THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2022-CP-42-03123
Appellate Case No. 2023-001752

MECO, Inc. of August. ……..
Appellant,

v.

Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures LLC; NEPA Trading & Investments, LLC……...
Respondents.

Petition for Rehearing

Respectfully submitted,

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May 13, 2026

Greenville, South Carolina

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Respondents Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures LLC; and NEPA Trading & Investments, LLC (collectively "Respondents"), pursuant to Rule 221(a) and 240, SCACR, respectfully petition this Court for rehearing the Court's April 29, 2026 Opinion (the "Opinion") reversing the circuit court's grant of summary judgment. See MECO, Inc. of Augusta v. Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures, LLC; and NEPA Trading & Investments, LLC, Op. No. 2026-UP-196 (S.C. Ct. App. Filed April 29, 2026).

Respondents do not seek rehearing as to this Court's affirmation that the statute of limitations should not be equitably tolled and that the Uniform Commercial Code's six-year statute of limitations does not apply because the contract is one for services. Id.

Respectfully, the Court overlooked or misapprehended several controlling facts and settled principles of South Carolina law in reversing summary judgment. In reversing the trial court's grant of summary judgment, the Opinion: (1) failed to apply principles of South Carolina contract interpretation and the Supreme Court's rejection of "continuing breach theory" in determining the accrual of breach of contract claims; (2) utilizes arguments not preserved for appeal; (3) misapplies the governing summary judgment standard; (4) misapplies the law governing accrual and the triggering of the statute of limitations under the discovery rule; and (5) improperly expands the revival of time-barred claims. Each error independently warrants rehearing and, collectively, requires reinstatement of the circuit court's Order granting Respondents' motion for summary judgment. See R. pp. 8-16.

Respondents further incorporate and expressly reassert into this Petition all arguments raised in their prior briefings and do not abandon or waive such arguments.

I. The Court Failed to Apply Established Principles of Contract Interpretation

The Opinion turns on a provision of the parties' contract that states Appellant "will furnish [Respondent] an invoice at the end of each week….Respondent shall pay for the same within thirty (30) days of invoice date or completion of project." R. pp. 79 ¶ 1. According to the Court, this language means that Appellant's cause of action could have accrued either after Respondent failed to pay each invoice or upon completion of the project, which the Court identifies as September 2019 and within the three-year statute of limitations.

In construing or interpreting a contract, "it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C. 554, 570, 772 S.E.2d 882, 891 (Ct. App. 2015) (citing Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting D.A. Davis Constr. Co. v. Palmetto Props., Inc., 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984)) (internal quotation marks omitted). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." Id. (internal citations omitted).

The contract identifies two possible dates payment is due – thirty days from issuance of an invoice or at project completion. The default rule in South Carolina is that the word "or" "is a disjunctive particle that marks an alternative [and] imports choice between two alternatives and as ordinarily used, means one or the other of two, but not both." Brewer v. Brewer, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963); K&A Acquisition Group, LLC v. Island Pointe, LLC, 388 S.C. 563, 682 S.E.2d 252, 261 (2009). Thus, even if the Court accepts that the Project was not complete when the invoices were issued, Appellant issued an invoice and thereby triggered the obligation of

Respondent to pay within thirty (30) days.[1] This was certainly how Appellant and Respondent treated this language as Appellant expected payment within thirty days of invoices.

Alternatively, our Supreme Court has recognized "the word 'or' may also be employed as a coordinate conjunction introducing a synonymous word or phrase or it may join different terms expressing the same idea or thing and it may be used as a particle to connect two words meaning the same thing." Martin v. Carolina Water Serv., Inc., 280 S.C. 235, 238, 312 S.E.2d 556, 558 (Ct. App. 1984). If this is the case and "or" is treated in the contract as a coordinate conjunction, Appellant's claim is also time barred.

South Carolina applies the discovery rule to breach of contract actions. Prince v. Liberty Life Ins. Co., 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct. App. 2010); Kagan v. Simchon, 429 S.C. 516, 527–28, 839 S.E.2d 106, 112 (Ct. App. 2020). Under this rule, a cause of action accrues when "the aggrieved party either discovered the breach or could or should have discovered it through the exercise of reasonable diligence." Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). The standard is objective: the statute begins to run when the facts would put a reasonable person on notice that a claim "might exist." Id.

Clearly, Appellant knew a claim "might exist" within thirty days of invoice. If "or" is read to convey synonymous clauses, then Appellant was right. He did have a claim for payment within thirty days of issuing an invoice even if he might have also had a claim for payment within thirty days of project completion. He did not, however, have the ability to wait more than three years from the issuance of the invoice to file suit because "South Carolina does not recognize the continuing breach theory in applying the statute of limitations to breach of contract claims." Poly-

[1] As addressed in Section III, this is incorrect. Appellant and Respondent considered the project complete for payment purposes. R. p. 86 ("We have been notified by your Vendor(s) – Meco of Augusta, that they have fully completed the work at your 175 Truck Stop Road, Cowpens, SC 29330 location"); R. p. 194 ("a job which started in October 2018 was not complete until May 2019").

Med, Inc. v. Novus Sci. Pte. Ltd., 437 S.C. 343, 355, 878 S.E.2d 896, 902 (2022). This is because "[i]n most contracts, based on the terms of the agreement and the context in which it was reached, each breach of a distinct and separate duty gives rise to a separate right of action." Id. By the contract's plain terms, each invoice triggered a thirty-day payment deadline which, when passed, gave rise to an action for payment on that invoice. Id.

The only interpretation of the clause at issue that would save Appellant's claim is one that our law does not permit - that invoices are only due thirty days from completion of the project. But that is not what the contract says and that is not how Appellant understood it. A court cannot redline the contract to remove the clause that payment is due "thirty days from invoice" to save an action that is time barred. Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 588, 694 S.E.2d 15, 18 (2010). Instead, when Appellant chose to issue an invoice during the project, it became due within thirty days. Claims for payment of each invoice brought three years plus thirty days beyond the invoice date are time barred.

II. The Court Utilizes Argument Not Preserved for Appeal

The Opinion departs from established appellate principles by relying upon a theory that was never presented to, considered by, or ruled upon by the circuit court, and therefore was not preserved for appellate review. See generally R. pp. 19 at ¶ 15, 122–138, and 223–231 (containing the written and oral arguments of Appellant within the Record of Appeal). It is well settled that appellate review is confined to issues raised to and ruled upon by the lower court. See Sanders v. Salley, 283 S.C. 458, 460–61, 322 S.E.2d 829, 830 (Ct. App. 1984). The Court in Moses explains that issue preservation rules ensure the "trial court has a fair opportunity to rule" and that the parties understand the nature of an objection so they may fully address it, and courts evaluate

requests to excuse preservation requirements against those principles. Moses v. State, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (internal citations omitted).

Here, the Opinion adopts a theory that Appellant's work under the contract remained incomplete and that certain later "service" invoices allegedly extended or tolled accrual of the statute of limitations. The Record of Appeal demonstrates that no such argument was presented to the circuit court in opposition to summary judgment, no ruling was made on that theory, and Appellant never preserved the issue through a Rule 59, SCRCP motion. See R. pp. 8–16, 122–138 and 223–231. Instead, Appellant expressly acknowledged that the later September 16, 2019 "service" invoices were separate from the unpaid contract invoices forming the basis of this action. See R. pp. 132; 266:14–267:1; see also R. pp. 154–155.

Before the circuit court, Appellant consistently argued that payment was due net-30 and that Respondents allegedly breached the contract by failing to pay those invoices. See R. p. 124 ("Plaintiff issued invoices (on a net-30 basis)"). The subsequently issued September 16, 2019 "service" tickets were not alleged as breaches in the complaint and were treated by Appellant as separate work outside the scope of the unpaid invoices at issue in this litigation. See R. pp. 132 ("Plaintiff's Complaint also alleges that Defendant Sayed had Plaintiff perform work outside the original scope of work in the Contract…"); 154–155; 266:14–267:1.

South Carolina law is clear that issues may not be raised for the first time on appeal and must be both raised to and ruled upon by the trial court to be preserved. Rule 210(c), SCACR. An appellate court exceeds the proper scope of review when it reverses on a theory never argued below because doing so deprives the opposing party of the opportunity to develop both the factual record and the legal arguments directed to that issue. Sanders v. Salley, 283 S.C. at 461, 322 S.E.2d at

831 (finding taking judicial notice of recitals would deny Respondents an opportunity to contest the matter noticed).

III. The Court Misapplies the Governing Summary Judgment Standard

The Opinion concludes that "there is a genuine issue of material fact as to when the contract was breached or when MECO could have reasonably discovered the breach," citing multiple hypothetical accrual points. In doing so, the Court departs from the governing standard under Rule 56, South Carolina Rules of Civil Procedure.

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Simmons v. Berkeley Elec. Coop., Inc., 419 S.C. 223, 228, 797 S.E.2d 387, 390 (2016); Rule 56(c), SCRCP. The "genuine issue of material fact" standard requires more than the identification of theoretical alternatives; it requires evidence supporting a reasonable inference of a disputed fact. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023) (rejecting the "mere scintilla" standard and holding that unreasonable inferences cannot defeat summary judgment). While the evidence must be viewed in the light most favorable to the nonmoving party, only reasonable inferences drawn from the record may be considered. Hawkins v. City of Greenville, 358 S.C. 280, 288, 594 S.E.2d 557, 561 (Ct. App. 2004) (internal citation omitted).

The Opinion identifies three potential accrual points: (1) failure to pay outstanding contract invoices by August 8, 2019; (2) thirty days after two September 26, 2019 invoices for additional service work; or (3) completion of the project. Despite the latter two accrual points not being preserved for appeal, the existence of multiple hypothetical accrual dates does not, standing alone, create a genuine issue of material fact. The dispositive question is whether the record supports a reasonable inference that accrual occurred at a time that would render the action timely through

the exercise of reasonable diligence. Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) (internal citations omitted).

Here, the record does not support such an inference. Even when the evidence is viewed in the light most favorable to Appellant, the record confirms that the Project was complete, at the latest, by May 2019. See generally R. pp. 120-121; 194. It is undisputed that Appellant notified Patriot Capital on February 13, 2019 "that they have fully completed the work," and Appellant's own corporate representative testified that completion occurs when the system is operational and fuel is being pumped which it gave the green light to do on April 26, 2019. Id.; See also R. p 257 at ll. 15-19; See also R. pp. 90-93. Respondents made a final payment of $70,000 on February 15, 2019, with no further payments made. See R. pp. 88-89; See also R. pp. 266:25-267:1. Appellant's own evidence establishes a single, consistent position: invoices were due within thirty days, were not paid, and were declared "months and months and months past due" by August 2019. See Appellant's Amended Initial Brief p. 14; See also R. pp. 264:6-265:8. These undisputed facts foreclose any genuine dispute regarding completion or accrual.

The Court's reliance on alternative accrual theories, particularly ones tied to project completion or the September invoices, rest on a theory contradicted by Appellant's own conduct and testimony. As Kitchen Planners makes clear, summary judgment cannot be defeated by an inference that is not reasonable or grounded in the record. 440 S.C. 456, 892 S.E.2d 297 (2023). Further, a party cannot create a material fact by contradicting its own prior testimony. See generally, Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004).

IV. The Court Misapplies the Law Governing Accrual and the Discovery Rule

Undisputed evidence establishes that Appellant knew or should have known of its claim no later than August 8, 2019. Appellant's own words and testimony show that it knew that its claims existed no later than August 8, 2019. Appellant could not have been any more clear about the date

of discovery of its injury when it provided an email containing a threat of "breach of contract" and spreadsheet to Respondents stating in all caps and bold font:

> **TOTAL DUE BY 8/8/2019 OR LAWYERS WILL TAKE OVER FROM HERE. NO NEGOTIATIONS NO WAIVERING.**

See R. pp. 120-121; See also R. p. 196. This unequivocal demand, paired with Appellant's admission that it knew invoices were "months and months and months past due," establishes actual knowledge of an alleged breach and a legally enforceable claim. Appellant's own counsel agreed, "[MECO] did testify that [it] was ready to move in early August 2019." See R. p. 230, lines 21-22; See also R. pp. 264:6-265:8.

The Court's reliance on the possibility of later accrual improperly disregards the objective standard embedded in the discovery rule. Maher, 331 S.C. at 377, 500 S.E.2d at 207. The relevant inquiry is when a reasonable party in its position would have known a claim might exist. Id. Here, that date is fixed by MECO's own admissions and conduct. By August 8, 2019, MECO had already demanded full payment, threatened litigation, and asserted that all sums were overdue.

The Court's analysis also improperly conflates separate work performed after the breach with the accrual of the original claim. At best, Appellant is only entitled to argue that the two singular invoices dated September 26, 2019, issued for service work separate from the contract, may have their own accrual dates. Poly-Med, Inc. 878 S.E.2d at 901. While separate breaches of distinct obligations may give rise to separate causes of action, "South Carolina law does not recognize a 'continuing breach theory' … to allow a plaintiff to get relief for a time-barred act by linking it with an act that is within the limitations period." Id. 437 S.C. at 343, 878 S.E.2d 896.

Thus, the failure to pay additional invoices is a separate breach, and cannot revive earlier, time-barred claims arising from invoices that were actionable under the terms of the contract at 31+ days from the date of invoice.

V. The Court Improperly Expands the Limited Doctrines For Revival of Time-Barred Claims

The Opinion also has the effect of expanding the limited and well-established doctrines for revival of time-barred claims by treating subsequent work and later invoices as extending the statute of limitations for earlier claims. South Carolina law is clear that there are only two recognized methods to revive a time-barred breach of contract claim. First, revival may occur through a "new promise to pay the debt." Cross v. Stackhouse, 212 S.C. 100, 46 S.E.2d 668, 670 (1948). Second, revival may occur through partial payment on the debt. Zaks v. Elliot, 106 F.2d 425, 427 (4th Cir. 1939) (applying South Carolina law). Neither circumstance exists here. Appellant admitted that it received no payments after February 15, 2019. See R. pp. 264:6-265:8. Appellant further confirmed that its last communication with Respondents yielded no promise to pay. See R. p. 11. Thus, as a matter of law, there is no basis to revive any time-barred claim.

Conclusion

For the reasons stated above and in Respondents' prior briefing, the Court should grant rehearing as to its reversal of the circuit court's ruling granting summary judgment effectively ending this matter.

Respectfully submitted,

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May 13, 2026
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THE STATE OF SOUTH CAROLINA
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APPEAL FROM SPARTANBURG COUNTY
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J. Derham Cole, Circuit Court Judge

Case No. 2022-CP-42-03123

Appellate Case No. 2023-001752

MECO, Inc. of Augusta. ..... Appellant,

v.

Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures LLC; NEPA Trading & Investments, LLC .....Respondents.

PROOF OF SERVICE

The undersigned certifies that a copy of the respondents' PETITION FOR REHEARING was served upon counsel of record in the above-entitled action by electronic mail on **May 13, 2026** as follows:

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May 13, 2026

Greenville, South Carolina

The South Carolina Court of Appeals

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Appellate Case No. 2023-001752

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jasmine D. Smith, Deputy

CLERK

cc: The Honorable J. Derham Cole

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

MECO, Inc. of Augusta, Appellant,

v.

Alex Sayed a/k/a Arshad M. Sayed a/k/a Arshed Sayed; NEPA Ventures, LLC; and NEPA Trading & Investments, LLC, Respondents.

Appellate Case No. 2023-001752

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2026-UP-196
Submitted March 2, 2026 – Filed April 29, 2026

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

Kyle Brandon Waddell and Scott W. Kelly, both of Fulcher Hagler, LLP, of Augusta, Georgia, for Appellant.

Zachary Aaron Turner and Adam Crittenden Bach, both of Tonnsen Bach LLC, of Greenville, for Respondents.

PER CURIAM: MECO, Inc. of Augusta (MECO) appeals the circuit court's order granting summary judgment to Alex Sayed in a contract dispute. On appeal,

MECO argues the circuit court erred in granting summary judgment because (1) its complaint was timely as its causes of action accrued less than three years before filing, (2) the statute of limitations period was equitably tolled due to Respondents' absence from South Carolina, and (3) the Uniform Commercial Code's (UCC's) six-year statute of limitations applied due to the contract predominantly concerning goods. We affirm in part and reverse and remand in part pursuant to Rule 220(b), SCACR.

1. First, we hold the trial court erred in granting summary judgment because there is a genuine issue of material fact regarding when MECO's cause of action accrued. *See Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 228, 797 S.E.2d 387, 390 (2016) ("When reviewing the grant of a summary judgment motion, [the appellate] court applies the same standard that governs the trial court under Rule 56(c)[of the South Carolina Rules of Civil Procedure], which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."); Rule 56(c), SCRCP (stating summary judgment "shall be rendered . . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact"); *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014) ("Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations."). The evidence in the record demonstrates there is a genuine issue of material fact as to when the contract was breached or when MECO could have reasonably discovered the breach and the cause of action accrued—the breach or discovery may have occurred after Respondents failed to pay all outstanding invoices by MECO's demand date, thirty days after MECO issued two invoices for additional work it performed, or upon completion of the project. The contract required Respondents to pay each invoice "within thirty (30) days of invoice date or completion of the Project." Respondents did not pay the invoices within thirty days of the invoice dates. MECO testified it had not received a payment since February 2019. As a result, MECO demanded Respondents pay all outstanding invoices by August 8, 2019, and warned that legal action would follow if Respondents failed to pay on this date. MECO testified multiple invoices were "months and months" past due as of August 7, 2019. On August 7, 2019, Respondents sent an email to MECO stating that to date, the project was "incomplete." MECO performed additional work and issued two invoices on September 26, 2019, after Respondents failed to pay all outstanding invoices on August 8, 2019, and Respondents claimed the project was incomplete. Therefore, viewing the evidence in the light most favorable to MECO, we hold a genuine issue of material fact exists as to when MECO's cause of action accrued.

See S.C. Code Ann. § 15-3-530(1) (2005) (mandating a three-year statute of limitations in "an action upon a contract, obligation or liability"); *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct. App. 2010) ("The discovery rule applies to breach of contract actions."); *Kagan v. Simchon*, 429 S.C. 516, 527-28, 839 S.E.2d 106, 112 (Ct. App. 2020) ("Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence." (quoting *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998))); *Maher*, 331 S.C. at 377, 500 S.E.2d at 207 ("A cause of action should have been discovered through exercise of reasonable diligence when the facts and circumstances would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist."). Accordingly, We reverse and remand and remit for a trial on the matter of when MECO's cause of action accrued.

2. Second, we hold the trial court did not err by finding that the statute of limitations should not be equitably tolled because although Respondents failed to acquire a certificate of authority and maintain an office and agent for service of process as required by statute, MECO did not attempt to serve the Secretary of State, and it failed to establish sufficient facts to justify tolling. *See* S.C. Code Ann. § 33-44-108(a)(1)-(2) (2006) (stating "a foreign limited liability company authorized to do business in this [s]tate shall designate and continuously maintain in this [s]tate . . . an office . . . and . . . an agent and street address of the agent for service of process on the company"); S.C. Code Ann. § 33-44-111(b) (2006) (stating that if "a foreign limited liability company fails to appoint or maintain an agent for service of process in this [s]tate or the agent for service of process cannot with reasonable diligence be found at the agent's address," then process may be served on the Secretary of State); S.C. Code Ann. § 33-44-1008(d) (2006) ("If a foreign limited liability company transacts business in this [s]tate without a certificate of authority, it appoints the Secretary of State as its agent for service of process for claims for relief arising out of the transaction of business in this [s]tate."); *Meyer v. Paschal*, 330 S.C. 175, 183, 498 S.E.2d 635, 639 (1998) ("The purpose of the tolling statute is to prevent a cause of action arising in this State from becoming unenforceable by virtue of the running of the statute of limitations in cases where personal jurisdiction over a defendant cannot be obtained because the defendant is not within the State."); *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 116, 687 S.E.2d 29, 32 (2009) ("[E]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." (quoting *Ocana v. Am. Furniture*

Co., 91 P.3d 58, 66 (N.M. 2004))); *id.* at 115-17, 687 S.E.2d at 32-33 (explaining equitable tolling should be "used sparingly and only when the interests of justice compel its use," and the party advocating for its application "bears the burden of establishing sufficient facts to justify its use").

3. Third, we hold the trial court did not err in finding the UCC's six-year statute of limitations did not apply because the contract was one for services. *See Plantation Shutter Co. v. Ezell*, 328 S.C. 475, 478, 492 S.E.2d 404, 406 (Ct. App. 1997) ("In considering whether a transaction that provides for both goods and services is a contract for the sale of goods governed by the UCC, courts generally employ the predominant factor test."); *id.* ("Under this test, if the predominant factor of the transaction is the rendition of a service with goods incidentally involved, the UCC is not applicable."); *id.* at 479, 492 S.E.2d at 406 (examining the language of the contract as a whole to determine whether the UCC applied).

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.[1]

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

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