTER-STATEMENT OF THE CASE

This case arises from TCC’s choice to identify March 17, 2016, as the last date of work in four sworn filings—two filed statements of account and two verified complaints. TCC did so to commence a foreclosure in June 2016; defendants answered relying on those sworn dates. (R. p. 18). By consent, the circuit court stayed the foreclosure as to unit owners pending arbitration of contractual claims lying between TCC and the HPR. (R. p. 1292). After TCC received an arbitration award, and following various motions in the circuit court, the Master (to whom lien issues were referred) confirmed the award, denied TCC’s belated attempt to rewrite its sworn lien filings, and granted summary judgment on foreclosure because the lien was never perfected. (R. pp. 83–97). Contrary to TCC’s suggestion, before the case was referred to the Master, Judge McCoy granted leave to amend the pleadings based on Rule 15, SCRCP, and expressly reserved the merits for the Master’s determination. (R. p. 42).

The Master also held that the Horizontal Property Act (the “Act”), S.C. Code Ann. § 27-31-10 et seq., precludes a “blanket” lien against the HPR; that additional discovery on tolling could not salvage untimely service; and that the HPR and owners were prevailing parties on the foreclosure claim. (R. pp. 83–97). The Court of Appeals affirmed these rulings and remanded

only for a hearing on the quantum of fees with unredacted time entries to be provided to TCC and added to the record.

## ARGUMENT

### **I. The Mechanic’s Lien Statute’s Strict Deadlines Are Triggered by the Date of Last Work Sworn to by the Lien Claimant, and TCC is Judicially Bound by its Sworn Filings.**

South Carolina’s mechanic’s lien statute, S.C. Code Ann. § 29-5-10 et seq. (the “Lien Statute”), is strictly construed. See Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 130, 631 S.E.2d 252, 257 (2006) (“A mechanic’s lien is purely statutory. Therefore, the requirements of the statute must be strictly followed.”). A claimant must serve and record a certificate of lien within ninety days after last furnishing labor or materials. See id. (“The deadline to serve . . . a mechanic’s lien begins running from the date the last material was furnished . . . .”); S.C. Code Ann. § 29-5-90. A claimant is “bound by the dates asserted in its pleadings and on the face of the lien.” Kitchen Planners, LLC v. Friedman, 432 S.C. 267, 279, 851 S.E.2d 724, 731 (Ct. App. 2020), aff’d as modified on other grounds, 440 S.C. 456, 892 S.E.2d 297 (2023).

The Master and the Court of Appeals applied that rule to the record TCC created: four sworn submissions stating the last date of work was March 17, 2016. (R. pp. 124, 130, 280, 287). TCC’s own verified pleading secured an admission by many defendants to that date. (R. p. 468, ¶10); see also Elrod v. All, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) (“[A] party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible.”). Years later, TCC pivoted to a different last date of work advanced through litigation affidavits. (R. pp. 2091-95). The Master correctly held TCC to its sworn filings and the statute’s strict scheme. The public-record function

of lien instruments would be undermined if claimants could substitute new dates post hoc to avoid statutory consequences.

TCC can cite no authority to support its position. Indeed, the only law cited simply identifies the rule for computing the deadline or discusses amendments to pleadings, not a license to undo sworn lien filings when expedient. Nor does any authority allow a claimant to litigate off-record dates in order to reset a perfection deadline after it expires. The Court of Appeals correctly rejected TCC's effort to substitute a new "actual" date for its sworn date to avoid the consequences of untimely service.

**II. Section 29-5-100 Does Not Save TCC's Lien Because the Statute's Text Confines Harmless Inaccuracies to Amount and Property Description.**

South Carolina Code section 29-5-100 provides that no inaccuracy "in stating the amount due" or "relating to the property" shall invalidate proceedings, absent willful overstatement. But it does not authorize retroactive alteration of a sworn last date of work, which is the cornerstone of the 90-day perfection period. Reading section 29-5-100 to excuse an untimely lien based on a later-asserted "actual" last date of work would rewrite the statute, collapse strict compliance, and undermine the public-record function of sworn lien filings.

TCC's effort to expand Kitchen Planners is unavailing. Kitchen Planners addressed amendment of pleadings—not statutory lien instruments affecting title. See Kitchen Planners, 432 S.C. at 278, 851 S.E.2d at 730–31 ("[P]arties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise." (quoting Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992))). The Master correctly held that lien perfection is governed by the mechanics' lien statute, not the pleading rules, and that section 29-5-100 does not cover last dates of work.

**III. The Master Did Not “Overrule” the Circuit Court; He Decided Referred Merits Issues the Circuit Court Expressly Reserved.**

The circuit court’s one-page order granted leave to amend TCC’s pleadings under Rule 15 and expressly reserved the merits of all other motions to the Master’s review and determination. Indeed, the entirety of the circuit court’s order is one sentence: “Rule 15(b) provides that leave to amend a pleading should be freely given, and the Court grants TCC’s motion to amend.” (R. p. 42).

Despite TCC’s Petition stating otherwise, no circuit court judge adjudicated the binding effect of TCC’s sworn last date of work or announced any “law of the case” on lien validity. The Master acted within his authority in denying TCC’s motion to amend its filed statement of account and in granting dispositive relief based on perfection defects. The Court of Appeals correctly affirmed.

**IV. The Master Properly Denied Additional Discovery Because Tolling Theories Were Legally Immaterial and Factually Speculative.**

Neither equitable tolling nor South Carolina Code section 15-3-30 can expand the statutory 90-day perfection window. The Lien Statute itself supplies alternative means to perfect service within that window, including service “on the owner or person in possession” of the property. S.C. Code Ann. § 29-5-90 (emphasis added). Given that the Lien Statute is to be strictly construed, additional failsafes should not be engrafted onto it. See Hainer v. American Med. Int’l, Inc., 328 S.C. 128, 492 S.E.2d 103 (1997) (stating that if legislature had intended certain result in statute, it would have said so).

Further, the Master had un rebutted evidence that TCC’s mechanic’s lien was not served timely based on the last date of work. (R. pp. 89–90). The Master’s Order stated:

Reviewing the record, it is apparent that June 22, 2016, was the first date of service on any Defendant and that the papers were provided to the process server no earlier

than June 16, 2016, as indicated by the inclusion of the Amended Lis Pendens in the documents served on various unit owners beginning on June 22, 2016. Because the last date of furnishing was March 17, 2016, service on or after June 22, 2016, was at least seven days too late. Further, it appears from the record and the filing of the Amended Lis Pendens that the documents were not provided to the process server until, **at the earliest, June 16, 2016, one day too late**. Although TCC's lien arose inchoate as of March 17, 2016, TCC failed to perfect the lien timely by June 15, 2016, and it therefore DISSOLVED as a matter of statutory law. S.C. Code Ann. § 29-5-90.

(R. pp. 89–90 (emphasis added)).

Accordingly, discovery into travel or door codes would not have changed the analysis and was appropriately denied. The Court of Appeals' affirmance reflects a routine application of summary judgment and discovery standards to a fully developed motion record.

**V. Service on the HPR is Not Service on the Owners; the Horizontal Property Act Requires Perfection Against Individual Unit Owners.**

Contrary to TCC's continued and repeated assertions, the HPR has never been served with the lien. But even if it had, the Act expressly provides that all liens must be perfected against the individual unit owners. S.C. Code Ann. § 27-31-230. In Resolution Trust Corp. v. Eagle Lake & Golf Condominiums, this Court found that the legislature expressly adopted the unmodified language of the Federal Housing Administration's 1962 Horizontal Property Regime Act, even though several states modified it prior to adoption. 310 S.C. 473, 477, 427 S.E.2d 646, 648 (1993). In other words, the Legislature meant for the Act to be strictly construed according to its plain language. Under the Act, each unit owner holds title to his or her interest; the regime is not the fee owner of those interests and cannot be served with a lien encumbering those interests.

The Master properly rejected TCC's attempt to deem service on the HPR (or its counsel)—which did not occur and cannot be supported by the Record—sufficient to perfect liens against dozens of separate fee owners. Contractual arrangements, bylaws, or the HPR's obligation to discharge liens do not override the Act's service and perfection requirements or convert the regime

into a universal service agent for all owners. The Court of Appeals correctly affirmed the no-blanket-lien rule and the service defects.

**VI. The HPR and Owners were Prevailing Parties on the Foreclosure Claim; the Fee Award Should be Affirmed on Entitlement and Remanded Only for the Court of Appeals' Directed Quantum Hearing.**

The Master found, on separate and independent grounds, (1) that TCC's lien dissolved and (2) that no blanket foreclosure lies against the HPR. Contrary to TCC's Petition, TCC repeatedly asserted the foreclosure claim against the HPR across pleadings and proceedings. TCC filed not one or two, but three complaints asserting claims against the HPR for foreclosure of mechanic's lien. Judge Young referred all causes of action against the HPR to arbitration. (R. p. 4).

When TCC sought its attorneys' fees in arbitration, the panel properly found that "S.C. Code Ann. 27-3-2[3]0 requires that TCC's lien must be filed against the property owners rather than the HPR." (R. p. 12). The panel would have no reason to include this finding in its award if TCC had not been pursuing an award of attorneys' fees against the HPR via section 29-5-10. Thus, the panel's finding proves two points: (1) TCC was pursuing its mechanic's lien foreclosure cause of action against the HPR, as asserted, in arbitration and in the circuit court; and (2) the HPR was defending the same prior to the lifting of the stay.

TCC changed its story regarding its pursuit of the foreclosure of mechanic's lien cause of action against the HPR only when it realized that the HPR was correct that such pursuit was a statutory impossibility and that the HPR would be entitled to attorneys' fees.

As to fees, the Master applied Jackson v. Speed, 326 S.C. 289, 486 S.E. 2d 750 (1997), to award fees to the prevailing parties on the foreclosure claim; the Court of Appeals affirmed entitlement. Nothing in TCC's Petition justifies revisiting those determinations.

The only remand ordered by the Court of Appeals concerns the amount of fees to be awarded: a hearing with unredacted time entries provided to TCC and added to the record of the case. The HPR and the unit owners maintain the Master's in camera process sufficed and that TCC expressly declined a quantum hearing below. If review is granted on this issue, the proper disposition is to affirm entitlement and leave the Court of Appeals' limited remand undisturbed.

### CONCLUSION

TCC's Petition presents no unsettled legal issue of broad significance. It invites the Court to re-weigh facts, dismiss sworn filings, and dilute strict statutory requirements. The Petition should be denied.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP



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October 20, 2025  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Master-In-Equity

Hon. Deadra L. Jefferson, Circuit Court Judge  
Hon. Mikell R. Scarborough, Master-In-Equity

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Case No. 2016-CP-10-2955

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Appellate Case No. 2021-000272

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TCC of Charleston, Inc., Appellant/Respondent,

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Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam, Respondents,

Of Which Concord & Cumberland HPR is the Respondent/Appellant.

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**PROOF OF SERVICE**

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I, F. Cordes Ford IV, certify that I have served the foregoing all Respondents-Petitioners Except for Betty Beatty's **RETURN TO TCC OF CHARLESTON, INC.'S PETITION FOR A WRIT OF CERTIORARI** on all other parties to this matter via electronic mail on October 20, 2025, addressed to their attorneys of record as follows, as evidenced by Exhibit "A" attached hereto:

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October 20, 2025  
Charleston, South Carolina

## EXHIBIT "A"

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**Subject:** TCC of Charleston, Inc. v. Concord and Cumberland, et al., App Case No. 2021-000272 - Respondent/Appellants except Betty Beatty's Return to TCC of Charleston, Inc.'s Petition for Writ  
**Date:** Monday, October 20, 2025 4:12:21 PM  
**Attachments:** [2025.10.20 Return to TCC of Charleston's Petition for a Writ of Certiorari.pdf](#)

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Attached for service, please the Return to TCC of Charleston, Inc.'s Petition for a Writ of Certiorari, by all Respondents/Appellants except for Betty Beatty.

Thank you,  
Carol