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Nov 12 2025

SC Court of Appeals

**In the Supreme Court For
the State of South Carolina**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Mikell Scarborough, Master in Equity

Case No.: 2016-CP-10-02955
Ct. App. Case No. 2021-000272
App. Case No. 2025-001715

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; *of whom* Concord & Cumberland HPR and Betty L. Beatty are.....*Respondents-Petitioners.*

**TCC OF CHARLESTON, INC.’S REPLY IN SUPPORT OF ITS
PETITION FOR A WRIT OF CERTIORARI**

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On November 4, 2025, the final opposition to TCC of Charleston, Inc.’s (“TCC’s”) Petition for a Writ of Certiorari was filed by Respondent Betty Beatty, adopting and incorporating the prior response of the HPR and all other Respondents. *See* Beatty Opp. at 1. TCC now replies in support of its petition as follows.

I. Respondents’ Arguments Regarding the Date of Last Work

In arguing that TCC must be bound by the erroneous date of last work, Respondents suggest that it is settled law that an erroneous date in a pleading or statement of account becomes the relevant date by which a lien’s timeliness is determined, relying on the Court of Appeals 2020 opinion in *Kitchen Planners, LLC v. Friedman*.¹ *See* HPR Opp. at 2 (“A claimant is ‘bound by the dates asserted in its pleadings and on the face of the lien.’”). This is not so.

As discussed below, the facts in *Kitchen Planners* were distinguishable from those in this case. Furthermore, the Court of Appeals’ decision in that case *and* this Court’s review of that decision supports TCC’s position that the actual date of last work governs the timeliness of a lien.

A. Distinctions Between This Case and *Kitchen Planners*

In *Kitchen Planners*, a contractor filed a mechanic’s lien and sued to foreclose, listing a date of last work in both the lien and the complaint. The property owner moved to dismiss a contractor’s lien foreclosure suit, arguing the lien was not timely served. The trial court found that “no credible evidence exist[ed] to show that [the contractor] provided any materials or labor” after the date of last work set forth in its pleading and its lien, that the lien was not served within 90 days of that last work, and granted the motion to dismiss. 432 S.C. at 274, 851 S.E.2d at 728. The contractor appealed.

¹ 432 S.C. 267, 279, 851 S.E.2d 724, 731 (Ct. App. 2020), *affirmed on other grounds*, 440 S.C. 456, 892 S.E.2d 297 (2023).

On appeal, the Court of Appeals noted that “parties are bound by their pleadings *unless withdrawn, altered or stricken by amendment or otherwise*,” *id.* at 278, 851 S.E.2d at 730–31 (quoting *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) (emphasis added)), and acknowledged that the contractor would have the right to amend its pleading to correct any error as to the date of last work. *Kitchen Planners*, 432 S.C. at 278, 851 S.E.2d at 730–31. However, it bound the contractor to the date of last work set forth in its pleading because there, unlike here:

- the pleading was *not* amended to correct or remove or alter the date of last work (nor did the contractor even move to amend); and
- there was insufficient evidence to establish that the date of last work was other than stated in the pleading, or even to create a question of fact to preclude summary judgment.

Id. Here, in contrast, TCC’s complaint *was* amended with leave of court,² and there is no dispute at all that TCC *was* onsite performing work substantially after the date in the original pleading.

Despite the contractor’s failure to amend in *Kitchen Planners*, the Court of Appeals (and this Court, *see infra*) looked past the date of last work in the pleading and examined whether there was evidence showing the actual last date of work differed. If Respondents’ position is correct, this would have been a meaningless exercise by both Courts. Thus, even the case relied upon by the Respondents demonstrates that the controlling date with respect to timeliness is the actual date of last work.

B. This Court’s Opinion in *Kitchen Planners*

Affirming the Court of Appeal on other grounds (namely, that more than a mere scintilla

² See *Duncan v. CRS Serrine Engs., Inc.*, 337 S.C. 537, 541–42, 524 S.E.2d 115, 117 (Ct. App. 1999) (“Duncan first contends Serrine is bound by its original pleadings and the circuit court erred in granting Serrine's motion to amend its answer. We disagree. While Duncan asserts Serrine should be bound by its original pleadings, even the cases Duncan relies on as authority relieve a party from its original pleadings when the party withdraws or amends its pleadings.”).

of evidence is required to create a genuine issue of material fact and defeat a Rule 56(c) motion), this Court observed:

Turning back to the evidence Kitchen Planners presented in this case, and analyzing that evidence using the proper standard for decision, we find Kitchen Planners failed to show the existence of a genuine issue of material fact. Kitchen Planners served the section 29-5-90 statement on November 17. The only event within ninety days before November 17 is the September 29 check Comose wrote to pay for cabinet parts she previously ordered. Ordering parts for the cabinets may very well qualify as “to labor on or furnish labor or materials for” under section 29-5-90, *and if that event occurred within ninety days of serving the section 29-5-90 statement, the statement would have been timely and the lien perfected.*

Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 464, 892 S.E.2d 297, 301–02 (2023) (emphasis added). Thus, despite the erroneous date of last work in the contractor’s pleading, this Court nevertheless noted that if labor or materials were supplied to the project within 90 days of filing and service of the lien, the lien would have been perfected.

Here, there is no dispute whatsoever—and there has *never* been any dispute whatsoever—that TCC was onsite performing work months after the erroneous date of last work included in the original pleadings and statement of account. The actual date of TCC’s last work must govern timeliness of the lien, and TCC asks this Court to say so.

II. Respondents’ Remaining Arguments

With respect to Respondent’s remaining arguments, TCC relies for present purposes on the arguments as presented in its petition to this Court for a writ of certiorari. Should TCC’s petition be granted, TCC looks forward to responding to these arguments in detail.

CONCLUSION

For the reasons stated here and in TCC’s petition, TCC requests this Court grant TCC’s request for a writ of certiorari.

This 12th day of November, 2025
Canaan, New York

Respectfully submitted:

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PROOF OF SERVICE

I certify that I have caused to be served Plaintiff/Petitioner TCC of Charleston, Inc.’s Reply in Support of its Petition for a Writ of Certiorari, addressed to counsel of record via email to the addresses below:

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