STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No.: 2023-000117

Kathleen M. Rankin, Appellant,

v.

Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants,

of which Hilton Head Exterminators, Inc., is the Respondent.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant Kathleen M. Rankin respectfully petitions this Honorable Court for rehearing of its Opinion No. 2025-UP-375, filed November 12, 2025, attached. Appellant submits that this Court has overlooked or misapprehended material evidence and applicable law in affirming the circuit court's grant of summary judgment.

I. THE COURT OVERLOOKED DIRECT EVIDENCE THAT CREATES A GENUINE ISSUE OF MATERIAL FACT.

This Court concluded that "Rankin failed to raise a genuine evidentiary dispute as to negligence." Op. at 2. In reaching this conclusion, the Court found that Appellant "failed to raise a genuine dispute over what Respondent did or did not do at the home," referenced "the lack of any records from Respondent's warranty period," and cited a "Department of Pesticide Regulation official's open acknowledgment that the department does not know what Respondent did or did not do with respect to this property." Op. at 2. This conclusion overlooks direct evidence in the record that creates a genuine issue of material fact.

This Court has overlooked the official Report of Structural Pest Inspection issued by DPR Investigator Kristen Lenox-Rustin, which was based on her *first-hand inspection* of the residence in January 2020. (R. pp. 246-252). Ms. Lenox-Rustin personally observed that EIFS stucco was in contact with the ground and expressly found: "*Hilton Head Exterminators failed to address EIFS ground contact.*" (R. p. 248) (emphasis added). This official DPR Report has neither been withdrawn nor amended.

This Court has also overlooked the official letter from Ryan Okey, the Pesticide Program Chief at DPR, dated January 15, 2021, which expressly affirmed Investigator Lenox-Rustin's findings and stated: "[T]he following standards for Prevention of Control of Wood Destroying Organisms [Section 27-1085(G)(2)(B)] were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act." (R. pp. 253-254). Mr. Okey's letter further stated: "*Hilton Head Exterminators failed to address EIFS ground contact.*" (R. pp. 253-254). This official letter has likewise neither been amended nor withdrawn.

These official DPR documents constitute direct evidence of what Respondent failed to do during its admitted six-year and eleven-month engagement at the property (June 1, 2005 to April

27, 2012). Respondent's own Memorandum in Support of Summary Judgment admitted this engagement. (R. p. 155). The DPR Report and Letter are not mere allegations; they are official regulatory findings documenting Respondent's specific failure to address a high-risk pathway for termite activity in violation of the South Carolina Pesticide Control Act. This evidence creates a genuine issue of material fact as to whether Respondent was negligent in carrying out its inspections.

Unlike *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 464, 892 S.E.2d 297 (2023), where the nonmoving party's evidence (a check written on a certain date) did not provide "a meaningful factual basis on which a factfinder could determine" the relevant issue and required the factfinder to "speculate," Appellant's evidence here consists of official regulatory findings based on *first-hand observation* that expressly identify Respondent's specific failure. No speculation is required—the DPR documents directly state what Respondent failed to do. A factfinder presented with this evidence could reasonably conclude that Respondent breached its duty of care by failing to address the EIFS ground contact condition during its nearly seven-year engagement at the property.

II. THE COURT MISAPPREHENDED THE EVIDENTIARY DISPUTE BY CREDITING ONE DPR OFFICIAL'S AFFIDAVIT OVER OFFICIAL DPR DOCUMENTS.

This Court's reference to a "DPR official's open acknowledgment that the department does not know what Respondent did or did not do" appears to credit the affidavit of Kevin DeLorenzo, DPR Structural Program Manager, who stated he "would have also agreed not to issue an informational letter." (R. p. 198).

However, Mr. DeLorenzo's affidavit does *not* refute the fact that Ms. Lenox-Rustin *personally observed* EIFS stucco in contact with the ground during her inspection. His affidavit does not withdraw or amend the official DPR Report or Mr. Okey's official letter. Rather, Mr.

DeLorenzo merely opined that he *would have* reached a different conclusion—a classic factual dispute.

"At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 11, 825 S.E.2d 707, 712 (Ct. App. 2019). This Court's Opinion effectively credits Mr. DeLorenzo's after-the-fact affidavit over the contemporaneous official DPR Report and Letter, thereby improperly weighing conflicting evidence at the summary judgment stage.

Where "the evidence is susceptible to more than one reasonable inference, [it] should be submitted to the jury." *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006); *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297 (2023) (citing *Vaughan* approvingly). Here, different officials of the same regulatory agency reached different conclusions from the same investigation. This is precisely the type of factual dispute that precludes summary judgment.

III. THE COURT OVERLOOKED THAT THE EVIDENCE CREATES A GENUINE ISSUE OF MATERIAL FACT AND SUPPORTS A REASONABLE INFERENCE.

The proper standard for summary judgment under Rule 56(c) is the "genuine issue of material fact" standard. As recently clarified by our Supreme Court, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463-64, 892 S.E.2d 297 (2023) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). Conversely, where the nonmoving party presents evidence supporting a *reasonable* inference in their favor, summary judgment is improper and the case must proceed to trial.

The official DPR Report documenting first-hand observations that EIFS stucco was in contact with the ground, and expressly stating "Hilton Head Exterminators failed to address EIFS

ground contact," creates a genuine issue of material fact that Respondent was negligent. This evidence supports a reasonable inference—indeed, the only reasonable inference—that Respondent failed to address this condition during its inspections. This Court's Opinion does not address why these official regulatory findings fail to create such a genuine issue.

Significantly, this case is distinguishable from *Kitchen Planners*, where the Supreme Court found the nonmoving party's evidence (a check written on September 29 to pay for parts ordered on an unknown date) "does not provide a meaningful factual basis on which a factfinder could determine" the relevant issue. 440 S.C. at 464. There, "the factfinder would be required to speculate." *Id*. Here, by contrast, no speculation is required. The official DPR documents expressly state that "Hilton Head Exterminators failed to address EIFS ground contact"—a direct finding based on first-hand observation.

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Callawassie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022) (quoting *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002)). Viewed in this light, the documented observation that EIFS stucco was in contact with the ground—a structural condition that existed during Respondent's nearly seven-year engagement—supports the reasonable inference that Respondent failed to address this condition during its inspections.

IV. THE COURT OVERLOOKED THE DISTINCTION BETWEEN THE OFFICIAL DPR DOCUMENTS AND RESPONDENT'S EXPERT AFFIDAVIT.

This Court's Opinion notes "the lack of evidence from Rankin directly contradicting the affidavit from Respondent's termite expert." Op. at 2. However, the official DPR Report and official DPR Letter *do* directly contradict Respondent's position. Both documents expressly state

that "Hilton Head Exterminators failed to address EIFS ground contact" and that this failure violated the South Carolina Pesticide Control Act.

Notably, Respondent's expert affidavit was filed only four days before the summary judgment hearing (August 11, 2022), despite the motion being filed on June 12, 2022, in violation of Rule 6(d), SCRCP, which requires affidavits to be "served with the motion." (R. pp. 153-154, 155-230). Appellant was denied meaningful opportunity to counter these late-filed affidavits.

V. THE COURT'S RULING OVERLOOKS THE NATURE OF THE EIFS GROUND CONTACT EVIDENCE.

The EIFS ground contact condition observed by Ms. Lenox-Rustin in January 2020 is a *structural condition,* not a transient state that appears and disappears. EIFS stucco does not spontaneously make contact with the ground after a pest control company's engagement ends. The reasonable inference, which must be drawn in Appellant's favor at summary judgment, is that this condition existed during Respondent's nearly seven-year engagement and that Respondent failed to address it during that time.

As the DPR Report itself explains: "Formosan subterranean termite, like other subterranean termites, must maintain contact with the ground in order to obtain moisture." (R. p. 247). The EIFS ground contact condition provided precisely this pathway. Respondent's failure to address this condition—as documented by DPR—is direct evidence of negligence.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant rehearing, vacate its Opinion affirming summary judgment, and remand this case for trial on the merits. The official DPR Report and official DPR Letter—based on first-hand observation and expressly finding that Respondent violated the South Carolina Pesticide Control Act—create a genuine

issue of material fact as to whether Respondent failed to address the EIFS ground contact condition during its engagement at the property. Unlike in *Kitchen Planners*, where the evidence required the factfinder to speculate, the official regulatory documents here directly state what Respondent failed to do. At minimum, these documents support a reasonable inference in Appellant's favor, precluding summary judgment under the proper Rule 56(c) standard.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez
Jesse Sanchez (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
(843) 814-8181
jesse@jessesanchezlaw.com

and

CAPELL THOMSON, LLC

Glynn L. Capell (SC Bar No. 16552)
Charles W. Thomson (SC Bar No. 101471)
102 Wappoo Creek Dr., Unit 8
Charleston, SC 29412
(843) 501-0423
CThomson@capellthomson.com
GCapell@capellthomson.com

Attorneys for Appellant Kathleen M. Rankin

Mount Pleasant, South Carolina
November 26, 2025

THE STATE OF SOUTH CAROLINA
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Kathleen M. Rankin, Appellant,

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Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants,

of which Hilton Head Exterminators, Inc., is the Respondent.

Appellate Case No. 2023-000117

Appeal From Beaufort County
Bentley Price, Circuit Court Judge

Unpublished Opinion No. 2025-UP-375
Submitted September 1, 2025 – Filed November 12, 2025

AFFIRMED

Glynn Lindsey Capell, of Capell Thomson, LLC, of Bluffton; Charles Whaley Thomson, of Capell Thomson, LLC, of Charleston; and Jesse Sanchez, of The Law Office of Jesse Sanchez, LLC, of Mount Pleasant, all for Appellant.

Stephen Michael Kozick, of McAngus Goudelock & Courie, LLC, of Mount Pleasant, for Respondent.

PER CURIAM: This is an appeal from the grant of summary judgment on Kathleen Rankin's claim for termite damage to her Hilton Head home. Rankin contends Respondent was negligent in not addressing the fact that part of the exterior insulation and finish system stucco on the home was in contact with the ground during Respondent's termite warranty. Rankin also makes a claim under the implied warranty of workmanship. The circuit court entered judgment for Respondent, finding no evidence of negligence, no duty of care, and that any damages were due to an intervening cause. Because we find Rankin failed to raise a genuine dispute over what Respondent did or did not do at the home, we affirm.

"Summary judgment is proper[] . . . when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999) (citing Rule 56(c), SCRCP). Given the Department of Pesticide Regulation official's open acknowledgment that the department does not know what Respondent did or did not do with respect to this property; the lack of any records from Respondent's warranty period; the lack of evidence from Rankin connecting any work by Respondent to any damages; and the lack of evidence from Rankin directly contradicting the affidavit from Respondent's termite expert, who opined there is no evidence to conclude Respondent's performance during its warranty was deficient and that the termite infestation and damage likely occurred during the six plus years of nontreatment after Respondent's warranty ended, we find Rankin failed to raise a genuine evidentiary dispute as to negligence. Thus, summary judgment was proper. *See John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 435, 904 S.E.2d 889, 895 (Ct. App. 2024) (stating, to properly refute a motion for summary judgment, the nonmoving party cannot "rest upon the mere allegations or

denials of his pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial") (quoting *Thompkins v. Festival Ctr. Grp. I*, 306 S.C. 193, 195–96, 410 S.E.2d 593, 594 (Ct. App. 1991))).

The same reasoning applies to Rankin's claim under the implied warranty of workmanship. Even if we agreed with Rankin that this warranty applied to Respondent, the absence of evidence regarding what Respondent did or did not do at the home necessitates summary judgment on the claim. *See id.* (stating, to properly refute a motion for summary judgment, the nonmoving party cannot "rest upon the mere allegations or denials of his pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial") (quoting *Thompkins*, 306 S.C. at 195–96, 410 S.E.2d at 594).

Because this case is controlled by Rankin's failure to present a genuine dispute of material fact over her claims, we need not address any remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal). The circuit court's order of summary judgment is

AFFIRMED.[1]

MCDONALD, HEWITT, and TURNER, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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Defendants,

Of whom Hilton Head Exterminators, Inc., is the Respondent.

PROOF OF SERVICE

I, the undersigned, certify that I have served Appellant Kathleen M. Rankin's Petition for Rehearing via electronic mail on Counsel for Respondent Hilton Head Exterminators, Inc., Stephen Kozick, Esquire, contemporaneously with this filing, at his AIS-designated email address (Stephen.Kozick@mgclaw.com) on November 26, 2025.

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez
Jesse Sanchez, Esquire (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
jesse@jessesanchezlaw.com
(843) 814-8181

Attorney for Appellant Kathleen M. Rankin

Mount Pleasant, South Carolina
November 26, 2025

November 26, 2025

VIA EMAIL (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Kathleen M. Rankin, Appellant v. Hilton Head Exterminators, Inc, Respondent. Appellate Case No. 2023-000117

Dear Ms. Kitchings:

Enclosed for filing on behalf of Appellant Kathleen M. Rankin, please find the following:

(1) Appellant's Petition for Rehearing with a copy of the Court's Opinion;

(2) Proof of Service.

A check for the fifty dollar ($50.00) filing fee has been deposited in today's mail. Thank you for your assistance with this matter. Should you have any questions or wish to discuss the filing, please do not hesitate to contact me directly.

Sincerely,

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)

Enclosures (as stated)

Cc: Glynn L. Capell, Esq. (Via Email Only)
Charles W. Thomson, Esq. (Via Email Only)
Stephen M. Kozick, Esq. (Via Email Only)

THE LAW OFFICE OF JESSE SANCHEZ, LLC
751 Johnnie Dodds Blvd., Suite 200, Mount Pleasant, SC 29464 P: 843.814.8181 F: 843.284.3953
jesse@jessesanchezlaw.com jessesanchezlaw.com