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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Jane H. Merrill, Circuit Court Judge

Appellate Case No.: 2025-002252

T. Cox Builders, LLC .....Appellant,

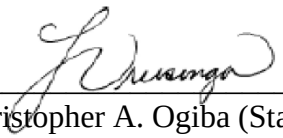
v.

Piedmont Vacant Properties, LLC and Watson Engineering, Inc. .....Respondents.

INITIAL BRIEF OF RESPONDENTS

Respectfully submitted,

MOORE & VAN ALLEN PLLC



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COUNTERSTATEMENT OF ISSUES PRESENTED

I. Whether Cox's appeal must be dismissed where Cox voluntarily paid and satisfied the judgment in full—without protest, without any threat of execution, and without seeking a supersedeas bond.

II. Whether the trial court properly denied Cox's motion to stay Respondents' compulsory counterclaims under the Right to Cure Act, where: (a) the Act's pre-suit notice-and-cure framework does not apply to compulsory counterclaims asserted after the builder chose to file suit first; (b) Cox waived any arguable right to a stay by litigating the counterclaims for more than three years through discovery and a three-day trial before seeking relief; (c) Cox's post-trial invocation of the Act is irreconcilable with the Act's purpose of encouraging pre-suit resolution; and (d) the Act does not apply to Respondent Piedmont Vacant Properties, LLC because it is not a "claimant" as defined in the statute.

III. Whether the trial court properly denied Cox's breach of contract claim, where the court found the contract ambiguous, construed it against its drafter to give effect to the parties' own course of dealing, and found—on ample evidence—that Cox demanded the sixth draw before completing the work that would have triggered payment.

IV. Whether the trial court's damages award should be affirmed, where it is supported by invoices, testimony, and expert evidence of Respondents' actual repair, completion, and consequential losses, and where the court awarded identical damages on Respondents' independent negligence claim that Cox does not meaningfully challenge.

V. Whether the trial court properly dismissed Cox's quantum meruit and account stated claims, where: (a) an express contract barred equitable recovery; (b) Cox failed to prove the value of any benefit conferred or unjust enrichment; (c) Cox's unclean hands independently bar relief in equity; and (d) Respondents consistently disputed the balance Cox claimed.

STATEMENT OF THE CASE

Appellant T. Cox Builders, LLC ("Cox") commenced this action on July 17, 2023, in the Anderson County Court of Common Pleas, asserting claims against Piedmont Vacant Properties, LLC and Watson Engineering, Inc. ("Respondents") for breach of contract, quantum meruit, account stated, and noncompliance with S.C. Code Ann. § 27-1-15. (Order Granting Relief to Defs. & Den. Relief to Pl. Sept. 9, 2025, (the "Order") at 1, 12 ¶ 31; Compl. *passim*.) On August 21, 2023, Respondents answered, denied liability, and asserted compulsory counterclaims for breach of contract, breach of the implied covenant of good faith and fair dealing, negligence, and promissory estoppel. (Order at 1, 12 ¶ 33; Defs.' Answer and Cross-cls. *passim*.)

The matter was tried without a jury before the Honorable Jane H. Merrill, Circuit Court Judge, on July 8, 9, and 10, 2025. (Order at 1.) At the close of the evidence, Cox moved to stay Respondents' counterclaims under the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act (the "Right to Cure Act" or the "Act"), S.C. Code Ann. § 40-59-810 *et seq*. (*Id.*)

By Order filed September 9, 2025, the trial court denied Cox all relief on its claims and entered judgment for Respondents in the amount of $149,939.41 on their breach of contract and negligence counterclaims. (Order at 1–3.) The court denied Cox's motion to stay on two independent grounds, finding: (1) the Right to Cure Act did not apply to Respondents' compulsory counterclaims; and (2) Cox had, in any event, waived any rights under the Right to Cure Act by waiting "until there was no litigation to stay before making the motion to stay the litigation." (*Id.*)

On September 19, 2025, Cox moved to reconsider, alter, or amend the judgment pursuant to Rule 59(e), SCRCP, which Respondents opposed by memorandum filed September 30, 2025.

(Pl.'s Mot. to Recons. Sept. 30, 2025.) The trial court denied that motion by Form 4 order on October 6, 2025. (Order Den. Pl.'s Mot. to Recons. Oct. 6, 2025.)

Following entry of the judgment, Cox's counsel, Shipman Miranda Law, LLC, contacted Respondents' counsel, inquiring about the payoff amount for the judgment, asking "how quickly" a satisfaction of judgment could be recorded, and requesting that Cox's payoff remain "good" until October 24, 2025. *See* E-mail thread between Miranda Shipman Law, LLC and Resp't Att'y (Oct. 17–22, 2025). Respondents' counsel provided the requested information on October 20, 2025, and in subsequent communications, provided wire instructions for the payoff of the judgment at the request of Cox's counsel. (*Id.*) On October 22, 2025, Cox's trial counsel advised that he "plan[ned] to fil[e] the Notice of Appeal in the morning" and attached a consent order for posting a bond. *See* E-mail from Att'y Johnson to Resp't Att'y (Oct. 22, 2025, 6:38 PM EST.) Cox, however, did not file a notice of appeal the following morning, but rather proceeded to wire payment to Respondents on Friday, October 24, 2025, in the amount of $152,065.21—the judgment amount plus post-judgment interest through October 24, 2025. Accordingly, on Monday, October 27, 2025, Respondents filed a Satisfaction of Judgment that was accepted by the court on the same day. (Satisfaction of J. Oct. 27, 2025.) Notably, Cox never communicated, or even intimated, that the payoff was being tendered under protest or threat of execution, leading Respondents to believe the judgment payoff concluded the matter with finality. (Aff. of Tom Scott.)

On November 3, 2025, Appellant filed a Notice of Appeal, despite having notice of the filed Satisfaction of Judgment.

STATEMENT OF THE FACTS

I. Introduction.

This appeal arises out of the failed construction of a custom lake house in Anderson County (the "Home"). Cox contracted to build the Home for a fixed price and was paid $462,800.00 over the first seventeen months of the project. (Order at 4 ¶ 4; Order at 7 ¶¶ 8–10.) By the trial court's findings, Cox left that work incomplete and defective, yet demanded still more money for milestones it had not met, conditioned any further progress on that premature payment, and ultimately left the job. (Order at 7 ¶ 11; Order at 6 ¶¶ 14–16; Order at 8 ¶ 20.) After a three-day bench trial, the circuit court found that Cox, not the Respondents, had breached the parties' contract and had been negligent, denied Cox any recovery on its own claims, and entered judgment for Respondents in the amount of $149,939.41. (Order at 15–16 ¶¶ 41–45; Order at 27.) The facts recited below are drawn from the trial court's order.

II. The Trial Court's Findings.

A. The Contract.

Based on the evidence presented, the trial court found that Cox had been engaged under a fixed-price contract to construct the Home for $712,000.00 in accordance with the plans and specifications and in a good and workmanlike manner, with payment to be made in installments pursuant to a 9-draw construction schedule. (Order at 4 ¶¶ 3–5; Pl.'s Ex. 1.) The draw schedule, excerpted below, detailed the significant construction milestones to be completed by Cox during the construction of the Home. (Order at 4 ¶ 5; Pl.'s Ex. 1.)

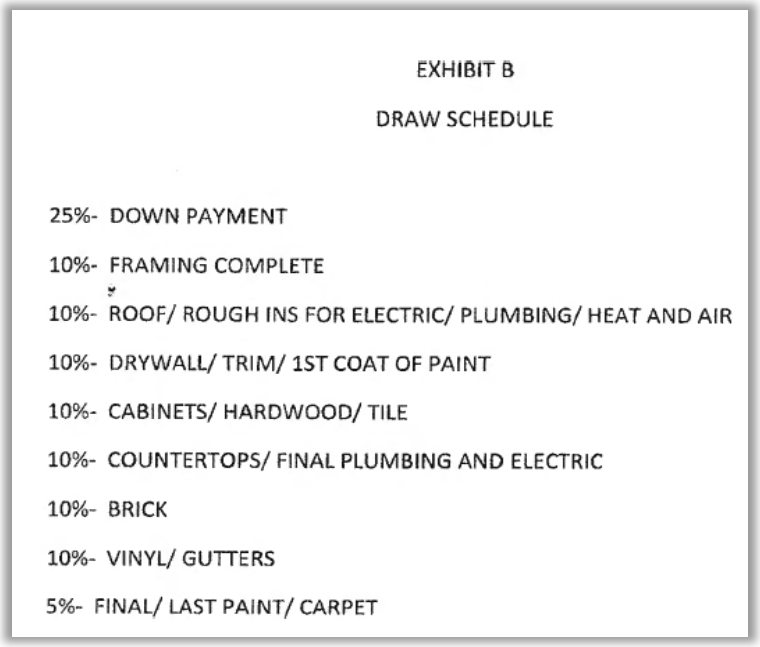


EXHIBIT B

DRAW SCHEDULE

25%- DOWN PAYMENT

10%- FRAMING COMPLETE

10%- ROOF/ ROUGH INS FOR ELECTRIC/ PLUMBING/ HEAT AND AIR

10%- DRYWALL/ TRIM/ 1ST COAT OF PAINT

10%- CABINETS/ HARDWOOD/ TILE

10%- COUNTERTOPS/ FINAL PLUMBING AND ELECTRIC

10%- BRICK

10%- VINYL/ GUTTERS

5%- FINAL/ LAST PAINT/ CARPET

The construction milestones reflected in the draw schedule corresponded with a certain payment percentage that was to be paid to Cox as the construction of the Home progressed. (*Id.*; Tr. at 75, 193, 477.) The trial court found that the contract, which Cox had drafted, did not set a fixed date for completion. (Order at 4–5 ¶¶ 5–6; Tr. at 469.)

B. Cox's Construction of the Home: Draws 1–5.

Cox began construction on the Home shortly after the contract was executed on or around May 11, 2021. (Order at 5 ¶ 7; Tr. at 194–195.) Over the next seventeen months, from May 2021 through October 2022, Cox requested and received full payment for the first five draws, totaling $462,800.00. (Order at 7 ¶¶ 8–10.) The trial court found that the work associated with each of those draws was, to varying degrees, incomplete or deficient. (Order at 7 ¶ 11; Tr. at 82–85.) Respondents paid anyway, relying on Cox's assurances that the deficiencies would be corrected in a timely manner or before the next draw and seeking to remedy a project the court found to be "grossly and inexcusably delayed." (Order at 8 ¶ 12; Tr. at 41–42, 50–51, 81–82, 187.)

At trial, Respondents documented the incomplete and deficient work across Draws 1 through 5, including deficiencies in the Home's framing, roof, mechanical rough-ins, exterior brick work, and interior drywall, trim, and first coat of paint. (Order at 8 ¶ 13.) They also presented expert testimony, admitted without objection, from Jack Glenn, a licensed South Carolina residential builder with more than twenty years of experience. (Tr. at 89–92.) Glenn opined that Cox's work was incomplete or deficient and failed to meet applicable building codes, industry standards, and the standard of care. (Order at 8 ¶ 13; Tr. at 93, 102, 108–09, 131–32.)

C. The Payment Dispute: Draw 6.

The dispute came to a head over Draw 6. In late January 2023, more than a year and a half after the contract was signed, Cox requested a sixth draw of $71,200.00. (Order at 6 ¶ 14; Tr. at 214.) Cox insisted the payment was due, but the court found that testimonial and documentary evidence established the corresponding vinyl and gutter work was incomplete, a point Cox itself conceded as to the vinyl work. (Order at 6 ¶¶ 15–16; Tr. at 29, 99–100, 120–121, 140–141, 168–169, 216, 218, 475–76.) Examining the contract's payment terms, the court found them ambiguous in three respects:

> (i) whether the project milestones identified in the Draw Schedule required completion before payment; (ii) whether payment for each draw corresponded only with the work specified on the Draw Schedule or included work specified in the Plans and Specifications (the latter of which [Cox] was also contractually obligated to complete); and (iii) whether the project milestones intended to correspond with percentages of overall construction completion.

(Order at 14 ¶ 38; Tr. at 48, 79, 192–193, 481–482.)

Resolving that ambiguity, the court looked to the parties' course of dealing and found that Cox's own invoices for the prior draws reflected a shared understanding that Cox had to *complete* each draw's milestones before payment came due. (Order at 16 ¶ 39.) Each of those invoices, all prepared by Cox, certified the milestone complete—"Framing complete" (Draw 2), rough-ins

"complete" (Draw 3), "Finish brick" (Draw 4), and "Drywall complete, trim installed, first coat of paint" (Draw 5)—directly contradicting Cox's trial testimony that completion was not required. (Order at 8–9 ¶ 19; Defs.' Exs. 2–5; Tr. at 79–82, 181–182, 473–77.) Cox's own correspondence reinforced the point: Cox claimed that the Home was only 70% complete—short of the 75% tied to Draw 6—yet requested a half draw of $35,600.00 for Draw 6 while conditioning any further work on that payment. (Order at 7 ¶ 17; Tr. at 191, 219, 221–222, 514.)

Having found that Cox failed to complete the Draw 6 milestones, the court concluded that Cox had demanded payment before fulfilling its obligation to complete its work in a workmanlike manner. (Order at 16 ¶ 39.) When Respondents insisted that Cox fulfil its contractual obligations to finish the work associated with Draw 6, Cox abandoned the project. (Order at 8 ¶ 20; Tr. at 36, 49, 186.)

D. The Construction Timeline.

Although the contract set no completion deadline, the trial court found that Cox was obligated to finish within a reasonable time. (Order at 15 ¶ 42.) Cox's own principal, Tony C. Cox, supplied the measure, testifying that a residence of similar scope typically took Cox eighteen months when, like here, the homeowners selected the materials. (Order at 5 ¶ 6; Tr. at 338, 531.) The court accordingly adopted "18 months as the reasonable upper limit of the time it would take" to build the Home. (*Id.*)

Cox's actual timeline, the court found, fell well outside that limit. (Order at 15 ¶ 42.) Respondents' expert testified that it took Cox twenty months to reach 57% completion, which was neither customary nor excusable. (Order at 15 ¶ 42; Tr. at 95–96, 104–105, 117, 131–32.) Respondents testified that Cox was rarely on site and that weeks often passed with no work performed on the Home. (Order at 15 ¶ 42; Tr. at 194–97, 199, 311.) This was corroborated by the

parties' communications and Respondents' detailed calendar. (*Id.*) The court found Cox's excuses for the delay unpersuasive, observing that Cox had built other single-family homes during the same period within nine to sixteen months, that a builder next door completed a comparable home in under a year despite the same market and weather contingencies, and that no evidence showed Respondents or any third party caused or contributed to the delay. (Order at 15–16 ¶ 42; Tr. at 200–201, 204.) Based on the evidence, the court concluded that Cox's non-performance and poor project management caused the delay. (Order at 16 ¶ 42.)

E. The Judgment Order.

On the evidence, the court found that Cox—not the Respondents—had breached the contract by failing to complete the work within a reasonable time, which the court set at eighteen months; by failing to perform in a good and workmanlike manner; and by conditioning continued performance on premature payment. (Order at 15–16 ¶¶ 41–44.) The court separately found Cox negligent, determining that the construction deficiencies resulted from Cox's willful misconduct and conscious failure to exercise due care, including misrepresentations about its qualifications and its repeated failure to correct deficiencies after notice. (Order at 22–23 ¶¶ 68–69.) The court awarded Respondents $89,261.32 in actual damages—the cost to repair and complete the work for which Cox had already been paid in previous draws (Draws 1 through 5)—together with $60,678.09 in consequential damages for rental, increased financing, and increased material costs, and entered judgment on the breach of contract and negligence claims in the total amount of $149,939.41. (Order at 17 ¶ 45; Order at 23 ¶ 69; Order at 27; Tr. at 239–245.)

The trial court denied Cox all relief on its own claims. On the breach of contract claim, the court found the contract ambiguous, construed it against Cox as the drafter, and found that Cox failed to complete the Draw 6 milestones before demanding payment. (Order at 14–16 ¶¶ 37–39.)

On the quantum meruit claim, the court found recovery barred because a valid express contract governed the parties' compensation; because Cox failed to prove the value of any benefit to the owner and did not establish that Watson Engineering was the record owner of the Home; and because Cox acted with unclean hands. (Order at 18–19 ¶¶ 50–52.) On the account stated claim, the court found no evidence that Respondents agreed to any stated amount and noted that Cox had demanded shifting sums of $35,600.00, $71,200.00, and $92,000.00 for unchanged work. (Order at 20 ¶¶ 57–58.) On the claim under S.C. Code Ann. § 27-1-15, the court found that Respondents conducted a fair and reasonable investigation—including a 23-page response disputing the claim—and did not unreasonably refuse payment. (Order at 21 ¶¶ 61–63.)

STANDARD OF REVIEW

This appeal arises from a non-jury action at law, and the applicable standard of review varies with the nature of each issue presented. As a general matter, the circuit court's factual findings in a non-jury action at law will not be disturbed on appeal if there is any evidence in the record to support them. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775–76 (1976), abrogated on different grounds by *Matter of Est. of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018). Questions of law, by contrast, are reviewed de novo, though the appellate court does not reweigh the evidence or reassess witness credibility. And where an order rests on multiple independent grounds, the judgment must be affirmed if any one ground is valid. The standard governing each issue on appeal is set out below.

Issue I. Whether Cox's voluntary satisfaction of the judgment waived its right to appellate review and rendered the appeal moot presents a question of law, which this Court reviews de novo. *See Protopapas v. Wall, Templeton & Haldrup, P.A.*, 442 S.C. 217, 227, 898 S.E.2d 150, 155 (Ct. App. 2023); *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

Issue II. The denial of Cox's motion to stay under the Right to Cure Act presents two related questions. The construction and application of the Act is a question of law reviewed de novo. *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 568–69, 703 S.E.2d 197, 200 (2010). The trial court's related determination that Cox waived any right to a stay by substantially litigating the covered claims through trial is a matter committed to the court's sound discretion and will be sustained where supported by the evidence. *See Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126–27, 647 S.E.2d 249, 251 (Ct. App. 2007).

Issue III. Cox's breach of contract claim was an action at law tried without a jury, so the trial court's factual findings, including its finding that Cox failed to complete the Draw 6

milestones, must be affirmed if any evidence supports them. *Townes Assocs.*, 266 S.C. at 86, 221 S.E.2d at 775. Whether a contract is ambiguous is a question of law reviewed de novo, *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997); *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012); but once a contract is found ambiguous, the parties' intent becomes a question of fact reviewed under the deferential any-evidence standard.

Issue IV. The damages award is reviewed under the any-evidence standard applicable to actions at law, and the amount of damages is a factual determination for the trial court that will be upheld if supported by any evidence. *Townes Assocs.*, 266 S.C. at 86, 221 S.E.2d at 775. The legal measure of damages presents a question of law reviewed de novo.

Issue V. Cox's quantum meruit claim sounds in equity. *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). While this Court may find facts in accordance with its own view of the preponderance of the evidence in an equitable action, it remains mindful of the trial court's superior position to assess witness credibility. Cox's account stated claim is an action at law, and the trial court's findings on that claim are reviewed under the any-evidence standard. *Townes Assocs.*, 266 S.C. at 86, 221 S.E.2d at 775.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED BECAUSE COX VOLUNTARILY SATISFIED THE JUDGMENT, WAIVING APPELLATE REVIEW AND RENDERING THE APPEAL MOOT.[1]

Cox's appeal fails at the threshold and should be dismissed. Before noticing its appeal, Cox voluntarily paid and satisfied the judgment in full—without protest, without any threat of execution, and without seeking a supersedeas bond to stay enforcement. Under settled South Carolina law, that voluntary satisfaction waived Cox's right to appellate review and extinguished any live controversy for this Court to decide.

A. Voluntary Satisfaction of Judgment Waives the Right to Appeal.

South Carolina courts have long held that the voluntary satisfaction of a judgment extinguishes the right to appellate review. More than a century ago, in *Town of Batesburg v. Mitchell*, 58 S.C. 564, 37 S.E. 36 (1900), the Supreme Court held that a party who pays a judgment forfeits the right to appeal, and that payment conclusively ends the controversy even when made "under protest." The court reaffirmed that principle in *Reedy River Power Co. v. City of Laurens*, 109 S.C. 210, 96 S.E. 116 (1918), explaining that once a judgment has been satisfied there remains nothing for an appellate court to decide, and again in *State v. Morris*, 249 S.C. 589, 155 S.E.2d 623 (1967), where the voluntary payment of a fine was held to waive the right to appeal. Together,

[1] On March 23, 2026, Respondents filed a Motion to Dismiss Cox's appeal on the grounds of waiver and mootness. On April 13, 2026, this Court denied the motion, citing *Montgomery Holdings, LLC v. Merlo*, 447 S.C. 502, 928 S.E.2d 746 (Ct. App. 2026), and emphasizing the portion of that opinion addressing "the mindset of the parties in paying or accepting the judgment monies." (Order Den. Resp't Mot. to Dismiss April 13, 2026.) The Court's order, however, expressly provided that "nothing in this order prohibits the parties from presenting argument on this point in their briefs." (*Id.*) Respondents' intent in accepting Cox's voluntary payment of the judgment is memorialized in the Affidavit of Tom Scott and is discussed more thoroughly in Section I(C), *infra*.

these decisions establish a straightforward rule: a litigant who pays and satisfies a judgment relinquishes the right to challenge it on appeal.

That rule follows from the nature of a satisfied judgment. Once a judgment is voluntarily satisfied, it is extinguished, and no further judicial relief is available because the judgment no longer exists—legally or practically—for a reviewing court to disturb. An appeal from such a judgment is therefore moot. *See Protopapas*, 442 S.C. at 227, 898 S.E.2d at 155 ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." (citing *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006))); *Wayne's Auto. Ctr., Inc. v. S.C. Dep't of Pub. Safety*, 431 S.C. 465, 476, 848 S.E.2d 56, 62 (Ct. App. 2020) ("Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.").

Those principles control here. Cox paid the judgment in full on October 24, 2025, and Respondents filed a Satisfaction of Judgment three days later, on October 27, 2025. Only after the judgment had been paid and satisfied did Cox file its Notice of Appeal on November 3, 2025. Nothing in the record suggests the payment was involuntary, compelled by duress, or made to avoid imminent execution. To the contrary, the correspondence reflects that Cox affirmatively requested payoff figures and asked how quickly the satisfaction could be recorded—conduct consistent with an intent to conclude the litigation, not to preserve it for appeal. *See* E-mail thread between Miranda Shipman Law, LLC and Resp't Att'y (Oct. 17–22, 2025). Further, Respondents relied on Cox's voluntary payment in filing the Satisfaction of Judgment, believing the matter had been resolved with finality. (Aff. of Tom Scott.)

Because Cox voluntarily satisfied the judgment before filing its appeal, the judgment was extinguished and the appeal presents no live controversy for this Court to resolve.

B. The Majority Rule Across Jurisdictions Accords with South Carolina Law and Confirms That Voluntary Satisfaction Moots the Appeal.

South Carolina's rule is no outlier; it reflects the overwhelming majority rule followed across the country. Most courts nationwide have uniformly held that a party may not voluntarily pay a civil judgment and then seek to revive the controversy on appeal. *See Lyon v. Ford Motor Co.*, 2000 ND 12, ¶ 13, 604 N.W.2d 453, 458 (collecting cases). Under that majority rule, the effect of paying a judgment on the right to appeal turns on whether the payment was voluntary or involuntary: if the payment was voluntary, the case is moot, but if it was involuntary, the appeal is not precluded. *Lytle v. Citizens Bank of Batesville*, 4 Ark. App. 294, 296, 630 S.W.2d 546, 547 (Ct. App. 1982).

The decisions applying this rule are legion. Texas law is illustrative: "[w]hen a judgment debtor voluntarily pays and satisfies a judgment rendered against him, the cause becomes moot [and] [h]e thereby waives his right to appeal and the case must be dismissed." *Highland Church of Christ v. Powell*, 640 S.W.2d 235, 236 (Tex. 1982). Ohio is in accord, recognizing that "[i]t is a well-established principle of law that a satisfaction of judgment renders an appeal from that judgment moot." *Blodgett v. Blodgett*, 551 N.E.2d 1249, 1250 (Ohio 1990). Florida applies the same principle expressly as "the majority rule," under which "if a defendant voluntarily pays a judgment entered against him, the case is moot." *Grant v. Wester*, 679 So. 2d 1301, 1305 n.4 (Fla. Dist. Ct. App. 1996). Courts in Arkansas, Tennessee, Maryland, Kansas, New Mexico, North Dakota, Minnesota, Michigan, Montana, and South Dakota, among others, have reached the same conclusion. *See, e.g.*, *Barringer v. Hall*, 202 S.W.3d 568, 576 (Ark. Ct. App. 2005); *Adams v. Mellen*, 618 S.W.2d 485, 490 (Tenn. Ct. App. 1981); *Varner v. Gulf Ins. Co.*, 866 P.2d 1044, 1046

(Kan. 1994); *Culp v. Sandoval*, 1916-NMSC-028, ¶ 33, 22 N.M. 71, 159 P. 956, 961. The rationale animating this consensus mirrors the reasoning of South Carolina's own decisions. The majority rule "promotes the interests of certainty and finality, and the judicial policy of furthering the intentions and legitimate expectations of the parties." *Lyon*, 604 N.W.2d at 457. It prevents a party "who has freely decided to pay a judgment from changing his mind and seeking the court's aid in recovering the payment," and it protects the opposing party from being misled "into believing that the controversy is over" only to face a renewed appeal. *Powell*, 640 S.W.2d at 236. Those concerns are squarely presented here. Cox voluntarily paid the judgment in full, prompted Respondents to record a Satisfaction of Judgment, and only then noticed its appeal—precisely the sequence the majority rule forecloses. Applying that rule, as this Court should, confirms that Cox's appeal is moot and must be dismissed.

C. *Montgomery Holdings* Is Readily Distinguishable and Does Not Control Here.

This Court's recent decision in *Montgomery Holdings, LLC v. Merlo*, does not compel a different result. Although the Court held that payment of a civil judgment did not foreclose appellate review, the decision turned on a critical fact absent here: the payment was not voluntary.

In *Montgomery Holdings*, a master in equity had ordered the sale of the appellant's real property to satisfy the judgment. 447 S.C. at 509, 928 S.E.2d at 750. The appellant paid only to avert that imminent forced sale which is a classic case of payment made under duress of legal process. (*Id.*) Payment made under that kind of compulsion, which is effectively under threat of execution, is not a voluntary relinquishment of appellate rights; it is precisely the type of involuntary payment that courts uniformly hold does not waive the right to appeal. *See Town of Batesburg*, 58 S.C. at 566, 37 S.E. at 37 (distinguishing involuntary payment compelled by legal process from voluntary satisfaction that extinguishes appellate rights); *Lytle v. Citizens Bank of*

Batesville, 4 Ark. App. at 296, 630 S.W.2d at 547 ("[I]f the payment was voluntary, the case is moot, but if it was involuntary, the appeal is not precluded."). *Montgomery Holdings* is thus a straightforward application of the involuntary payment exception—an exception that, by its terms, confirms rather than undermines the general rule that voluntary satisfaction moots an appeal.

The circumstances here are the antithesis of *Montgomery Holdings*. Cox faced no court-ordered sale, no levy, no writ of execution, no garnishment, and no other imminent coercive enforcement measure when it paid. No enforcement proceedings of any kind had been initiated or even threatened. To the contrary, the record establishes that it was Cox—through its counsel—who initiated the payoff process by contacting Respondents' counsel, requesting the payoff amount, asking "how quickly" a satisfaction could be recorded, and requesting that the payoff figure remain "good" until October 24, 2025. *See* E-mail thread between Miranda Shipman Law, LLC and Resp't Att'y (Oct. 17–22, 2025). That sequence of events is the hallmark of a deliberate, voluntary decision to satisfy a judgment—not the conduct of a party acting under compulsion.

Cox's conduct is particularly telling in light of the alternative mechanisms available under South Carolina law. A judgment debtor who wishes to prevent enforcement while preserving appellate rights may obtain a supersedeas bond under Rule 225, SCACR, which stays execution of the judgment pending appeal. Cox was plainly aware of this mechanism: on October 22, 2025, Cox's trial counsel advised that he "plan[ned] to fil[e] the Notice of Appeal in the morning" and attached a consent order for posting a bond. *See* E-mail from Att'y Johnson to Resp't Att'y (Oct. 22, 2025, 6:38 PM EST). But Cox did not file a notice of appeal the following morning. Instead, Cox elected to wire payment of the full judgment amount—plus post-judgment interest—two days later, on October 24, 2025, and waited ten more days to file its Notice of Appeal on November 3, 2025. Cox's decision to pay the judgment outright rather than post a supersedeas bond reflects a

knowing and deliberate choice to satisfy the judgment rather than preserve it for review. *See Protopapas*, 442 S.C. at 227, 898 S.E.2d at 155 (evaluating voluntariness based on the totality of the circumstances surrounding the payment).

Moreover, Cox never communicated—either at the time of payment or at any point thereafter—that the payoff was being tendered under protest or with any reservation of appellate rights. (Aff. of Tom Scott.) Under *Town of Batesburg*, even a payment expressly made "under protest" extinguishes the right to appeal. 58 S.C. at 566, 37 S.E. at 37. *A fortiori*, a payment made without any protest, without any reservation, and without any indication that the payor intends to continue litigating, must be treated as voluntary. Cox's silence is not a neutral fact; it induced Respondents' reasonable reliance. Upon receiving payment, Respondents filed a Satisfaction of Judgment on October 27, 2025, believing in good faith that the dispute had been resolved. (Satisfaction of J. Oct. 27, 2025; Aff. of Tom Scott.) Permitting Cox to satisfy the judgment, induce Respondents to record a satisfaction, and then pursue appellate review would undermine the very finality interests that the voluntary satisfaction doctrine exists to protect. *See Sloan*, 369 S.C. at 26, 630 S.E.2d at 477 (explaining that mootness doctrine prevents courts from issuing advisory opinions where no live controversy remains).

That Respondents' mindset matters is precisely the point this Court emphasized when it denied Respondents' Motion to Dismiss without prejudice to further briefing. The Court cited the portion of *Montgomery Holdings* discussing "the mindset of the parties in paying or accepting the judgment monies," and expressly allowed the parties to present argument on that issue in their briefs. (Order Den. Resp't Mot. to Dismiss April 13, 2026.) Here, the uncontroverted evidence of Respondents' mindset confirms finality, not preservation of appellate litigation. As Tom Scott averred, Respondents accepted Cox's payoff as satisfaction of the judgment and understood the

payment to conclude the lawsuit with finality. (Aff. of Tom Scott.) They did not accept the money as a conditional deposit, as security pending appeal, or as a payment that would leave Cox free to continue challenging the judgment while Respondents' lien rights were extinguished. Respondents' understanding was objectively reasonable because Cox requested payoff information, asked how quickly a satisfaction could be recorded, wired the full judgment amount plus interest, and never stated that payment was made under protest or subject to a reservation of appellate rights. Thus, the parties' actual conduct and Respondents' documented mindset distinguish this case from any situation in which the judgment creditor accepts funds while understanding that the judgment remains contested. Respondents accepted the judgment monies to end the case, release the judgment, and bring the dispute to finality—not to forfeit their judgment lien while simultaneously defending an appeal from the very judgment Cox had chosen to satisfy.

Finally, the policy concerns that animated the *Montgomery Holdings* exception have no application here. The involuntary payment exception exists to protect litigants who face the loss of their property through forced judicial sale and who pay only to avoid that irreparable harm. That equitable concern is entirely absent where, as here, the judgment debtor faces no enforcement action, affirmatively initiates the payoff, and induces the judgment creditor to record a satisfaction. Extending *Montgomery Holdings* to these facts would effectively abolish the voluntary satisfaction rule because any judgment debtor could pay, obtain a satisfaction, and then claim it was preserving its appellate rights by filing a belated notice of appeal. That is not what *Montgomery Holdings* permits, and it is not what South Carolina law has ever allowed. This case is the paradigmatic example of voluntary satisfaction, and *Montgomery Holdings* does not disturb, much less overcome, the century of precedent requiring dismissal of this appeal.

II. THE TRIAL COURT PROPERLY DENIED COX'S UNTIMELY POST-TRIAL MOTION TO STAY UNDER THE RIGHT TO CURE ACT.

The trial court correctly denied Cox's post-trial motion to stay, and its ruling should be affirmed for four independent reasons, each sufficient standing alone. First, South Carolina's Right to Cure Act does not apply to Respondents' compulsory counterclaims. The Act establishes a pre-suit notice-and-cure process for a homeowner who elects to file an affirmative construction defect action—not for homeowners who are already defendants because the builder sued first and who must plead related claims or risk losing them. Second, even if the Act could apply in this posture, Cox waived any arguable right to a stay by asserting the Act as a defense, then litigating the covered counterclaims for more than three years through discovery, motion practice, and a three-day trial before seeking relief. Third, when the Act is read as a whole, its purpose is unmistakably to facilitate pre-suit inspection, repair, settlement, or denial of construction defect claims. Cox's interpretation would invert that purpose by allowing a builder to use the Act as a post-trial tactical sword after the very pre-suit process the Act protects has become impossible. Fourth, even apart from the foregoing, the Act does not apply to the claims asserted by Respondent Piedmont Vacant Properties, LLC ("Piedmont") because Piedmont is not a "claimant" as defined in the Act—it is neither a homeowner nor a subsequent purchaser of the Home. The trial court's ruling should be affirmed on any of these grounds.

A. The Right to Cure Act Does Not Apply to Respondents' Compulsory Counterclaims.

The trial court correctly held that the Right to Cure Act does not apply to compulsory counterclaims that homeowners are forced to assert after a builder has already chosen to sue. The Act creates a pre-suit process: before a covered construction defect action is filed, the homeowner or subsequent purchaser must give notice and afford the contractor an opportunity to inspect,

repair, settle, or deny the claim. *See* S.C. Code Ann. §§ 40-59-820, 840. That framework fits a voluntary lawsuit brought by a homeowner who controls whether and when to file. It does not fit—and cannot sensibly operate—when the builder files first, places the same construction project before the court, and compels the homeowner to respond in that action.

That is exactly what occurred here. Cox—the builder—filed suit against Respondents, asserting claims arising from the same residential construction project. Once Cox put the project at issue in litigation, Respondents were required to assert their related claims as compulsory counterclaims. Rule 13(a), SCRCP, provides that a pleading "shall state as a counterclaim" any claim the pleader has against an opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require unavailable third parties for adjudication. *See* Rule 13(a), SCRCP. Respondents' claims plainly arose from the same construction contract, the same work, and the same payment dispute Cox placed before the court.

The Act's timing requirements confirm why Cox's construction cannot work. A defendant served with a complaint must serve an answer within thirty days, and Rule 13(a) requires that pleading to include any compulsory counterclaim then held by the pleader. *See* Rules 12(a), 13(a), SCRCP. By contrast, the Act provides that "[i]n an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor." S.C. Code Ann. § 40-59-840(A). Those two requirements cannot be reconciled when the contractor is the party who sues first. A homeowner cannot simultaneously file a compulsory counterclaim within the thirty-day answer period and wait ninety days after serving pre-suit notice before "filing the action." The phrase "before filing the action" presupposes a claimant who has the ability to decide whether and

when to initiate litigation. It does not describe a homeowner already in court because the builder chose to file suit.

Because Respondents' claims were compulsory, they had no meaningful option to withhold them while attempting to complete a separate pre-suit process. Had Respondents failed to plead their counterclaims in Cox's action, those claims would have been subject to preclusion in later litigation. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 217, 493 S.E.2d 826, 835 (1997) ("[I]f a counterclaim is compulsory, but not raised in the first action, a defendant is precluded from asserting the claim in a subsequent action."). Cox's reading would therefore force homeowners into an impossible and inequitable choice: comply with Rule 13(a) and risk a stay or dismissal under the Act if the builder waits to invoke it, or withhold compulsory claims and risk losing them altogether. Nothing in the Act suggests the General Assembly intended to place homeowners in that procedural trap—least of all at the election of the builder who filed first.

The trial court's reading avoids that contradiction and gives the Act a coherent field of operation. The Act protects builders from being surprised by affirmative construction defect lawsuits filed without prior notice and an opportunity to cure. It does not allow a builder to file suit first, require the homeowners to assert related claims in the same lawsuit, and then complain that the homeowners failed to complete a pre-suit procedure the builder itself made impracticable. Under Cox's view, the builder would control the timing of litigation, place the entire construction dispute before the court, and then claim prejudice because the homeowners did precisely what the Rules of Civil Procedure required them to do.

That result would invert both the Act and the civil rules. Respondents' counterclaims were not a voluntary effort to bypass the Act; they were a compulsory response to Cox's lawsuit. By filing first, Cox destroyed the pre-suit posture on which the Act depends. The Act should not be

construed to reward that choice by giving Cox a later procedural weapon against claims it forced into the case. Accordingly, the trial court correctly held that the Right to Cure Act does not apply to Respondents' compulsory counterclaims.

B. Cox's Post-Trial Motion to Stay Proceedings was Untimely.

Cox next argues that its Motion could not be untimely because the Right to Cure Act contains no express deadline for requesting a stay. But the absence of a fixed statutory deadline does not permit a party to keep a stay request in reserve while litigating the covered claims to completion. A stay is a procedural mechanism designed to pause litigation before the parties and the court expend resources on the claims to be stayed. It is not a device a litigant may invoke after discovery, motion practice, and trial have already occurred.

South Carolina law rejects that kind of sandbagging. Although *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007), involved a motion to compel arbitration and stay judicial proceedings, its reasoning is directly persuasive here. *Rhodes* recognizes that even a contractual right to remove claims from active litigation may be waived when the party delays, substantially invokes the judicial process, and prejudices the opposing party. In determining waiver, the court considered the length of the delay, the extent of the movant's participation in discovery and motion practice, and the prejudice caused by permitting a belated suspension of judicial proceedings.

Those considerations compel affirmance here. Cox pleaded the Right to Cure Act as an affirmative defense to Respondents' compulsory counterclaims, confirming that it knew from the outset of the statutory basis for a stay. Yet Cox did not seek that relief then. Instead, it litigated the counterclaims for more than three years—through written discovery, depositions, dispositive motion practice, and a three-day trial—before first asking the court to stay the proceedings. That

was not a prompt invocation of a statutory right; it was a strategic effort to resurrect a procedural remedy only after Cox had taken the benefit of full litigation on the merits. Other courts have denied motions to stay under materially similar right-to-cure statutes on far less egregious facts. For example, in *Blevins v. Habersham Pools, Inc.*, No. 21EV003382B, 2023 Ga. State LEXIS 521 (State Ct. Fulton Cnty. Jan. 6, 2023), the Georgia state court denied a builder's motion to stay under the Georgia Right to Repair Act, O.C.G.A. § 8-2-35 *et seq.*, as untimely where the builder did not raise the issue until after the court published the trial calendar even though trial had not yet occurred. If a pre-trial motion to stay is too late when filed on the eve of trial, Cox's motion—filed only *after* a three-day bench trial had concluded—is manifestly untimely.

Cox's status as the plaintiff makes the delay even less defensible. To be sure, some litigation would have occurred regardless because Cox initiated this action. But that does not excuse Cox's failure to seek a stay directed to Respondents' counterclaims when those claims were pleaded. If Cox believed the Act applied, it should have promptly asked the circuit court to decide whether any statutory notice-and-cure procedure remained available. By waiting until after discovery closed and trial concluded, Cox ensured that the requested stay could no longer accomplish anything the Act was designed to accomplish.

The point is not merely that Cox waited too long in the abstract. The timing destroyed the utility of the remedy Cox requested. The Act's stay mechanism exists to preserve the builder's pre-suit "procedural timeline" for asserting its notice-and-cure rights by pausing the litigation, "thereby granting the contractor/subcontractor the ability to explore those rights in full." *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 573, 574, 703 S.E.2d 197, 202, 203 (2010). That mechanism presupposes a stay invoked at the outset of litigation—not after three years of discovery and a completed trial. Once the parties have completed discovery and tried the claims,

there is no meaningful litigation left to pause and no practical notice-and-cure process left to preserve. A post-trial stay would not enforce the Act; it would distort it.

The prejudice to Respondents and the court was substantial. By the time Cox moved for a stay, Respondents had already incurred the expense and burden of litigating their compulsory counterclaims through years of discovery, expert work, motion practice, and trial. The circuit court had likewise devoted substantial judicial resources to resolving those claims. Granting a stay at that point would have nullified years of litigation, rewarded Cox for waiting to see how the evidence unfolded, and converted the Act from a pre-suit dispute-resolution tool into a post-trial litigation tactic.

Accordingly, the circuit court properly concluded that Cox's motion to stay was untimely. As *Rhodes* confirms, a litigant may waive a mechanism designed to suspend judicial proceedings by substantially participating in litigation before invoking it. Cox did exactly that. Having knowingly and extensively litigated Respondents' compulsory counterclaims through trial, Cox waived any arguable right to a stay under the Right to Cure Act.

C. Cox's Post-Trial Invocation of the Act Is Inconsistent with the Act's Purpose.

Grazia supplies the interpretive principle that defeats Cox's position. The Supreme Court held that a court's "primary consideration in interpreting a statute is finding the intent of the legislature," and that, in doing so, "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *Grazia*, 390 S.C. at 571, 703 S.E.2d at 201 (citation omitted). A statute "should not be construed by concentrating on an isolated phrase." (*Id.*) Cox's argument does exactly that. Cox isolates the stay language in Section 40-59-830 and reads it in a vacuum to authorize a stay of any construction

defect claim whenever pre-suit notice was not served, even if the builder sued first, the claim was compulsory, and the motion was made only after trial. *Grazia* forecloses that piecemeal approach.

Read as a whole, the Act refutes Cox's isolated construction. Its operative provisions presuppose a "claimant" who is a would-be plaintiff and who controls the decision whether and when to sue. Section 40-59-840(A) directs the claimant to serve notice "no later than ninety days before filing the action," and Section 40-59-850(C) provides that, "[i]f the parties cannot settle the dispute pursuant to this article, the claimant may proceed with a civil action or other remedy provided by contract or by law." Those provisions describe a claimant who may choose to proceed with litigation only after the notice-and-cure process has run. They do not describe homeowners already haled into court who must assert compulsory counterclaims or forfeit them. Construed together, as *Grazia* requires, the Act's stay provision reaches a premature affirmative action filed by a claimant; it does not reach Respondents' compelled counterclaims in a lawsuit Cox initiated.

That reading also best serves the Act's stated purpose. The South Carolina Supreme Court has explained that the Right to Cure Act embodies an express public policy of:

> (1) addressing the need for an alternative dispute resolution method to promote settlement of construction disputes without litigation, while adequately protecting the rights of homeowners; and (2) requiring a would-be plaintiff in certain construction defect matters to file a notice of claim with the would-be defendant and provide an opportunity to resolve the claim without litigation.

Grazia, 390 S.C. at 572, 703 S.E.2d at 202.

That purpose cannot be squared with Cox's post-trial use of the Act. The Act is designed to promote early notice, inspection, remediation, and settlement before the parties and the court incur the burdens of litigation. Section 40-59-850(A) confirms the point by contemplating that, after receiving notice, a builder may "inspect, offer to remedy, offer to settle with the claimant, or deny the claim regarding the defects." Those options are meaningful only before litigation has

hardened the parties' positions and before the claims have been tried. Cox's delay rendered each statutory option impossible. After years of discovery and a completed trial, there was nothing left for a stay to preserve.

Cox's interpretation would therefore transform the Act into the opposite of what the Legislature enacted. Instead of encouraging pre-suit resolution of construction-defect disputes, it would allow a builder to file suit, litigate the homeowners' compulsory counterclaims through trial, and then invoke the Act only if the litigation proves unfavorable or not strategically useful. The Act does not create that tactical sword. It creates a pre-suit opportunity to cure or otherwise resolve a claim. Because Cox's motion came after that opportunity had been eliminated by Cox's own litigation choices, the trial court properly rejected Cox's post-trial invocation of the Act.

D. The Act Does Not Apply to Piedmont Because Piedmont Is Not a "Claimant" as Defined in the Act.

In addition to the foregoing reasons supporting the trial court's denial of Cox's motion, the denial was proper on an additional supporting ground: the Right to Cure Act does not apply to the claims asserted by Piedmont because Piedmont does not qualify as a "claimant" under the Act. This Court may affirm the trial court's ruling on any ground supported by the record, even one not raised below or relied upon by the trial court. *See* Rule 220(c), SCACR; Rule 208(b)(2), SCACR; *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419–20, 526 S.E.2d 716, 723 (2000) (holding that a respondent may raise any additional reason the lower court's ruling should be affirmed that is supported by the record).

The Act's pre-suit notice requirements apply only to a "claimant" as that term is defined by the statute. Section 40-59-820(2) defines "claimant" as "a homeowner or subsequent purchaser of a dwelling asserting a claim against a contractor[.]" S.C. Code Ann. § 40-59-820(2). Likewise, Section 40-59-840(A) requires that "*the claimant must* . . . serve a written notice of claim on the

contractor," and contemplates that "*[t]he claimant shall* allow inspection of the construction defect" and "give the contractor and any subcontractors reasonable access to the dwelling for inspection." S.C. Code Ann. §§ 40-59-840(A), 850(A) (emphasis added). These provisions presuppose that the claimant is a person with a possessory or ownership interest in the dwelling—one who can grant the contractor access for inspection and repair. The Act's entire framework is built around the relationship between a homeowner and the contractor who constructed or remodeled the homeowner's dwelling.

Piedmont does not meet that definition. Cox did not claim, yet alone establish, that Piedmont was the owner or subsequent purchaser of the Home. Rather, Cox claimed, and it was not disputed, that Piedmont was a party to the construction contract with Cox. Because Piedmont is not a "claimant" within the meaning of Section 40-59-820(2), the Act's pre-suit notice-and-cure requirements do not apply to Piedmont's counterclaims, and Cox had no statutory basis to seek a stay of those claims.

This distinction matters because Piedmont was the contracting party to the fixed price contract with Cox, and the trial court's award of actual damages in the amount of $89,261.32 and consequential damages in the amount of $60,678.09 on Respondents' breach of contract and negligence counterclaims stands independently as to Piedmont. Even if the Act could theoretically require compliance by some other party in some other posture, Piedmont's claims are not subject to the Act because Piedmont is not the type of party the General Assembly sought to regulate through the notice-and-cure process.

Accordingly, even if this Court were to conclude that the Act applies to compulsory counterclaims, that Cox's motion was timely, or that the Act's purpose permits a post-trial stay, the trial court's denial of Cox's Motion was nevertheless correct as to Piedmont's claims because

the Act simply does not reach a party that is not a "claimant" as defined in the statute. Because the trial court's judgment in favor of Defendants on breach of contract and negligence can be sustained on Piedmont's claims alone, this additional ground independently supports affirmance of the trial court's order denying Cox's motion to stay.

III. THE TRIAL COURT PROPERLY DENIED COX'S BREACH OF CONTRACT CLAIM.

Cox's Draw 6 argument fails at every step. Cox contends that the draw schedule term "10%—vinyl/gutters" is unambiguous and that the trial court both manufactured ambiguity and rewrote the parties' payment terms by reading in conditions the contract does not contain. Neither contention withstands scrutiny.

Whether a contract is ambiguous is a question of law, *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012), and the trial court correctly found that the draw schedule—which Cox itself drafted—was ambiguous. Having properly identified that ambiguity, the court did not rewrite the contract; it ascertained the parties' intent from their own course of dealing and then made the factual finding, amply supported by the record, that Cox failed to complete the vinyl and gutter work that would have triggered Draw 6. In substance, Cox's argument is a thinly veiled request for this Court to reweigh the evidence and substitute its judgment for that of the trial court. That is not the appellate function.

A. The Trial Court Correctly Found That the Draw Schedule Was Ambiguous.

A contract is ambiguous when it is "capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement." *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) (quoting 17A Am.Jur.2d Contracts § 338, at 345). The draw schedule that Cox drafted meets that definition. The single line on which Cox stakes its entire claim, "10%—

vinyl/gutters," is a shorthand milestone entry that does not, on its face, answer the questions essential to determining when payment became due.

The trial court identified three genuine uncertainties in the payment terms: (i) whether the milestones identified in the draw schedule had to be completed before payment; (ii) whether payment for each draw corresponded only with the work specified on the draw schedule, or also included the related work Cox was separately obligated to perform under the Plans and Specifications in Exhibit A; and (iii) whether the milestones were intended to correspond with percentages of overall construction completion. (Order at 14 ¶ 38.) Each is a reasonable, competing reading of the same terse language, which is the hallmark of ambiguity. Moreover, because Cox drafted the contract, any ambiguity in the draw schedule must be construed against it. *See Myrtle Beach Lumber Co. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981). The trial court's ambiguity determination was therefore correct as a matter of law, and Cox's contrary assertion that the phrase is susceptible to only one meaning simply ignores the interpretive questions the language leaves open.

B. Having Found the Contract Ambiguous, the Court Ascertained the Parties' Intent Rather Than Rewriting the Payment Terms.

When a contract is ambiguous, the court's task is to ascertain the parties' intent, and parol evidence is admissible for that purpose. *Ebert v. Ebert*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995); *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977). That is precisely what the trial court did. It looked to the parties' own course of dealing—most tellingly, the invoices Cox himself prepared for the prior draws—and found they reflected a shared understanding that Cox had to complete the milestone work before payment came due. (Order at 14 ¶ 39.) Each earlier invoice certified completion of the corresponding milestone: Draw 2 stated "Framing complete," Draw 3 stated the rough-ins were "complete," Draw

4 was for "Finish brick," and Draw 5 stated "Drywall complete, trim installed, first coat of paint." (*Id.*; Defs.' Exs. 1–5.) Cox's trial testimony that the draw schedule did not require completion before payment was flatly inconsistent with the very invoices Cox had authored. (Tr. at 471–77.) Cox, in its Initial Brief, even now admits that "[t]he contract made each draw payable upon completion of its designated milestone," a pivot from its position throughout trial. (Appellant's Initial Br. at 16.)

Resolving an ambiguity by reference to the parties' own conduct is the opposite of rewriting a contract. A court may not, of course, "make new contracts for the parties" or add terms to which they never agreed. *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988). But that is not what happened here. The court added nothing to the agreement; it enforced the completion requirement the parties themselves had consistently observed through five prior draws. Cox's assertion that the court "rewrote" the payment terms or imposed conditions precedent that the contract does not contain mischaracterizes what occurred: the court construed genuinely ambiguous language against its drafter and gave effect to the parties' demonstrated intent, exactly as South Carolina law requires. Nothing in the contract entitled Cox to payment for unfinished or defective work, and nothing in the draw schedule permitted Cox to demand payment based on its own unilateral assessment of progress.

C. The Trial Court's Finding That Cox Failed to Complete the Draw 6 Milestones is Supported by the Evidence.

The circuit court made a clear factual finding that Cox failed to complete the vinyl and gutter work required for Draw 6 before requesting payment. In the judgment Order, the court found that, after Cox requested Draw 6 in late January 2023, Respondents notified Cox that the vinyl and gutter milestones were incomplete and also identified outstanding deficient work from prior draws. (Order at 6 ¶¶ 14–15.) The court further found that Respondents presented documentary and

testimonial evidence, including expert testimony, establishing that Cox failed to complete the vinyl and gutter work. (Order at 6 ¶ 16; Tr. at 99–100, 120–21, 292–293.) Those findings were supported by:

1. Respondents' March 9, 2023, correspondence itemizing incomplete and defective work and providing photographs of the same, including incomplete vinyl and gutter work (Order at 7 ¶ 18; Defs.' Ex. 12);

2. Photographic evidence showing incomplete vinyl and gutter installation at the time Cox demanded payment (Order at 6–7 ¶¶ 16, 18; Defs.' Ex. 12);

3. Testimony and communications establishing that Cox never returned to the Home after the March 9 dispute and that Respondents never refused Cox entry or prevented completion of the work (Order at 8 ¶¶ 20–21; Tr. at 186, 449).

Additionally, Cox conceded at trial that the vinyl work was incomplete (Tr. at 475–476), and although it claimed the gutter work was finished because only "gutters," not "downspouts," were listed on the draw schedule, the court rejected that position as inconsistent with Exhibit A, which required Cox to construct a complete gutter system—both gutters and downspouts. (Order at 6 ¶ 16; Tr. at 453, 471.) The contract required completion of the milestone work, not the partial or subjective completion that Cox unilaterally assigned to it.

Further, Cox's mid-dispute conduct confirms that Draw 6 had not been earned. In February 2023, Cox acknowledged in writing that the Home was only 70% complete—short of the 75% completion corresponding to the sixth draw—and then requested a half draw of $35,600.00 rather than the full $71,200.00, despite that request being inconsistent with the contract. (Order at 7 ¶ 17.) Cox also conditioned further work on immediate payment, stating that it needed the 5% draw "as soon as possible" so it could "go on to the next phase" and "move forward." (Order at 7 ¶ 17.) That request is an admission that the full Draw 6 milestone was not complete, and the trial court was entitled to treat it as corroborative evidence that full payment was not yet due. Cox's attempt

to recast the half-draw request as a mere effort to keep the project moving neither undoes the admission nor displaces the trial court's supported findings.

Because the trial court's finding that Cox sought payment before completing the Draw 6 work is supported by the parties' correspondence, the photographs of incomplete vinyl and gutter installation, Cox's own concession and conduct, and the parties' course of dealing, it is unassailable under the "any evidence" standard governing this non-jury action at law.

IV. THE DAMAGES AWARD IS SUPPORTED BY THE EVIDENCE AND MAY BE AFFIRMED ON INDEPENDENT GROUNDS.

The trial court awarded Respondents $149,939.41 in damages—$89,261.32 in actual damages to repair and complete Cox's work and $60,678.09 in consequential damages—on both its breach of contract and its negligence findings. (Order at 17 ¶ 45; Order at 23 ¶ 69.) In a non-jury action at law, that award must be affirmed if any evidence supports it, and this Court neither reweighs the evidence nor substitutes its own damages calculation. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976), abrogated on other grounds by *Matter of Est. of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018). Cox's challenge fails for two independent reasons: the award is supported by ample evidence of Respondents' actual loss, and the identical award rests on Cox's negligence—an independent tort ground Cox does not meaningfully contest. Either is sufficient to affirm.

A. The Damages Award is Supported by Evidence of Actual Loss.

The $89,261.32 actual damages award represents the reasonable cost Respondents incurred to repair and complete the very work for which they had already paid Cox—work the trial court found incomplete or defective. (Order at 17 ¶ 45; Order at 23 ¶ 69; Defs.' Ex. 9.) Cost of repair and completion is a recognized measure of damages against a builder. *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 94, 344 S.E.2d 869, 873 (Ct. App. 1986). Cox's contention that the award must

be offset against the unpaid contract balance misreads the record: the $249,200.00 that remained unpaid corresponded to later draws for work Cox never performed, whereas the repair costs redressed defective work Cox had already been paid to complete. Crediting the unpaid balance against the cost of curing work Cox was separately paid to perform would hand Cox the benefit of both the payments it received and the work it never did. In any event, Cox neither contested Respondents' damages methodology at trial nor offered contrary evidence of net loss or betterment, leaving the trial court's calculation supported by the only competent evidence in the record. (Order at 18–19 ¶ 45.) Finally, Cox cites no supporting authority for its offset argument, and its failure to marshal any legal support is itself reason to reject the contention.

B. The Absence of a Fixed Completion Date Does Not Bar Consequential Damages.

Cox's lead damages argument—that the eighteen-month reasonable-completion time was an improper "judicially selected date" the contract omitted—misdescribes both the law and the record. Where a contract fixes no time for performance, South Carolina law does not leave the parties without a temporal obligation; instead, it implies a duty to perform within a reasonable time. *Drews Co. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 209, 371 S.E.2d 532, 533 (1988). It follows from that rule that when a reasonable time is the governing standard, the fact finder must necessarily determine how much time is reasonable under the circumstances of the particular case. In other words, a reasonable-time obligation cannot be enforced without ascertaining what that reasonable time is.

Far from rewriting the parties' bargain, the trial court did precisely what the law required of it when it found a reasonable construction time of eighteen months. (Order at 16 ¶ 42.) The court did not invent that figure or select an arbitrary date; it drew the number directly from Cox's own testimony that the Home would take twelve months if Cox selected the materials and eighteen

months if the owners did, and it adopted the outer limit most favorable to Cox. (Order at 5 ¶ 6; Order at 16 ¶ 42; Tr. at 338, 531–532.) The court's reasonable-time finding is thus supported by the evidence and reflects the ordinary, indeed unavoidable, function of the fact finder in a case governed by a reasonable-time standard. The consequential damages—rental, financing, and increased material costs—were then measured from the date eighteen months after execution and were supported by documentary evidence and testimony Cox did not rebut. (Order at 23 ¶ 69 & n.11; Order at 18–19 ¶ 45.) Determining a reasonable time and the resulting delay damages was a factual finding reviewed only for any supporting evidence, not an impermissible rewriting of the parties' bargain.

C. The Negligence Claim Independently Sustains the Award.

Independently, the judgment rests on Cox's negligence, and Cox's challenge to that ground is both legally mistaken and largely undeveloped. The economic loss rule does not bar an owner's negligence claim arising from residential construction, and a builder who violates a legal duty—not merely a contractual one—is liable in tort. *Carroll v. Isle of Palms Pest Control, Inc.*, 446 S.C. 177, 187, 918 S.E.2d 532, 537 (2025), *reh'g denied* (Aug. 11, 2025); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 345–46, 384 S.E.2d 730, 737 (1989); *see also Dixon v. Texas Co.*, 222 S.C. 385, 389, 72 S.E.2d 897, 899 (1952) (where a breach of duty "arises out of a liability independent[] of the personal obligation undertaken by contract, it is a tort"). Cox does not dispute those principles; it concedes the economic loss rule poses no bar. The trial court found that Cox's deficiencies resulted from its willful misconduct and conscious failure to exercise due care, and it fixed the resulting damages at the same $89,261.32 in repair costs and $60,678.09 in consequential losses. (Order at 22–23 ¶¶ 68–69.) Cost of repair is a proper measure of a builder's tort liability. *Kincaid*, 289 S.C. at 94, 344 S.E.2d at 873. Because the negligence finding is an independent legal

basis that fully supports the identical award, the judgment must be affirmed on that ground regardless of any asserted error in the contract measure of damages. Where a judgment rests on multiple independent grounds, an appellate court will affirm if any one of them is valid, and the unchallenged, evidence-supported negligence ground is sufficient standing alone. *See Anderson v. S.C. Dep't of Highways & Pub. Transp.*, 322 S.C. 417, 420, 472 S.E.2d 253, 254 (1996) (finding when a general verdict can be supported by more than one cause of action submitted to it, the appellate court will affirm unless the appellant appeals all causes of action).

V. THE TRIAL COURT PROPERLY DISMISSED COX'S QUANTUM MERUIT AND ACCOUNT STATED CLAIMS.

A. The Express Contract Bars Cox's Equitable Claims.

The trial court dismissed Cox's quantum meruit claim on three independent grounds, any one of which sustains the result. First, it is undisputed that a valid express contract between Cox and Piedmont governs compensation for Cox's work, and an express contract bars quantum meruit as to the matters it covers. (Order at 18 ¶¶ 49–50.) *See Johnston v. Brown*, 290 S.C. 141, 147–48, 348 S.E.2d 391, 394–95 (Ct. App. 1986), *rev'd on other grounds*, 292 S.C. 478, 357 S.E.2d 450 (1987). Cox responds that it asserted the claim against Watson Engineering, Inc. ("Watson"), a non-party to that contract, so the bar cannot reach it. Even accepting that premise, it changes nothing: the trial court supplied two additional, independent grounds for dismissal, (1) Cox's failure to prove the value of any benefit conferred on the Home's owner, and (2) Cox's unclean hands, each of which defeats the claim against Watson in addition to the express-contract bar.

B. Cox Failed to Prove the Value of Any Alleged Benefit and Unjust Enrichment.

The trial court's alternative ground that Cox failed to prove the value of any benefit conferred is independently dispositive and legally correct. To prevail on a quantum meruit claim, Cox was required to prove a benefit conferred, Watson's realization of that benefit, and retention

of the benefit under circumstances making it inequitable to retain it without paying its value. *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 8–9, 532 S.E.2d 868, 872 (2000); *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). Recovery in quantum meruit is measured by the value of the benefit to the owner, not the cost of the labor and materials to the party that performed the work. *Stringer Oil Co. v. Bobo*, 320 S.C. 369, 373, 465 S.E.2d 366, 369 (Ct. App. 1995).

Cox claimed that it expended roughly $92,000.00 in labor and materials, but it neither presented evidence to support this claim (and conveniently obscures the fact that its invoices include built-in profit), nor did it present evidence of the value of any benefit Watson allegedly retained. (Order at 18–19 ¶ 51; Order at 14 ¶ 32.) Cox's contention that the court applied the "value to the owner" measure too rigidly is misdirected: the deficiency was not a matter of degree but a complete failure of proof on an essential element.

Cox also failed to prove unjust enrichment. Particularly where the trial court found that Respondents, including Watson, sustained $149,939.41 in damages as a result of Cox's incomplete, defective, and delayed work, Cox cannot establish that Watson was unjustly enriched by that same conduct. Evidence of what Cox improperly *invoiced* says nothing about what Watson *gained*, and the court's damages findings confirm that Respondents were harmed, not enriched. That failure of proof is fatal to the claim.

Cox's requested remedy underscores the point. As the party asserting the claim, Cox bore the burden of proving the value of the benefit conferred and unjust enrichment by a preponderance of the evidence, *see Columbia Wholesale Co.*, 312 S.C. at 261–62, 440 S.E.2d at 130–31, and it had a full opportunity to do so at a three-day trial. Having failed to carry that burden, Cox now asks this Court to remand for a determination of the value of any benefit Watson allegedly

received. In effect, this is a second bite at the apple to prove an essential element it neglected to establish the first time. But a claimant who fails to prove an essential element of its claim is not entitled to a remand to try again; the remedy for a failure of proof is dismissal, not a do-over. Granting the relief Cox seeks would require the trial court to shoulder Cox's evidentiary burden, which neither the law of quantum meruit nor the allocation of the burden of proof permits.

C. Cox's Unclean Hands Independently Bars Equitable Relief.

The trial court's third ground, unclean hands, likewise bars relief as to both Respondents and is supported by the record. Equity will not aid a claimant whose own inequitable conduct, related to the matter in litigation, prejudiced the party against whom relief is sought. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998); *see Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) ("He who seeks equity must do equity." (quoting *Norton v. Matthews*, 249 S.C. 71, 152 S.E.2d 680 (1967))). The court found that Cox demanded and accepted payment for work it failed to complete or performed deficiently, demanded a premature sixth draw for incomplete work, and misrepresented the percentage of completion. (Order at 18–19 ¶ 52.) The court further found that Cox's conduct rose beyond mere breach: Cox's construction deficiencies resulted from willful misconduct and a conscious failure to exercise due care, including misrepresentations bearing on both Respondents. (Order at 22 ¶ 68.) Cox therefore cannot limit the unclean hands finding to Piedmont alone. The misconduct concerned the very project, work, payment demands, and representations underlying Cox's equitable claim, and the trial court's findings establish inequitable conduct directed at and prejudicing Respondents collectively. On de novo review of this equitable claim, the trial court's unclean hands ruling accords with the preponderance of the evidence and independently supports dismissal.

D. Cox Failed to Establish an Account Stated.

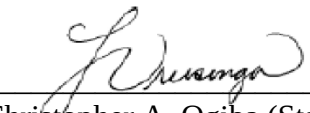
The account stated claim fails for want of the mutual assent the theory requires. An account stated must be actually stated, and the parties must have expressly or impliedly agreed that it is a true statement of the amount due. *S. Welding Works, Inc. v. K & S Constr. Co.*, 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985); *Portfolio Recovery Assocs., LLC v. Campney*, 441 S.C. 36, 48, 892 S.E.2d 321, 327 (Ct. App. 2023); *Wakefield v. Spoon*, 100 S.C. 100, 84 S.E. 418, 420 (1915). Here, Respondents expressly denied and consistently disputed any balance due, and Cox presented no evidence that Respondents ever agreed to any stated amount. (Order at 20 ¶¶ 57–58.) Nor does Cox identify any record evidence on appeal showing that Respondents assented—expressly, impliedly, or by silence—to a fixed balance owed. To the contrary, Cox demanded shifting and inconsistent sums for unchanged work—$35,600.00 in February 2023, $71,200.00 in March 2023, and $92,000.00 by July 2023—the antithesis of an agreed account. (Order at 20 ¶ 58.) Reviewed under the any-evidence standard, the trial court's rejection of the account stated claim is unassailable.

CONCLUSION

The trial court's Order reflects a careful, well-supported application of South Carolina law to the facts of this case. Cox's appeal asks this Court to disregard the deferential standard of review, reweigh evidence, and reward litigation gamesmanship. For all of these reasons, the judgment should be affirmed in its entirety.

Respectfully submitted,

MOORE & VAN ALLEN PLLC



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