THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

Supreme Court Appellate Case No. 2026-00386

Unpublished Opinion No. 2025-UP-416 (S.C. Ct. App. Filed Dec. 10, 2025)

Appellate Case No. 2024-000171

Trial Court Case No. 2022-CP-26-06116

Flatiron Constructors, Inc.,

Respondent,

v.

TranSystems Corporation,

Petitioner.

OPENING BRIEF OF PETITIONER TRANSYSTEMS CORPORATION

WILKES ATKINSON & JOYNER, LLC
Michael B. T. Wilkes, Esq. (S.C. Bar #6107)
mwilkes@wajlawfirm.com
C. Daniel Atkinson, Esq. (S.C. Bar # 72721)
datkinson@wajlawfirm.com
J. Alexander Joyner, Esq. (S.C. Bar # 101771)
ajoyner@wajlawfirm.com

127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Counsel for Petitioner
TranSystems Corporation

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Page

Cases—continued:

STATUTES, REGULATIONS, AND RULE

MISCELLANEOUS

INTRODUCTION

The question in this case is whether a consultant hired by the government to inspect the work of a construction contractor can be liable to that contractor for doing its job zealously. TranSystems, petitioner in this case, was hired by Horry County, South Carolina to inspect the work of respondent Flatiron, a general contractor hired to construct a multimillion-dollar highway project. TranSystems and Flatiron never entered any contract between themselves. And the various contracts among the parties expressly provided that TranSystems would review Flatiron's work for the benefit of Horry County, the South Carolina Department of Transportation, and the general public in order to ensure that Flatiron's work complied with the construction plans and with state public-safety regulations. None of those agreements listed Flatiron as the intended beneficiary of TranSystems' review—indeed, Flatiron has effectively conceded as much by withdrawing its appeal as to its contract-based claims in this case. When Flatiron's work proved lacking, it sued TranSystems, alleging that TranSystems negligently inspected its work, prolonging construction and causing Flatiron to incur more costs.

In Flatiron's own words, its theory is that TranSystems was "overzealous" in its inspections. But that cannot be a basis for tort liability here. As the trial court correctly recognized, TranSystems did not owe Flatiron a legal duty in inspecting Flatiron's work for the benefit of the government and the people of South Carolina. In the absence of privity between the parties, the existence of a legal duty requires that the parties have some other special relationship that creates a legally cognizable basis for imposing a duty. As numerous tort-law treatises, Restatement provisions, and cases from this Court and others explain, in the professional-liability context, such a "special relationship" exists only where the defendant's services are provided for the plaintiff's benefit and where the plaintiff can reasonably rely on the defendant's prudence in providing those services. Accordingly, a construction engineer who is hired to inspect the plaintiff's work for the benefit of a third party lacks a special relationship with the plaintiff and thus owes the plaintiff no duty.

That legal principle resolves this case and entitles TranSystems to judgment as a matter of law. But in the decision below, the court of appeals reversed the grant of summary judgment for TranSystems, taking the view that a factual dispute existed as to whether TranSystems wielded so much authority over the project as to owe a duty to Flatiron. The court of appeals' holding was based on a mistaken reading of this Court's decision in *Tommy L. Griffin Plumbing & Heating Co.* v. *Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995). Contrary to the court of appeals' apparent view, *Tommy L. Griffin* does not preclude courts from resolving the issue of duty as a matter of law at the summary-judgment stage. Nor does that decision hold that every engineer or inspector who interacts with a contractor suddenly owes the contractor a duty in tort. Instead, *Tommy L. Griffin* recognizes only that a construction engineer and a contractor *can* have a special relationship when the engineer undertakes responsibilities that are plainly intended to serve as a basis for reliance by the contractor in preparing a bid and carrying out the plans. This case falls outside of that rule: the relevant contracts at issue plainly establish that TranSystems' CEIT services—which were limited to reviewing Flatiron's work for compliance with contractual and statutory requirements—were offered solely for the benefit of Horry County, the Department, and the public, and not for Flatiron's benefit or reliance.

The court of appeals therefore erred by imposing an implied duty in this context. In doing so, the court of appeals created a conflict of interest that is impermissible under state law. Not only is that result wrong as a doctrinal matter, but it also would have unfortunate consequences, multiplying the costs of public construction projects while eroding public safety.

The court of appeals compounded its error by finding a genuine dispute of material fact as to the existence of a duty on this record. If allowed to stand, that reasoning would mean that the existence of a duty in this context would never be resolved as a matter of law but must instead await a determination until after full discovery and a hearing or trial. That rule would flout this Court's longstanding recognition that the existence of a duty may properly be determined as a matter of law, and it would further drive up the costs and uncertainty to public construction contractors. The court of appeals' decision was incorrect, and its judgment should be reversed.

QUESTIONS PRESENTED

1. Did the court of appeals err in failing to determine that the conflict of interest between TranSystems and Flatiron foreclosed any potential finding of legal duty?

2. Did the court of appeals' analysis of duty as involving primarily factual questions, rather than a legal question, conflict with prior decisions of this Court?

STATEMENT

I. Factual Background

This case arises out of a highway construction project in Horry County, South Carolina. In 2007, Horry County contracted with the South Carolina Department of Transportation to administer a construction project involving the Carolina Bays Parkway in Horry County. App. Vol. 1 at 51. The contract covered a set of highway improvement projects in the County, including the construction of a fully controlled access six lane highway that would extend the Carolina Bays Parkway from South Carolina Highway 544 to South Carolina Highway 707, including a bridge over the Intracoastal Highway. App. Vol. 3 at 787.

The project also included the widening of Highway 707 from two lanes to five. *Id*. The newly constructed highway runs "in a highly-traveled area" and thus "was required to be safe for public use and to perform without failure." App. Vol. 1 at 51.

The construction project had a total estimated cost of $246 million, including an initial grant of $40 million from the State with the possibility of subsequent grants up to $110 million. App. Vol. 3 at 785. That funding was conditioned on "the execution of an intergovernmental agreement" between Horry County, the Department, and the South Carolina Transportation Infrastructure Bank, a state agency that finances the construction of state and federal highways. *Id*. at 784-785.

Through the intergovernmental agreement, the parties intended for the Department to provide "oversight of design and construction for the Project." App. Vol. 1 at 52. Specifically, under the agreement, the Department agreed to "administer" the construction project, and it was required to "oversee" the "necessary activities or functions" of the construction project, including "all planning, design, engineering, right-of-way acquisition, contract administration, [and] inspection," as well as the "construction for the [p]roject" and any other related activities. App. Vol. 3 at 793. The intergovernmental agreement also empowered the Department to "authorize change orders it deem[ed] necessary." *Id*. at 795. Although the Department was required to "obtain the prior approval of the County for any change orders" that could "materially increase estimated costs" or "materially alter the scope" of any component project, the Department expressly disclaimed any "guarantee [of] completion" of each component project "within the scope approved by the County and within the budget." *Id*. Once the project was finished, the Department's State Highway Engineer—the Department employee tasked with overseeing the day-to-day operations of the project—was to "recommend to the SCDOT Commission the acceptance of the [project] into the State Highway System, as defined by S.C. Code Ann. Section 57- 5-10." App. Vol. 3 at 795. Horry County also issued a resolution approving the intergovernmental agreement, in which Horry County stated that the Department would "assume the primary responsibility for various aspects of the roadway project." *Id*. at 812.

In December 2011, Horry County hired petitioner TranSystems Corporation to provide construction, engineering, and inspection (CEIT) services for the "use and benefit of the County in the development of the project." App. Vol. 3 at 818. The only identified beneficiary of TranSystems' services is Horry County. *See id*.

The scope of those services was laid out in a separate schedule. App. Vol. 3 at 819; *see id*. at 837-843. Those documents reflect TranSystems' limited role: TranSystems was tasked with reviewing the construction as it progressed, but it "played no role in preparation of the [p]roject plans" themselves. App. Vol. 1 at 105. TranSystems did not prepare any design or engineering plans or provide any other design services, *see* App. Vol. 3 at 837-843; rather, the Department furnished all the design plans, and the construction contractor would provide any necessary supplemental drawings, *see* App. Vol. 4 at 989. TranSystems' role was thus limited to working as a "consultant" who would inspect the contractor's work to ensure the quality of that work and to "ensure compliance with applicable state laws." App. Vol. 3 at 847.

Among other things, TranSystems' CEIT services included "construction management, construction engineering, assurance and acceptance inspection, sampling, testing, and construction survey verifications to determine compliance with the contract requirements," as well as other tasks "as deemed necessary by the [Department] or Horry County."

App. Vol. 3 at 837. TranSystems was thus required to "perform the majority of the on-site inspection and testing duties" to ensure quality control, which the contract explained would entail "highly technical and specialized inspection and testing procedures for roadway and bridge construction." *Id*. at 839. Likewise, TranSystems was responsible for "independently" "monitor[ing]" the construction contractor's "compliance with [its] approved [quality-control] plan," including by performing inspection, testing, and sampling of materials, "monitoring the workmanship" of the contractor's construction, recommending "corrective action" as necessary, and maintaining notes and reports detailing the contractor's work. *Id*. at 840-841. TranSystems' reports and recommendations were to be provided to and subject to the approval of the Department. *See* pp. 6-7, *infra*.

TranSystems' "highly technical and specialized inspection" services—which spanned multiple aspects of the project, including "all Concrete Structures," "all Structural Foundations," and "all Earthwork and Base Activities"—were "developed to address the [ ] goals and objectives" of the Department and Horry County. App. Vol. 1 at 277; App. Vol. 3 at 837, 839-840. TranSystems was obligated to "at all times work closely with" Horry County and Department representatives and to "keep them fully advised" of the project's status. App. Vol. 3 at 824. All "[b]asic notes, sketches, charts and other data" generated under the TranSystems contract became "the property of the County without restriction or limitation on their use." *Id.* at 823. Likewise, TranSystems was required to keep certain work product confidential unless the County provided written approval. *Id.* Under the "Inspection of Work" provision, only "[t]he County and Department [ ] ha[d] access to and the right to inspect all project work," and certain work product was to be "ma[d]e available . . . for inspection by the County [and] Department," and authorized representatives of the County and Department. *Id.* at 823-824. And if TranSystems "impair[ed] or prejudice[d] *the interest of the County*," the County could terminate TranSystems' contract. *Id*. at 826 (emphasis added).

TranSystems was required to provide a "Project Engineer" who would be "responsible for the day-to-day operation and administration of the project." App. Vol. 3 at 837. But TranSystems' Project Engineer would "report directly to [the Department's] Resident Engineer," who would "provide daily supervision on the project" and "make final decisions." *Id*. Moreover, the TranSystems' Project Engineer's direct supervisor, the Department's Resident Engineer, had the authority to take certain actions based on the Contractor's "failure to correct unsafe conditions for its workers or the general public" and "any other conditions or reason the [Department's Resident Engineer] deems to be in the public interest." *Id*. at 775.

Other provisions of the TranSystems contract likewise explained the allocation of authority between TranSystems, the Department, and Horry County. In a provision titled "Control," the contract provided that "[a]ll work" by TranSystems was "to be done in a manner satisfactory to," and "in accordance with the established customs, practices, and procedures" of, Horry County and the Department. App. Vol. 3 at 824. The contract likewise provided that "[t]he decision of [the Department was] to control in all questions regarding location, type of design, dimension of design and similar questions." *Id*. Additionally, Horry County and the Department were entitled to "monitor the progress" of TranSystems' work to ensure that the work proceeded in a timely manner; if TranSystems failed to ensure that the project met the agreed-upon deadlines, the Department Program Manager and Program Development Engineer were authorized to determine that TranSystems was "delinquent"—which would disqualify TranSystems from receiving any additional or future work. *Id*. at 825.

All of TranSystems' work was to be done in accordance with the Department's 2004 Construction Manual and 2007 Standard Specifications, which set forth guidelines and requirements for Department-certified projects. *See* App. Vol. 3 at 839-840. The Standard Specifications provide that the Department's Resident Engineer—who, per the TranSystems contract, oversaw TranSystems' Project Engineer, *see id*. at 837—would "decide all questions that may arise regarding the quality and acceptability of materials furnished, the work performed, the rate of progress of the work; the interpretation of the Plans and Specifications; [and] acceptable fulfillment of the Contract by the Contractor," among other things. App. Vol. 4 at 989. The Department's Resident Engineer likewise "ha[d] the authority to suspend the work, wholly or in part." *Id*. And although the Department's Resident Engineer could authorize representatives to "inspect all work done and all materials furnished"—as was the case under the TranSystems contract—the Standard Specifications explicitly state that construction contractors were not to construe representations "by the [Department's Resident Engineer's] representative as binding on the Department," as the Department still retained final authority to approve or accept portions of the work and to issue instructions regarding the project. *Id*. at 990. Indeed, the Standard Specifications expressly provide that inspection of work by any representative of the Department or its Resident Engineer—including by an inspection consultant like TranSystems—would "not relieve the [c]ontractor of any responsibility or obligation" to perform under the contractor's own agreement. *Id*.

In November 2013, Horry County hired respondent Flatiron Constructors, Inc., to serve as the general contractor for the project. App. Vol. 1 at 53; App. Vol. 3 at 695. Flatiron and TranSystems did not enter any contracts between themselves. *See* App. Vol. 3 at 847. The County's contract with Flatiron required the project to be completed within 1220 calendar days from the date of its notice to proceed with the project (subject to agreed-upon modifications to that schedule). App. Vol. 2 at 337. If Flatiron failed to complete the project in time, it would be assessed liquidated damages of $5,000 per day until completion. *Id*.

Like the TranSystems contract, the County's contract with Flatiron stated that the project was governed by the Department's 2007 Standard Specifications. App. Vol. 3 at 696. The Standard Specifications provide that contractors must "cooperate with" the Department's Resident Engineer and any "authorized representatives and inspectors." *Id*. at 778. To that end, the Standard Specifications state that the contractor's work would be subject to scrutiny and (as needed) correction by the Department's Resident Engineer and authorized representatives or inspectors. *See id*. at 775-777. The Standard Specifications likewise note that the Department's Resident Engineer would "decide all questions that may arise regarding the quality and acceptability of materials furnished, the work performed, the rate of progress of the work," and the interpretation of the Plans and Specifications." *Id*. at 775. The Standard Specifications also give the Department's Resident Engineer the "authority to suspend the work, wholly or in part, or to withhold further payments" to the contractor. *Id*. In such circumstances, "[n]o additional compensation" would be paid to Flatiron. *Id*.; *see* App. Vol. 2 at 427.

The Flatiron contract also provided a claims procedure through which Flatiron could pursue compensation against Horry County and the Department for project delays or changes in the project's scope not attributable to Flatiron that increased its costs. App. Vol. 3 at 780-782. Under that claims procedure, Flatiron was obligated to "continue work pursuant to the contract" "[a]t all times during the pendency of a claim." *Id*. at 780.

In March 2014, Flatiron began construction on the project. *See* App. Vol. 1 at 87. At various points throughout the construction, TranSystems notified Flatiron about deficiencies in its materials, protocols, and performance, which Flatiron claims caused delays and added costs in its performance of the construction project. For example, TranSystems informed Flatiron that certain materials could not be approved for use due to rust and other defects, and TranSystems was unable to approve Flatiron's proposed procedures to repair the materials for several months. *Id*. at 78. At another point, TranSystems rejected Flatiron's proposed method for installing bolts to anchor bridge bents; when those bolts later became misaligned, TranSystems required Flatiron to submit for approval proposed procedures to correct the alignment. *Id*. at 79. TranSystems' decisions were based on the Department's Standard Specifications and Flatiron's non-compliance with those standards. *See*, *e.g.*, *id.* at 104. Once TranSystems screened and rejected Flatiron's submittals and proposed protocols, the Department actively reviewed, issued directives, and made final decisions on TranSystems' recommendations—confirming on multiple occasions that Flatiron's proposals were inadequate or faulty. *See*, *e.g.*, *id*.; App. Vol. 3 at 869; App. Vol. 4 at 992, 995-997.

II. Procedural History

Flatiron sued TranSystems in April 2018. *See* App. Vol. 1 at 25. As relevant here, Flatiron brought claims for negligence, breach of contract (based on a third-party-beneficiary theory), and tortious interference with contract, seeking over $35 million in damages. *Id*. at 91-93, 138. As to its negligence claim, Flatiron alleged that TranSystems "owed a professional duty to Flatiron to not negligently supervise or negligently design the project, such duty arising separate and distinct from any contractual duties between Tran[S]ystems and Horry County." *Id*. at 91. Flatiron alleged that TranSystems violated those duties by, among other things, "failing to properly inspect and observe the construction in accordance with the standards and procedures set forth in the SCDOT Construction Manual" and the Standard Specification; by "unreasonably refusing to allow or approve" Flatiron's proposed construction protocols; by "failing to review [Flatiron's] submittals in a timely manner"; and by "instituting additional procedures and inspection protocols not contemplated by the Specification." *Id*.

Shortly after Flatiron filed its complaint against TranSystems, the parties agreed to stay the matter so that Flatiron could "pursue a claim against SCDOT and/or Horry County, via the claim procedure set forth in" Flatiron's contract. App. Vol. 1 at 295; *see id*. at 5, 96. That claim eventually resulted in a separate civil action in November 2022. *See Flatiron Constructors, Inc.* v. *Horry County*, No. 2022-CP-26-06970 (Ct. Common Pleas Horry Cnty. June 22, 2023). In that action, and closely similar to the claims Flatiron brought against TranSystems in this case, Flatiron alleged that the County and the Department unlawfully impeded Flatiron's ability to timely finish the construction as required under its contract. *See* Complaint at 3-7, No. 2022-CP-26-06970. Flatiron sought over $42 million in damages. *Id*. at 11-12. In June 2023, Flatiron, Horry County, and the Department agreed to dismiss the case. Stipulation of Dismissal at 1, No. 2022-CP-26-06970.

While Flatiron's claims against the County and the Department were still pending under the claims procedure, the stay in this case expired, so TranSystems sought to stay the case again until the claims against the County and the Department were resolved. App. Vol. 1 at 110-113. Flatiron opposed TranSystems' request, primarily on the basis that a stay was unwarranted because Flatiron's claims against the County and the Department "involve[d] different parties" and "different causes of action," and because a stay would "prejudice Flatiron's interest in the expedient resolution of the claim." *Id*. at 264, 267. Flatiron also argued that it was entitled to discovery from TranSystems while its other claims were pending. *Id*. at 270-271. The trial court denied the stay and granted Flatiron's motion to compel discovery. *Id*. at 12. Nevertheless, as the case continued, Flatiron filed no affidavits, took no depositions, and served no supplemental discovery on the "issues for which it allegedly needed information." *Id*. at 31-32.

In October 2021, the parties again agreed to strike the case from the trial docket, App. Vol. 1 at 142, and the case was restored to the docket in September 2022, *id*. at 16, 144, 295. TranSystems then moved for summary judgment, which the trial court granted as to Flatiron's negligence and breach-of-contract claims. App. Vol. 1 at 58-69. The court held that Flatiron's negligence claim failed because TranSystems owed no legal duty to Flatiron. *See id*. at 59.

The trial court explained that because Flatiron had identified no "statute, contract, status, or property interest" that created a duty owed to it by TranSystems, the only question was whether a "special relationship" existed between the parties. App. Vol. 1 at 33. Although South Carolina courts have not articulated a singular "test to evaluate whether there is a special relationship," the trial court explained, the most relevant considerations are whether the defendant provided services to or for the benefit of the plaintiff and whether the plaintiff could have reasonably relied on (or did in fact reasonably rely on) the defendant's provision of those services. *Id*. at 34-36. Applying those considerations, the trial court concluded that TranSystems' services were performed for the benefit of Horry County, the Department, and the public. *Id*. at 36. And because the plain, unambiguous language of the project contracts made clear that Department had final authority—and not TranSystems—the court concluded that there was no special relationship as a matter of law. *Id*. at 40-41, 60.

The court further reasoned that recognizing a duty in this context would create an improper conflict of interest in TranSystems' contractual relationship with Horry County. App. Vol. 1 at 64. Specifically, the court found that TranSystems' "exact duties were to provide critical, *independent* review for [TranSystems'] client, Horry County." *Id*. at 36. It thus concluded that Flatiron "could not rely on" TranSystems' provision of services because TranSystems "was ethically prohibited" from providing Flatiron such services, given the conflict of interest that would result. *Id*. Flatiron moved for reconsideration, which the trial court denied. *Id*. at 72.

Flatiron appealed. In a six-page per curiam opinion, the court of appeals reversed the trial court's grant of summary judgment on Flatiron's negligence claim. *See* App. at 1338-1343. The court of appeals acknowledged that "it is difficult from precedent to determine the exact facts and circumstances that create a special relationship." *Id*. at 1340. But it nonetheless took the view that a factual dispute existed as to whether TranSystems wielded so much authority over the project that it "owed a duty to Flatiron." *Id*. The court interpreted this Court's decisions in *Tommy L. Griffin Plumbing & Heating Co.* v. *Jordan,* *Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995), and *Cullum Mechanical Construction, Inc.* v. *South Carolina Baptist Hospital*, 344 S.C. 426, 544 S.E.2d 838 (2001), to mean that the existence of a special relationship is primarily (if not purely) a question of fact. App. at 1339-1340. And it deemed the facts of this case analogous to the facts of *Tommy L. Griffin*, reasoning that the project engineer in that case "not only designed the project for the county, but . . . also supervised the project." *Id*. at 1341. And although the court of appeals recognized that the Department in this case "retained the authority to make final decisions," it took the view that the fact that the Department "delegated the everyday inspection and supervision" of the project to TranSystems itself—and that TranSystems' duties included "inspection for all phases of the Project" and "verification and approval of contractor pay requests"—sufficed to create a factual issue as to whether a special relationship existed between TranSystems and Flatiron. *Id*. at 1341-1342.

The court of appeals also relied on additional evidence that Flatiron introduced for the first time in its motion to reconsider before the trial court, which included emails related to whether Martin Long, a TranSystems employee, was acting as the Department's Resident Engineer. App. at 1340-1341 & nn.3-4. Pointing to that evidence, the court concluded that "further inquiry into the facts" was "necessary to determine the extent of the parties' relationship." *Id*. at 1339. The court did not address the conflict-of-interest problem that TranSystems raised in its appellate briefs and that was a primary basis of the trial court's decision in TranSystems' favor.

TranSystems filed a petition for a writ of certiorari on February 20, 2026. This Court granted the petition on June 17, 2026.

STANDARD OF REVIEW

Summary judgment serves "to expedite disposition of cases which do not require the services of a fact finder." *George* v. *Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). This Court reviews summary-judgment decisions using the same standard as the trial court. *See Osborne* v. *Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); *see also Braden's Folly, LLC* v. *City of Folly Beach*, 439 S.C. 171, 190, 886 S.E.2d 674, 684 (2023).

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, a movant is entitled to summary judgment if "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." *Id*. In determining whether a genuine fact issue exists, the trial court views the evidence and draws any inferences in favor of the nonmovant. *Summer* v. *Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). But the nonmovant may not defeat summary judgment by pointing to merely a "scintilla" of evidence; it is insufficient "for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC* v. *Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (citations omitted). And as this Court has recognized, "[a] motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine." *Oblachinski* v. *Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011).

ARGUMENT

I. TranSystems Had No Special Relationship To Flatiron And Thus Owed Flatiron No Legal Duty

In the professional-liability context, a legal duty sufficient to support a tort suit exists only where the defendant has offered its services for the plaintiff's benefit, such that the plaintiff can reasonably rely on the defendant's prudent provision of those services.

See pp. 16-22, *infra*. Where, as here, a construction engineer is hired to inspect the plaintiff's work for the benefit of a third party, the construction engineer lacks a special relationship with the plaintiff and thus owes the plaintiff no duty.

Countless sources of tort law—including the Restatement and other treatises, and decisions of this Court, the U.S. Supreme Court, and other state supreme courts—make that principle clear. And this Court's decision in *Tommy L. Griffin Plumbing & Heating Co.* v. *Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995), is not to the contrary: that decision recognizes only that a construction engineer and a contractor *can* have a special relationship when the engineer's services are intended to be relied upon by the contractor, such as when the engineer is tasked with designing the project.

The contrary rule adopted by the court of appeals in this case contravenes those authorities and creates a conflict of interest that is impermissible under state law. That result is legally flawed and creates significant practical problems. This Court should reverse.

A. A Construction Inspection and Testing Engineer Lacks A Special Relationship With The Contractor Whose Work It Has Been Hired To Inspect

It is a bedrock principle of tort law that a negligence claim requires the plaintiff to demonstrate "the existence of a duty" owed by the defendant to the plaintiff. *South Carolina State Ports Authority* v. *Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). "If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." *Wright* v. *PRG Real Estate Management, Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019) (citation omitted).

As this Court has recognized, "[t]he concept of duty in tort liability must not be extended beyond reasonable limits." *South Carolina State Ports Authority*, 289 S.C. at 377, 346 S.E.2d at 326. After all, "not every one who suffers a loss from the negligence of another can maintain a suit on such grounds." *National Savings Bank of District of Columbia* v. *Ward*, 100 U.S. (10 Otto) 195, 202 (1879). Were it otherwise, "[t]here would be no bounds to actions and litigious intricacies." *Id*.

1. One of the "essential" limitations on the concept of duty in tort liability is that the parties must "have some relationship recognized by law to support the duty owed by the tort-feasor." *Barker* v. *Sauls*, 289 S.C. 121, 122, 345 S.E.2d 244, 244 (1986). Thus, "[a]n affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Johnson* v. *Robert E. Lee Academy, Inc.*, 401 S.C. 500, 504, 737 S.E.2d 512, 513-514 (Ct. App. 2012) (quoting *Hendricks* v. *Clemson University*, 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003)).

To establish a tort duty that arises independent of a contractual duty—and independently of any duty arising under a statute or because of property interest—the plaintiff must show that a "special relationship" existed between the parties. *Tommy L. Griffin Plumbing & Heating Co.* v. *Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995); *see Carroll* v. *Isle of Palms Pest Control, Inc.*, 446 S.C. 177, 187, 918 S.E.2d 532, 537 (2025). That requirement "recognizes that certain socially recognized relations exist which constitute the basis for a legal duty to act for the protection of a third party." 65 C.J.S. Negligence § 42 (2026).

Critical to the existence of a special relationship is "an aspect of dependency in which one party relies to some degree on the other for protection." 65 C.J.S. Negligence § 42. And "[t]he corollary of dependence in a special relationship is control." *Id*. Accordingly, liability for negligent performance of services is generally limited to losses suffered or incurred "(a) by the person . . . for whose benefit the actor performs the service; and (b) through reliance upon it in a transaction that the actor intends to influence." Restatement (Third) of Torts § 6 (2020). Similarly, a claim for negligent misrepresentation generally requires the plaintiff to show "justifiable reliance upon the information" negligently furnished by the defendant in the course of the defendant's services, and such claims are limited to losses suffered (1) by the person "for whose benefit and guidance [the defendant] intends to supply the information" and (2) "through reliance upon" the information "in a transaction that [the defendant] intends the information to influence." Restatement (Second) of Torts § 552 (1977).

Illustrations from the Restatement demonstrate how these principles apply in common professional-services relationships. One illustration describes a home buyer who borrows money from a bank to finance a contractor's construction of a new house and gives the bank "the right to inspect the construction before issuing payments" to the contractor. Restatement (Third) of Torts § 6 (2020), comment a, illustration 4. The bank, the example goes, "negligently inspects" and "overlooks various errors in" the contractor's work. *Id*. In that situation, the Restatement concludes, the bank "is not liable" to the buyer. *Id*. That is because the bank's "purpose in inspecting the work was not to benefit [the buyer]," but rather was "to protect [the bank's] interest in the house." *Id*. The Restatement also addresses how these principles apply in "[t]hree-cornered construction disputes," which involve "litigation between a contractor hired to erect a building and the architect who designed it." Restatement (Third) of Torts § 6 (2020), comment b. If "[a] mistake in the architect's plans imposes costs on the builder," the architect may be liable to the contractor. *Id*. That is so because the architect's design plans are "intended to serve as a basis for reliance by the contractor in preparing a bid" and in "carry[ing] out the plans"—a situation analogous to a client's reliance on an "audit report that an accountant supplies to [the] client for distribution to potential investors." *Id*. By contrast, "[t]here is no liability in tort" when "one subcontractor is sued by another because the negligence of the first drives up the costs of the second." *Id*. In that circumstance, the negligence of the one subcontractor is "viewed just as a failure in the performance of its obligations to its contractual partner, not as the breach of a duty in tort to other subcontractors on the same job." *Id*. As the Restatement makes clear, the dispositive inquiry is whether the defendant operated for the plaintiff's benefit. When the defendant's obligation is for the benefit of itself (like the bank) or a third party (like the subcontractor acting for the owner of the building), no special relationship exists.

Consistent with the Restatement, South Carolina courts have recognized that reliance and dependency are hallmarks of any "special relationship" that can give rise to a legal duty in the professional-liability context. *See*, *e.g.*, *South Carolina State Ports Authority*, 289 S.C. at 376-377, 346 S.E.2d at 326; *Beachwalk Villas Condominium Association* v. *Martin*, 305 S.C. 144, 145-147, 406 S.E.2d 372, 373-374 (1991); *Roundtree Villas Association* v. *4701 Kings Corp.*, 282 S.C. 415, 422-423, 321 S.E.2d 46, 50-51 (1984); *see also Johnson*, 401 S.C. at 504-505, 737 S.E.2d at 514 (quoting Restatement (Second) of Torts § 323 (1965)). Under those decisions, the existence of a legal duty depends on whether the defendant offered a specialized professional service to be performed for the benefit of the plaintiff and whether the plaintiff reasonably could rely on the defendant to provide it with that service. *See South Carolina State Ports Authority*, 289 S.C. at 376-377, 346 S.E.2d at 326.

For example, in *Beachwalk Villas*, this Court held that an architect who undertook the planning and design of a condominium construction project owed a duty to the condominium owners, even though the parties lacked contractual privity, because the architect's plans were for the benefit and protection of the homebuyers. 305 S.C. at 145-147, 406 S.E.2d at 373-374. By contrast, this Court held in *Roundtree Villas* that a construction lender who monitored a condominium construction project to protect its loan investment to the builder owed no duty to subsequent homeowners to prevent construction defects. 282 S.C. at 422-423, 321 S.E.2d at 50-51. The Court emphasized that although the lender "ma[de] periodic inspections," those inspections were "fundamentally for the protection of the lending institution." *Id*. A duty eventually arose when the lender later "took over the project" and "undertook to repair defects" to promote and sell more units—because those repairs were for the benefit of homebuyers—but the lender owed no duty for merely undertaking inspections when it was not an "active participant[] in the building enterprise" or otherwise involved in the design or construction. *Id*. at 423, 321 S.E.2d at 50-51.

Similarly, the United States Supreme Court has long held that a defendant employed by a putative property owner to examine and certify the validity of title to the property was not liable to a group of plaintiffs—themselves third parties who were strangers to the defendant and property owner's contract—who loaned money to the property owner in reliance on the defendant's representation that the property was unencumbered. *Ward*, 100 U.S. (10 Otto) at 195, 205-207. Although the defendant in that case assumed a duty to use reasonable care and skill in providing his services, that duty was owed only to the property owner who had hired the defendant to perform "such service[s] at [the owner's] request or in [his] behalf," and who thus could reasonably rely on the defendant's assurances and provision of services. *Id*. at 205. By contrast, the U.S. Supreme Court explained that, as to the third parties, the defendant "never performed [the] service at their request or [on] their behalf"; the third parties "never paid [the defendant] any thing for the service he did perform"; and there was accordingly no basis for those third parties to rely on the defendant's conduct. *Id*. The Court therefore held that no duty existed as a matter of law. *Id*. at 205-206. "Such a restriction on the right to sue for a want of care in the exercise of employments or the transaction of business," the Court explained, "is plainly necessary to restrain the remedy from being pushed to an impracticable extreme." *Id*. at 202. The U.S. Supreme Court's decision in *Ward* thus confirms that where, as here, the defendant's services were not performed for the plaintiff's benefit, the defendant owes the plaintiff no duty as a matter of law.

Other jurisdictions have likewise held that a defendant tasked with inspecting the plaintiff's work for the benefit of a third party has "no duty, which would give rise to a corresponding right in the [plaintiff], to rely upon [the] inspections." *Peterson* v. *Mutual Savings Institution*, 646 S.W.2d 327, 329 (Tex. App. 1983); *see Colonial Savings Association* v. *Taylor*, 544 S.W.2d 116, 119-120 (Tex. 1976); *Daniels* v. *Army National Bank*, 822 P.2d 39, 41-44 (Kan. 1991); *Meyers* v. *Guarantee Savings & Loan Association*, 79 Cal. App. 3d 307, 310-313 (Cal. Ct. App. 1978). And in considering circumstances similar to those here, where the defendant is hired only to review the plaintiff's work for the benefit of the construction project's owner, other jurisdictions have held that the defendant owes no duty of care to the plaintiff as a matter of law. *Lutz Engineering Co.* v. *Industrial Louvers, Inc.*, 585 A.2d 631, 635-636 (R.I. 1991). For example, in *Lutz*, the defendant, an architect-engineering firm, was hired to review proposed drawings and plans prepared by the plaintiff, a construction subcontractor, in order to ensure the subcontractor's "general conformance" to the project's specifications and "general compliance with the contract documents." 585 A.2d at 632-633. The plaintiff sued the defendant for negligent review after one of the plaintiff's drawings that the defendant had approved turned out to be non-compliant with project specifications, leading the project owner to withhold payment to the plaintiff. *Id*. at 634. In holding that the defendant was entitled to judgment as a matter of law, the court emphasized that the defendant's contract with the project owner, "by its terms, never created or even contemplated a duty of care" owed by the defendant "to any-one but" the project owner. *Id*. at 635. Thus, although the plaintiff attempted to rely on the defendant's "engineering expertise in order to meet [its] own contractual obligations" to the project owner, the plaintiff could not justifiably do so. *Id*.

2. Applying those principles, TranSystems owed Flatiron no legal duty. Flat-iron's negligence claim was based on its theory that TranSystems owed it "a professional duty . . . to not negligently supervise or negligently design the project," "arising sepa-rate and distinct from any contractual duties" between TranSystems and Horry County. App. Vol. 1 at 91. But the relevant contracts make clear that TranSystems' work was performed solely for the benefit of Horry County, the Department, and the general public. Moreover, the relevant contracts unambiguously provide that only the Department—not TranSystems—had the final authority to approve Flatiron's proposed protocols, and only the Department had the ultimate oversight authority over the inspection of the project. Given those limitations, Flatiron could not reasonably rely on TranSystems' conduct or representations in the performance of Flatiron's own contractual obligations. Accordingly, there was no "special relationship" sufficient to create a legal duty.

As an initial matter, the relevant contracts plainly show that TranSystems' obligations were to be performed for the benefit of Horry County, the Department, and the general public. The terms of TranSystems' contract, for example, provide that TranSystems' "professional engineering services" were offered "for [the] use and benefit of [Horry] County." App. Vol. 1 at 818. TranSystems also agreed to "assist" the Department in various related duties, including "project public relations and informational meetings." *Id*. at 843. And TranSystems' CEIT services would ultimately benefit the County and the Department by ensuring that the highways were "safe and serviceable" under S.C. Code Ann. § 57-5-10 (2025)—an assurance that was not only required for the project to be lawful, but was also an express condition of the project's $240 million in funding under the intergovernmental agreement between the County, the Department, and the South Carolina Transportation Infrastructure Bank. App. Vol. 3 at 797. Nowhere in the contract, however, did TranSystems undertake duties owed to Flatiron. Nor could it have: the very reason why TranSystems' CEIT services benefitted the County and the Department is precisely because Flatiron's interests in getting the project done quickly and cheaply, *cf.* App. Vol. 2 at 337 (requiring Flatiron to complete the project within 1220 calendar days and imposing $5,000 in liquidated damages for each day past that deadline), would be adverse to the County's. The nature of the benefit to the County and the Department was inherently at odds with Flatiron's interests.

Applicable state statutes and regulations further support the conclusion that, in undertaking its engineering role under the contract, TranSystems owed a duty to Horry County, the Department, and the public. For example, regulations promulgated by the South Carolina Department of Labor, Licensing, and Regulation—which are "binding upon every person holding a certificate of registration" as a professional engineer, S.C. Ann. Code Regs. § 49-300 (2022)—state that the "primary obligation" owed by engineers "is to protect the safety, health, property, and welfare of the public," S.C. Ann. Code Regs. § 49-301 (2022). Those regulations likewise contemplate that an engineer owes duties to "their employer or client," but not to others. S.C. Code Ann. Regs. § 49-304 (2022). Those provisions thus confirm what common sense suggests: none of TranSystems' work was performed on behalf of Flatiron or in Flatiron's interest.

Moreover, Flatiron could not have relied on TranSystems' conduct or representations—including with respect to TranSystems' own professional services, such as its inspections, approvals, and stop-work orders—because the terms of all the relevant contracts expressly gave the Department final authority over each of those things. Indeed, the contracts could not be more clear: for example, the intergovernmental agreement (which was necessary to secure the project's $240 million in funding) specifically provided that the Department would be the party to provide "oversight of design and construction for the Project." App. Vol. 1 at 52. That agreement referred to the Department "administer[ing]" and "oversee[ing]" the "necessary activities or functions" of the construction project, including "all planning, design, engineering, right-of-way acquisition, contract administration, [and] inspection," as well as the "construction for the [p]roject" and any other related activities. App. Vol. 3 at 793. It also empowered the Department to "authorize change orders it deem[ed] necessary." *Id.* at 795. And it provided that, once the project was finished, the Department's State Highway Engineer—the Department employee tasked with overseeing the day-to-day operations of the project—was to "recommend to the SCDOT Commission the acceptance of the [project] into the State Highway System, as defined by

S.C. Code Ann. Section 57-5-10." App. Vol. 3 at 797. Horry County's resolution approving the intergovernmental agreement similarly stated that the Department would "assume the primary responsibility for various aspects of the roadway project." App. Vol. 3 at 812.

The TranSystems contract is equally clear. It provided that the Department's Resident Engineer would "provide daily supervision on the project" and "make final decisions," and TranSystems' Project Engineer would "report directly" to the Department. App. Vol. 3 at 837. TranSystems' work was to be done in accordance with standards established by the Department, *see id*. at 839-840; those standards further clarified that the Department's Resident Engineer would "decide all questions that may arise regarding the quality and acceptability of materials furnished, the work performed, the rate of progress of the work; the interpretation of the Plans and Specifications; [and] acceptable fulfillment of the Contract by the Contractor," among other things. App. Vol. 4 at 989. The Department's Resident Engineer likewise "ha[d] the authority to suspend the work, wholly or in part." *Id*. And if that were not clear enough, the Standard Specifications explicitly state that construction contractors were not to construe representations "by the [Department's Resident Engineer's] representative as in any way binding on the [Department's Resident Engineer] or the Department," as the Department still retained final authority to approve or accept portions of the work and to issue instructions regarding the project. *Id*. at 990.

The relevant contracts brim with language indicating that TranSystems did not possess final authority over the project. For example, the TranSystems contract refers to TranSystems as the "Consultant" on the project. App. Vol. 3 at 818. Likewise, the contract expressly states, in a provision labeled "Control," that "[a]ll work" by TranSystems was "to be done in a manner satisfactory to [Horry] County and [the] Department and in accordance with the established customs, practices, and procedures" of Horry County and the Department. *Id*. at 824. The Department's decisions were "to control in all questions regarding location, type of design, dimension of design and similar questions." *Id*. And any "failure[s] to maintain satisfactory progress" would be determined by Horry County and the Department, which the contract authorized to "monitor the progress of the work to determine that the work is progressing sufficiently to meet the commitments agreed to" in the contract. *Id*. at 825. Similarly, as explained, the intergovernmental agreement specifically provided that the Department would provide "oversight of design and construction for the Project." App. Vol. 1 at 52. That agreement referred to the Department "administer[ing]" and "oversee[ing]" the "necessary activities or functions" of the construction project, including "all planning, design, engineering, right-of-way acquisition, contract administration, [and] inspection," as well as the "construction for the [p]roject" and any other related activities. App. Vol. 3 at 793. It also empowered the Department to "authorize change orders it deem[ed] necessary." *Id*. at 795. Horry County's resolution approving the intergovernmental agreement similarly stated that the Department would "assume the primary responsibility for various aspects of the roadway project." *Id*. at 812. That language was not merely ornamentation: the Department's control over the project was necessary to make the project lawful and to receive millions of dollars in state funding.

Because the relevant contracts plainly show that TranSystems' services were not rendered for Flatiron's benefit, and because they foreclosed any possibility that Flatiron could reasonably rely on TranSystems' services in the performance of Flatiron's own obligations, the parties lacked any "special relationship." Absent such a relationship, TranSystems could not owe a legal duty to Flatiron.

B. This Court's Decision In *Tommy L. Griffin* Is Not To The Contrary

In *Tommy L. Griffin*, this Court held that, in some circumstances, an engineer may owe duties to contractors outside of privity to not "negligently design or negligently supervise" projects. 320 S.C. at 55-56, 463 S.E.2d at 88-89. But *Tommy L. Griffin* did not purport to define the circumstances giving rise to a "special relationship" between an engineer and a contractor as a matter of law.

Tommy L. Griffin's reach is narrow, and its facts are distinguishable from this case. *Tommy L. Griffin* involved an engineer that was tasked by contract with designing and supervising a county-owned construction project. 320 S.C. at 51, 463 S.E.2d at 86. The engineer's contract gave it direct supervisory and decision-making authority over the contractor. *Id*. at 55-56, 463 S.E.2d at 88-89. After a contractor had already bid on and won the construction project—but before the contractor's agreement with the county was finalized—it was discovered that the engineer's project designs would have to be redone, causing substantial delays. *Id*. at 51, 463 S.E.2d at 86. The engineer and the contractor continued to have "numerous disagreements" about the implementation of the project: the engineer "closed the job for nearly a month," "made demands of [the contractor] which were not in the contract," and "wrote a disparaging letter to [the contractor's] bonding company." *Id*. at 51-52, 463 S.E.2d at 86-87. This Court relied on *Beachwalk Villas*, which held that a party who "furnishe[d] plans and specifications for a contractor to follow" owed a duty not to design those plans negligently. 305 S.C. at 146, 406 S.E.2d at 374. Accordingly, this Court concluded that because the engineer "designed the project" and "had the right, among other things, to inspect the construction and to halt construction," the engineer owed a duty to the contractor. *Tommy L. Griffin*, 320 S.C. at 56, 463 S.E.2d at 89.

That holding does not impose a duty on each and every engineer or inspector who interacts with a contractor. Instead, it merely reflects the principle illustrated by the Restatement—that a special relationship exists in this context only where the engineer is tasked with responsibilities (such as designing construction plans) that are "intended to serve as a basis for reliance by the contractor in preparing a bid" and in "carry[ing] out the plans." Restatement (Third) of Torts § 6 (2020), comment b. As explained (pp. 18-19), and as the Restatement points out, such a circumstance is analogous to an "audit report that an accountant supplies to a client for distribution to potential investors." Restatement (Third) of Torts § 6 (2020), comment b; *see South Carolina State Ports Authority*, 289 S.C. at 377, 346 S.E.2d at 326. But that principle does not extend to circumstances in which one party hired to provide services to the project's owner "is sued by another because the negligence of the first drives up the costs of the second." Restatement (Third) of Torts § 6 (2020), comment b. There is "no liability in tort" for such claims, because any negligence by the one contractor is "viewed just as a failure in the performance of its obligations to its contractual partner, not as the breach of a duty in tort to other subcontractors on the same job." *Id*. *Cf. South Carolina State Ports Authority*, 289 S.C. at 377, 346 S.E.2d at 326.

Tommy L. Griffin thus does not expand the scope of tort liability nearly as far as the court of appeals seemed to suggest; instead, it turns on the existence of a special relationship that is absent here as a matter of law. TranSystems' role was materially different from the engineer's role in *Tommy L. Griffin*. As explained (pp. 22-27), TranSystems was not the engineer of record for the project: it did not design the project or otherwise owe design duties to Flatiron; it did not administer the construction contract as the ultimate decisionmaker; and it did not approve or deny claims in a binding way. Indeed, as the intergovernmental agreement between the Department and Horry County that gave rise to the project makes clear, the parties intended for the Department—not TranSystems or any other contractor—to provide "oversight of design and construction for the Project." App. Vol. 1 at 52. The Department was the party tasked with the "planning, design, [and] engineering of the project," and it was required to "administer" and "oversee" the inspection of the construction. App. Vol. 3 at 793.

The engineer in *Tommy L. Griffin* was involved in designing the project and its designs were used to form the contractor's bid and its ultimate contract with the County; here, by contrast, TranSystems did not design the project, *see* App. Vol. 3 at 847; App. Vol. 4 at 989, and Flatiron's bid for the project in no way related to or depended on TranSystems' services. *Cf.* App. Vol. 3 at 695, 819, 837-843. Indeed, Flatiron's bid documents confirm that Flatiron did not rely on TranSystems' services in the bid process, as they do not reference TranSystems at all (because, after all, TranSystems' CEIT services were to be provided only once construction had already begun). *See* App. Vol. 2 at 322-355. Absent those indicia of reasonable reliance by Flatiron, and absent any evidence that TranSystems' services were for Flatiron's benefit, the parties' relationship lacked the necessary elements of a "special relationship" that *Tommy L. Griffin* deemed sufficient to create a tort-law duty.

What is more, Flatiron's contract with Horry County and the Department foresaw these very differences: the Flatiron contract provided Flatiron with a claims procedure and remedy against the County and the Department for project delays or changes in the project's scope not attributable to Flatiron that increased its costs—the very sort of claim Flatiron has asserted against TranSystems here. App. Vol. 2 at 780-782. By limiting Flatiron's remedies to claims against the County and the Department, the Flatiron contract contemplated that only those entities—and not TranSystems—could have the type of relationship with Flatiron necessary to make them accountable to Flatiron for delays. Flatiron's claims against TranSystems seek a second bite at the apple, but nothing in *Tommy L. Griffin*'s holding permits such a maneuver.

C. Imposing A Duty In This Context Would Generate Unavoidable Conflicts Of Interest And Would Lead To Untold Liability For Construction Engineers

Absent a special relationship, there is no basis to impute a negligence duty on TranSystems—and this Court should not extend *Tommy L. Griffin* to do so. Extending *Tommy L. Griffin*'s holding to create a duty owed by consultant engineers—those who are not serving as engineer of record on a project and are responsible solely for reviewing and assessing a contractor's work—to the contractors whose work they review would create an impermissible conflict of interest. Recognizing such a duty would put TranSystems and similarly situated consultant engineers in an impossible position. The Department has designed its standard specifications to allow for independent review of contractors' work by CEIT service providers, and creating a new tort duty for those important reviewers would substantially (and unnecessarily) increase the costs of highway construction by vastly expanding the scope of their potential tort liability. The threat of untold liability would loom over every construction project—a predicament that would inevitably undermine public safety while pushing the cost of multimillion-dollar projects even higher.

Creating a tort duty in this context would create a conflict of interest that is impermissible under state law, thereby subjecting TranSystems to unavoidable professional liability. As explained, *see* pp. 23-24, the terms of TranSystems' contract make clear that TranSystems was to perform its contractual obligations in the best interests of Horry County, the Department, and the public. As a result, TranSystems' professional duties were adverse to Flatiron: it was obligated to review Flatiron's construction plans—including proposed quality-control protocols—and "recommend [those plans] for approval" only "in accordance with [TranSystems'] contract documents." App. Vol. 3 at 839. Likewise, TranSystems was required to perform "assurance and acceptance inspection" and "construction survey verifications to determine compliance with the contract requirements." *Id*. Flatiron, meanwhile, had every incentive to complete the project quickly: its contract with the County required Flatiron to complete the project within 1220 calendar days from the date of its notice to proceed with the project (subject to agreed-upon extensions). App. Vol. 2 at 337. And if Flatiron failed to complete the project in time, it would have to pay the County liquidated damages of $5,000 per day until completion. *Id*. TranSystems' contractual duties with Horry County thus inherently pitted TranSystems against Flatiron by requiring TranSystems to closely scrutinize Flatiron's work in the interest of public safety. That is a classic conflict of interest.

South Carolina's engineering regulations likewise confirm that a tort duty running from TranSystems to Flatiron would create an impermissible conflict of interest. The stated purpose of South Carolina's professional regulations governing engineers is to "safeguard life, health, and property and to promote the public welfare." S.C. Code Ann. § 40-22-2 (2025). And as explained, the regulations provide that an engineer's "primary obligation" is to protect the public. S.C. Code Ann. Regs. § 49-301 (2022). An implied duty to a contractor would divert the engineer's loyalty from that primary obligation.

The imposition of a duty in this context would make impermissible conflicts of interest practically unavoidable. South Carolina requires construction engineers to "avoid conflicts of interest" and prohibits dual compensation from clients with conflicting interests absent their full disclosure and consent. S.C. Code Ann. Regs. § 49-304 (2022). That rule recognizes that an engineer's professional obligations cannot be split between the client (including the public) and the contractor whose work is being evaluated, absent disclosure and consent. But in common cases like these—where the engineer and the contractor lack contractual privity and are otherwise strangers—disclosure and consent requirements are cold comfort, given that there is no agreement in which to make the required disclosures or to give the required consent (and likewise no negotiating table for doing so). In that way, imposing a duty to Flatiron would force TranSystems into precisely the dual-loyalty position that Section 49-304 was designed to prevent. Extending tort-law duties to this context would thus flout the principle that a consultant retained to inspect and evaluate a contractor's work on behalf of a public entity cannot simultaneously owe the contractor a duty that would penalize the consultant for zealous, safety-driven inspection and enforcement of project requirements.

Recognizing the absence of a duty between the inspector and the contractor makes practical sense too. In every professional-liability context, it is foundational that a licensed professional cannot serve two principals with adverse interests on the same matter without informed consent by all parties. Consider the conflict-of-interest rules in the attorney-client context: an attorney retained by Client A to litigate against Party B owes loyalty and zealous advocacy duties to Client A and therefore cannot concurrently owe duties to Party B. Likewise, TranSystems was hired by Horry County to perform CEIT services evaluating Flatiron's work for the benefit of Horry County and the public. Just as a lawyer's efforts are oriented towards serving his client, TranSystems was entirely oriented toward serving Horry County, the Department, and the public's interest in safe construction and could therefore not simultaneously owe duties to Flatiron.

The court of appeals' approach has no limiting principle, and it would make virtually every CEIT consultant a potential tort defendant to the contractor it inspects. On public highway projects, CEIT consultants necessarily inspect, comment on, reject, test, evaluate, and report on contractor work. If those ordinary inspection functions create a "special relationship," then the consultant's ordinary performance of its owner-facing role becomes a tort undertaking to the contractor. Making CEIT consultants beholden to the interests of the contractors they scrutinize would undermine the quality of inspections that are meant to be for the public's benefit under South Carolina law. *See* S.C. Code Ann. § 40-22-2 (2025); S.C. Code Ann. Regs. § 49-301 (2022).

Such sweeping liability would impede construction contracts and drive up the cost of building in South Carolina. After all, "[t]he parties involved in a construction project rely on intricate, highly sophisticated contracts to define the relative rights and responsibilities of the many persons whose efforts are required" and to "allocate among them the risk of problems, delays, extra costs, unforeseen site conditions, and defects." Sidney R. Barrett, Jr., *Recovery of Economic Loss in Tort for Construction Defects: A Critical Analysis*, 40 S.C. L. Rev. 891, 941 (1989) (internal quotation marks and citations omitted). "Imposition of tort duties that cut across those contractual lines disrupts and frustrates the parties' contractual allocation of risk and permits the circumvention of a carefully negotiated contractual balance among owner, builder, and design professional." *Id*. What is more, the complex nature of construction contracts—and the "wealth of participants" made parties to those contracts, often with "overlapping" and "unclear lines of responsibility"—

"makes it unlikely that expansion of professional liability [in this context] will place responsibility on the party on whom it ought to be placed." *Legal Aspects of Architecture, Engineering, and the Construction Process* 314 (Justin Sweet ed., 1994). And as courts have long recognized, "contorting the Restatement to create a precedent that may have a chilling effect on cooperation with the authorities or other conduct that inures to the public good is ill-advised and poor public policy." *Johnson*, 401 S.C. at 505, 737 S.E.2d at 514; *see Ward*, 100 U.S. (10 Otto) at 202.

Finally, creating a tort duty here would undermine the safety and efficiency of major public construction projects. If inspectors face tort liability to contractors for being too strict, too slow, or too demanding—or for being "overzealous" in their inspections, as Flatiron characterized its theory, *see* App. Vol. 3 at 859-860—CEIT consultants will face pressure inconsistent with their duty to the owner and public. That is especially serious on highway projects, where the inspection function protects public infrastructure and safety. Indeed, the Department administers the fourth largest state-maintained highway system in the nation with an approximately $7 billion construction program, and it has measured a 20% reduction in fatal and serious injury crashes following the completion of certain highway-construction projects. *See* SCDOT, *Annual Report* 1, 10 (2026), <tinyurl.com/2026 SCDOTAnnual-Report>.

Concerns for public safety arise even *during* the completion of construction projects: between 2014 and 2018, for example, South Carolina experienced "a 300% increase in active construction projects," which in turn "increas[ed] the potential for both workers and motorists to be involved in a collision in a work zone." *South Carolina Strategic Highway Safety Plan: Target Zero* 38-39 (2020), <tinyurl.com/SCHighwaySafety>. That risk prompted the State to create a highway safety plan that, among other things, called for "routine inspection[s]" related to "work zone design plans." *Id*. at 111. And public-safety concerns—and how a State addresses those concerns—likewise matter when state and local governments partner with private entities to carry out construction; professional-liability insurers expressly evaluate state legal environments when making risk and pricing assessments and consider state legal trends in potential rate actions. *See*, *e.g.*, Ames & Gough, *PLI Market 2024: A/E Firms See Steady Growth, Evolving Risks, and Inflation-Driven Costs* (2024), <tinyurl.com/ProfessionalLiabilityRisks>. For these reasons, imposing a duty in this context would subject construction engineers to unavoidable and impermissible conflicts of interest, expose them to unbounded liability, and ultimately compromise the safety and efficiency of construction projects across South Carolina.

II. The Court Of Appeals Erred By Treating The Existence Of A Duty In This Case As A Factual Question Irresolvable At Summary Judgment

A. The Court Of Appeals Failed To Recognize That The Existence Of A Duty Is Ultimately A Question Of Law

In the decision below, the court of appeals primarily rested its holding on the grounds that the existence of a special relationship between TranSystems and Flatiron was a factual question irresolvable at summary judgment. That is mistaken. The existence of a legal duty is ultimately and predominantly a question of law. As this Court has recognized, "[a] motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine." *Oblachinski* v. *Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011); *Hendricks*, 353 S.C. at 456, 578 S.E.2d at 714 ("The determination of the existence of a duty is solely the responsibility of the court."). "If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." *Wright* v.

PRG Real Estate Management, Inc., 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019) (citation omitted).

The court of appeals described the existence of a duty as a "factual issue," quoting *Tommy L. Griffin*'s statement that "[w]hether such a duty exists will depend on the facts and circumstances of each case." App. at 1339. Of course, there are often subsidiary factual questions, and the existence of a duty is a case-specific inquiry. But that does not mean that a court is precluded from resolving the question of duty as a matter of law in certain circumstances. To the contrary, this Court has "expressly clarified" that the fact that subsidiary questions are factual does not mean that the existence of a duty is itself a factual question. *Spence* v. *Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 926-927 (2011). The court of appeals' contrary reading of *Tommy L. Griffin* would render practically every professional-liability dispute irresolvable at summary judgment. That result would flout this Court's longstanding precedent recognizing that judgment as a matter of law is appropriate "[i]f there is no duty" under existing state law. *Wright*, 426 S.C. at 212, 826 S.E.2d at 290; *see Steinke* v. *South Carolina Department of Labor, Licensing & Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999).

Further warping the legal analysis, the court of appeals focused on whether TranSystems "actually wielded authority." App. at 1342-1343 n.5. But that is irrelevant. The law asks whether TranSystems had authority of the kind that could create a special relationship with—and therefore a duty of care toward—Flatiron as a matter of law. After all, as other courts have explained, the existence and scope of a duty owed by a project engineer or supervisor to a construction contractor may be defined by the "provisions contained in the various contract entered among the parties" and the relevant "rules of professional conduct." *Eastern Streel Constructors, Inc.* v. *City of Salem*, 549 S.E.2d 266, 275 (W. Va. 2001); *see Lutz*, 585 A.2d at 635-636. As explained (pp. 22-27), the relevant contracts and professional rules make clear that Flatiron could not rely on TranSystems' services in carrying out its own contractual obligations to Horry County and the Department. That is true regardless of whether TranSystems in fact purported to wield authority: the relevant contracts and the Standard Specifications expressly provided that contractors were not to view representations of engineering consultants like TranSystems as "binding on the [Department]," and instructed contractors not to rely on consultants' inspections as "reliev[ing] the [c]ontractor of any responsibility or obligation." App. Vol. 4 at 990. Given those express contractual limitations on TranSystems' authority—which were made equally clear in Flatiron's own contract with the County—any dispute about the authority TranSystems in fact wielded is immaterial.

In any event, the record forecloses any claim that TranSystems wielded the type of authority Flatiron reasonably could rely on. The only piece of evidence the court of appeals discussed—an affidavit from Louis Hutcherson, a Flatiron project engineer—asserts in conclusory terms that a TranSystems employee, Martin Long, "held himself out" as the Department's Resident Engineer, but even that affidavit never stated that Flatiron relied on Long's conduct in carrying out its own contractual obligations. *See* App. Vol. 4 at 932-937. To the contrary, undisputed evidence in the record establishes that Flatiron was aware that TranSystems was not the engineer of record and did not have final authority. For example, Flatiron received emails from Travis M. Patrick, a Department employee, who identified himself as the Department's "Resident Construction Engineer." App. Vol. 4 at 972. And in another email exchange, Long stated that he was just a "consultant" and indicated that the Department's Resident Engineer was Patrick—which Hutcherson forwarded to other Flatiron employees, adding that Long "does not possess, and nor will he demonstrate, any authority." *Id*. at 1209-1210. Under those circumstances, and in light of the contractual language foreclosing any reliance, any on-the-ground authority that TranSystems may have exercised subject to the Department's final decision could not create a legally cognizable undertaking to protect Flatiron's economic interests.

The combined effect of the two rulings of the court of appeals—recognizing a potential special relationship in these circumstances and treating the existence of that relationship as a factual question only able to be addressed at trial—would increase unpredictability in the allocation of risk on public construction projects. If allowed to stand, that ruling would mean that a CEIT could be found in any case to have a duty to every contractor whose work it scrutinized; making matters worse, the existence of that duty would never be resolved as a matter of law but must instead await a determination until after full discovery and a hearing or trial. In that world, the cost of CEIT services—and consequently the cost of public construction projects—will inevitably increase to account for this new and indeterminate litigation exposure. Meanwhile, the quality and independence of public-benefit inspections will diminish as CEIT consultants calibrate their conduct not to "their primary obligation [of] protect[ing] the safety, health, property and welfare of the public," but to the avoidance of contractor litigation. *See* S.C. Code Ann. Regs. § 49-301(A) (2022). Those consequences would erode the very public interests that CEIT consultants are employed to protect. *See* pp. 31-33, *supra*.

B. There Are No Genuine Disputes Of Material Fact Sufficient To Preclude Summary Judgment In This Case

Contrary to the court of appeals' reasoning, the existence of a duty owed by TranSystems to Flatiron can be resolved as a matter of law from the project contracts and engineering regulations, regardless of any evidence of TranSystems' actual on-the-ground conduct. The proper standard requires the nonmoving party to present evidence of a "genuine issue of material fact." *Town of Hollywood* v. *Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). Unreasonable inferences, conclusory assertions, and issues of fact that are not genuine do not suffice. *See id*. And here, the contract terms clearly and unambiguously provide that the Department had final say-so over the project, meaning that TranSystems could not owe a duty to Flatiron—both under *Tommy L. Griffin* and in light of the impermissible conflict of interest that would result. As explained (pp. 23-27), TranSystems' contract clearly states that TranSystems' CEIT services were to be supervised by—and subject to the approval of—the Department's own Resident Engineer, who provided daily supervision and made final decisions when necessary. Neither the Department nor Horry County gave TranSystems authority to make any decisions to bind either entity. App. Vol. 3 at 837; App. Vol. 4 at 990. Similarly, Flatiron's contract expressly instructs it not to "construe advice given by [TranSystems] as in any way binding on [the Department or its Resident Engineer]," or as releasing Flatiron "from the fulfillment of the terms" of its contract. App. Vol. 3 at 696; App. Vol. 4 at 990. The plain language of those provisions eliminates any basis for Flatiron to justifiably rely on TranSystems as a party with decision-making authority.

As explained (pp. 37-38), the only disputed factual evidence the court of appeals cited is the Hutcherson affidavit suggesting that TranSystems in fact wielded final supervisory authority over the project. At most, Hutcherson's affidavit raises an unreasonable inference: it asserts that Long, a TranSystems employee, "held himself out" as the Department's Resident Engineer and that TranSystems "wielded substantial influence and power" over Flatiron. But as the trial court observed, Hutcherson never testified that he in fact believed Long was the Department's Resident Engineer or that Long possessed the actual authority of the Department's Resident Engineer. App. Vol. 1 at 28-29; *see* pp. 37-38, *supra*. Regardless, Hutcherson's own contemporaneous correspondence—including the February 2016 email exchange in which Hutcherson acknowledged that Long "does not possess, nor will he demonstrate[,] any authority" after Long had described himself as a "consultant" and noted that references to "RCE" meant the Department's Resident Engineers—contradicts any inference that Flatiron genuinely relied upon TranSystems as the final supervisory authority during construction. App. Vol. 1 at 160-161, 169; App. Vol. 4 at 1209.

Moreover, Hutcherson's affidavit did not create a genuine dispute of material fact: the plain scope of the contract terms demonstrates that there was no reasonable basis for Flatiron to rely on TranSystems as the final supervisory authority, including any statements TranSystems—or Long—allegedly made to that effect. *See* pp. 23-27, *supra*. Nor was there any reasonable basis for Flatiron to rely on TranSystems to provide it with any "professional services." That is so regardless of the facts asserted in the Hutcherson affidavit. And absent any justifiable reliance by Flatiron, there could be no special relationship between the parties.

Even if Hutcherson's affidavit could create a genuine dispute of material fact, the court of appeals erred by considering it at all. Under the parol evidence rule, that evidence could not properly be considered or used to vary the clear and unambiguous terms of TranSystems' contract with Horry County. *Penton* v. *J.F. Cleckley Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997). TranSystems' and Flatiron's contracts with Horry County both unambiguously define the "Resident Construction Engineer" as an "SCDOT Official." App. Vol. 3 at 696; App. Vol. 4 at 988. Extrinsic evidence, including the Hutcherson affidavit, cannot be used to redefine or contradict that plain language. As this Court has made clear, "[w]hen a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used," and "[e]xtrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible." *C.A.N. Enterprises, Inc.* v. *South Carolina Health & Human Services Finance Commission*, 296 S.C. 373, 377-378, 373 S.E.2d 584, 586 (1988). Indeed, the United States Supreme Court in *Ward* explained that a non-party to a contract cannot use extrinsic evidence to "contradict or vary" the terms of the contract in order to establish that the defendant owed the non-party a tort-law duty under the defendant's contractual obligations. 100 U.S. (10 Otto) at 206-207. As discussed above (pp. 20-21), *Ward* addressed a third-party lender's effort to bring a tort claim against an attorney hired by the borrower, arguing that local custom established that the attorney should be treated as acting for the lender. 100 U.S. (10 Otto) at 206-207. The Court rejected that argument, explaining that, because the attorney's duty ran only to his client and not to the third-party lender, extrinsic evidence could not be used to create a contractual relationship and thus could not supply the duty the lender sought to impose. *Id*. at 207-208; *see Lutz*, 585 A.2d at 635-636.

Accordingly, even if a tort duty between an engineer and the party it was hired to inspect could be recognized as a matter of law, the court of appeals erred by reversing the grant of summary judgment on the record presented here.

CONCLUSION

For the foregoing reasons, the court of appeals' decision should be reversed.

Respectfully submitted.

August 6, 2026

/s/ C. Daniel Atkinson

WILKES ATKINSON & JOYNER, LLC
Michael B. T. Wilkes, Esq. (S.C. Bar #6107)
mwilkes@wajlawfirm.com
C. Daniel Atkinson, Esq. (S.C. Bar # 72721)
datkinson@wajlawfirm.com
J. Alexander Joyner, Esq. (S.C. Bar # 101771)
ajoyner@wajlawfirm.com

127 Dunbar Street, Suite 200
Spartanburg, SC 29306
(864) 591-1113

Counsel for Petitioner
TranSystems Corporation