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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Jennifer B. McCoy, Circuit Court Judge

Opinion No. 2026-UP-106
(S.C. Ct. App. filed March 4, 2026)
Case No. 2018-CP-10-3286

Karolina Richardson and Krista Richardson,.....

Respondents,

v.

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments,
Dewberry Capital Corporation, and GREP Southeast, LLC,.....

Petitioners.

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

| | |
|--|----|
| Certificate of Counsel | 1 |
| Questions Presented | 1 |
| Statement of the Case..... | 2 |
| Arguments..... | 6 |
| I. The South Carolina Court of Appeals erred both in misapplying the specific requirements of the Residential Landlord Tenant Act and in failing to recognize that a landlord has no liability under the common law for the negligent failure to make repairs. | 6 |
| II. The South Carolina Court of Appeals erred in affirming the trial court on a preservation issue raised <i>sua sponte</i> where the record shows that the Petitioners’ argument that they timely and properly remediated Respondents’ mold problem in compliance with the Residential Landlord Tenant Act was actually raised and ruled on at both the directed verdict and JNOV stages..... | 11 |
| III. The South Carolina Court of Appeals erred in treating the written notice issue as a “defense” that was asserted by the Petitioners on appeal but was not asserted or decided by the trial court, when in actuality the Petitioners never took the position that there is no liability because written notice was never given. | 16 |
| Conclusion | 18 |

CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on May 14, 2026.

QUESTIONS PRESENTED

- I. Did the South Carolina Court of Appeals err both in misapplying the specific requirements of the Residential Landlord Tenant Act and in failing to recognize that a landlord has no liability under the common law for the negligent failure to make repairs?

- II. Did the South Carolina Court of Appeals erred in affirming the trial court on a preservation issue raised *sua sponte* where the record shows that the Petitioners' argument that they timely and properly remediated Respondents' mold problem in compliance with the Residential Landlord Tenant Act was actually raised and ruled on at both the directed verdict and JNOV stages?

- III. Did the South Carolina Court of Appeals err in treating the written notice issue as a "defense" that was asserted by the Petitioners on appeal but was not asserted or decided by the trial court, when in actuality the Petitioners never took the position that there is no liability because written notice was never given?

STATEMENT OF THE CASE

This is a negligence action pursuant to the South Carolina Residential Landlord Tenant Act (RLTA), S.C. Code Ann. § 27-40-10, *et seq.*, commenced by the Respondent Karolina Richardson and her daughter, the Respondent Krista Richardson. From May to September 2017, the Respondents were tenants at Oyster Park Apartments located in Mount Pleasant, South Carolina. Oyster Park Apartments is owned by the Petitioner Mt. Pleasant Square Associates II, LLC d/b/a Oyster Park Apartments and was developed by the Petitioner Dewberry Capital Corporation (“Dewberry”). During the time the Respondents lived at Oyster Park Apartments, it was managed by the Petitioner GREP Southeast, LLC (“Greystar”).

By way of background, the Respondents moved into Unit 104 at Oyster Park Apartments on May 17, 2017. (R. 317). Unit 104 experienced external flooding from a storm that occurred on or about May 23, 2017. (R. 317-318, 795). As a result of the flooding, the property manager (Greystar) moved the Respondents from Unit 104 to Unit 101 on May 26, 2017. (R. 318-319, 339).

On July 10, 2017, Karolina Richardson reported by email to the property manager (Kathlina Sampson) that she discovered “black mold” in Unit 101. Her email states in part:

For the past couple of weeks we have smelled mold/mildew, but have assumed it was innocent. At the same time my daughter and I have been suffering from severe allergy symptoms. As of yesterday I noticed black mold on the bathroom CEILING – assume to be from upstairs. Today we notice black mold from behind washer. I need this addressed today.

(R. 323, 341-342, 1106-1107). That email was sent at 2:31 a.m. Karolina Richardson received a reply email at 11:47 a.m. on that same date from Kathlina Sampson stating that they “have initiated the necessary steps to address this issue with the utmost haste.” (R. 1105). As her

email confirms, July 10th was the first day Karolina Richardson visually observed any mold. (R. 331). The property manager moved the Respondents on July 12th or 13th to another unit, specifically Unit 102. (R. 326, 365). The property manager also initiated remedial action, including retaining Cyrus Higgs to perform mold testing which was done immediately on July 10, 2017. (R. 364, 629). Additionally, the property manager made contact with Belfor for remediation services on July 10, 2017, with a contract being entered on the following day. (R. 365, 634-636). The remediation was begun on July 14th and completed by July 18th. (R. 584-587). Thus, remediation of Unit 101 was completed within eight days of Karolina Richardson having provided notice of the “black mold.”

The Respondents were moved out of Unit 101 to Unit 102 on July 12th or 13th. (R. 326, 365). They never had any issues with mold or water intrusion in Unit 102. (R. 339-340). They were never required to move back to Unit 101; they remained in Unit 102. The Respondents eventually moved out of Oyster Park Apartments on Labor Day in 2017. (R. 335).

As a result of their tenancy at the Oyster Park Apartments, the Respondents filed suit against the Petitioners on June 27, 2018. The causes of action included the RLTA negligence claim as well as claims for a violation of the South Carolina Unfair Trade Practices (SCUTPA), negligent misrepresentation, fraudulent misrepresentation, and civil conspiracy.

Following the completion of discovery, the case proceeded to trial before Circuit Court Judge Jennifer McCoy and a jury on July 18, 2022. At the close of the Respondents’ case-in-chief, the Petitioners moved for a directed verdict as to all causes of action. (R. 479-504). The trial court granted a directed verdict as to the SCUTPA and civil conspiracy claims but denied a directed verdict as to the RLTA negligence claim. (R. 482, 494, 501). The trial court also took under advisement the directed verdict motion as to the negligent misrepresentation and

fraudulent misrepresentation claims. Subsequently, the Respondents withdrew their claims for negligent misrepresentation and fraudulent misrepresentation. (R. 256). After the close of all of the evidence, the Petitioners renewed their directed verdict motion, which was denied. (R. 524).

The case was presented to the jury on the RLTA negligence claim only. (R. 511-514). The jury ultimately returned a verdict of \$850,000 actual damages for the Respondent Karolina Richardson and \$150,000 actual damages for the Respondent Krista Richardson. (R. 22, 526-527). The jury allocated fault among the Petitioners as follows: 35 percent as to Mt. Pleasant Square Associates II, LLC d/b/a Oyster Park Apartments, 30 percent as to Dewberry Capital Corporation, and 35 percent as to GREP Southeast, LLC. (R. 23, 533-534).

Following the verdict, on July 29, 2022, the Petitioners filed a motion for judgment notwithstanding the verdict (JNOV) contending that the evidence presented fails to support a finding of a breach of any duty of care under the Residential Landlord Tenant Act. (R. 254-262). That motion was summarily denied by Judge McCoy by Order filed August 24, 2022. (R. 7-8).

On August 29, 2022, the Petitioners filed a timely Notice of Appeal to the Court of Appeals.

Thereafter, on December 8, 2022, Judge McCoy issued an Order Granting Plaintiff's Motion for Sanctions Pursuant to Rule 37(b)(2)(C), SCRCF, finding that the Petitioners had committed a discovery violation and awarding sanctions in the amount of \$25,200. (R. 9-13). The Petitioners filed a Rule 59(e) motion to alter or amend and/or motion to reconsider as to that sanctions order. (R. 265-269). The appeal was held in abeyance to allow Judge McCoy to consider the Petitioners' Rule 59(e) motion. That motion was heard on January 19, 2023, and Judge McCoy issued an Order denying that motion on June 6, 2023. (R. 14-17).

The Petitioners thereafter filed a timely Amended Notice of Appeal to the Court of Appeals. On March 4, 2026, the Court of Appeals issued an unpublished opinion affirming the

judgment and the denial of the Petitioners' direct verdict and JNOV motions. The Petitioners then filed a petition for rehearing which was summarily denied by the Court of Appeals by its order issued May 14, 2026.

The Petitioners now seek a writ of certiorari in this Court.

ARGUMENTS

I. The South Carolina Court of Appeals erred both in misapplying the specific requirements of the Residential Landlord Tenant Act and in failing to recognize that a landlord has no liability under the common law for the negligent failure to make repairs.

The Court of Appeals erred in misapplying the RLTA and the constraints on liability adopted therein, and additionally, the Court entirely overlooked that a landlord has no liability under the common law for the negligent failure to make repairs. By way of background, in *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989), the Court of Appeals explained that at common law “the relationship of landlord and tenant, by itself, imposes no legal duty on the part of the landlord to keep in repair leased residential premises under the control of the tenant.” 385 S.E.2d at 372. The *Watson* Court relied on this Court’s decision in *Young v. Morrissey*, 285 S.C. 236, 329 S.E.2d 426 (1985), explaining that “[t]raditionally, under the law of South Carolina, a landlord owes no duty to maintain leased premises in a safe condition.” 329 S.E.2d at 428. *See also, Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495, 496 (Ct. App. 2009) (same). Indeed, in *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 469 S.E.2d 630 (Ct. App. 1996), the Court of Appeals pointed out that “[t]he RLTA creates a new cause of action not found at common law.” 469 S.E.2d at 633. Likewise, the *Watson* Court found that “the RLTA is in derogation of common law and, therefore, the statute should be strictly construed.” 385 S.E.2d at 373. Thus, there is no common law liability for the Petitioners, and indeed, no common law negligence claim was presented to nor decided by the jury.

Thus, as misapprehended by the Court of Appeals, the potential liability of the Petitioners in this case could only be based on the RLTA, especially because each of the other causes of

action were dismissed at the directed verdict stage or withdrawn. Importantly, no tort liability under the RLTA arises until the tenant provides written notice and the landlord fails to correct the issue within a reasonable time. In *Watson, supra*, the Court of Appeals held that “the RLTA by express words creates a cause of action in tort in favor of a tenant of residential property against his landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition.” *Watson*, 385 S.E.2d at 373. The *Watson* Court further explained that “[t]he principal statute which creates a cause of action is Section 27-40-440 wherein it is provided in pertinent part that ‘[a] landlord shall ...make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.’” 385 S.E.2d at 374, *citing* S.C. Code Ann. § 27-40-440(a)(2). As indicated, the duties owed by the landlord arise only “after notice.” The RLTA specifically provides that a tenant’s rights “do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time.” S.C. Code Ann. § 27-40-630(d). The RLTA requires “delivery of ‘a written notice to the landlord specifying the acts and omissions constituting the breach.’” *Robinson*, 682 S.E.2d at 497, *citing* S.C. Code Ann. § 27-40-610(a).

Critical to this case, the RLTA provides that without written notice, the landlord owes no duty to repair. Indeed, the precise language of the relevant sections of the RLTA and the supporting case law establish the requirement that the tenant provide *written notice* of a deficiency requiring correction, and the absence of that written notice is fatal to a RLTA claim. In *Robinson, supra*, the Court of Appeals wrote: “This court has found the Landlord–Tenant Act requires *written notice* to the landlord specifying the acts and omissions constituting the breach and failure of the landlord to make the necessary repairs after notice.” 682 S.E.2d at 497-498. (Emphasis added). That case involved the absence of smoke detectors. The Court of Appeals

recognized that the tenant failed to provide written notice of the lack of smoke detectors and, among other reasons, that barred the tenant's RLTA claim. Thus, the *Robinson* Court applied the written notice requirement to claims based on Sections 27-40-440(a)(1) and (2).

As the record demonstrates, the Petitioners argued in their directed verdict and JNOV motions that there was not a violation of the RLTA because, once written notice was provided by Karolina Richardson on July 10, 2017, the Petitioners acted promptly to remediate the mold issue and to move the tenant to another unit. Specifically, the evidence is undisputed that on July 10, 2017, Karolina reported by email to the property manager (Kathlina Sampson) that she discovered "black mold" in Unit 101. Her email states in part:

For the past couple of weeks we have smelled mold/mildew, but have assumed it was innocent. At the same time my daughter and I have been suffering from severe allergy symptoms. As of yesterday I noticed black mold on the bathroom CEILING – assume to be from upstairs. Today we notice black mold from behind washer. I need this addressed today.

(R. 323, 341-342, 1106-1107). That email was sent at 2:31 a.m.¹ Karolina received a reply email at 11:47 a.m. on that same date from Kathlina Sampson stating that they "have initiated the

¹ The Respondents' counsel questioned Karolina Richardson about that July 10, 2017 email as follows:

Q. So on July 10, you actually saw mold and *called it in as you were supposed to do by notifying, I think by a call and an e-mail*, to the Oyster Park folks that you discovered mold in your apartment; is that right?

A. Yes, sir.

Q. And so this is another GreyStar document dated 7/10/17, again unit 101, the second unit, "Occupant of apartment 101 *notified management via e-mail* her concern with black mold in her apartment that is seriously affecting the health of herself and her daughter." Was that a truthful statement you made at that time?

necessary steps to address this issue with the utmost haste.” (R. 1105). As her emails confirms July 10th was the first day Karolina visually observed any mold. (R. 331). The property manager moved the Respondents on July 12th or 13th to another unit, specifically Unit 102. (R. 326, 365). The property manager also initiated remedial action, including retaining Cyrus Higgs to perform mold testing which was done immediately on July 10, 2017. (R. 364, 629). Additionally, the property manager made contact with Belfor for remediation services on July 10, 2017, with a contract being entered on the following day. (R. 365, 634-636). The remediation was begun on July 14th and completed by July 18th. (R. 584-587). Thus, remediation of Unit 101 was completed within eight days of Karolina providing written notice of the “black mold.”

Consequently, there is no dispute that Karolina Richardson provided written notice with her email sent July 10, 2017. The Petitioners have not defended this case by suggesting that written notice as required by the RLTA was never provided by the Respondents. However, once that written notice was provided, it is undisputed that the Petitioners took remedial action within the span of eight days. For that reason, the Petitioners were held liable under the RLTA in error by the courts below.

In apparent disregard of the limits of RLTA liability and the absence of common law liability, the Court of Appeals nonetheless wrote: “While the evidence indicates Petitioners

A. I'm sorry?

Q. Was that true?

A. Yes, sir.

(R. 324). (Emphasis added). As the italicized language shows, the Respondents’ own counsel recognized that written notice was required and was given on July 10, 2017.

worked to remediate Respondents’ mold issue, there was some conflict and lack of clarity in trial testimony regarding how long management was aware of leaks at Oyster Park and their effect on Respondents’ unit.” (Slip Op. at 5). In making that ruling, the Court of Appeals disregarded the fact that under the language of the RLTA, it is irrelevant and immaterial how long the landlord may have been aware of an issue requiring repair. The landlord’s duty to take action is not triggered until the tenant provides *written notice of the deficiency*. See, *Robinson, supra*. In enacting the RLTA, the General Assembly allowed for liability in derogation of the common law, but only under certain circumstances – one of those conditions is that a duty to repair is triggered only by written notice of the deficiency received from the tenant.

As indicated, the Court of Appeals’ suggestion that liability may be triggered by “how long management was aware of leaks at Oyster Park” disregards the fact that liability under the RLTA is *never* triggered by the landlord’s knowledge of any deficiency prior to receiving written notice of that deficiency from the tenant. Indeed, by suggesting that “how long management was aware of leaks at Oyster Park” is relevant to a determination of liability, the Court of Appeals, in effect, attempts to alter the common law which provides that “under the law of South Carolina, a landlord owes no duty to maintain leased premises in a safe condition.” *Young*, 329 S.E.2d at 428. The Court of Appeals then exacerbated that error by stating: “we find evidence lends itself to an inference that, at face value, Petitioners failed to keep the premises in a fit and habitable condition based on the mold in Respondents’ unit.” (Slip Op. at 5). That too is irrelevant and immaterial to a determination of liability under the strict requirements of the RLTA, which are in derogation of the common law *and must be strictly construed*. See, *Watson*, 385 S.E.2d at 373 (“the RLTA is in derogation of common law and, therefore, the statute should be strictly construed”).

In sum, the RLTA requires written notice of a deficiency to trigger any duty to repair by the landlord. To require that duty to repair based on the landlord's own knowledge prior to receipt of written notice from the tenant, the Court of Appeals misapplied the strict terms of the RLTA and likewise disregarded the law of this state which provides that the landlord has no duty to repair unless the strict terms of the RLTA are met. The Court is respectfully requested to issue a writ of certiorari so as to apply the strict terms of the RLTA which requires written notice of a deficiency by the tenant to trigger any duty to repair by the landlord as well as any liability under the RLTA. This case further provides this Court with a needed opportunity to educate the bar and bench as to the requirement of written notice by a tenant to trigger a landlord's duty to repair under the strict terms of the RLTA.

II. The South Carolina Court of Appeals erred in affirming the trial court on a preservation issue raised *sua sponte* where the record shows that the Petitioners' argument that they timely and properly remediated Respondents' mold problem in compliance with the Residential Landlord Tenant Act was actually raised and ruled on at both the directed verdict and JNOV stages.

As explained above, the jury returned a \$1 million verdict on the Respondents' negligence claim brought pursuant to the RLTA. No other cause of action went to the jury. The Court of Appeals affirmed the trial court's denial of the Petitioners' motions for directed verdict and JNOV on the RLTA negligence claim by finding that the issue that "Petitioners properly remediated Respondents' mold problem in compliance with RLTA," among other issues, "have either been raised for the first time on appeal or have not been ruled on by the trial court." (Slip Op. at 6, n.2). As a result, the Court of Appeals found those issues "are unpreserved for our review." (Slip Op. at 6, n.2).

As our appellate courts have consistently stated, issue preservation "is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants." *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285 (2012). This Court has explained: "While it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our longstanding precedent and resolve the issue on preservation grounds when it *clearly* is unpreserved." *Id.* (Emphasis added). "[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." 730 S.E.2d at 287. (Toal, C.J., concurring in result in part and dissenting in part). Additionally, "[e]rror preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review. Instead, a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue." *State v. Brannon*, 388 S.C. 498, 697 S.E.2d 593, 595-96 (2010). *See also, Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640, 644 (2011) ("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner"); *Cone v. State*, 443 S.C. 487, 905 S.E.2d 368 (2024) (holding an issue was preserved where it was "apparent from the record the trial court understood and ruled on [the] objection"); *State v. Morales*, 439 S.C. 600, 889 S.E.2d 551, 556 (2023) ("We are mindful that issue preservation rules should not be applied in a technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue").

In this case, the Respondents did not even raise any preservation issue or challenge to the arguments made on appeal. The Court of Appeals raised preservation *sua sponte*. The Court of Appeals erred in doing so because the Petitioners' argument that they timely and properly

remediated Respondents' mold problem in compliance with RLTA was actually raised and ruled on at both the directed verdict and JNOV stages. As part of their directed verdict motion, the Petitioners argued:

What the evidence has shown in this case during the Plaintiff's case in chief, and what will be, you know, likely again presented in looking at the defense's own witnesses that have already been called, is this reported on July the 10th, and on July the 10th, we did something about it. All the considerations were asked for on July 11th, and they were immediately met on July 11th. Additional considerations were asked for on July the 12th, and they were again immediately met on July the 12th, Your Honor.

Under the Landlord/Tenant Act, there simply is no gross negligence. I don't know how much more quickly a landlord can act, other than the same day. I don't know what else a landlord can do, except for get the tenant out of the apartment they're complaining about. Done. Repair the apartment. Done. Provide adequate alternative accommodations. Done.

(R. 480-481). Thus, the Petitioners argued that Karolina Richardson provided written notice of a mold issue on July 10, 2017. Immediate action was taken on that date, and the remediation was completed within days.

The trial court denied that directed verdict motion based on the testimony of the Karolina Richardson and another tenant, Oba Mubarak, finding that “they both testified to conditions that were poor.” (R. 482). The trial court further ruled: “whether or not they found [sic] the landlord to live up to the duties of the Landlord Tenant Act is totally up to the jury to decide. It’s not a legal conclusion that I can reach based on the testimony that’s been brought out.” (R. 482). Without stating any specifics, the trial court concluded that “[t]here’s at least some evidence in the record that presents an issue of facts [sic] for the jury.” (R. 482). The Petitioners later renewed that directed verdict motion, and it was similarly denied. (R. 524). Thus, the issue of liability under the RLTA was raised and ruled on at the directed verdict stage. Certainly, the

issue was not “clearly unpreserved” as is required to reject an appellate issue on a preservation basis as the foregoing authority from this Court states.

Additionally, the issue was re-asserted in the Petitioners’ JNOV motion. After outlining the pertinent facts including the written notice of the mold on July 10, 2017, and the remediation which was completed within days (R. 255), the Petitioners again argued that “the evidence only leads to one conclusion and shows that Greystar responded to the plumbing leak in Unit 301 that lead [sic] to water intrusion and mold in Unit 101 promptly and that it was addressed and repaired. The evidence also shows that the Plaintiff was moved to a Unit that was not experiencing issues.” (R. 261). Accordingly, as the Petitioners argued, “Plaintiff provided absolutely no evidence of a violation of the LTA [sic] by any Defendant.” (R. 260). By written order filed August 24, 2022, the trial court denied the JNOV motion. The court found that “there was substantial evidence in support of Plaintiffs’ claim, and the jury weighed the evidence presented at trial and reached a reasonable conclusion as to the value of Plaintiffs’ damages suffered as a proximate result of Defendants’ conduct.” (R. 8). Again, the issue of liability under the RLTA was raised and ruled on at the JNOV stage. Certainly, the issue was not “clearly unpreserved” as is required to reject an appellate issue on a preservation basis.

As the record demonstrates, the Petitioners argued in their directed verdict and JNOV motions that there was not a violation of the RLTA because, once written notice was provided by Karolina Richardson on July 10, 2017, the Petitioners acted promptly to remediate the issue and to move the tenant to another unit. To recap, the evidence is undisputed that on July 10, 2017, Karolina reported by email to the property manager (Kathlina Sampson) that she discovered “black mold” in Unit 101. Her email states in part:

For the past couple of weeks we have smelled mold/mildew, but have assumed it was innocent. At the same time my daughter and I

have been suffering from severe allergy symptoms. As of yesterday I noticed black mold on the bathroom CEILING – assume to be from upstairs. Today we notice black mold from behind washer. I need this addressed today.

(R. 323, 341-342, 1106-1107). As confirmed by her email, July 10th was the first day Karolina visually observed any mold. (R. 331). The property manager immediately initiated remedial action, mold testing which was done on July 10, 2017. (R. 364, 629). The Respondents were moved to another unit on July 12th or 13th. (R. 326, 365). The remediation was then begun on July 14th and completed by July 18th. (R. 584-587). In short, the evidence is undisputed that the remediation of Unit 101 was completed within eight days of Karolina providing written notice of the “black mold.”

Based thereon, there was not any violation of the RLTA for which the Petitioners may be found liable. The issue of liability under the RLTA was raised in the directed verdict and JNOV motions and was ruled on by the trial court, and as a result, the issue was properly and sufficiently preserved for appellate review. Accordingly, the Court of Appeals erred in affirming the judgment based on a preservation analysis – indeed a preservation issue that was never raised by the Respondents. This Court is asked to grant a writ of certiorari and find that the Respondents failed to prove a violation by any of the Petitioners of the RLTA because prompt remedial action was taken after the landlord’s receipt of written notice of the mold issue from the Respondent Karolina Richardson on July 10, 2017.

III. The South Carolina Court of Appeals erred in treating the written notice issue as a “defense” that was asserted by the Petitioners on appeal but was not asserted or decided by the trial court, when in actuality the Petitioners never took the position that there is no liability because written notice was never given.

As a related point, the Court of Appeals also erred in construing the issue of written notice under the RLTA as an issue or argument that was required to be raised in the trial court. In its opinion, the Court of Appeals cited “the RLTA requires written notice to a landlord” as being an “argument” that was not preserved for appellate review. (Slip Op. at 6). The Court of Appeals misapprehended this point.

As is evident from the record and as further explained by the Petitioners’ counsel at the close of oral argument in response to questioning from Judge Paula Thomas, the Petitioners never took the position at trial that Karolina Richardson did not provide written notice of the mold in her unit as required by the RLTA. To the contrary, the Petitioners agree, and the evidence is uncontradicted, that written notice was provided on July 10, 2017, when Karolina’s “black mold” email was sent to the property manager in the middle of the night. Thereafter, as discussed above, immediate remedial action was taken, and as a result, there is no violation of the RLTA. To reiterate, the Petitioners never argued that there is no liability because written notice was never given. Instead, the Petitioners have argued that once written notice was given, the landlord promptly acted within the time limitations imposed by the RLTA. That is why there is no liability under the RLTA.

However, in error, the Court of Appeals concluded that the Petitioners’ defense is somehow based on a lack of written notice. Accordingly, the Court of Appeals found that the requirement of written notice was not an issue raised or ruled upon by the trial court. Again, the Petitioners never disputed that written notice was provided by Karolina Richardson with her July

10, 2017 email, and accordingly, there was no defense or issue to raise to the trial court related to notice or lack thereof. As indicated, the evidence is uncontradicted that written notice was provided by email on July 10, 2017. The Respondents acknowledge that (see footnote one above). The Petitioners' defense was that they responded immediately to that written notice and remediated the deficiency within eight days, including the movement of the Respondents to another unit.

In sum, there is no preservation problem with the notice issue that should have precluded the Court of Appeals (or now this Court) from adjudicating this case based on whether the Petitioners violated the RLTA. It should not be overlooked that this case involves a sizable judgment of \$1 million. As should be clear from the foregoing discussion and the record, there is no preservation basis that precludes the RLTA claim from being reviewed and decided on its merits. A writ of certiorari is therefore warranted to allow the RLTA judgment of \$1 million to be adjudged and reviewed on appeal *on the merits* – rather than some unfounded technicality not even asserted by the Respondents and/or an obvious misunderstanding of the common law limits on landlord liability.

CONCLUSION

Based on the foregoing discussion, the Petitioners respectfully request that this Court grant their Petition for Writ of Certiorari.

Respectfully submitted,

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