

RECEIVED

Feb 06 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2026-000055

Kathleen M. Rankin,

Petitioner,

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.; Terminix Service, Inc.,

Defendants,

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

Stephen M. Kozick
(SC Bar No. 78343)
McAngus Goudelock & Courie, LLC
735 Johnnie Dodds Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 576-2910
stephen.kozick@mgclaw.com

Attorneys for Respondent Hilton Head
Exterminators, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES3

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW4

COUNTER-STATEMENT OF THE CASE5

ARGUMENT9

 I. The Court of Appeals correctly found no genuine issue of material fact exists as to
 Petitioner’s negligence and implied warranty of workmanship claims.

 II. The Court of Appeals and lower court did not weigh conflicting evidence.

 III. The Court of Appeals correctly applied *Kitchen Planners, LLC v. Friedman*, 440
 S.C. 436, 892 S.E.2d 297 (2023).

 IV. Petitioner waived any arguments concerning the timing of the service of affidavits
 with Respondent’s Motion for Summary Judgment.

CONCLUSION.....19

TABLE OF AUTHORITIES

Cases

Beale v. Hardy, 769 F.2d 213 (4th Cir. 1985)16

David v. McLeod Reg’l Med Ctr., 367 S.C. 242, 626 S.E.2d 1 (2006).....16

Gibson v. Epting, 426 S.C. 346, 827 S.E.2d 178 (Ct. App. 2019).....14, 16

Guinan v. Tenet Health Sys. of Hilton Head, Inc., 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009)..16

Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).....18

Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 677 S.E.2d 612 (Ct. App. 2009).....14

Kitchen Planners, LLC v. Friedman, 440 S.C 436, 892 S.E.2d 297 (2023).....2, 5, 17, 18

Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984)12

Marsh Waterproofing v. Steeple S. Pleasantburg, 2019 S.C. C.P. LEXIS 5687, at *3 (Greenville County Circuit Ct. Aug. 8, 2019).....12

Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 762 S.E.2d 693 (2014)18

Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998)18

Regulations

SCDPR § 27-1085(G)(2)(b).....6

SCDPR § 27-1085M(1)(g).....11

Rules

Rule 6(d), SCRCF18

Rule 208(b)(1)(C), SCACR8

Rule 220(c), SCACR19

Rule 242(b), SCACR4

Rule 242(b)(1), (b)(3), SCACR4

Rule 242(f), SCACR.....4

INTRODUCTION

Pursuant to South Carolina Appellate Court Rule 242(f), Respondent, Hilton Head Exterminators, Inc. (“Respondent” or “HHE”), submits its Return to Petition for Writ of Certiorari filed by Petitioner, Kathleen Rankin (“Petitioner”). Respondent respectfully requests that the Court deny the petition, as the Court of Appeals’ decision affirming the lower court’s ruling is well-supported by established legal precedent and the overwhelming lack of evidence presented by Petitioner in the record. “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.” South Carolina Appellate Court Rule 242(b). There are no such reasons raised in the petition. Furthermore, there are no novel questions of law or conflicting decisions which merit the Court’s consideration pursuant to Rule 242(b)(1) and (3).

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

- I. Did the Court of Appeals correctly find no genuine issue of material fact exists as to Petitioner’s negligence and implied warranty of workmanship claims, when Petitioner relied solely on speculative statements in a Department of Pesticide Regulation (“DPR”) report and informational letter, which were not supported by any documents, affidavits, deposition testimony, or expert testimony, and were based on an inspection conducted approximately seven years and nine months after Respondent last provided termite services at the subject residence?

- II. Did the Court of Appeals and lower court correctly determine that no genuine issue of material fact existed, when Petitioner offered only unsupported, speculative statements contained in a DPR report and informational letter, and Respondent

presented uncontradicted evidence in the form of testimony from two experts addressing the DPR documents?

- III. Pursuant to *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023), did the Court of Appeals correctly find that Petitioner’s reliance on a DPR report and informational letter required speculation, when DPR’s inspection occurred approximately 16 years and 10 months after Respondent’s termite pretreatment and seven years and nine months after Respondent last provided termite inspection and treatment services at the residence?
- IV. Did Petitioner waive any argument that Respondent’s affidavits were untimely by failing to raise this issue in Petitioner’s Memorandum in Opposition, or during oral argument before the lower court?

COUNTER-STATEMENT OF THE CASE

This appeal arises from the circuit court’s order granting summary judgment in favor of Respondent as to Petitioner’s negligence/gross negligence and breach of implied warranty of workmanship claims. Petitioner filed her original Complaint on March 26, 2020, asserting construction defect claims against various contractors for moisture intrusion and other damage discovered following her “as is” purchase of a residence (the “Residence” or “11 Harrogate Drive”) in Hilton Head, South Carolina. She filed an Amended Complaint on October 19, 2020, naming additional defendants, including Respondent. In her Amended Complaint, Petitioner asserted claims for negligence/gross negligence and breach of implied warranty of workmanship against Respondent (App. pp. 63-64), claiming Respondent failed to properly treat the Residence for termites with the appropriate amount of pesticide, note certain conditions at the Residence, and comply with South Carolina pest control regulations (App. p. 55). Petitioner filed a Second

Amended Complaint on May 20, 2021, adding yet another defendant but no additional claims against Respondent. Respondent timely filed Answers and affirmative defenses to both Amended Complaints. (App. pp. 73-82; pp. 112-121).

Respondent's Motion for Summary Judgment

Following a lengthy period of discovery, Respondent filed a Notice of Motion and Motion for Summary Judgment on June 21, 2022. Respondent then filed a Memorandum in Support of Its Motion for Summary Judgment with exhibits on August 11, 2022. The exhibits included documents obtained in discovery, excerpts from Petitioner's deposition, and affidavits from Brian DeChirico, Manager, HHE; Kevin DeLorenzo, Structural Program Manager, Department of Pesticide Regulation ("DPR"), Clemson University; and entomology expert Dr. Maxcy P. Nolan, III, Owner and President, NIPCAM. (App. pp. 155-230).

Petitioner filed a Memorandum in Opposition with exhibits on August 12, 2022. In support of her Memorandum, she relied on a June 24, 2020 Report of Structural Pest Inspection prepared by DPR Pesticide Investigator Kristin Lenox-Rustin, and a DPR informational letter issued to HHE on January 15, 2021. (App. pp. 246-254). Petitioner did not submit any deposition testimony or affidavits in support of her Memorandum. Investigator Lenox-Rustin's June 24, 2020 report is based on an inspection she performed at the Residence on January 22, 2020. (App. pp. 246-252). In the report, Investigator Lenox-Rustin states that "that DPR Regulation § 27-1085(G)(2)(b)—addressing EIFS[stucco]-to-ground contact—was neither met nor wa[i]ved during [HHE's] March 23, 2003 pretreatment." (App. p. 248). The pretreatment referenced in her report occurred approximately 16 years and 10 months prior to Investigator Lenox-Rustin's inspection, and the inspection occurred approximately seven years and nine months after HHE cancelled its termite warranty, when a prior owner decided not to renew it. (App. p. 166). DPR did not require HHE

to correct this issue and simply issued an informational letter dated January 15, 2021. (App. pp. 253- 254). In the same report, DPR cited Terminix, the pest control company providing services at the time of the inspection, for not addressing EIFS-to-ground contact, along with a termiticide use violation. DPR issued a warning letter to Terminix. (App. pp. 248-249; pp. 194-195).

The Honorable Bentley D. Price, Circuit Court Judge, conducted a hearing for Respondent's Motion for Summary Judgment on August 15, 2022. Judge Price subsequently issued an Order granting Respondent's Motion for Summary Judgment on August 31, 2022. (App. pp. 9-19). In his Order, Judge Price first concluded that no evidence exists regarding the conditions at the Residence during HHE's warranty, whether conditions were waived by previous owners, or any alleged deficiencies in HHE's pretreatment and inspections. (App. pp. 12-14). It was undisputed that the March 23, 2003 termite pretreatment discussed in Investigator Lenox-Rustin's June 24th report was documented by one invoice obtained from a building file, showing that HHE performed the pretreatment of the soil *before any structure was built*. No EIFS-to-ground contact could have existed at that time. (App. p. 15). Furthermore, Kevin DeLorenzo, DPR Structural Program Manager and Investigator Lenox-Rustin's supervisor, provided undisputed testimony that an investigator can only observe what is present on the day of the inspection. In this case, the inspection took place approximately seven years and nine months after HHE ceased providing services at the Residence. (App. p. 13). DPR has no records that it ever inspected the Residence previously. (App. p. 15). Mr. DeLorenzo testified that HHE properly destroyed records on the Residence in 2017, in accordance with DPR regulations for records maintenance and destruction; therefore, it is impossible for DPR to determine whether the EIFS-to-ground condition existed almost eight years earlier, or whether one of the previous homeowners signed a waiver, waiving treatment of the EIFS-to-ground condition. (App. p. 13).

The court acknowledged that “DPR issues informational letters to pest control companies with previous involvement at a property for the sole purpose of increasing termite technician awareness of such issues when performing future inspections and treatments at other properties. As such, the informational letter issued to HHE is not tracked against HHE’s enforcement history.” (App. pp. 13-14). Mr. DeLorenzo stated that he would also have agreed not to issue any letter at all to HHE due to the lack of records. (App. p. 14). The court further held that the lack of HHE records, as well as the passage of a significant amount of time since HHE’s involvement at the Residence, precludes a determination that HHE’s termite chemical pretreatments were in any way deficient.¹ (App. p. 13).

Based on the lack of HHE records described above, along with the affidavit testimony of Mr. DeLorenzo and independent entomology expert Dr. Maxcy Nolan, III, the second conclusion reached by Judge Price is that it is impossible to determine whether HHE owed a duty or breached any standard of care to Petitioner or any prior owners. (App. pp. 14-16). Dr. Nolan provided uncontradicted expert testimony that “no evidence exists showing that HHE violated any state laws, regulations, standards of care, or industry standards as they relate to pest control operators.” (App. p. 15). As a result, Judge Price dismissed Petitioner’s negligence/gross negligence claim. (App. p. 15). The court further held that Petitioner’s damages were caused by the intervening negligence of prior owners. (App. p. 16). Prior to Petitioner’s purchase, the Residence sat uninspected and untreated for termites for a period of approximately six years and eight months in an area with significant Formosan termite pressure. (App. p. 16). This undisputed fact was supported by the sworn testimony of defense experts, Mr. DeLorenzo and Dr. Nolan. (App. p. 16).

¹ Page 2 of the Petition for Writ of Certiorari states that “[Petitioner] does not claim that HHE was negligent in its application of chemical pesticide treatment”; therefore, pursuant to South Carolina Appellate Court Rule 208(b)(1)(C), Petitioner is bound by this statement and has abandoned that claim in Paragraph 37 of her Second Amended Complaint.

Finally, Judge Price held that Petitioner's claim for breach of implied warranty of workmanship applies only to builders of new homes, not pest control operators, under South Carolina law. (App. pp. 17-18).

Petitioner's Motion to Alter or Amend Order Granting Summary Judgment

Petitioner filed a Motion to Alter or Amend Order Granting Summary Judgment to Hilton Head Exterminators, Inc. on September 7, 2022. Respondent filed its Response in Opposition on September 14, 2022. Judge Price considered both submissions and refused to overturn the summary judgment ruling in favor of HHE.

Petitioner's Appeal to the South Carolina Court of Appeals

Petitioner filed her Notice of Appeal on January 25, 2023. The Court of Appeals affirmed the lower court's ruling without oral argument in an Unpublished Opinion filed on November 12, 2025. Petitioner filed a Petition for Rehearing on November 26, 2025. On December 10, 2025, the Court of Appeals issued an Order denying the Petition for Rehearing. Petitioner filed her Petition for Writ of Certiorari on January 9, 2026, and Respondent now timely files its Return to Petition for Writ of Certiorari.

ARGUMENT

I. The Court of Appeals correctly found no genuine issue of material fact exists as to Petitioner's negligence and implied warranty of workmanship claims.

Petitioner argues the June 24, 2020 DPR Report of Structural Pest Inspection prepared by Investigator Kristin Lenox-Rustin, and the January 15, 2021 informational letter issued by the office of Ryan Okey, Pesticide Program Chief, DPR, create a genuine issue of material fact that Respondent failed to address EIFS-to-ground contact when it previously provided termite inspection and treatment services at the Residence, which ended approximately seven years and

nine months before Investigator Lenox-Rustin's inspection. Petitioner's argument is fundamentally flawed for a number of reasons.

First, the June 24, 2020 DPR Report of Structural Pest Inspection states that the EIFS-to-ground contact observed at the Residence was "neither met nor wa[i]ved **during** [HHE's] **March 23, 2003 pretreatment.**" (App. p. 248) (emphasis added). It is undisputed that the only record documenting HHE's termite pretreatment at the Residence is an HHE invoice found in the Town of Hilton Head Building Department file produced by Petitioner in discovery. The invoice is dated March 23, 2003, which pre-dates the March 3, 2005 Town of Hilton Head building permit for the Residence by almost two years. Thus, the March 23, 2003 termite pretreatment consisted of a soil treatment before the Residence was constructed. Without a building, EIFS-to-ground contact could not exist. The January 15, 2021 informational letter issued by Mr. Okey's office to HHE references the "2003-2005 subterranean termite pretreatment of the structure." (App. p. 253). Once again, however, the only document reflecting a pretreatment is the March 23, 2003 invoice described above.

Second, Investigator Lenox-Rustin conducted her inspection at the Residence **approximately 16 years and 10 months after the pretreatment, and seven years and nine months after HHE last provided any termite services at the Residence.** (App. p. 246) (emphasis added). According to the affidavit of Mr. DeLorenzo, DPR Structural Program Manager and Investigator Lenox-Rustin's supervisor, "there have been no other DPR inspections at [the Residence] during the time period HHE had a termite warranty for the property." (App. p. 198). It is undisputed that Investigator Lenox-Rustin never inspected the Residence during HHE's termite warranty period, which lasted from June 1, 2005 to April 27, 2012. Therefore, she has no firsthand knowledge of the condition of the property or surrounding landscaping that existed during that time, or if there

were any changes to the condition of the Residence or the property made after April 27, 2012. Petitioner incorrectly asserts that EIFS-to-ground contact is a “structural condition, not a transient state that appears and disappears.” (Pet. p. 8). In fact, EIFS-to-ground contact relates to a condition of the EIFS synthetic stucco exterior cladding of the residence in contact with the soil, not the structural components of the Residence. Stucco can be easily removed, replaced or repaired at any time. EIFS-to-ground contact can also be affected by the surrounding soil grade, which can change over time due to actions taken by a property owner, such as a renovation, or environmental conditions, such as heavy rain or flooding. Mr. DeLorenzo testified that “DPR investigators are only able to observe what is visible at the time of inspection, which, in this case, was on January 22, 2020.” (App. p. 198).

Third, it is undisputed that no other records exist regarding the termite services and warranty provided by HHE at the Residence, and that HHE’s records were properly disposed of pursuant to DPR regulations. The affidavit of DPR Structural Manager Kevin DeLorenzo states that “DPR Regulation § 27-1085M(1)(g) was the applicable records maintenance regulation at the time HHE had a termite warranty on 11 Harrogate Drive. This regulation required [pest control operators] to maintain records for a period of two (2) years after the date of treatment.” (App. p. 198). The affidavit of Brian DeChirico, Manager, HHE, states that HHE maintained the records for a period of five years, three years longer than the DPR regulatory requirement, prior to their destruction in 2017. (App. p. 166). Mr. DeLorenzo testified that “[f]ollowing the cancellation of HHE’s warranty in April 2012, HHE’s disposal of records for 11 Harrogate Drive in 2017 was proper.” (App. p. 198). Independent entomology expert, Dr. Maxcy Nolan, III, also opined that “HHE’s destruction of records in 2017 was proper and complied with DPR regulations concerning

maintenance of records by pest control applicators.” (App. p. 202). Petitioner has failed to produce any evidence or testimony to dispute the proper maintenance and destruction of HHE’s records.

Without HHE’s records, it is impossible to determine the conditions existing at the Residence from June 2005 to April 2012. Investigator Lenox-Rustin can only speculate as to whether any conditions were met or waived. The findings in her June 24th report are allegations or assumptions without any evidentiary support. “Unsupported allegations or denials that simply create an inference are insufficient to withstand summary judgment.” *Marsh Waterproofing v. Steeple S. Pleasantburg*, 2019 S.C. C.P. LEXIS 5687, at *3 (Greenville County Circuit Ct. Aug. 8, 2019) (citing *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984)). Even if EIFS-to-ground contact existed during HHE’s warranty, which HHE disputes, prior owners may have elected to waive that condition and signed valid, written waivers excluding that condition from treatment. Those waivers would have been included in HHE’s records. Both Mr. DeLorenzo and Dr. Nolan testified that it is impossible to determine conditions at the Residence and whether a waiver was signed by prior owners due to the lack of available records. (App. p. 198; pp. 202-203).

Fourth, aside from blindly relying on the speculation in Investigator Lenox-Rustin’s report and the informational letter issued by Mr. Okey’s office, Petitioner never deposed or sought an affidavit from Investigator Lenox-Rustin to obtain sworn testimony and further ascertain the limitations of her findings or any explanation of what purpose an “informational letter” serves. Nor did Petitioner depose or seek an affidavit from Mr. Okey, who is now the Assistant Director of DPR, to learn that his former office sends out letters as an administrative function, and that Mr. Okey has no substantive knowledge of the DPR inspection in this case. In fact, Petitioner did not take a single deposition in this case, which was filed more than two years before Respondent filed its Motion for Summary Judgment. Petitioner made no effort to identify and depose prior

homeowners to ascertain the condition of the Residence before Petitioner's purchase, or whether they signed waivers regarding any conditions. Petitioner did not retain any experts in the fields of entomology or pest control regulation to provide affidavits and opinions in opposition to Respondent's Motion for Summary Judgment or Respondent's experts.

In contrast, HHE produced an affidavit from Mr. DeLorenzo, the individual overseeing the DPR Structural Program, explaining the limitations of DPR's findings in this matter as to HHE. (App. pp. 196-200). His affidavit explains that DPR issues informational letters to pest control companies with previous involvement at a property for the sole purpose of increasing termite technician awareness of such issues when performing future inspections and treatments at other properties. (App. pp.197-198). Mr. DeLorenzo further states that the informational letter to HHE is not tracked against HHE's enforcement history, and due to the lack of available records, Mr. DeLorenzo would have also agreed not to issue any letter to HHE. (App. p. 198). HHE also retained the services of an independent termite expert, Dr. Nolan. Dr. Nolan has extensive education and experience in the areas of termite treatments, inspection and regulation, and he has served as an expert in numerous termite damage cases in South Carolina. (App. pp. 201-202). After a review of relevant case documents and a site inspection at the residence, Dr. Nolan concurs with Mr. DeLorenzo's testimony. (App. pp. 202-204). Dr. Nolan testified that the informational letter issued to HHE "does not require HHE to address any issues found at 11 Harrogate Drive." (App. p. 203).

Lastly, Petitioner ignores the facts that Investigator Lenox-Rustin's report does not require HHE to correct the EIFS-to-ground condition found at the Residence on January 22, 2020, almost eight years after the cancellation of HHE's warranty, or take any enforcement action against HHE. (App. p. 248). Instead, DPR cited Terminix, the pest control company with the termite warranty

on the Residence in January 2020, for failure to address EIFS-to-ground contact, along with a termiticide use violation. (App. pp. 248-249). DPR also issued Terminix a Commercial Applicator Warning Letter for these violations. (App. pp. 194-195).

Based on Investigator Lenox-Rustin's inspection almost 17 years after the March 23, 2003 pretreatment, and almost eight years after HHE's termite warranty ended at the Residence, the Town of Hilton Head Building Department record, the undisputed lack of HHE records, and the expert testimony of Mr. DeLorenzo and Dr. Nolan, there are simply no reasonable inferences that can be drawn in Petitioner's favor regarding her negligence or breach of implied warranty of workmanship claims, even in the light most favorable to Petitioner. Both Mr. DeLorenzo, DPR's Structural Program Manager, and Dr. Nolan, an independent entomology expert with extensive experience in South Carolina termite cases, have provided uncontradicted testimony stating that it is impossible to determine conditions at the Residence from the March 23, 2003 pretreatment through the end of HHE's warranty on April 27, 2012, and whether any conditions were waived by prior owners. (App. p. 198; pp. 202-203). It is equally impossible for a jury to make that determination. Any such determination would be purely speculative as to what conditions existed and what information was contained in the properly destroyed HHE records. Petitioner cannot rely on speculation to create a genuine issue of material fact.

A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror. However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court. A corollary of this rule is that verdicts may not be permitted to rest upon surmise, conjecture, or speculation. Finally, assertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact.

Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009) (internal citations omitted); *see also Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App.

2019) (A party opposing summary judgment “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.”) (internal citations omitted)). Accordingly, the Court of Appeals correctly held that Petitioner failed to present a genuine issue of material fact with respect to her claims, and her petition should be denied by this Court.

II. The Court of Appeals and lower court did not weigh conflicting evidence.

Petitioner asserts that the Court of Appeals and lower court improperly weighed conflicting evidence at the summary judgment stage by effectively crediting the expert testimony of Mr. DeLorenzo and Dr. Nolan over the statements contained in the DPR Report of Structural Pest Inspection prepared by Investigator Lenox-Rustin and the informational letter issued by Mr. Okey’s office. (Pet. p. 11). Petitioner is wrong.

Petitioner claims the DPR report and informational letter are based on the firsthand observations of Investigator Lenox-Rustin; however, an HHE invoice proves the EIFS-to-ground contact alleged at the time of the 2003 pretreatment could not have existed, and Investigator Lenox-Rustin’s “firsthand” observations occurred almost eight years after Respondent last provided any services at the Residence. No evidence exists regarding the conditions at the Residence during the timeframe in which Respondent provided termite treatment and inspection services.

As discussed above, both the June 24, 2020 DPR Report of Structural Pest Inspection and the January 15, 2021 informational letter state the EIFS-to-ground contact at the Residence was “neither met nor wa[i]ved” during the March 23, 2003 termite pretreatment at the Residence. (App. pp. 248, 253). Yet, the only record documenting Respondent’s pretreatment, an HHE invoice dated March 23, 2003, clearly shows that the pretreatment of the soil occurred almost two

years before a building permit was issued. EIFS-to-ground contact could not have existed before the Residence was built.

Likewise, Investigator Lenox-Rustin's observations seven years and nine months after Respondent last provided any services at the Residence offer no evidence in support of Petitioner's claims. In the interest of brevity, Respondent will not repeat the details of every point presented above; however, the uncontradicted testimony from Mr. DeLorenzo and Dr. Nolan establish that no prior DPR inspections occurred at the Residence during HHE's termite warranty period; DPR investigators are only able to observe what is visible at the time of inspection; and no records exist regarding HHE's prior services, including waivers of any conditions, at the Residence. Moreover, Petitioner failed to conduct any meaningful discovery in support of her claims. Petitioner did not take any depositions, seek affidavits from DPR personnel, identify prior owners of the Residence, or retain any experts in support of her claims.

“[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *Guinan v. Tenet Health Sys. of Hilton Head, Inc.*, 383 S.C. 48, 53, 677 S.E.2d 32, 35 (Ct. App. 2009) (quoting *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006)). Petitioner has contested the facts of this case in a deficient manner and has improperly relied on speculation or the building of one inference on another to create a genuine issue of material fact. *See Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (citing *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)). The March 23, 2003 HHE invoice and the uncontradicted testimony of Mr. DeChirico, Mr. DeLorenzo, and Dr. Nolan provided the only evidence for the Court of Appeals and lower court to consider. This evidence is not susceptible of more than one reasonable inference and presents no genuine issues of material fact for consideration by a jury. Respondent was entitled to judgment as a matter of law.

III. The Court of Appeals correctly applied *Kitchen Planners, LLC v. Friedman*, 440 S.C. 436, 892 S.E.2d 297 (2023).

Petitioner asserts that the Court of Appeals' decision conflicts with this Court's clarification of the summary judgment standard in *Kitchen Planners, LLC v. Friedman*, 440 S.C. 436, 892 S.E.2d 297 (2023), and that the DPR report and informational letter constitute evidence which do not require any speculation by a factfinder. (Pet. p. 12-13). Petitioner's assertions are without merit, and the Court of Appeals' decision falls squarely within this Court's holding in *Kitchen Planners*.

On Page 13 of her petition, Petitioner quotes various portions of the DPR report and letter, including facts regarding Formosan termite infestations and Respondent's alleged failure to address EIFS-to-ground contact. However, Petitioner noticeably omits the basis for the alleged violation in Investigator Lenox-Rustin's report, that EIFS-to-ground contact "was neither met nor wa[i]ved **during [HHE's] March 23, 2003 pretreatment.**" (App. p. 248) (emphasis added). The informational letter also references the "2003-2005 subterranean termite pretreatment of the structure." (App. p. 253). In addition, Petitioner incorrectly reiterates that the EIFS-to-ground condition is a "structural condition, not a transient state that appears and disappears." (Pet. p. 13).

As addressed above, the March 23, 2003 pretreatment performed by HHE predated the construction of the Residence; therefore, EIFS-to-ground contact could not have existed at that time. And, EIFS-to-ground contact is not a structural condition; it is a condition of EIFS synthetic stucco exterior cladding in contact with the ground, which can be changed at any time. Any remaining assumptions as to the termite treatment and inspection services provided by Respondent more than seven years and nine months prior to the DPR inspection, whether EIFS-to-ground contact ever existed during HHE's termite warranty at the property, and whether any conditions were waived by prior owners, are purely speculative. The speculative nature of the DPR report

and informational letter are similar to the check issued to pay for cabinet parts in *Kitchen Planners*. Neither the DPR report nor the informational letter “provide a meaningful factual basis on which a factfinder could determine” the conditions that existed when HHE provided termite services at the Residence. *Kitchen Planners*, 440 S.C. at 464, 892 S.E.2d at 302. As a result, Petitioner cannot demonstrate that a genuine issue of material fact exists as to her claims.

IV. Petitioner waived any arguments concerning the timing of the service of affidavits with Respondent’s Motion for Summary Judgment.

Petitioner now argues that Respondent failed to comply with South Carolina Rule of Civil Procedure 6(d) by not filing its supporting affidavits contemporaneously with its Motion for Summary Judgment, and that the trial court erred in considering the affidavits. Petitioner never raised this issue in her Memorandum in Opposition to Respondent’s Motion for Summary Judgment (App. pp. 231-238) or during the motion hearing before Judge Price (App. pp. 270-279). In fact, Petitioner did not even raise this issue in her Motion to Alter or Amend, instead requesting at that time for the lower court to allow Petitioner to take Respondent’s experts’ depositions after summary judgment had already been granted. (App. pp. 257-258).²

“It is axiomatic than an issue cannot be raised for the first time on appeal, but must have been raised and ruled upon by the trial judge to be preserved for appellate review.” *Stevens & Wilkinson of S.C., Inc.*, 409 S.C. at 567, 762 S.E.2d at 695 (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). Accordingly, Petitioner failed to preserve the issue of the service of affidavits at the trial court level, and the issue was never properly before the Court

² Even if Petitioner raised the issue regarding the service of affidavits in her Motion to Alter or Amend, “[a] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not.” *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (citing *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990)).

of Appeals. Moreover, Petitioner's assertion of this issue is properly characterized as frivolous based on her knowledge that the issue was never raised in the lower court.

CONCLUSION

For the reasons set forth above, the Court of Appeals properly affirmed the circuit court's ruling granting summary judgment to Respondent and dismissing Petitioner's negligence/gross negligence and breach of implied warranty of workmanship claims. Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari on the grounds set forth herein, as well as any other grounds found in the record pursuant to South Carolina Appellate Court Rule 220(c).

MCANGUS GOUDELOCK & COURIE, L.L.C.

s/ Stephen M. Kozick

Stephen M. Kozick

(SC Bar No. 78343)

735 Johnnie Dodds Blvd., Suite 200

Mt. Pleasant, South Carolina 29464

(843) 576-2910

stephen.kozick@mgclaw.com

ATTORNEYS FOR HILTON HEAD
EXTERMINATORS, INC.

February 6, 2026

Mt. Pleasant, South Carolina