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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2026-UP-196
(S.C. Ct. App. filed April 29, 2026)
Case No. 2023-001752

MECO, Inc. of Augusta, ………………………………………………………… Respondent,

v.

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was filed on May 13, 2026, and ruled on by the Court of Appeals on June 18, 2026.

QUESTIONS PRESENTED

I. Whether the South Carolina Court of Appeals' decision conflicts with this Court's precedent governing contract interpretation and rejection of the "continuing breach theory" for accrual of claims for breach of contract?

II. Whether the South Carolina Court of Appeals failed to correctly apply the discovery rule to determine the accrual of Respondent's claims?

III. Whether the South Carolina Court of Appeals improperly relied on hypotheticals not supported by the record to find a genuine issue of material fact?

IV. Whether the South Carolina Court of Appeals decision improperly expanded the grounds to revive an otherwise time-barred claim?

V. Whether the South Carolina Court of Appeals exceeded the scope of appellate review by relying on arguments not preserved by Respondent?

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

In May 2018, Mr. Alex Sayed and his companies, NEPA Ventures, LLC and NEPA Trading & Investments, LLC (collectively "Petitioners" or "Sayed") hired MECO, Inc. of Augusta ("Respondent" or "MECO") to renovate and upgrade a gas station known as the "Westar Travel Plaza," which is located at 175 Truck Stop Road, Cowpens, South Carolina (the "Project"). On May 8, 2018, Petitioner Sayed entered into a written contract (the "Contract") with MECO for improvements to the Property. R. p. 26, ¶ 9; see also R. pp. 78-84. Specifically, the Contract provided that MECO would perform work and furnish Petitioners with invoices for the value of materials stored and/or for work completed as the Project progressed. Petitioners agreed to pay such invoices within thirty (30) days of an invoice or completion of the Project. Id., ¶ 13; see also R. pp. 78-84.

Work on the Project began in August 2018 following payment of an initial deposit by Petitioners to MECO. See R. pp. 78-84. On February 13, 2019, MECO notified Petitioners through Petitioners' financing company that MECO "ha[s] fully completed the work at your 175 Truck Stop Road, Cowpens, SC 29330." See R. p. 86; see also R. p. 26, ¶ 15. On February 15, 2019, Sayed made a second, final payment of $70,000 to MECO and has made no further payments to MECO since that time. See R. p. 89; see also R. p. 263, lines 13-15.

A dispute arose between MECO and Sayed regarding the amount owed on the Project. On July 17, 2019, MECO sent a list of all invoices it claimed were owed. See R. pp. 94-119. MECO alleged that Petitioners were "month and months and months past due" on their payment obligations to MECO. See R. p. 264, lines 6-25; R. p. 265, lines 1-8.

On August 7, 2019, William Burke[1] sent an email to Sayed providing a spreadsheet and stating:

> I have attached spreadsheets with contract amounts, invoices, payments made and outstanding invoices. I have attached the contracts and what you agreed to. I have attached service tickets that have not been paid and all finance charges **for breach of contract**. I don't want to go to court over this. I want payment made **by the end of business tomorrow 8-8-19 through wire transfer for the full amount owed or you will hear from my lawyer on Friday**.

See R. p. 196; see also R. pp. 120-121 (the "Spreadsheet"). A review of the Spreadsheet reveals three undisputed facts. First, the latest invoice for work performed on the Project is dated July 2, 2019. See R. pp. 120-121. Second, MECO received no payments from Sayed on any of these

[1] Mr. William Bradley Burke, CEO of MECO, appeared as MECO's 30(b)(6) designee on June 7, 2023.

invoices. Id. Finally, MECO knew that it had a cause of action for breach of contract. The final line of the Spreadsheet showing the total owed states in all bold, all caps: **TOTAL DUE BY 8/8/19 OR LAWYERS WILL TAKE OVER FROM HERE.** Id. (emphasis in original).

MECO did not commence this lawsuit until August 23, 2022, more than three years after demanding payment and threatening a lawsuit. When it finally did bring its lawsuit, it brought actions for breach of contract, quantum meruit, promissory estoppel, and "recovery of costs of collection and attorneys' fees," which is not a cause of action recognized by South Carolina law. All three causes of action are time-barred.

II. PROCEDURAL HISTORY

A. Circuit Court Proceedings

This litigation commenced when MECO filed a breach of contract action against Petitioners on August 23, 2022. Two days later, MECO filed an amended complaint against Petitioners alleging four causes of action for breach of contract, quantum meruit, promissory estoppel and "recovery of costs of collection & attorneys' fees." R. pp. 24-30. On September 30, 2022, Petitioners filed their answer with three counterclaims against MECO for breach of contract, breach of implied warranty of workmanlike services, and breach of express and implied warranties. R. pp. 31-39.

On August 22, 2023, Petitioners filed a motion for summary judgment pursuant to Rule 56, SCRCP. Mot., filed Aug. 22, 2023. R. pp. 74-77. After the parties submitted memoranda, a hearing on Petitioners' motion was held on September 14, 2023. R. pp. 8-16. On November 2, 2023, the trial court issued a Form 4 Order (the "Form 4 Order") setting forth its reasons for granting Petitioners' motion and instructing Petitioners' counsel to draft a formal order. R. pp. 2-7. The trial court reasoned that:

> [MECO] became aware not later than 08/08/2019 that the [Petitioners] had breached a contract entered between the parties by the failure to pay sums owed under the contract. The statute of limitations on a contract action is three years. This action was commenced after the passage of three years from the breach and [MECO]'s knowledge of it.

R. pp. 2-4. After submission of the proposed order, the trial court issued a formal order granting Petitioners' motion for summary judgment on November 27, 2023 (the "Order"). R. pp. 8-16.

Five days after the Form 4 Order, MECO filed a notice of appeal. R. pp. 202-203. Seven days after the Order, MECO filed an amended notice of appeal. R. pp. 211-212. MECO did not file a motion seeking to alter or amend the Order pursuant to Rule 59(e), SCRCP prior to the notice of appeal.

B. Court of Appeals Opinion

On April 29, 2026, the Court of Appeals issued an unpublished opinion "hold[ing] the trial court erred in granting summary judgment because there [was] a genuine issue of material fact regarding when MECO's cause of action accrued." <u>MECO v. Sayed</u>, No. 2026-UP-196 (S.C. Ct. App. filed Apr. 29, 2026). According to the Court of Appeals, the evidence in the record demonstrated that there was 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." <u>Id</u>. The Court of Appeals explained "the breach or discovery may have occurred after [Petitioners] 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." <u>Id</u>. The Court of Appeals remanded the case to the circuit court for trial. <u>Id</u>. The Petitioners then filed for a petition for rehearing which was summarily denied by the Court of Appeals by its order issued June 18, 2026. Sayed Pet. 1, <u>reh'g denied</u> (June 18, 2026).

ARGUMENTS

This is a straightforward case with a simple fact pattern showing a time-barred claim. MECO sent periodic invoices for payment. Petitioners refused to pay some of the invoices. MECO demanded immediate payment of past due invoices and threatened to bring a lawsuit for breach of contract. Petitioners still refused to pay. MECO waited more than three years to commence a lawsuit. The Court of Appeals blurs this simple fact pattern, which was undisputed by the parties at the lower court, by pointing to language in the parties Contract about "completion of the project" and to two later invoices issued for separate work. In doing so, the Court of Appeals' decision conflicts with the decisions of this Court, including, but not limited to: Brewer v. Brewer, 242 S.C. 9, 129 S.E.2d 736 (1963); K&A Acquisition Group, LLC v. Island Pointe, LLC, 388 S.C. 563, 682 S.E.2d 252 (2009); Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023); Poly-Med, Inc. v. Novus Sci. Pte. Ltd., 437 S.C. 343, 878 S.E.2d 896 (2022); and Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010).

I. The South Carolina Court of Appeals erred in failing 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

The Court of Appeals' Opinion turned on a provision of the parties' contract that states Respondent "will furnish [Petitioner] an invoice at the end of each week …. [Petitioner] shall pay for the same within thirty (30) days of invoice date or completion of project." R. p. 79 ¶ 1. According to the Court of Appeals, this language means that Respondent's cause of action could have accrued either 30 days after each invoice or upon completion of the project, which the Court of Appeals identified as September 2019 and within the three-year statute of limitations. This construction is incorrect, and the Court of Appeals impermissibly strayed from well-settled principles of South Carolina contract interpretation.

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 established by this Court 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, 242 S.C. at 14, 129 S.E.2d at 738; K&A Acquisition Group, 388 S.C. 563, 682 S.E.2d at 261. Alternatively, this 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). While the default rule is the correct interpretation of this Contract, either definition of the word "or" triggers a payment obligation upon issuance of an invoice.[2] This was certainly how Respondent and Petitioner treated this language, as Respondent clearly expected payment within thirty days of invoicing. See R. pp. 120-121; See also R. p. 196.

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[2] As addressed below, the Court's determination that the Project was not complete until September 2019 is incorrect. Respondent and Petitioner 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").

Thus, Respondent had a claim for payment after issuing each invoice. Each invoice carried its own accrual date for statute of limitations purposes. An invoice that was due more than three years prior to the lawsuit cannot be revived by the issuance of additional invoices due less than three years prior to the lawsuit. Similarly, even if payment is due at project completion, project completion does not reset the accrual date for earlier breaches of Petitioner's obligation to pay invoices within "30 days of issuance." "South Carolina does not recognize the continuing breach theory in applying the statute of limitations to breach of contract claims." Poly-Med, 437 S.C. at 355, 878 S.E.2d at 902. 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.

The only interpretation of the clause at issue that would save Respondent's claim is one that South Carolina law does not permit – that the time-barred invoices were only due thirty days from completion of the project. But that is not what the contract says, and that is not how Respondent 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, 387 S.C. at 588, 694 S.E.2d at 18. Instead, when Respondent chose to issue an invoice during the project, it became due within thirty days. Claims for payment of an invoice brought three years plus thirty-one days beyond the invoice date are barred.

The Court of Appeals committed an error of law by failing to apply this Court's precedent. Rather than interpreting the Contract's language consistent with Brewer and K&A Acquisition Group, the Court of Appeals analyzed only one side of the "or" clause and ignored the other side that triggered the breach. 242 S.C. at 14, 129 S.E. 2d at 738; 388 S.C. at 563, 682 S.E.2d at 261. In doing so, the Court of Appeals treated all claims as if they did not accrue until the final breach, in direct conflict with this Court's recent decision in Poly-Med governing accrual of breach of contract claims. 437 S.C. at 355, 878 S.E.2d at 902.

II. The South Carolina Court of Appeals Misapplied this Court's Precedent Governing Accrual and the Discovery Rule.

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.

Respondent's own words and testimony show that it knew its claims existed no later than August 8, 2019. Respondent could not have been any more clear about the date of discovery of its injury when it sent an email to Petitioners containing a threat of "breach of contract" and a spreadsheet to Petitioners 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 Respondent's statement that invoices were "months and months and months past due," establishes actual knowledge of an alleged breach and a legally enforceable claim. Respondent'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 of Appeals' reliance on the possibility of later accrual dates improperly disregards the objective standard of the discovery rule. Maher, 331 S.C. at 377, 500 S.E.2d at 207. The relevant inquiry is when a reasonable party in Respondent's 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.

III. The South Carolina Court of Appeals Misapplied This Court's Controlling Precedent Governing Summary Judgment.

The Court of Appeals concluded that "there [was] 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 of Appeals departed from the governing standard under Rule 56, SCRCP.

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. This Court has held that 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, 440 S.C. 456, 892 S.E.2d 297 (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 Court of Appeals identified 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 of one of the two latter, hypothetical accrual dates. 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 the Respondent, the record confirms that the Project was complete, at the latest, by May 2019. Respondent notified Patriot Capital on February 13, 2019 "that they have fully completed the work," and Respondent'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. See R. p. 86.; See also R. p. 257 at 11. 15-19; See also R. pp. 90-93. Concerning the September 2019 invoices, Respondent had a single, consistent position in the lower court: invoices issued prior to August 2019 were "months and months and months past due." See Appellant's Amended Initial Brief p. 14; See also R. pp. 264:6-265:8. And, again, Respondents did not view "project completion" as a barrier to demanding immediate payment of the pre-September 2019 invoices.

The Court of Appeals' reliance on alternative accrual dates rests on theories contradicted by Respondent's own conduct and testimony. As this Court in Kitchen Planners made clear, summary judgment cannot be defeated by an inference that is not grounded in the record. 440 S.C. 456, 892 S.E.2d 297. 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 South Carolina Court of Appeals Improperly Expanded the Limited Doctrines For Revival of Time-Barred Claims.

The Court of Appeals expanded 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. This Court and South Carolina law has made 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. Respondent admitted that it received no payments after February 15, 2019. See R. pp. 264:6-265:8. Respondent further confirmed that its last communication with Petitioner yielded no promise to pay. See R. p. 11. Thus, as a matter of law, there was no basis for the Court of Appeals to revive any time-barred claims.

V. The South Carolina Court of Appeals Exceeded the Scope of Appellate Review by Relying on an Unpreserved Argument.

The Court of Appeals departed from established appellate principles by relying on 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 Respondent 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 of Appeals in Moses explains that issue preservation ensures 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).

In its Opinion, the Court of Appeals adopted a theory that Respondent'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 and no ruling was made on that theory. See R. pp. 8-16, 122-138 and 223-231; See R. pp. 132; 266:14-267:1; see also R. pp. 154-155.

Before the circuit court, Respondent consistently argued that payment was due net-30 and that Petitioners 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 Respondent 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 has Plaintiff perform work outside the original scope of work in the Contract…"); 154-155; 266:14-267:1. Respondent also acknowledged that the Project was complete no later than May 2019. See R. p. 194.

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). The Court of Appeals' Opinion conflicts with this Court's longstanding precedent defining the proper scope of appellate review. Rather than limiting its review to the issues and theories preserved in the circuit court, it reversed upon a theory that was never presented to, considered by, or ruled upon by the circuit court; and therefore, certiorari should be granted to restore uniform application of South Carolina's established preservation requirements.

CONCLUSION

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

Respectfully submitted,

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