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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Unpublished Opinion No. 2026-UP-196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

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

v.

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

REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Respondent's position on appeal relies on a hypothetical that is contrary to the facts and record. The question on summary judgment is not whether a hypothetical set of facts can be turned into a question of material fact. The question on summary judgment is whether the actual record of what really happened between the parties supports the existence of a disputed material fact. In this case, that question turns on whether the parties' contract requires payment within thirty (30) days of an invoice or not. The trial court found the clause at issue unambiguous and correctly answered the question as a matter of law. (R. pp. 13-14); S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008).

But even if the clause is ambiguous, the facts and record provide the answer. Connor v. City of Forest Acres, 363 S.C. 460, 473, 611 S.E.2d 905, 912 (2005) ("[E]vidence that a party complied with the terms of the alleged contract or acted in conformity therewith is relevant and admissible on the issues of…the meaning of its terms…"). Respondent performed work for Petitioner for over a year on the project. On July 17, 2019, Respondent sent an email to Petitioner forwarding the "outstanding invoices which we need to get resolved." (R. pp. 95 – 118). Then on August 7, 2019, Respondent sent a spreadsheet to Petitioner (the "Spreadsheet") with a detailed itemization of the invoices Respondent considered owed as of the date of the Spreadsheet. (R. p. 196). Respondent distinguished that the invoices reflected in the Spreadsheet reflected amounts owed under all of the parties' agreements, including agreements outside the original contract. (R. p. 264). According to Respondent's Spreadsheet, from June 21, 2018 until July 2, 2019 Respondent issued twenty-two (22) invoices totaling $435,108.74 to Petitioner for work performed on the contract (R. pp. 120 – 121). Petitioners paid $328,305.00 on the invoices before July 1, 2019, with their last payment in February 2019. (R. pp. 121, 263, 265). The Spreadsheet itemizes "finance charges [for] breach of contract ON CONTRACTS ABOVE," referring to the invoices it claimed were past due and subject to finance charges. (R. p. 121). The parties understood and performed the contract for more than a year prior to August 2019 as if invoices were due within thirty (30) days of issuance (R. p. 26, ¶ 13).

Respondent and the Court of Appeals' unpublished opinion rely on a counterfactual, namely that the $425,108.74 that Respondent periodically billed in twenty-two (22) separate invoices over the course of the year prior to July 2, 2019 was not actually due. The $328,305.00 that Petitioner actually paid on those invoices was not owed. Respondent's numerous claims for payment on what it considered "outstanding invoices" was all a mistake; Petitioner's payment of seventy-five (75%) percent of the invoices issued prior to July 2019 was a misunderstanding. This is a counterfactual and hypothetical set of assumptions not supported by the record and insufficient to avoid summary judgment.

Respondent's Return to Petition for Writ of Certiorari repeatedly cites to Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp., 332 S.C. 197, 503 S.E.2d 761 (Ct. App. 1998) for the proposition that the statute of limitations in construction contracts only runs before the completion of the contract in "rare circumstances." (Respondent's Brief at 9, 10, 11, 12). Republic's holding relies 54 C.J.S. Limitations of Actions § 131 (1987). See Republic, 332 S.C. at 212. That Corpus Juris Secundum section describes the "continuing claim" and "continuing tort" doctrines of accrual for statute of limitations purposes. That exact section of Corpus Juris Secundum, and the "continuing claim," "continuing wrong," and "continuing tort" doctrine described by it, were expressly rejected by this court in Poly-Med, Inc. v. Novus Scientific Pte., Ltd., 437 S.C. 343, 349, 878 S.E.2d 896, 899 (2022) (rejecting 54 C.J.S. Limitations of Actions § 131 (2020) and holding "[i]n jurisdictions that have a discovery rule like South Carolina, the clear majority rejects the continuing breach theory.”). Republic’s holding that all “claims,” “wrongs” and “torts” committed during the life of a construction contract accrue only at project completion is directly contrary to this court’s holding in Poly-Med.

Respondent’s citation to Republic illustrates the need for this court’s involvement in this case. In Poly-Med this court described the “continuing claim doctrine” as

> [O]perat[ing] to save parties who have pled a series of distinct events, each of which gives rise to a separate cause of action subject to its own statute of limitations, as a single continuing event….That is the doctrine allows a plaintiff to get relief for a time-barred act by linking it with an act that is within the limitations period.

Poly-Med, 437 S.C. 348-349 (quoting 54 C.J.S. Limitations of Actions § 131 (2020)). This is what Respondent is attempting here. Each of the invoices is a distinct event giving rise to a claim if not paid within thirty (30) days. Nearly all of Respondent’s claims on its invoices are time-barred. Respondent is seeking to save the time-barred invoices by “linking” them with work and invoices that are not time-barred and with completion of the project. Poly-Med rejects Respondent’s effort. This court should use this case to reaffirm its rejection of the “continuing breach” theory.

Finally, Respondent claims that all issues were properly preserved for review ignores the requirement that issues before the trial court be both raised and ruled upon. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); Rule 210(c), SCACR. See also Sanders v. Salley, 283 S.C. 458, 460–61, 322 S.E.2d 829, 830–31 (Ct. App. 1984); Moses v. State, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (emphasis added). Assuming for sake of argument that Respondent raised its current interpretation of the contract provision at issue at the trial court, which is disputed, it is undisputed that the Order did not address or rule on any argument concerning “project completion.” (R. pp. 8 – 15). Instead, the Order held that the contract required payment of invoices “net 30” and that Petitioners were “required to make payment on each invoice thirty (30) days after it was submitted." (R. p. 14). Respondent chose to file their notice of appeal the day after the Form 4 was entered and then again the day after the formal order was entered without filing a motion to alter or amend and seek a ruling on their "project completion" argument. (R. pp. 202-222). South Carolina appellate courts do not recognize the "plain error rule" as the "mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without a concern a later appeal will be deemed untimely." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004). Having elected not to file a Rule 59(e) motion, Respondent did so at its own peril and cannot now fault the trial court for failing to rule on an issue Respondent did not ask it to decide.

CONCLUSION

For these reasons, and for the reasons set forth in the Petition, Petitioners respectfully request that this Court grant the Petition for Writ of Certiorari, reverse the decision of the Court of Appeals, and affirm the circuit court's order granting summary judgment to Petitioners.

Respectfully submitted,

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