

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Jan 09 2026

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Opinion No. 2025-UP-375 (S.C. Ct. App. filed November 12, 2025)

Kathleen M. Rankin,

Petitioner,

v.

Hilton Head Exterminators, Inc.,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Jesse Sanchez
The Law Office of Jesse Sanchez, LLC
751 Johnnie Dodds Blvd., Suite 200
Mount Pleasant, South Carolina 29464
(843) 814-8181

Charles W. Thomson
Glynn L. Capell
Capell Thomson, LLC
102 Wappoo Creek Dr., Unit 8
Charleston, South Carolina 29412
(843) 501-0423

Attorneys for Petitioner
Kathleen M. Rankin

Other Counsel of Record:

Stephen Michael Kozick
McAngus Goudelock & Courie, LLC
735 Johnnie Dodds Blvd., Suite 200
Mount Pleasant, SC 29464
(843) 576-2910

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

CERTIFICATE OF COUNSEL1

QUESTIONS PRESENTED.....1

STATEMENT OF THE CASE.....2

ARGUMENT6

 I. THE OFFICIAL DPR DOCUMENTS CREATE A GENUINE ISSUE
 OF MATERIAL FACT AS TO PETITIONER’S NEGLIGENCE AND IMPLIED
 WARRANTY CLAIMS7

 II. THE COURT OF APPEALS AND LOWER COURT IMPROPERLY WEIGHED
 EVIDENCE AT THE SUMMARY JUDGMENT STAGE10

 III. THE COURT OF APPEALS’ DECISION CONFLICTS WITH
 KITCHEN PLANNERS12

 IV. THE LOWER COURT AND COURT OF APPEALS ERRED IN CONSIDERING
 LATE-FILED AFFIDAVITS, WHICH WERE DELIBERATELY WITHHELD IN
 VIOLATION OF RULE 6(d), SCRPC, DEPRIVING PETITIONER OF A
 MEANINGFUL OPPORTUNITY TO RESPOND.....14

CONCLUSION.....15

TABLE OF AUTHORITIES

Cases

Allwin v. Russ Cooper Assocs., Inc.,
426 S.C. 1, 825 S.E.2d 707 (Ct. App. 2019).....10

Callawassie Island Members Club, Inc. v. Martin,
437 S.C. 148, 877 S.E.2d 341 (2022)10

Fleming v. Rose,
350 S.C. 488, 567 S.E.2d 857 (2002)10

Kitchen Planners, LLC v. Friedman,
440 S.C. 456, 892 S.E.2d 297 (2023)1, 12, 13, 14, 15

Town of Hollywood v. Floyd,
403 S.C. 466, 744 S.E.2d 161 (2013)13

USAA Property and Cas. Ins. Co. v. Clegg,
377 S.C. 643, 661 S.E.2d 791 (2008)11

Vaughan v. Town of Lyman,
370 S.C. 436, 635 S.E.2d 631 (2006)12

Rules

Rule 6(d), SCRCP1, 5, 14

Rule 56(c), SCRCP12

Rule 242(b), SCACR6

CERTIFICATE OF COUNSEL

Counsel for Petitioner Kathleen M. Rankin certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on December 10, 2025.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in finding no genuine issue of material fact as to Petitioner’s negligence and implied warranty of workmanship claims where official DPR documents expressly found that “Hilton Head Exterminators [Respondent] failed to address EIFS ground contact” in violation of the South Carolina Pesticide Control Act—findings based on first-hand observation that have never been withdrawn or amended and that expressly identify this condition as a high-risk pathway for termite infestation?

II. Did the Court of Appeals improperly weigh evidence at the summary judgment stage by crediting an affidavit from an official who did not conduct the inspection or issue the official DPR findings, and who did not dispute those findings but merely stated he “would have also agreed” not to issue them, over the official DPR documents from those who did?

III. Did the Court of Appeals err under *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023), in finding Petitioner’s evidence required speculation where official DPR documents—a report based on first-hand observation and a letter from the Pesticide Program Chief—expressly found “Hilton Head Exterminators [Respondent] failed to address EIFS ground contact” and that “[i]t is a violation of the South Carolina Pesticide Control Act to fail to properly perform the Standards for Prevention or Control of Wood Destroying Organisms”?

IV. Did the lower court err in considering affidavits that were obtained but withheld until four days before the summary judgment hearing, in violation of Rule 6(d), SCRPC, which requires affidavits to be served with the motion?

STATEMENT OF THE CASE

This appeal stems from a negligence action brought by Petitioner Kathleen M. Rankin against Respondent Hilton Head Exterminators, Inc. (“HHE”) for its failure to identify and/or address conditions present at her home, which posed a high-risk pathway for termite activity, and later caused and/or contributed to termite infestation of the property. (App. pp. 85, 91-103). In addition to her negligence claim, Ms. Rankin asserts that HHE breached its implied warranty of workmanship as to the inspections it carried out on the property. (App. p. 103). She does not claim that HHE was negligent in its application of chemical pesticide treatment.

A central issue in this case is whether the lower courts erred in granting and affirming summary judgment where official Department of Pesticide Regulation documents—from those who actually conducted the investigation—found that HHE failed to address a high-risk pathway for termite activity during its inspections of the property in violation of the South Carolina Pesticide Control Act.

Motion for Summary Judgment

At the hearing on HHE’s Motion for Summary Judgment, Ms. Rankin presented a Report of Structural Pest Inspection authored on June 24, 2020 by Ms. Kristen Lenox-Rustin, a field investigator for Clemson University’s Department of Pesticide Regulation (“DPR”), based on Ms. Lenox-Rustin’s first-hand inspection of the residence in January of 2020. (App. pp. 246-252). Ms. Lenox-Rustin found that HHE had failed to address conditions where Exterior Insulation Finishing System (“EIFS”) stucco was in contact with the ground and that allowing said condition was a violation of the South Carolina Pesticide Control Act. (App. p. 248).

In addition to the report, Ms. Rankin presented an informational letter from Mr. Ryan Okey, the Pesticide Program Chief at DPR, to William Robertson of HHE, dated January 15, 2021.

(App. pp. 253-254). Mr. Okey's letter expressly referenced Investigator Lenox-Rustin's report 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." (App. p. 253). The letter further stated, "Hilton Head Exterminators failed to address EIFS ground contact. It is a violation of the South Carolina Pesticide Control Act to fail to properly perform the Standards for Prevention or Control of Wood Destroying Organisms." (App. pp. 253-254).

Despite Ms. Lenox-Rustin's first-hand observation that EIFS stucco was in contact with the ground, and her finding that HHE failed to address this issue in violation of the South Carolina Pesticide Act, and the subsequent letter issued by Mr. Okey affirming the same, Respondent HHE argued, "There is no genuine issue of material fact as to Plaintiff's negligence/gross negligence because no evidence exists regarding HHE's termite pretreatment and subsequent warranty inspections." (App. p. 161).

In support of its Motion for Summary Judgment, HHE submitted an affidavit from Mr. Kevin DeLorenzo, Structural Program Manager for DPR, which acknowledged Ms. Lenox-Rustin's findings and Mr. Okey's letter, but then stated he could have also arrived at a different conclusion, stating, "As DPR Structural Program Manager, I would have *also* agreed not to issue an informational letter in this case due to the lack of available records." (App. pp. 197-198) (emphasis added). Mr. DeLorenzo's affidavit does not refute the fact that Ms. Lenox-Rustin observed EIFS stucco in contact with the ground—itsself evidence that HHE had not properly addressed this high-risk pathway for termite activity during its inspections. Additionally, his affidavit does not withdraw nor does it amend Ms. Lenox-Rustin's report or Mr. Okey's letter. Rather, Mr. DeLorenzo appears to draw a different conclusion than Ms. Lenox-Rustin and Mr.

Okey based on his understanding of the facts. Unlike Ms. Lenox-Rustin, Mr. DeLorenzo did not perform the field inspection of the property nor personally observe that EIFS stucco was in contact with the ground.

HHE also submitted an affidavit from Dr. Nolan, who opined that 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. (*Affidavit*, ¶¶ 11 and 13 at App. pp. 202-204; *Opinion* at App. p. 343). However, the official DPR documents directly contradict Dr. Nolan's first opinion. The DPR Report and Letter expressly found that HHE's performance was deficient, stating that "Hilton Head Exterminators failed to address EIFS ground contact" in violation of the South Carolina Pesticide Control Act. (App. pp. 248, 253-254). As to Dr. Nolan's second opinion regarding when the infestation occurred, the official DPR Report itself establishes the causal mechanism: "Formosan subterranean termite, like other subterranean termites, must maintain contact with the ground in order to obtain moisture." (App. p. 247). The EIFS ground contact condition provided precisely that necessary ground contact. HHE's failure to address this condition during its engagement left in place the very pathway the DPR Report identifies as necessary for termite infestation. Whether HHE's failure caused or contributed to the infestation is a question for the factfinder, and the DPR Report provides the evidentiary basis for that determination.

After submission of briefs by both parties and a hearing on HHE's Motion for Summary Judgment, the lower court eventually issued an Order granting HHE's Motion, finding that (1) No evidence exists regarding the conditions at the residence, whether conditions were waived, or any alleged deficiencies in HHE's pretreatment and inspection at the residence, (2) Plaintiff's claim

fails as HHE did not owe Plaintiff a duty of care, and (3) Plaintiff's damages were caused by the intervening negligence of prior owners. (Order, App. pp. 20-29).

Procedural History

HHE provided pre-treatment for the 2003-2005 original construction of the home, followed by regular inspections and treatments up until at least April 2012. Ms. Rankin closed on the purchase of the residence on December 18, 2018. On March 26, 2020, Ms. Rankin initiated the present lawsuit.

HHE filed its Motion for Summary Judgment on June 12, 2022, simply stating, "There is no genuine issue as to any material fact for the negligence and breach of implied warranty of workmanship causes of action asserted by Plaintiff against Defendant." (App. pp. 153-154). HHE did not attach any affidavits in support of its motion at the time of its filing as required by Rule 6(d), SCRCF, which specifically states, "When a Motion is to be supported by Affidavit, the Affidavit shall be served with the motion."

On August 11, 2022, four days (two business days) before the scheduled hearing, HHE filed its Memorandum in Support of its Motion for Summary Judgment, attaching the subject affidavits. (App. pp. 155-230). Dr. Nolan's affidavit had been obtained on August 3, 2022, but then withheld until the 11th. (App. p. 204). Mr. DeLorenzo's affidavit was obtained on August 9, 2022, but then also withheld. (App. p. 200). On August 12, 2022, Ms. Rankin filed her Memorandum in Opposition, attaching the official DPR Report and Letter. (App. pp. 231-254).

On August 15, 2022, the circuit court held a hearing on HHE's Motion for Summary Judgment. (H'rg Tr., App. pp. 270-279). On December 28, 2022, the Court entered an Amended Order Granting Hilton Head Exterminators, Inc.'s Motion for Summary Judgment. (App. pp. 20-29). On January 25, 2023, Ms. Rankin timely filed her Notice of Appeal.

On November 12, 2025, the Court of Appeals affirmed in an unpublished opinion. *Rankin v. Hilton Head Exterminators, Inc.*, Op. No. 2025-UP-375 (S.C. Ct. App. filed Nov. 12, 2025) (App. p. 342). The Court of Appeals found that Petitioner “failed to raise a genuine dispute over what Respondent did or did not do at the home,” citing “the Department of Pesticide Regulation official’s [Mr. De Lorenzo] open acknowledgment that the department does not know what Respondent did or did not do with respect to this property” and “the lack of evidence from Rankin directly contradicting the affidavit from Respondent’s termite expert.” (App. pp. 343-344).

On November 26, 2025, Petitioner timely filed a Petition for Rehearing pursuant to Rule 221, SCACR, arguing that the Court of Appeals overlooked direct evidence in the record: the official DPR Report and official DPR Letter, both of which expressly found that HHE “failed to address EIFS ground contact” in violation of the South Carolina Pesticide Control Act. (App. pp. 345-354). On December 10, 2025, the Court of Appeals denied the Petition for Rehearing. (App. p. 355). This Petition for Writ of Certiorari follows.

ARGUMENT

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. Among the considerations warranting review are “[w]here there are novel questions of law” and “[w]here the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.” Rule 242(b)(1), (3). Both considerations are present here.

I. THE OFFICIAL DPR DOCUMENTS CREATE A GENUINE ISSUE OF MATERIAL FACT AS TO PETITIONER'S NEGLIGENCE AND IMPLIED WARRANTY CLAIMS.

The Court of Appeals held that Petitioner “failed to raise a genuine dispute over what Respondent did or did not do at the home.” (App. pp. 343). This holding is directly contradicted by the record.

Petitioner presented an official Report of Structural Pest Inspection from DPR Investigator Kristen Lenox-Rustin, documenting Ms. Lenox-Rustin’s first-hand observations that EIFS stucco was in contact with the ground, thereby presenting a high-risk pathway for termite activity. (App. pp. 246-252). This official DPR Report expressly states: “Hilton Head Exterminators failed to address EIFS ground contact.” (App. p. 248). This Report has neither been withdrawn nor amended.

Petitioner also presented an official letter from Ryan Okey, the Pesticide Program Chief at DPR, 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.” (App. p. 253). The letter further stated: “Hilton Head Exterminators failed to address EIFS ground contact. It is a violation of the South Carolina Pesticide Control Act to fail to properly perform the Standards for Prevention or Control of Wood Destroying Organisms.” (App. 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). HHE’s own Memorandum in Support of Summary Judgment admitted this engagement.

(App. 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.

Although HHE’s engagement ended in April 2012 and Ms. Lenox-Rustin’s inspection occurred in January 2020, this temporal gap does not defeat the evidentiary value of the DPR findings. The EIFS ground contact condition observed by Ms. Lenox-Rustin 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. It would be speculative to assume that the EIFS ground contact issue somehow spontaneously appeared after HHE’s involvement with the property. The reasonable inference, which must be drawn in Petitioner’s favor at summary judgment, is that this structural condition existed during Respondent’s nearly seven-year engagement and that Respondent failed to address it during that time—precisely what the official DPR documents found.

The Court of Appeals also cited “the lack of evidence from Rankin connecting any work by Respondent to any damages.” (App. p. 343). But the official DPR documents establish precisely this causal connection.

The DPR Report documents that subterranean termites “must maintain contact with the ground in order to obtain moisture.” (App. p. 247). The Report further documents that EIFS stucco was in contact with the ground at the residence, presenting a high-risk pathway for termite activity. (App. pp. 246-248). The official DPR Letter confirms that HHE “failed to address EIFS ground contact” in violation of the South Carolina Pesticide Control Act. (App. pp. 253-254).

These official findings establish the causal mechanism: (1) termites require ground contact for moisture; (2) EIFS ground contact provided that necessary pathway; (3) HHE failed to address

this condition during its nearly seven-year engagement; and (4) termite infestation and damage resulted. The DPR documents thus provide the evidentiary basis for a factfinder to conclude that HHE's failure to address the EIFS ground contact condition caused or contributed to the termite infestation and resulting damages. This is a determination for the factfinder, not for resolution at summary judgment.

The Court of Appeals also cited "the lack of evidence from Rankin directly contradicting the affidavit from Respondent's termite expert." (App. p. 343). But the official DPR documents do directly contradict Dr. Nolan's opinion that there is "no evidence" of deficient performance. The DPR Report and Letter expressly found that "Hilton Head Exterminators failed to address EIFS ground contact" and that this was "a violation of the South Carolina Pesticide Control Act." (App. pp. 248, 253-254). This is evidence of deficient performance. As to Dr. Nolan's opinion that the infestation "likely occurred" during the years of nontreatment after HHE's warranty ended, the DPR Report itself establishes the causal mechanism: subterranean termites "must maintain contact with the ground in order to obtain moisture." (App. p. 247). The EIFS ground contact condition provided precisely that necessary ground contact. HHE's documented failure to address this condition left in place the very pathway the DPR Report identifies as necessary for termite infestation. The DPR Report thus provides the evidentiary basis for a factfinder to conclude that HHE's failure caused or contributed to the infestation—a determination that cannot be made at summary judgment.

Because the Court of Appeals applied the same reasoning to Petitioner's implied warranty of workmanship claim, citing "the absence of evidence regarding what Respondent did or did not do at the home" (App. p. 344), the official DPR documents likewise preclude summary judgment on that claim.

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791, 796 (2008). “Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Id.*

“[T]he 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. The official DPR documents expressly draw this conclusion. The lower courts erred in disregarding this evidence.

The Court of Appeals’ Opinion neither evaluates nor explains why official regulatory documents, which are based on first-hand observation by a DPR investigator and affirmed by the Pesticide Program Chief, fail to create a genuine issue of material fact. Instead, the Opinion credits Mr. DeLorenzo’s affidavit and notes “the lack of evidence from Rankin directly contradicting the affidavit from Respondent’s termite expert.” (App. p. 343). But the DPR Report and Letter *are* precisely such evidence. The Court of Appeals’ failure to address why these official documents are insufficient warrants this Court’s review.

II. THE COURT OF APPEALS AND LOWER COURT IMPROPERLY WEIGHED EVIDENCE AT THE SUMMARY JUDGMENT STAGE.

“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). “Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791, 796 (2008).

The Court of Appeals’ Opinion effectively credited Mr. DeLorenzo’s affidavit and Dr. Nolan’s affidavit over the official DPR Report and official DPR Letter. The Court referenced “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” and “the lack of evidence from Rankin directly contradicting the affidavit from Respondent’s termite expert.” (App. p. 343).

However, Mr. DeLorenzo did not conduct the inspection. He did not issue the Report. He did not write the Letter. He had no first-hand knowledge. And critically, he did not dispute the findings. Mr. De Lorenzo merely stated he “would have *also agreed* not to issue an informational letter in this case due to the lack of available records.” (App. p. 198) (emphasis added). Mr. DeLorenzo’s affidavit does not refute Ms. Lenox-Rustin’s first-hand observation that EIFS stucco was in contact with the ground. His affidavit does not withdraw or amend the official DPR Report or Mr. Okey’s official letter.

Indeed, at the summary judgment hearing, defense counsel acknowledged that Mr. DeLorenzo “signs off on [Investigator Lenox-Rustin’s] report” and “thought it was fine to issue the informational letter.” (App. p. 275: 4-6). Mr. DeLorenzo’s subsequent affidavit—prepared after litigation commenced, stating he “would have also agreed not to issue an informational letter” directly contradicts his earlier approval of those very documents. This is precisely the type of credibility determination reserved for the factfinder, not for resolution at summary judgment.

Similarly, the official DPR documents directly contradict Dr. Nolan’s opinion that there is “no evidence” of deficient performance during HHE’s warranty. The DPR Report and Letter expressly found that HHE failed to address EIFS ground contact in violation of the South Carolina Pesticide Control Act. This is evidence of deficient performance—evidence that was before the Court of Appeals.

This is precisely the type of factual dispute that precludes summary judgment. Different officials of the same regulatory agency reached different conclusions. The official DPR Report and official DPR Letter—which remain in effect—find that HHE violated the South Carolina Pesticide Control Act by failing to address EIFS ground contact. Mr. DeLorenzo’s affidavit, prepared after litigation commenced, and withheld until just two business days the hearing, states he would have reached a different conclusion. Dr. Nolan’s affidavit opines there is “no evidence” of deficient performance, but the DPR documents are exactly that evidence. The Court of Appeals improperly resolved these factual disputes in HHE’s favor 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). By crediting the late-filed affidavits over the official DPR documents, the Court of Appeals failed to view the evidence in the light most favorable to Petitioner and instead weighed conflicting evidence—a function reserved for the factfinder at trial.

III. THE COURT OF APPEALS’ DECISION CONFLICTS WITH *KITCHEN PLANNERS*.

The Court of Appeals’ decision conflicts with this Court’s recent clarification of the summary judgment standard in *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023). In *Kitchen Planners*, this Court clarified that the proper standard under Rule 56(c), SCRCP is the “genuine issue of material fact” standard, explaining that “it is not sufficient for a party to

create an inference that is not reasonable or an issue of fact that is not genuine.” *Id.* at 463-64 (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.

In *Kitchen Planners*, this Court found summary judgment was proper because the nonmoving party’s evidence—a check written on a certain date to pay for parts ordered on an unknown date—did not “provide a meaningful factual basis on which a factfinder could determine” the relevant issue, and “the factfinder would be required to speculate.” 440 S.C. at 464.

Here, unlike in *Kitchen Planners*, Petitioner’s evidence consists of official regulatory documents that expressly identify Respondent’s specific failure. No speculation is required. The official DPR Report documents that DPR Investigator Lenox-Rustin personally observed EIFS stucco in contact with the ground. (App. p. 248). The Report explains that “Formosan subterranean termite, like other subterranean termites, must maintain contact with the ground in order to obtain moisture.” (App. p. 247). The Report expressly states: “Hilton Head Exterminators failed to address EIFS ground contact.” (App. p. 248). The official DPR Letter from Pesticide Program Chief Okey affirms this finding and states that this was “a violation of the South Carolina Pesticide Control Act to fail to properly perform the Standards for Prevention or Control of Wood Destroying Organisms.” (App. pp. 253-254).

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 official DPR documents provide a meaningful factual basis for the factfinder’s determination. A factfinder presented with this evidence could reasonably conclude that HHE

breached its duty of care by failing to address the EIFS ground contact condition during its nearly seven-year engagement at the property. Unlike in *Kitchen Planners*, no speculation is required. Indeed, the official DPR documents expressly state what Respondent failed to do.

IV. THE LOWER COURT AND COURT OF APPEALS ERRED IN CONSIDERING LATE-FILED AFFIDAVITS, WHICH WERE DELIBERATELY WITHHELD IN VIOLATION OF RULE 6(d), SCRCF, DEPRIVING PETITIONER OF A MEANINGFUL OPPORTUNITY TO RESPOND.

Rule 6(d), SCRCF specifically states: “When a Motion is to be supported by Affidavit, the Affidavit shall be served with the motion.” HHE filed its Motion for Summary Judgment on June 12, 2022, without attaching any affidavits. (App. pp. 153-154).

HHE waited until August 11, 2022—four days (two business days) before the scheduled hearing—to file its Memorandum in Support, attaching the affidavits upon which the lower court relied in granting summary judgment. (App. pp. 155-230). Notably, these affidavits were obtained but then deliberately withheld. Dr. Nolan’s affidavit was obtained on August 3, 2022, but withheld until August 11. (App. p. 204). Mr. DeLorenzo’s affidavit was obtained on August 9, 2022, but also withheld. (App. p. 200).

This strategic withholding denied Petitioner a meaningful opportunity to respond or, at minimum, to depose these experts about their opinions. The lower court should not have considered affidavits filed in violation of Rule 6(d), SCRCF, and the Court of Appeals erred in crediting them—including Mr. DeLorenzo’s affidavit and Dr. Nolan’s affidavit—to find that Petitioner failed to raise a genuine issue of material fact.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant her Petition for Writ of Certiorari, reverse the decision of the Court of Appeals, and remand this case for trial on the merits.

Official DPR documents—a report based on first-hand observation and a letter from the Pesticide Program Chief, neither of which has been withdrawn or amended—expressly found that “Hilton Head Exterminators failed to address EIFS ground contact” and that this was “a violation of the South Carolina Pesticide Control Act.” The DPR Report itself establishes the causal mechanism: termites need ground contact for moisture, and HHE’s failure to address the EIFS ground contact left in place the very pathway the Report identifies as necessary for infestation. This evidence creates a genuine issue of material fact as to both Petitioner’s negligence and implied warranty of workmanship claims. The Court of Appeals erred in disregarding these official findings and instead crediting affidavits from an official who did not conduct the inspection and did not dispute the findings, and from an expert whose opinion that there is “no evidence” of deficient performance is directly contradicted by the DPR documents.

Unlike in *Kitchen Planners*, where the evidence required the factfinder to speculate, Petitioner’s evidence here consists of official regulatory documents that expressly state what Respondent failed to do. No speculation is required. The Court of Appeals’ decision conflicts with this Court’s holding in *Kitchen Planners* and should be reversed.

Additionally, the lower court erred in considering affidavits that were obtained but deliberately withheld until four days before the summary judgment hearing, in violation of Rule 6(d), SCRCF, depriving Petitioner of a meaningful opportunity to respond.

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

Attorneys for Petitioner Kathleen M. Rankin

Mount Pleasant, South Carolina
January 9, 2026