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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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

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Opinion No. 2026-UP-106  
(S.C. Ct. App. filed March 4, 2026)  
Case No. 2018-CP-10-03286

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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.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## INTRODUCTION

The Petition for Writ of Certiorari should be denied. A writ of certiorari “is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. The Rule lists five considerations that “indicate the character of reasons which will be considered.” *Id.* The Petition satisfies none of them.

The decision Petitioners ask this Court to review is unpublished. Memorandum opinions “have no precedential value and should not be cited except in proceedings in which they are directly involved.” Rule 268(d)(2), SCACR. The opinion carries that legend on its face. It binds no one but these parties and announces no rule of law. Petitioners nonetheless ask this Court to grant the writ so that it may “educate the bar and bench as to the requirement of written notice by a tenant to trigger a landlord’s duty to repair.” Petition at 11. A petition premised on the need to correct a decision that makes no law is a request for error correction in a single case, which is not the office of the writ.

The written notice rule Petitioners want this Court to announce is not in the statute. Section 27-40-440 sets out the landlord’s duties and does not require written notice from the tenant. The South Carolina Residential Landlord Tenant Act (“RLTA”) separately defines “notice” to mean actual knowledge, receipt of a notification, or “reason to know,” S.C. Code Ann. § 27-40-240(A), and it charges an organization with what the individual conducting the transaction knows, and with what the organization would have known “if the organization had exercised reasonable diligence,” *id.* § 27-40-240(C). *Watson v. Sellers*, the decision Petitioners identify as the source of the requirement, does not contain the phrase “**written** notice.” It says “after notice.”

In all events, Petitioners concede that written notice was given. “[T]he 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.” Petition at 16. A holding that the RLTA requires written notice would therefore change nothing in this case. What Petitioners actually seek is a ruling that a landlord’s own knowledge of an active leak is “irrelevant and immaterial,” Petition at 10, so that a jury may not weigh the days Petitioners spent trying to get their general contractor to repair a broken pipe two floors above Respondents’ unit while the water ran down into it. The jury weighed that evidence. The Court of Appeals held it sufficient. That is fact-bound error correction, not a basis for certiorari. As such, the Petition should be denied.

### **COUNTER-STATEMENT OF THE CASE**

Respondents Karolina and Krista Richardson sued Petitioners in 2018 for negligence under the RLTA, S.C. Code Ann. § 27-40-10 et seq., together with claims for unfair trade practices, negligent and fraudulent misrepresentation, and civil conspiracy. The case was tried to a jury before the Honorable Jennifer B. McCoy in July 2022. At the close of Respondents’ case, the Trial Court directed a verdict on the unfair trade practices and civil conspiracy claims and denied a directed verdict on the RLTA negligence claim. (R. pp. 479-504.) Respondents withdrew the misrepresentation claims. (R. p. 256.) Petitioners renewed their motion at the close of all the evidence, and it was again denied. (R. p. 524.)

The RLTA negligence claim alone went to the jury, which was charged on the entirety of Section 27-40-440(a) without objection from any party. (R. pp. 511-514.) The jury returned a verdict of \$850,000 for Karolina Richardson and \$150,000 for Krista Richardson and apportioned fault among the three Petitioners. (R. pp. 22-23, 526-527, 533-534.) The Trial Court denied Petitioners’ motion for JNOV, finding “there was substantial evidence in support of Plaintiffs’ claim.” (R. p. 8.) The Trial Court separately sanctioned Petitioners \$25,200 under Rule 37(b)(2)(C), SCRCP, for producing discoverable material on the eve of trial. (R. pp. 9-13.)

The Court of Appeals affirmed in an unpublished opinion. It held “there is evidence in the record to support the jury’s finding that Appellants breached the RLTA,” pointing to the “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.) It affirmed the sanctions award as within the Trial Court’s discretion. (Slip Op. at 7.) In footnote two, the panel added that four additional arguments, including that “the RLTA requires written notice to a landlord,” were unpreserved. (Slip Op. at 6 n.2.) Rehearing was denied on May 14, 2026. Petitioners do not seek review of the sanctions award.

### **COUNTER-STATEMENT OF THE FACTS**

Oyster Park Apartments (hereinafter referred to as “Oyster Park”) is an apartment complex located at 1421 Shucker Circle, Mount Pleasant, South Carolina. Oyster Park was constructed by LandSouth Construction, LLC. (R. p. 370). Dewberry Capital Corporation developed Oyster Park and oversaw the construction process. (R. p. 360). Dewberry Capital Corporation sold Oyster Park to Mt. Pleasant Square Associates, II, LLC., the owner of Oyster Park at all relevant times. (R. p. 360). A Greystar entity called GREP Southeast, LLC served as the property manager of Oyster Park. (R. p. 361).

Since it first opened, Oyster Park has had continuous and ongoing issues with:

1. Roof leaks (R. pp. 375, 442, 795-1019, 1024-1062)
2. Floods (R. pp. 317-318, 375, 442, 795-1019)
3. Excess humidity caused by HVAC issues (R. pp. 375, 443, 773-780, 795-1019, 1063-1085)
4. Plumbing leaks (R. pp. 375, 442, 795-1019, 1035-1062)
5. Window leaks (R. pp. 375, 442, 795-1019, 1035-1062)
6. Mold (R. pp. 629-749, 773-1062, 1066, 1085)

As of the date of trial, there had been approximately 100 reported and documented cases of water leaks, mold, and mildew claims reported by tenants. (R. pp. 395-396; 795-1019). Kathlina Sampson, the on-site Greystar Property Manager, testified as to the following regarding Oyster Park:

Q. So we've got water coming in from the ground; we've got water coming in from the side; we've got water coming in from the top; and we have water growing from within – moisture from within?

A. More or less, yes.

(R. pp. 375-376).

On May 17, 2017, Karolina Richardson entered into an Apartment Lease Contract with an entity listed as “Oyster Park” for the rental of Unit 104. That same day, Karolina and her daughter Krista moved into Unit 104. (R. p. 317). While living in Unit 104, Karolina and Krista Richardson noticed odd musty smells in Unit 104. (R. p. 318). These odd musty smells were reported to Oyster Park staff. (R. p. 318).

On May 23, 2017, Unit 104 flooded with water pouring into the unit from the front door and from under the walls. (R. p. 317). In fact, Units 102, 103, 104, 105, and 106 (a total of five (5) units) all flooded at that same time. (R. pp. 318, 795-1019). The Oyster Park onsite Service Manager, Travis Harmon, was tasked “to complete the Mold/Water Response Report” in response to the flood; however, Oyster Park’s property manager conceded at trial that no such report was produced for Units 102, 103, 104, 105, and 106, for Unit 101, or for Units 201 and 301. (R. pp. 436-437, 795-1019).

As a result of the flooding, on May 26, 2017, the Richardsons signed another lease and were moved to Unit 101 – the unit next to the five (5) flooded units. (R. pp. 795-1019). At the time of the move into Unit 101, Karolina Richardson performed a move-in inspection with an

Oyster Park employee. (R. p. 320). During this inspection, Karolina Richardson informed the Oyster Park employee that “the breezeway looked like as if it may flood as well” and that “101 looks like it may eventually suffer water penetration and mold.” (R. pp. 320-321, 1088-1092). This information was directly provided to the Oyster Park employee by Karolina Richardson and written down on Oyster Park’s Move-In Inspection Form for Unit 101 on May 27, 2017 – approximately two (2) weeks before the active mold growth was discovered in Unit 101. (R. pp. 321, 1088-1092).

After the Richardsons moved into Unit 101, they continued to smell musty odors, and they continued to notify Oyster Park staff of the same. (R. pp. 322-323). During this same time period, the Richardsons began to suffer extensive physical issues including bronchitis, nasal congestion, allergy symptoms, upper respiratory issues, swollen eyes, sinusitis, and related health issues. (R. pp. 323-324, 1086-1087).

Unbeknownst to the Richardsons, a unit located directly over their unit, Unit 301, had a broken pipe that was causing water to flood down from Unit 301, into and through Unit 201 (directly below), and settled in the walls in Unit 101 (the Richardsons’ apartment). Even though Petitioners were aware of the active leak (actual notice), they had not repaired it. The plumbing leak had not yet been repaired because Petitioners were trying to get the general contractor, LandSouth, to come and make the repairs. (R. pp. 767-772).

On July 10, 2017, the Richardsons discovered extensive mold growth within Unit 101 and notified Oyster Park. (R. pp. 324-325, 795-1019). Karolina Richardson emailed Oyster Park staff in the early morning hours of July 10<sup>th</sup> to notify them of the mold. (R. pp. 1095-1096, 1106-1107). In response, Kathlina Sampson, (Greystar’s on-site Property Manager) began an email chain with Douglas German (Dewberry Capital – Construction & Development) and Christy Stevens

(Greystar – Senior Regional Manager) to discuss and manage the situation. (R. pp. 767-772). The emails, all dated July 10, 2017, state:

Sampson writes: “Hi Douglas – Please let me know if construction would like to be the responsible party for all the remediation as needed for the unit. This is a pretty intense case. **Travis informed me that there was some communication regarding a plumbing issue that was going to be handled by construction in a unit that is directly above this unit in 301 that has not been resolved as of this morning.** It seems that the water leak is settling at 101. Also a bit of history for this particular unit, she is the occupant that experienced the flooding that occurred and had to be relocated.” (emphasis added).

German responds: “This is the first I’ve heard of any leak in Building G...? Yes, LandSouth should definitely be responsible for this.”

Stevens responds: “This is the same resident that had the foundation issue in her initial apartment. Kat – can you confirm that unit number? This sounds fishy to me.. she has already moved once. We should certainly loop in legal counsel on this one.”

(R. pp. 767-772). At trial, Respondents’ counsel read the first of these emails to German as “an e-mail from Ms. Sampson to you,” and German did not dispute the attribution. (R. pp. 445-446.) This email string is clear evidence that Petitioners had actual notice of the leak in Unit 301 and had asked LandSouth (referred to as “construction” by Sampson but then directly as “LandSouth” by German in his response) to remedy the situation. It is also clear the leak was known PRIOR to Karolina Richardson reporting mold in her unit. In July 2017, Travis Harmon was the Maintenance Supervisor at Oyster Park. (R. p. 362). He responded to on-site construction issues and was in charge of reporting the issues and having them repaired. (R. p. 362). It is clear from Sampson’s email that:

1. Travis was aware of this leak in Unit 301 before mold was discovered in Unit 101 (“there was some communication regarding a plumbing issue . . . in a unit that is directly above this unit in 301 **that has not been resolved as of this morning.**”)

2. Oyster Park was trying to get LandSouth (“construction”) to fix the plumbing leak (“plumbing issue that was going to be handled by construction.”)

There is no other plausible explanation for this email, other than that Travis Harmon knew about the leak, had not fixed it, and was trying to get LandSouth to fix it – all prior to Karolina Richardson notifying Oyster Park of mold in Unit 101. While all of this was happening, no one stopped the leak or checked Unit 201 to see if it was saturated (it was) and had mold or that the water had spread downhill into Unit 101, causing more saturation and mold (it had).

On July 14, 2017, four (4) days after Karolina Richardson notified Oyster Park of active mold growth in Unit 101, Petitioners hired Belfor, a mold remediation company. Belfor began the process of investigating the extent of water intrusion and mold in the three (3) impacted units (101, 201, and 301). (R. pp. 637-641, 673-743). In addition to the water and mold in Unit 101, Belfor’s documents show it discovered excessive moisture (saturated drywalls) in the bathroom and laundry areas of Units 201 and 301, to include “walls, ceilings, and floor,” and that there was also active mold in Unit 201. (R. pp. 637-641). Belfor’s report and photographs show multiple areas in these units with extensive water damage and active mold growth. (R. pp. 673-743). The actual remediation process did not begin until July 17, 2017 – seven (7) days after first being notified by Karolina Richardson of the mold in Unit 101. Although Belfor was initially hired by Oyster Park to repair Units 101, 201, and 301, Oyster Park ultimately only hired them to remediate Unit 101. (R. pp. 642-666, 669-743). Oyster Park has no record of who repaired units 201 and 301 or when the repairs were made. (R. p. 372, 636).

During the remediation of Unit 101, Belfor found active mold in the walls, ceiling, in the laundry room, and bathroom, as well as in the internal wall cavity itself and the framing members

of the walls. (R. pp. 308, 590). Belfor also discovered cracked plumbing pipes in Unit 101 causing additional leaks. (R. pp. 308, 589).

The evidence at trial showed the leaks within Units 301, 201, and 101 had been happening for a significant period and that Petitioners knew about them and, rather than fix them, they were delaying and trying to get LandSouth to do it for them.

At most, Petitioners' arguments ask this Court to reweigh the evidence. The jury heard evidence that Petitioners knew of an active plumbing leak above Respondents' unit before the July 10 mold email, failed to stop the leak, failed to inspect the affected units, and delayed remediation until after the damage had spread. That evidence was more than sufficient to support the Trial Court's denial of directed verdict and JNOV.

### **STANDARD GOVERNING CERTIORARI**

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. The Rule lists five considerations that, "while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered": (1) novel questions of law; (2) a dissent in the decision of the Court of Appeals; (3) conflict between the decision of the Court of Appeals and a prior decision of this Court; (4) substantial constitutional issues directly involved; and (5) a federal question on which the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242(b)(1)–(5), SCACR.

Two features of the Rule frame this Petition. First, consideration (3) is satisfied only by conflict with a decision of *this Court*, not with a decision of the Court of Appeals. Second, the

decision under review is unpublished and therefore “ha[s] no precedential value.” Rule 268(d)(2), SCACR.

The appeal below was governed by the settled standard for reviewing a jury verdict. “In ruling on a motion for directed verdict, a court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party,” and “[t]he trial court can only be reversed by this Court when there is no evidence to support the ruling below.” *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 476–77, 514 S.E.2d 126, 130 (1999). “When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000).

### **ARGUMENT**

#### **I. The Petition identifies no “special and important” reason for certiorari under Rule 242(b), SCACR.**

Petitioners never address the standard that governs their own Petition. Measured against Rule 242(b), SCACR, the Petition satisfies no consideration that would justify this Court’s discretionary review.

##### **A. The Decision Is Unpublished and Makes No Law**

The panel issued its decision as an unpublished opinion that, by rule, has “no precedential value.” Rule 268(d)(2), SCACR. The decision announces no precedential rule, and Petitioners identify no conflict between the panel’s decision and a prior decision of this Court. Petitioners’ own stated reason for review defeats them: they ask this Court to take the case in order 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.” Petition at 11. A decision that is not precedent teaches

the bar and bench nothing and requires no correction. The unpublished disposition does not establish a rule governing future cases or demonstrate a need for statewide clarification.

**B. There Is No Novel Question of Law**

The duties in Section 27-40-440 have been settled since 1986, and the meaning of “notice” is supplied by the Act itself in Section 27-40-240. A question is not novel because a litigant declines to engage with the statute that answers it.

**C. The Decision Conflicts with No Decision of This Court**

Consideration (3) requires conflict with a prior decision of *this Court*. Petitioners’ written notice argument rests on *Watson* and *Robinson*, both decisions of the Court of Appeals, and conflict with an intermediate appellate decision does not satisfy Rule 242(b)(3). The only decision of this Court that Petitioners invoke is *Young v. Morrissey*, 285 S.C. 236, 329 S.E.2d 426 (1985). As explained below, *Young* was decided the year before the RLTA was enacted, and Petitioners’ own authority recognizes that the RLTA displaced the common law rule for which they cite it.

**D. The Remaining Considerations Are Absent**

The panel was unanimous; there was no dissent. No substantial constitutional issue is directly involved. No federal question is presented. Petitioners do not contend otherwise.

What remains is a request that this Court reweigh a trial record. The Court of Appeals held “there is evidence in the record to support the jury’s finding.” (Slip Op. at 5.) Petitioners disagree. Disagreement with a sufficiency ruling in an unpublished case is not a special and important reason for the writ.

**II. The South Carolina Court of Appeals correctly affirmed the Trial Court and correctly applied the notice requirement of the Residential Landlord Tenant Act.**

The Court of Appeals correctly affirmed the Trial Court’s decision. Petitioners repeatedly misstate the law related to the notice requirement found in the RLTA. The Petition states:

“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.” Petition at 7. That statement is incorrect and a misstatement of the RLTA.

First, it is clear from the record (and Petitioners do not appear to dispute) the fact that Petitioners were on ACTUAL notice of the plumbing leak that caused the mold in the Richardsons’ apartment. They repeatedly attempt to tie notice to Karolina Richardson’s email to Oyster Park staff on July 10, 2017, after her discovery of extensive mold in her apartment. Petitioners would have this Court (as they asked the Court of Appeals) ignore their own prior notice and forgive their failure to act in any way to remedy the issue. Petitioners could have made a timely repair to the active leak in Unit 301 or moved the Richardsons out of Unit 101 into a safe unit. Instead, they were trying to get the builder, LandSouth, to come back and make the repairs. Regardless, they ignored the issue after notice, and the tenants suffered damages.

The RLTA does not require written notice for the claims brought by Respondents. The South Carolina Residential Landlord Tenant Act states:

- (a) A landlord shall:
  - ...
  - (2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;
  - (3) keep all common areas of the premises in a reasonably safe condition. . . ;
  - ...
  - (5) maintain in reasonably good and safe working order and condition all . . . plumbing, . . . , heating, ventilation, air conditioning. . .

S.C. Code Ann. § 27-40-440.

Section 27-40-610(b) provides that “the tenant may recover actual damages . . . for any noncompliance by the landlord with Section 27-40-440.”

Petitioners' argument overlooks the RLTA's own definition of the word on which their entire Petition turns. Section 27-40-240, titled "Notice," appears in the RLTA's general definitions and governs the term throughout Chapter 40. A person "has notice of a fact if" the person "has actual knowledge of it," "has received a notice or notification of it," or "from all the facts and circumstances known to him at the time in question he has reason to know that it exists." S.C. Code Ann. § 27-40-240(A). And notice "received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to the individual's attention if the organization had exercised reasonable diligence." *Id.* § 27-40-240(C). Actual knowledge is notice. A corporate landlord is charged with what its maintenance supervisor knew. The Petition never cites Section 27-40-240.

There was significant evidence provided at trial to justify the Trial Court's denial of the motion for directed verdict and post-trial motion for JNOV. As such, the Court of Appeals correctly affirmed the Trial Court's decisions. Petitioners incorrectly state that the RLTA requires written notice to the landlord for a claim to exist by citing to S.C. Code Ann. § 27-40-630(d). That code section deals with the wrongful failure to provide essential services. Respondents have never made a claim arising out of the landlord's failure to provide essential services. Respondents' case is based upon S.C. Code Ann. § 27-40-440(a)(2), (3), and (5). These statutory provisions do not require **written** notice to the landlord.

The case cited by Petitioners in support of their written notice requirement actually states the following: "[A]s a result, this court has held the Landlord-Tenant Act creates a cause of action for a tenant of residential property against the landlord, 'for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition.'"

*Robinson v. Code*, 384 S.C. 582, 586, 682 S.E.2d 495, 497 (Ct. App. 2009) (citing *Watson v. Sellers*, 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989)). Petitioners misapply *Robinson* when they quote from the Opinion as though it requires written notice. Petitioners overread *Watson* and *Robinson*. Neither case holds that a claim under S.C. Code Ann. § 27-40-440(a)(2), (3), or (5) requires **written** notice from the tenant before a landlord may be liable. At most, those cases recognize that a landlord must have notice and fail to make necessary repairs. Here, the evidence showed Petitioners had actual notice of the active leak before Ms. Richardson discovered mold on July 10, 2017.

The phrase “written notice” appears nowhere in *Watson*. What *Watson* holds is 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*, 299 S.C. at 433, 385 S.E.2d at 373 (emphasis added). *Robinson* is no different. It observes that the Act “mentions the delivery of ‘a written notice to the landlord specifying the acts and omissions constituting the breach’” in Section 27-40-610(a), *Robinson*, 384 S.C. at 586, 682 S.E.2d at 497, and it then dismissed the tenants’ claim because their complaints did “not allege that Haggins, Sr., notified Code of the lack of smoke detectors in the residence *or that Code failed to correct the problem after notice.*” *Id.* at 588, 682 S.E.2d at 498 (emphasis added). *Robinson* was a case of no notice at all, not of oral notice. It says nothing about a landlord who had actual knowledge and did nothing.

As such, for a claim to exist, the landlord must be on notice of the issue and fail to remedy it. There is no requirement for written notice. If the General Assembly wanted to require written notice for S.C. Code Ann. § 27-40-440(a)(2), (3), and (5), it would have done so. “[W]here a statute contains a given provision, the omission of such a provision from a similar statute

concerning a related subject is significant to show that a different intention has existed.” *State v. Ramsey*, 409 S.C. 206, 211, 762 S.E.2d 15, 18 (2014) (quoting 82 C.J.S. Statutes § 478 (2014)).

Petitioners’ remaining answer is that the RLTA is “in derogation of common law” and must be “strictly construed.” Petition at 6, 10 (quoting *Watson*, 299 S.C. at 433, 385 S.E.2d at 373). The General Assembly said the opposite: “[t]his chapter must be liberally construed and applied to promote its underlying purposes and policies,” among them “to encourage landlords and tenants to maintain and improve the quality of housing.” S.C. Code Ann. § 27-40-20(a), (b)(2). In any event, no canon of construction, strict or liberal, permits a court to insert into Section 27-40-440 a requirement the Legislature didn’t include.

The Court of Appeals correctly followed the RLTA statutes, specifically S.C. Code Ann. § 27-40-440(a)(2), (3), and (5), confirming that there was sufficient evidence in the record that Petitioners failed to act after they were on notice of the leaks. Again, despite how many times Petitioners state it in their Petition, these statutory provisions do not require **written** notice to the landlord.

Petitioners’ common law argument is beside the point, and it is wrong. It is beside the point because Petitioners concede that “no common law negligence claim was presented to nor decided by the jury.” Petition at 6. The claim tried was statutory. It is wrong because the only decision of this Court that Petitioners cite, *Young v. Morrissey*, 285 S.C. at 239, 329 S.E.2d at 428, was decided the year before the RLTA was enacted.

Petitioners’ own authority says so. *Robinson* quotes the identical sentence from *Young* and then explains that “the Landlord-Tenant Act, enacted in 1986, requires a landlord to comply with applicable housing codes materially affecting health and safety, and ‘make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.’”

*Robinson*, 384 S.C. at 586, 682 S.E.2d at 496. As the Court of Appeals has held, “[t]he RLTA creates a new cause of action not found at common law.” *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 528, 469 S.E.2d 630, 632-33 (Ct. App. 1996). A decision cannot conflict with a common law rule the General Assembly displaced four decades ago.

**III. The South Carolina Court of Appeals correctly concluded Petitioners did not argue or preserve the argument that they timely remediated the Respondents’ mold problem in accordance with the RLTA.**

The issue at trial was whether Petitioners violated the RLTA by their failure to stop the ongoing water leak, that they had actual notice of, in a timely manner that directly and proximately led to the mold growth in Unit 101, causing Respondents’ damages. The issue relates to Petitioners’ failure to respond to the ongoing known and unrepaired water leak in Unit 301, not the response to Karolina Richardson’s email after she discovered the extensive mold growth in her apartment. It is undisputed that there were no efforts to remediate the water leaks and mold growth by Belfor until at least four (4) days after Ms. Richardson’s email. (R. p. 585.)

The leak had been allowed to continue long enough, before Ms. Richardson’s email, for the water to flow from the broken plumbing pipe in Unit 301, into and through Unit 201, into the walls and wall cavity of Unit 101, to saturate that unit and allow mold to form in sufficient fashion to require extensive, professional mold remediation in Unit 101 and to cause significant personal injuries to the Richardsons. (R. pp. 585, 589-590.)

Petitioners misstate what their prior counsel argued at the directed verdict motion and in their Motion for Judgment Notwithstanding the Verdict. At the directed verdict motion, Petitioners argued they acted promptly upon receiving notice, on July 10, 2017, the date Karolina Richardson discovered the mold in her apartment. (R. 480-481). The JNOV motion repeatedly states the same argument – that Petitioners acted promptly upon receiving notice of the plumbing leak – using Ms.

Richardson's email after finding the active mold in her apartment as the notice. Again, that email was dated July 10, 2017.

The JNOV motion states: "On July 14, 2017, Belfor came to the apartments to inspect and begin repairs. It was determined that a plumbing leak on the third-floor apartment over the Richardson's unit was the moisture source." (R. 255). Again, Belfor is the mold remediation specialist hired by Oyster Park to perform the extensive mold remediation in Unit 101. (R. 636).

Petitioners' arguments at directed verdict and JNOV were that they acted promptly to Karolina Richardson's email, ignoring a tremendous amount of evidence that the leak had been active for days AND the critical fact that Petitioners knew about it and were trying to get someone else to fix it. That issue was never raised by Petitioners at any point. In fact, as quoted above, Petitioners were still asserting in their JNOV motion that the plumbing leak was not "determined" to be the moisture source until Belfor arrived on July 14, 2017. (R. p. 255.) That assertion cannot be squared with Petitioners' own emails of July 10, 2017. (R. pp. 767-768.)

The Petition states "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.'" Petition at 14. This again ignores the point – Petitioners knew about the water leaks well in advance of Karolina Richardson's email upon finding the mold, did nothing about it, never addressed that issue at trial, at directed verdict, or at JNOV. As such, the Court of Appeals decision was appropriate, and the Petition should be denied.

Petitioners' preservation argument also collapses under their own authority. They contend the Court of Appeals erred "in affirming the trial court on a preservation issue raised sua sponte" because "the Respondents did not even raise any preservation issue." Petition at 11-12. The

decision they cite for that proposition holds the opposite. In *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282 (2012), this Court stated that “we are not precluded from finding an issue unpreserved even when the parties themselves do not argue error preservation to us. In fact, a rule which would permit such an ‘appeal by consent’ is contrary to the very core of our preservation requirement.” *Id.* at 329, 730 S.E.2d at 285. This Court then declined to reach the merits on preservation grounds and added that it “would place no weight on the fact that neither the parties nor the court of appeals raised it.” *Id.* at 330, 730 S.E.2d at 285.

The “gotcha” language Petitioners quote comes from that same passage, and it is followed immediately by the holding that “we should follow our longstanding precedent and resolve the issue on preservation grounds when it clearly is unpreserved.” *Id.* The statement that “any doubt should be resolved in favor of preservation” is from Chief Justice Toal’s separate opinion, concurring in result in part and dissenting in part, *id.* at 333, 730 S.E.2d at 287, which did not command a majority. Petitioners’ own case authorizes precisely what the Court of Appeals did.

The footnote was correct in any event. The Court of Appeals cited *RFT Management Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 170-71 (2012) (“[O]nly the grounds raised in the directed verdict motion may properly be reasserted in a JNOV motion.”), and *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“[I]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”). (Slip Op. at 5 n.1, 6 n.2.) At directed verdict, Petitioners argued only that they had responded promptly to the July 10 email. (R. pp. 480-481.) They never argued, at directed verdict or at any other time, that their knowledge of the Unit 301 leak before July 10<sup>th</sup> was legally irrelevant. That argument, on which the entire Petition now depends, appeared for the first time on appeal.

Additionally, and critically, the Court of Appeals did not affirm based on the preservation (or lack thereof) issue. It held there was evidence to support the RLTA claim and rejected the directed verdict and JNOV challenge on its merits.

**IV. Petitioners' third question does not present an independent basis for certiorari, as it is essentially the same argument as the second question.**

Petitioners' third question is based on the same flawed premise as question number two related to failure to preserve. Again, the Court of Appeals did not affirm based on the preservation issue – it affirmed based on its finding there was sufficient evidence on the RLTA claim to submit it to the jury. Petitioners contend the Court of Appeals improperly treated the written-notice issue as an unpreserved defense. But Respondents' position has never depended on the absence of written notice. Respondents' claim was based on Petitioners' failure to act after they were already on notice of the active plumbing leak that caused water intrusion, mold growth, and injury.

The record contains evidence that Petitioners knew of the Unit 301 plumbing leak before Ms. Richardson discovered mold in Unit 101, that the leak had not been repaired as of the morning of July 10, 2017, and that Petitioners were attempting to have LandSouth address the problem instead of stopping the leak themselves. The Court of Appeals, therefore, did not need to adopt Petitioners' written-notice theory to affirm the trial court's denial of directed verdict and JNOV.

Petitioners' third question does not identify a novel legal issue, a conflict in authority, a constitutional question, or any other basis for certiorari review. It is another attempt to recast a fact-bound sufficiency-of-the-evidence issue as a cert-worthy legal question. This Court should decline that invitation and deny the Petition.

**CONCLUSION**

The Court of Appeals applied settled law to a particular record and affirmed a jury verdict supported by evidence. Its decision is unpublished, announces no rule, conflicts with no decision

of this Court, and presents no novel question, no dissent, no constitutional issue, and no federal question. The single legal proposition Petitioners advance, that the RLTA requires written notice, is absent from the statute, contradicted by the Act's own definition of notice, unsupported by the cases they cite, and conceded to be satisfied on this record.

For these reasons, Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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