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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Court Judge

Case No. 2024-CP-40-07265

Appellate Case No.: 2026-001292

Eagle House Mitigation Bank, LLC,Respondent,

v.

WSP USA, Inc.,Appellant,

AND

WSP USA, Inc.,Third-Party Plaintiff,

v.

H20 Mitigation Services, LLC and Pond & Company, Inc., Third-Party Defendants.

**RESPONDENT'S
MOTION TO DISMISS APPEAL**

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Attorneys for Respondent Eagle House Mitigation Bank, LLC

INTRODUCTION

Under Rule 240, SCACR, Respondent Eagle House Mitigation Bank, LLC (“Eagle House”), moves to dismiss this appeal by Appellant WSP USA, Inc. (“WSP”). WSP has appealed the unappealable—an order *denying* a motion to dismiss and motion for summary judgment. Accordingly, the Court should dismiss this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from a contract between Eagle House and WSP, under which WSP agreed to provide consulting and engineering services in connection with Eagle House's mitigation banking project in Fairfield County. Eagle House alleges WSP breached the parties' contract and express and implied warranties after the United States Army Corps of Engineers determined the project did not comply with the approved Mitigation Banking Instrument.

WSP moved to dismiss, contending the claims were professional negligence claims requiring an expert affidavit, and separately sought partial summary judgment based upon a contractual limitation-of-liability provision.

By Form 4 Order entered December 2, 2025, the circuit court denied WSP's Rule 12(b)(6) motion, holding the complaint alleges breach of contract and warranty claims rather than professional negligence. *See Exhibit A* (Form 4 Order). The court also denied WSP's motion for partial summary judgment, concluding that, at this stage, the contractual limitation of liability applies only to negligence claims and not to Eagle House's breach of contract action. The order expressly states that it does not end the case. The Form 4 Order provides in pertinent part:

WSP’s Motion for Partial Summary Judgement seeks to limit potential damages recoverable against it for any reason to \$50,000 in accord with a provision in the parties’ contract which so limits damages for “any and all causes of action arising out of or related to the negligent act(s)..." of WSP. WSP urges a broad interpretation of this clause that would require damages for even breach of contract to be limited to \$50,000.

At this point, the Court believes that only causes of action arising out of negligence are subject to the limitation such that it declines to extend the damages limitation to Plaintiff's breach of contract action. For this reason, as well as the other arguments articulated by Plaintiff in its opposition memorandum, WSP's Motion for Partial Summary Judgment is DENIED.

On its face, the Form 4 Order only *denies* motions under Rule 12(b)(6), SCRPC and Rule 56, SCRPC. On May 8, 2026, the circuit denied by Form 4 order Appellant's motion to reconsider.

DISCUSSION

The appeal should be dismissed because the order appealed from is not immediately appealable under clearly established South Carolina law—the Form 4 Order merely denies WSP's motion to dismiss and motion for partial summary judgment.

South Carolina appellate courts have repeatedly held that the denial of summary judgment is not directly appealable because such an order determines nothing finally and merely allows the action to continue. *See Bank of New York v. Sumter County*, 387 S.C. 147, 691 S.E.2d 473 (2010) (“Since it is well-settled that an order denying summary judgment is never reviewable on appeal, *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003), we dismiss *County's appeal.*”) (emphasis added); *Morris v. Anderson County*, 349 S.C. 607, 564 S.E.2d 649 (2002); *Silverman v. Campbell*, 326 S.C. 208, 486 S.E.2d 1 (1997); *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994); *see also Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 799 S.E.2d 318 (Ct. App. 2017); *Coastal Fed. Credit Union v. Brown*, 417 S.C. 544, 790 S.E.2d 417 (Ct. App. 2016).

This Court recently restated this black-letter rule in *Click Properties, LLC*:

In South Carolina, “it is well-settled that an order denying summary judgment is never reviewable on appeal” *Bank of N.Y. v. Sumter County*, 387 S.C. 147, 154, 691 S.E.2d 473, 477 (2010); *see Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994) (“This Court has repeatedly held that the denial of summary judgment is not directly appealable.”). Accordingly, we do not consider this issue. *See Watson v. Underwood*, 407 S.C. 443, 457, 756 S.E.2d 155, 163 (Ct. App. 2014)

(“Because the denial of a motion for summary judgment cannot be appealed, we cannot consider this issue.”).

Click Props., LLC v. Thomas SC Props., LLC, 445 S.C. 468, 483, 914 S.E.2d 488, 495–96 (Ct. App. 2025), *cert. denied* (Sept. 23, 2025).

Motions to dismiss are likewise unappealable—“[l]ike the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable....” *Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 382, 762 S.E.2d 44, 48 (Ct. App. 2014) (quoting *McLendon v. S.C. Dep’t of Highways & Pub. Transp.*, 313 S.C. 525, 526 n. 2, 443 S.E.2d 539, 540 n. 2 (1994)).

The Form 4 Order on appeal denied a motion to dismiss and for summary judgment, and this Court should dismiss this appeal.

CONCLUSION

This Court should immediately dismiss this appeal under Rule 240, SCACR.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Harry A. Dixon

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July 9, 2026
Columbia, South Carolina

EXHIBIT

“A”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4007265

Eagle House Mitigation Bank Llc et al
PLAINTIFF(S)

WSP USA Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on November 4, 2025, on Defendant/Third-Party Plaintiff WSP USA's (WSP) Motions to Dismiss and for Partial Summary Judgement. The Court also heard a Motion to Dismiss filed by Third-Party Defendant Pond and Company (Pond), a professional design company, challenging the Third-Party Complaint filed against it by WSP. This case arises out of a contract between Plaintiff and WSP for WSP's performance of certain consulting services related to Plaintiff's environmental mitigation efforts. A subcontract exists between WSP and Pond for the performance of certain work in furtherance of the contract with the Plaintiff.

WSP's Motion to Dismiss under Rule 12(b)(6), SCRPC asserts that Plaintiff's complaint, while couched as a breach of contract claim, is in substance, a professional negligence action that requires an expert affidavit under S.C. Code Ann. 15-36-100.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/02/2025 .

Pond & Company Inc
Wsp Usa Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The Court disagrees and DENIES WSP's Motion to Dismiss. On its face, Plaintiff's complaint does not allege and/or seek damages for professional negligence but instead alleges breach of contract and breach of express and implied warranties. While the complex nature of this lawsuit will likely mean that Plaintiff will need to produce some scientific testimony to explain how WSP has allegedly breached its contract with the Plaintiff, the need for this testimony, without more, does not convert Plaintiff's case into a professional negligence case. The Court finds that the Plaintiff's complaint is sufficient under Rule 12(b)(6), SCRCP.

WSP's Motion for Partial Summary Judgement seeks to limit potential damages recoverable against it for any reason to \$50,000 in accord with a provision in the parties' contract which so limits damages for "any and all causes of action arising out of or related to the negligent act(s)..." of WSP. WSP urges a broad interpretation of this clause that would require damages for even breach of contract to be limited to \$50,000. At this point, the Court believes that only causes of action arising out of negligence are subject to the limitation such that it declines to extend the damages limitation to Plaintiff's breach of contract action. For this reason, as well as the other arguments articulated by Plaintiff in its opposition memorandum, WSP's Motion for Partial Summary Judgement is DENIED.

Finally, the Court DENIES Pond's Motion to Dismiss the Third-Party Complaint filed against it by WSP. Pond asserts that WSP's claims against it are substantially professional negligence claims requiring compliance with S.C. Code Ann. 15-36-100. The Court agrees with WSP's arguments that its claims against Pond sound in breach of contract.

To the extent needed, each prevailing party may submit a formal order for the Court's consideration withing ten (10) days.



Richland Common Pleas

Case Caption: Eagle House Mitigation Bank Llc , plaintiff, et al vs WSP USA Inc ,
defendant, et al
Case Number: 2024CP4007265
Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

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AND

WSP USA, Inc.,Third-Party Plaintiff,

v.

H20 Mitigation Services, LLC and Pond & Company, Inc., Third-Party Defendants.

PROOF OF DELIVERY

The undersigned hereby certifies that on July 9, 2026, a copy of **RESPONDENT'S MOTION TO DISMISS APPEAL** was served on all counsel of record via email containing the above referenced document to counsel's individual email addresses:

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July 9, 2026
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July 9, 2026

VIA EMAIL: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Eagle House Mitigation Bank, LLC v. WSP USA, Inc.
Appellate Case No. 2026-001292
Our File No. 1942.042

Dear Ms. Kitchings:

Enclosed herewith please find the Respondent's Motion to Dismiss Appeal, together with the Proof of Service, in the above-referenced matter. Kindly file the same and return a clocked-in copy of each to the undersigned via return email. My firm's check in the amount of \$50.00 as the filing fee for the Motion will be hand-delivered to the Court.

The enclosed documents have been served upon Appellant's counsel today via email and first-class mail as indicated in the Proof of Service.

Please feel free to contact me with any questions. Thank you.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

s/ Harry A. Dixon

Harry A. Dixon

HAD:kam
Enclosures

July 9, 2026
Page Two

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