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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, Circuit Court Judge

Common Please Case No. 2025-CP-23-00389

Appellate Case No. 2025-001151

Southern Painting and Maintenance Specialists, LLC.,

Appellant,

v.

Greenville County,

Respondent.

APPELLANT'S FINAL REPLY BRIEF

Respectfully submitted this 5th day of December 2025.

CAMPBELL TEAGUE LLC

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This appeal presents two *main* issues: the circuit court's denial of Appellant's Motion for a Preliminary Injunction and its denial of Appellant's Motion for Declaratory Judgment. Respondent's brief fails to meaningfully address the latter, offering no substantive response to Appellant's arguments concerning declaratory relief. To assist the Court, this Reply addresses the issues in the sequence presented in Appellant's opening brief and then responds to any remaining arguments advanced by Respondent.

A. While Respondent mentions declaratory relief, it does not contest Appellant's legal arguments or the basis for relief, and thus concedes the issue on appeal

"If respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct." *Turner v. S.C. Dep't of Health & Env't Control*, 377 S.C. 540, 547, 661 S.E.2d 118, 121 (Ct. App. 2008). "An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court." *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993). "Waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Skipper v. Perrone*, 382 S.C. 53, 62, 674 S.E.2d 510, 514 (Ct. App. 2009).

Respondent has not addressed, and therefore has conceded, the following arguments presented in Appellant's opening brief:

- Respondent concedes that the standard of review for a Declaratory Judgment is *de novo* and cites no authority to the contrary. (*See* Resp.'s Op. Br.)
- Respondent offers no evidence or argument disputing that the Project in question was for the installation of floors. (*See* Resp.'s Op. Br.) And for good reason as the Project itself was titled "Animal Care Services – Shelter **Flooring Installation**."

(R. 440-475.) (emphasis added). Respondent cites no evidence, testimony, or document suggesting the Project involved anything else. (*See* Resp.'s Op. Br.)

- Respondent does not dispute that S.C. Code §§ 40-11-30 and 40-11-370 language is unambiguous and that it prohibits unlicensed contractors from performing construction work in this State. Respondent itself acknowledged this in its reply brief, stating: "Unlike the South Carolina Contractor's Licensing Statute, which provides that general contractors must be licensed before even submitting a bid…." (Resp.'s Op. Br. at pg. 12.)
- Respondent never disputed the holding in *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 57, 742 S.E.2d 359, 361 (2013), in which the Court held, "The term valid is clear and unambiguous, and leaves no room for statutory construction. Respondent admits it did not have the appropriate license, yet attempts to avoid the door-closing effect of section 40–11–370(C) by claiming it was merely under-licensed. The statute manifestly forecloses Respondent's interpretation, as the term valid does not give rise to the slightest ambiguity."
- Respondent never disputed that S.C. Code §§ 40-11-30 and 40-11-370 are ambiguous—either at the lower court or on appeal. (R. 35-61 and Resp.'s Op. Br.)

In failing to confront these points, Respondent accepts Appellant's position and leaves the Court with no opposing argument to consider.

What Respondent relies on is not compelling either. Respondent cites to *Ruocco v. S.C. State Bd. of Registration for Pro. Eng'rs & Land Surveyors*, 314 S.C. 111, 115, 441 S.E.2d 829, 831 (Ct. App. 1994) to state that the "construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent

compelling reasons." (Resp.'s Op. Br. at pg. 9). Respondent, however, fails to address the threshold issue of ambiguity as stated above. (*See* Resp.'s Op. Br.) This omission ignores the settled rule that an agency interpretation is consulted *only* when a statute is ambiguous *State v. Sweat*, 379 S.C. 367, 384, 665 S.E.2d 645, 655 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010). When a statute's language is plain, the Court's inquiry ends, and it may not look beyond the text for meaning. *Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019).

Lastly, Respondent relies on a nonbinding decision, *In Re: Protest of Monroe Construction Co., LLC*, Case No. 2011-3, 2011 WL 7068068 (S.C. Proc. Rev. Panel 2011) to suggest that the Respondent's only duty was to inquiry into whether TMS held a valid construction license. (Resp.'s Op. Br. 9-10.) That position has been rejected by the Procurement Panel *In Re: Protest of Roofco, Inc.*; *Appeal By Moore Construction of York Cnty., Inc.,* 2001 WL 34058940, where the panel stated, "[f]urther, the Panel will take this opportunity to state that the lack of a proper license to do the work solicited in a state contract ***will always*** render a bidder non-responsible." (emphasis added). Moreover, that position directly conflicts with the well-settled law that prohibits unlicensed contractors from performing construction work without first obtaining a valid license. *See C-Sculptures, LLC v. Brown*, 403 S.C. 53, 57, 742 S.E.2d 359, 361 (2013); *W & N Constr. Co. v. Williams*, 322 S.C. 448, 472 S.E.2d 622 (1996).

Therefore, because almost all of these issues stand uncontested, the Court should adopt Appellant's positions in full and grant the relief requested.

B. Contrary to Respondent's position, TMS was not registered to do business, and its contract is void

Respondent asserts that Appellant waived its right to contest that TMS was not licensed at the time of its bid as required pursuant to the bidding contract and S.C. Code Ann. § 33-15-10.

(Resp.'s Op. Br. at pg. 11-12.) However, Courts have consistently recognized that error preservation is not intended as a procedural trap. See *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (preservation of error is "not a 'gotcha' game"). In situations where, as here, the record is fully developed, the reviewing court may properly examine the whole record in assessing preservation. *Bailey v. Segars*, 346 S.C. 359, 365, 550 S.E.2d 910, 913 (Ct. App. 2001). If any uncertainty exists as to whether an issue has been adequately preserved, that uncertainty should be resolved in favor of finding preservation. *See Johnson v. Roberts*, 422 S.C. 406, 411-12, 812 S.E.2d 207, 210-11 (Ct. App. 2018). Appellant raised this issue in its pleadings, supporting briefs, and its motion to alter or amend. (R. 21-28; 33-491; 492-543; 544-558.) There is nothing more Appellant could have done to preserve it; the issue is anything but waived.

Furthermore, Respondent misstates Appellant's position by claiming the contract was awarded before any work was performed and that there was no harm and no foul. (Resp.'s Op. Br. at pg. 12.) That is not the issue before this Court. The defect arises from Respondent's ineligibility to receive the award in the first place because it was not legally authorized to do business in South Carolina at the time of bid submission. (Appellant Br. at pg. 20-21.) South Carolina law requires any business to register with the Secretary of State before conducting operations within the State. *See* S.C. Code Ann. § 33-15-101. This requirement is mandatory, not discretionary and TMS cannot enter into contracts without complying with this statute. *Id*. TMS expressly acknowledged this obligation in the "S.C. Law Clause" of the Request for Proposals it signed as part of its bid submission. (R. 341-437.). Despite that certification, TMS was not registered to do business in South Carolina until 21 days after Appellant filed this lawsuit on January 23, 2025, even though the contract was awarded on December 3, 2024. (R. 21-28 and R. 321.) By certifying compliance

it did not have, TMS misrepresented its legal status. (R. 331-491.) Because it was unregistered at the time of bid submission, TMS was not legally eligible to enter into or perform the contract.

C. The lower court erred by failing to issue an injunction

Contrary to Respondent's assertion, what Respondent, Mr. Brewer, or the LLR did or did not do is irrelevant.[1] (Resp.'s Op. Br. at 8-10.) Respondent attempts to argue that Appellant has to show that Respondent's determination was "clearly erroneous, arbitrary, capricious, or contrary to law." (Resp.'s Op. Br. at 7.) The law was violated when an unlicensed contractor performed work without a license, and that is both the beginning and the end of this case. (R. 540-542.) ; S.C. Code § 40-11-370; S.C. Code § 40-11-200(b); *W & N Constr. Co. v. Williams*, 322 S.C. 448, 472 S.E.2d 622 (1996); *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 57, 742 S.E.2d 359, 361 (2013); *Duckworth v. Cameron*, 270 S.C. 647, 649, 244 S.E.2d 217, 218 (1978); *In Re: Protest of Roofco, Inc.*; *Appeal By Moore Construction of York Cnty., Inc.,* 2001 WL 34058940.

Rebidding is necessary to protect the integrity of South Carolina's procurement process. Allowing an unlicensed contractor (TMS) to benefit from the award after violating the law tells every future bidder that compliance is optional. The purpose of licensing is to ensure public projects are performed safely, competently, and by qualified professionals. *In Re: Protest of Roofco, Inc.; Appeal By Moore Construction of York Cnty., Inc.*, 2001 WL 34058940 ("[b]ut would also undermine the purpose of the Code to ensure the fair and equitable treatment of all person s who deal with procurement system which will promote increased public confidence in the procedures followed in public procurement.") That policy does not disappear because the work is "finished." (Resp.'s Op. Br. at 13.) Our Supreme Court has voided these unlawful contracts before

[1] As it relates to Respondent's wholly irrelevant argument about the LLR emails, email sent from an LLR employee offering only the following statement "Sealants do not require a license from our board…" (R. 293-299.) The email does not address the fundamental question of whether the Project was a flooring installation. Respondent does not even attempt to challenge that the Project is for flooring in its brief.

such as in *W & N Construction Co. v. Williams*, 322 S.C. 448, 472 S.E.2d 622 (1996). Rendering this contract void and requiring a rebid reinforces that public contracts belong only to those who follow the law and meet the standards set forth in the RFP. (R. 440-475.) Put simply, Appellant asks this Court to void the contract between TMS and Respondent and to require that **only** licensed contractors bid on and certify the Project in accordance with industry standards.

D. Contrary to Respondent's position, Appellant's Motion for Declaratory Judgment was a final ruling

S.C. Code Ann. § 15-53-110 provides that, "[a]ll orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees." It also states that the purpose of the Declaratory Judgment Act is to provide relief from uncertainty and insecurity regarding legal rights, status, and relations, and that the Act must be liberally construed and applied. S.C. Code 15-53-130. S.C. Code 15-53-20 provides that,

> "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed...**The declaration may be either** affirmative or **negative** in form and effect. **Such declarations shall have the force and effect of a final judgment or decree**."
>
> (emphasis added).

Appellant filed its Motion for Declaratory Judgment on January 24, 2025, and Respondent filed a memorandum in opposition on April 10, 2025. (R. 215- 217; R. 322-329.) Nowhere in those filings—or in the trial court's order—did Respondent argue, or the court find, that Appellant's Motion for Declaratory Relief was not properly before the court. (*Id*. and R. 7-17.)

The lower court stated the following,

> Southern Painting seeks a preliminary injunction and declaratory judgment against the County on the grounds that the County's award of the Project to TMS was improper for two reasons: first, that TMS does not have a South Carolina contractor's license, and second, that TMS is not authorized to do business in South Carolina. Neither of these arguments, however, invalidates the award of the Project to TMS.

(*Id*.)

Therefore, because the lower court denied Appellant's Motion for Declaratory Relief, S.C. Code Ann. § 15-53-20 provides that such an order constitutes a final judgment, giving this Court jurisdiction to hear the appeal.

Respondent cites a single case S*kywaves I Corporation v. Branch Banking and Trust Company*, 423 S.C. 432, 459, 814 S.E.2d 643, 658 (2018) in its briefing on this issue. S*kywaves I Corporation* deal strictly with a Motion for Summary Judgment and does not consider Motions for Declaratory Relief. Respondent cites **no** cases supporting the proposition that a Declaratory Judgment was procedurally in the same posture as a Motion for Summary Judgment. (Resp.'s Op. Br. at 14.) Therefore, this Court has jurisdiction to hear the appeal.

CONCLUSION

The two main issues before the Court are the denial of Appellant's request for an injunction and the denial of its Motion for Declaratory Judgment. Respondent largely avoided the declaratory judgment issue and did not dispute that a contractor must be properly licensed to perform construction work in South Carolina. We are here because defense counsel has done a commendable job of misdirection—precisely what good defense lawyers do when the law is against them. But skillful advocacy cannot rewrite the statute or erase decades of precedent. No South Carolina case allows an unlicensed contractor to perform construction work under these circumstances, and this Court should not be the first to say otherwise. To let the order stand would erode a settled rule that protects the public and the integrity of licensed practice. The law is clear. It should remain so.

Respectfully submitted this 5th day of December 2025.

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