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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge
Case No.: 2023-CP-29-01144

Appellate Case No. 2026-001299

Transocean Investments, Inc.,.....................................Appellant-Respondent,

v.

Kent Davis Jones; Lisa A. Page; and Russell J. Sinacori, individually, ... Respondents,

of whom Kent Davis Jones and Lisa A. Page are the...........Respondents-Appellants.

RESPONDENTS-APPELLANTS' INITIAL APPELLANTS' BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err in failing to dismiss Plaintiff's legal malpractice-based claims against attorneys Lisa Page and Kent Jones when Plaintiff did not file a contemporaneous expert affidavit as required by § 15-36-100 of the South Carolina Code, and the Circuit Court exceeded its discretionary authority to permit Plaintiff's late filing?

STATEMENT OF THE CASE

This case involves claims against attorneys Lisa Page and Kent Jones arising from a commercial land transaction in 2015 between Transocean Investments and Russell Sinacori entities, and a subsequent redocumenting of that transaction in 2019. Defendant Page served as the settlement agent for the 2015 transaction and was not Transocean's attorney. Kent Jones represented the Sinacori entities in the 2019 transaction, not Transocean.

When Transocean filed suit against Page and Jones for legal malpractice, it did not file a contemporaneous expert affidavit under § 15-36-100 of the South Carolina Code, and both Page and Jones moved to dismiss. More than six months later, and on the eve of a hearing on the motions to dismiss, Transocean filed a deficient expert affidavit. The circuit court refused to dismiss the frivolous claims and forced Page and Jones to incur the cost and inconvenience of years-long litigation only to end up at the same place at summary judgment. This case presents the exact scenario that the Frivolous Proceedings Sanctions Act was intended to prevent and the circuit court erred by not dismissing the professional negligence-based claims at the pleadings stage.

STATEMENT OF FACTS

Transocean's Complaint conflated the facts of the case as were eventually borne out by the public record and discovery. Page and Jones outline below an objective statement of facts taken from the relevant public records referenced in the Complaint, and then outline the Complaint allegations.

General Background

In 2015, Russell Sinacori, through his entity Carolina Land Ventures, entered into a contract with Transocean Investments to purchase approximately 21 acres of land in Lancaster County, South Carolina, TMS #0005-00-002-00 (Subject Property). Carolina Land Ventures assigned the contract to Sinacori Builders, LLC. Sinacori Builders agreed to pay $1,921,500 for the Subject Property. **Page MTD, Ex. 1**. It appears that Transocean was represented by Tracy Frick of Frick Trent, PLLC, in Rock Hill, South Carolina. **Page MTD, Ex. 1** (recording information and witness for Transocean principal Jason Vick referencing Frick).

Carolina Land Ventures gave Transocean a Promissory Note for $1,621,500 and granted Transocean a Mortgage on the Subject Property to secure the Note. **Page MTD, Ex. 2 (Mortgage); Compl. ¶ 3.** Lisa Page served as the settlement agent for the 2015 Transaction. This mortgage was recorded November 2, 2016, with the Lancaster County Register of Deeds in Book 3254 at Page 1. **Page MTD, Ex. 2.** The mortgage named Carolina Land Ventures as borrower, whereas the deed named Sinacori Builders as the grantee, but the mortgage was signed by Defendant Sinacori. **Compl. Ex. B.**

In mid-March 2019, Sinacori Builders deeded the Subject Property to another Sinacori entity—Chateau Ridge, LLC. **Page MTD, Ex. 3 (Deed to Chateau Ridge)**. Jones represented the Sinacori entities with the 2019 redocumenting. In connection with the 2019 redocumenting, Chateau Ridge and Sinacori Builders executed a new mortgage and promissory note, whereby Chateau Ridge mortgaged the Subject Property in favor of Transocean and signed a promissory note for $808,000. **Page MTD, Ex. 1 (3.14.19 Mortgage)**. Then Transocean, through Mr. Vick, executed and recorded a satisfaction of the 2015 Mortgage between Transocean and Carolina Land

Ventures. **Page MTD, Ex. 5 (3.14.19 Satisfaction)**. Lisa Page was not involved in the 2019 Transaction, and did not witness or notarize any of these documents.

In December 2019, Transocean, Sinacori Builders, and Chateau Ridge entered into a Memorandum of Agreement recorded March 10, 2020, in Lancaster County Mortgage Book 3945 at Page 286. **Page MTD, Ex. 6 (Memo of Agreement)**. This is the recorded document Plaintiff repeatedly mentions but does not attach to the Complaint. **Compl. ¶ 19(e)**. Pursuant to this Agreement, Chateau Ridge recognized the terms of the March 2019 transaction, including that it was to pay Transocean $421,000, and an additional $387,000 after Chateau Ridge sold the Subject Property (but only subject to certain conditions). **Page MTD, Ex. 6**. Importantly, Transocean **expressly acknowledged** receipt of the $421,000 payment required under the note. **Page MTD, Ex. 6**. Chateau Ridge subsequently deeded the Subject Property to Toll Southeast LP Company, Inc., on October 27, 2020, recorded November 5, 2020. **Page MTD, Ex. 7 (Deed to Toll Southeast); Compl. Ex. B.**. Lisa Page was not involved in the Memorandum of Agreement or the transaction with Toll Southeast, and did not witness or notarize any of the documents. Kent Jones represented Sinacori Builders and Chateau Ridge in connection with the December 2019 Memorandum of Agreement.

These facts are taken from documents recorded with the Lancaster County Register of Deeds based on references in the Complaint, and the facts in these recorded documents differ significantly from what Transocean alleges. Page and Jones highlight the differences below to aid the Court in evaluating the appeal.

<u>Complaint Allegations</u>

The Complaint allegations conflate events and misattribute actions. The Complaint alleges Defendant Page is a North Carolina attorney and notarized purported transfers of the Subject

Property when Defendant Page knew the "seller" was not adequately capitalized and had not deposited purchase monies with Page. **Compl. ¶ 9**. Defendant Page, however, did not notarize any of the purported transfers for the Subject Property according to the signed and recorded documents. Transocean also alleged Jones executed certain agreements, notes, and mortgages; however, none of the public records support the allegation. **Compl. ¶¶ 10(e), 13, second 22(F)**.

The Complaint alleges Defendant Page requested Transocean, by its owner Jason Vick, execute a deed and title, but that she failed to escrow $421,000 owed to Transocean under the promissory note and mortgage recorded at Lancaster County Mortgage Book 3945 at Pages 286-91. **Compl. ¶ 13**. Defendant Page, however, was not involved in the transaction referenced in the recorded document, and had no involvement in the $421,000 payment. Further, the recorded document 2020 Memorandum of Agreement indicates Transocean received the $421,000.[1] **Page MTD, Ex. 6**.

The Complaint also alleges that Page and Jones purportedly issued a seller title insurance policy for Transocean through Chicago Title Insurance Company when they were not licensed title insurance underwriting agents, including an exhibit to the Complaint. **Compl. ¶ 15, Exs. A, C**. Exhibits A and C to the Complaint is an owner's policy with Chicago Title Insurance Company dated December 13, 2007, naming Transocean Investments as the insured and is not signed by Page or Jones. **Compl. Exs. A, C**. The Complaint fails to clarify what seller title insurance would be, as no such product exists.

[1] Bank records and deposition testimony obtained during discovery also prove Transocean received the $421,000 payment in 2019, which will be addressed in Respondents-Appellants' Respondents' Brief concerning the order granting them summary judgment.

Based on the confusing allegations, Transocean asserted claims against Page and Jones for (1) fraud and fraudulent inducement; (2) breach of fiduciary duty; (3) legal malpractice; (4) breach of contract; and (5) violation of the South Carolina Unfair Trade Practice Act.

Jones and Page moved to dismiss the Complaint on October 30, 2023, and November 1, 2023, respectively. The motions were based, in part, on Transocean's failure to file a contemporaneous expert affidavit under section 15-36-100 of the South Carolina Code. **Page MTD; Jones MTD**. On April 26, 2024, the circuit court noticed the motions for a hearing on May 27, 2024. **Hearing Notice**. Five days prior to the hearing, on May 22, 2024, Transocean filed an affidavit of its purported expert, Attorney Mark Hardee. **Expert Affidavit**. The parties all filed memoranda for the hearing, including Transocean's filing the day of the hearing. **Page MIS MTD (5.22.24); Transocean MIO MTD (5.22.24); Jones MIS MTD (5.23.24); Transocean Memo (5.27.24)**. After argument, the circuit court permitted the parties to submit supplemental memoranda, which the parties filed. **Jones Supp. MIS MTD (6.6.24); Page Supp. MIS MTD (6.7.24); Transocean Supp. MIO MTD (6.11.24)**.

The circuit court denied the motions to dismiss on June 17, 2024. **6.17.24 Order**. The parties subsequently completed discovery. The circuit court later granted Page and Jones summary judgment on January 20, 2026. **1.20.26 Orders**. Transocean filed Motions to Reconsider, Alter, or Amend the Orders Granting Summary Judgment, which were denied on May 11, 2026. **5.11.26 Order**. Transocean timely appealed the orders granting summary judgment and the order denying the motions to reconsider, alter, or amend, and Jones and Page cross-appealed the order denying the motions to dismiss. **6.10.26 Transocean Notice; 6.15.26 Notice of Cross-Appeal**.

STANDARD OF REVIEW

In reviewing a decision under Rule 12(b)(6), SCRCP, the appellate court applies the same standard as the circuit court. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 320, 701 S.E.2d 39, 44 (Ct. App. 2010). Dismissal of claims under Rule 12(b)(6) is appropriate if the complaint fails to state facts sufficient to constitute a cause of action. *Baird v. Charleston Cnty.*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). When ruling on a motion to dismiss, the court must base its ruling on the allegations set forth in the complaint. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). Any document that is an exhibit to a pleading is considered a part of the pleading. Rule 10(c), SCRCP. A party cannot avoid application of Rule 10(c) by intentionally omitting a document from the complaint. *See Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). Furthermore, when a plaintiff merely states legal conclusions without facts supporting those conclusions, a claim fails under the Rule 12(b)(6) standard. *See generally Rotec Servs.. v. Encompass Servs.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (noting legal conclusions of the elements of an affirmative defense were insufficient and were struck from the pleading). Dismissal is appropriate when "mere conclusory allegation[s], unsupported by any particularized fact," are pled. *Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 455 n.9, 814 S.E.2d 642, 656, n.9 (Ct. App. 2018).

ARGUMENT

I. The circuit court's order denying Page and Jones' motions to dismiss are appropriate for consideration by this Court, because the order granting summary judgment is an appealable order before this Court and judicial economy supports deciding the expert affidavit issue.

"An order that is not directly appealable may be considered if there is an appealable issue before the court." *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005) (finding jurisdiction over the cross-appeal of a motion to dismiss because of judicial economy). The appellate court can consider an order denying a motion to dismiss on appeal for the purpose of judicial economy. *Id.*; *see, e.g.*, *Cox v. Woodmen of the World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001) (considering on appeal an order denying a motion to dismiss under Rule 12(b)(8), SCRCP, when the court was simultaneously considering an appealable arbitration issue).

Likewise, appellate courts will entertain important issues that would otherwise be unreviewable to provide guidance to the bench and bar. *See Branham v. Ford Motor Co.*, 390 S.C. 203, 241, 701 S.E.2d 5, 25 (2010) (finding issue involving realignment of parties not preserved for appeal but addressing it anyway because the Court wanted to provide guidance to the bench and bar on a novel issue); *State v. Blake*, 289 S.C. 17, 19, 344 S.E.2d 385, 387 (Ct. App. 1986) (finding issue moot but discussing it regardless because of its precedential value and providing guidance to the bench and bar); *cf. Salmonsen v. CGD, Inc.*, 377 S.C. 442, 452, 661 S.E.2d 81, 87 (2008) (finding exception to appealability of interlocutory order on class certification but deciding to address a novel question of law at that time for "judicial economy and guidance to the bench and bar").

Judicial economy supports reviewing the circuit court's denial of the motions to dismiss, because interpretation of the safe harbor provision in § 15-36-100(C) as applied in this case is a novel question that would otherwise be unreviewable, and this Court has opportunity to provide guidance to the bench and bar on the topic.

Further, it appears that the appellate court only declines to review an interlocutory order paired with an appealable order when the issue would benefit from further factual development below. *See Blackwell v. Mary Black Health Sys., LLC*, 445 S.C. 62, 78-79, 911 S.E.2d 147, 155-56 (Ct. App. 2024). There is no need for further factual development on the § 15-36-100 issue, because statutory interpretation is an issue of law for the court and the factual record is sufficiently developed, as demonstrated by the grant of summary judgment.

Therefore, this Court has jurisdiction and should review the circuit court's decision denying the motions to dismiss.

II. This Court should reverse the circuit court's order denying the motions to dismiss, because Plaintiff did not file the required contemporaneous expert affidavit, did not qualify for the safe harbor provision, and the late-filed expert affidavit was deficient.

The burden of proof to establish the required standard of care, a breach of the applicable standard of care, and a causal relationship between the defendant's negligence and the plaintiff's damages is on the plaintiff in a professional negligence action. *Kemmerlin v. Wingate*, 274 S.C. 62, 65, 261 S.E.2d 50, 51 (1979). In 2005, the South Carolina General Assembly enacted tort reform legislation (including § 15-36-100) to "establish standards for expert witnesses in professional malpractice actions" and to "filter frivolous claims" against professionals by requiring the contemporaneous filing of an expert affidavit identifying at least one negligent act or omission. *See generally*, *Ranucci v. Crain*, 409 S.C. 493, 763 S.E.2d 189 (2014). Requiring expert testimony to establish the standard of care and its breach is rooted in the "court's 'healthy respect . . . for the learning of a fellow profession, and [its] reluctance to overburden it with liability based on uneducated judgment.'" *Doe v. American Red Cross Blood Services*, 297 S.C. 430, 435, 377 S.E.2d 323, 326 (1989) (quoting Prosser and Keeton, *Law of Torts*, § 32, p. 189 (5th ed. 1984)). "The expert witness affidavit serves to ensure that claims of professional negligence made against attorneys have some validity before filing and alerts the professional to the merits of the claim." *In re Steinmetz*, 2011 WL 4543894, at *3 (Bankr. D.S.C. Mar. 18, 2011).

A plaintiff suing an attorney for professional negligence must file an expert witness affidavit specifying one negligent act or omission and the factual basis for each claim. S.C. Code

Ann. § 15-36-100(B). When an affidavit is not filed and the defendant moves to dismiss on that ground, the complaint should be dismissed for failure to state a claim. S.C. Code Ann. § 15-36-100(C)(1).

The Act permits a late filed affidavit in two scenarios: (1) when the period of limitations will expire before an affidavit can be acquired or (2) the plaintiff moves for an extension to file the affidavit and the court finds good cause and justice requires extending the deadline. § 15-36-100(C)(1). The Act imposes similar restrictions and discretion when a plaintiff files a defective affidavit. § 15-36-100(E).

Pursuant to § 15-36-100, this Court should reverse the circuit court's denial of Page and Jones' motions to dismiss because Transocean did not contemporaneously file an expert affidavit, never moved for an extension to file the affidavit and did not demonstrate good cause, and the expert's affidavit that was filed after the statutory deadline was also defective.

A. Transocean failed to file a contemporaneous expert affidavit with its Complaint, which Page and Jones both raised in their motions to dismiss, and all of Transocean's claims based on the attorney-client relationship should have been dismissed.

It does not matter how a plaintiff couches the claims, an affidavit is required if the claims are based on the professional's work. *See, e.g.*, *H & H Johnston, LLC v. Old Republic Nat'l Title Ins. Co.*, 405 S.C. 469, 748 S.E.2d 72 (Ct. App. 2013) (dismissing at summary judgment claims against attorney in his capacity as title agent and title company arising out of real estate closing because attorney was providing legal advice and an expert affidavit was required under 15-36-100); *see also Charles Blanchard Constr. Corp. v. 480 King St., LLC*, 447 S.C. 295, 309, 926 S.E.2d 235, 242 (2026) (finding the circuit court properly dismissed breach of warranty and breach of contract claims that were based on the same allegations as the professional negligence claims); *Charles Blanchard Constr. Corp. v. 480 King St., LLC*, 443 S.C. 165, 170, 904 S.E.2d 182, 184

(Ct. App. 2024) ("We find that if all of the claims included in the complaint were grounded in professional negligence and the affidavit failed to meet the requirements of section 15-36-100, the circuit court would not have erred in dismissing the entire complaint." (*reversed in part on other grounds by* 447 S.C. 295, 926 S.E.2d 235 (2026)).

Furthermore, when a claim for breach of fiduciary duty is based on an attorney-client relationship, a breach of fiduciary duty claim is duplicative of a legal malpractice claim. *RFT Mgmt. Co., L.L.C v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 336, 732 S.E.2d 166, 173 (2012); *see also Aller v. Law Office of Carole C. Schriefer*, 140 P.3d 23 (Colo. App. 2005) (stating when a legal malpractice claim and a breach of fiduciary duty claim arise from the same material facts, the breach of fiduciary duty claim should be dismissed as duplicative). Because a breach of fiduciary duty claim based on an attorney-client relationship is duplicative of a legal malpractice claim, the affidavit filing requirement applies.

Here, the circuit court denied Page and Jones' motions to dismiss based on section 15-36-100, and this Court should reverse the circuit court. Transocean asserted claims for fraud, breach of fiduciary duty, legal malpractice, and breach of contract based on an alleged attorney-client relationship and the duties attorneys owe to clients. ***See*** **Compl. ¶ 15** (alleging in fraud claim that Page and Jones made representations that were false and fell below the standard of care for attorneys engaged in real estate practice); **¶ 22** (alleging in breach of fiduciary duty claim that "Defendants breached the duty of care expected of attorneys"); **¶ 24** (alleging in legal malpractice claim that Defendant attorneys were negligent in their representation of Transocean); **¶¶ 17, 20** (alleging in breach of contract action that an agreement of representation existed, Page and Jones breached duties of loyalty and fell below the professional standard of care). Because Transocean's claims all rely on the attorney-client relationship and duties attorneys owe to clients, which sound in negligence, Transocean was unquestionably required to contemporaneously file an expert affidavit identifying the standard of care and its breach under section 15-36-100 of the South Carolina Code.

Transocean failed to comply with the statutory requirements and did not file an affidavit of an expert identifying the standard of care for attorneys in similar circumstances and how Page or Jones deviated from that standard of care. Transocean's failure should have resulted in the circuit court dismissing Transocean's claims for professional negligence, which include its claims for fraud, breach of fiduciary duty, legal malpractice, and breach of contract because each of these claims are based on attorney-client duties and allege breaches of those duties.

B. Transocean did not qualify for section 15-36-100(C)(1)'s safe harbor provision, and Transocean did not move for an extension or demonstrate good cause.

The contemporaneous filing requirement

> does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after a hearing and for good cause may extend the time as the court determines justice requires.

S.C. Code. Ann. § 15-36-100(C)(1). The safe harbor provision is important here because one ground for dismissing the complaint was the three-year statute of limitations. **Page MTD; Jones MTD**. Once discovery was completed, the circuit court dismissed all claims against Page and Jones based on the statute of limitations. Given the age of the subject transactions, Transocean should have been concerned about the statute of limitations, such that it reasonably should have invoked the safe harbor provision permitting late filing of an affidavit. It did not. Transocean did not allege the statute of limitations would expire within ten days of the filing or that an affidavit could not be prepared because of time constraints. Further, even if Transocean had made those allegations, Transocean did not file an affidavit within 45 days of filing the Complaint—it was filed 265 days after the Complaint and 205 days after Jones raised the affidavit requirement. Indeed, the circuit court acknowledged Transocean did not comply with the safe harbor provision. **MTD Transcript**.

During the hearing, however, the circuit court discussed whether it had discretion to excuse the failure. **MTD Hearing Tr.** The circuit court did not have discretion. "The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The goal of statutory construction is to harmonize statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd. *Florence Cnty. v. Moore*, 344 S.C. 596, 601, 545 S.E.2d 507, 509 (2001). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Landis*, 362 S.C. at 102, 606 S.E.2d at 505.

"Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires." § 15-36-100(C)(1). "If an affidavit is not filed within the period . . . as extended by the trial court and the defendant against whom an affidavit should have been filed alleges by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit," the complaint should be dismissed. *Id.*

The plain meaning of this section of the statute is to restrict extension for the required affidavit and to force plaintiffs to comply with the timing requirements. The court may extend the time to file the affidavit when (1) a plaintiff moves to extend the time; (2) after a hearing on the motion to extend; (3) upon showing good cause; and (4) the court determines justice requires extension. The record is clear that Transocean did not move for an extension or show good cause, and there was no hearing addressing an extension request where the court determined justice required extension. ***See*** **MTD Hearing Tr**. Instead, Transocean filed an expert affidavit purporting to support its claims seven months after it filed its lawsuit, and the court seemingly accepted it. Accepting the late-filed affidavit without enforcing the statute's requirements is directly contrary to the statute's purpose: to ensure that claims against professionals have merit prior to filing them.

Because Transocean did not ask to extend the time within which to file the expert affidavit or show good cause, and the circuit court did not hold a hearing on the issue or determine justice required extension, the circuit court erred in not dismissing Transocean's claims and this Court should reverse the circuit court.

C. The circuit court should have found the late-filed expert affidavit deficient, because the negligent act or omission the expert outlined was not the basis of the professional negligence claims outlined in the complaint and no standard of care was articulated.

Section 15-36-100(B) requires a plaintiff to file an expert affidavit specifying the factual basis for each claim of professional negligence against a licensed professional ("[T]he plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." (emphasis added)).

When the plaintiff files a defective affidavit and the defendant specifically alleges that the affidavit is defective, the complaint should be dismissed. S.C. Code Ann. § 15-36-100(E). Once the defendant files a motion outlining the deficiency, the Plaintiff "may cure the alleged defect by amendment within thirty days of service of the motion". *Id.* The circuit court may extend the time as it determines justice requires. *Id.*

Our courts have interpreted the statute as requiring the expert affidavit to outline the standard of care and breach elements of a professional malpractice claim. *See Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 537, 725 S.E.2d 693, 696 (2012) (finding an affidavit sufficient if it opines on how the professional breached the standard of care); *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 752, 869 S.E.2d 886, 892 (Ct. App. 2022) (noting expert affidavit in legal malpractice case must outline the breach element of the malpractice claim).

Transocean's late-filed expert affidavit was deficient and should have resulted in the Complaint's dismissal. The obvious implication of requiring that an expert affidavit outline the standard of care and breach elements of a professional malpractice claim is that it pairs with the Complaint's allegations for standard of care and breach. Notably, this would not been an issue if the statute's purpose was imposed—having an expert review the particular circumstances of the professional relationship to determine if claims have merit <u>prior</u> to filing. If a plaintiff follows the statute's purpose, then the Complaint should naturally mirror the expert's opinion on the applicable standard of care and how the defendant allegedly breached it. Without this expert attestation, claims are necessarily frivolous.

Transocean's expert's opinion did not clearly outline the standard of care and its breach or mirror Transocean's Complaint allegations. With respect to Jones, it is unclear from the affidavit what specific standard applied to Jones and how he breached it. **Aff. ¶¶ 6-8**. The expert vaguely references a conflict of interest in representing Sinacori's entities in the subsequent purchase of Transocean's property when Jones allegedly represented Transocean during its 2007 purchase of the Subject Property. **Aff. ¶¶ 7-8**. But that does not necessarily give rise to a conflict of interest. There are also vague allegations regarding the timing of recording of documents; however, the Complaint does not allege damages resulting from a delay in recording. There is no language in the affidavit regarding the standard of care on either of these issues.

With respect to Page, the expert affidavit indicates her duty was to make sure Transocean received its compensation, including cash, note, and a mortgage. **Aff. ¶ 9**. But then alleges Transocean did not receive the cash or a timely filed mortgage, and the timely filed mortgage permitted subsequent property transfers. The alleged standard of care—duty to receive the mortgage—is not connected to the alleged breach—failing to timely record the mortgage. In fact, the breach presumes the duty fulfilled, a mortgage would have to exist in Transocean's favor before it could be "not timely filed." Because the expert affidavit does not clearly articulate the standard of care or the alleged breaches of any specific duty owed by the attorneys to their client, the affidavit is deficient and the circuit court should have dismissed the professional negligence-based claims.

Transocean's professional negligence-based claims assert numerous breaches of standards of care not supported by the expert's affidavit: (1) failing to collect the $421,000 prior to conveying the land (**Compl. ¶ 22(B)**); (2) fraudulently issuing ineffective title insurance policies (**Compl. ¶ 22(C)**); (3) allowing the property to convey without payment and satisfaction of the note and mortgage (**Compl. ¶ 22(D)**); (4) by combining Transocean's property with another and not ensuring Transocean's mortgage was paid before a subsequent sale (**Compl. ¶ 22(E)**); (5) executing and recording deeds when the property was subject to Transocean's lien and encumbrance (**Compl. ¶ 22(F)**); and (6) failing to account, escrow, collect and pay Transocean's note, mortgage and agreements (**Compl. ¶ 22(F)**). Transocean's expert's affidavit does not opine on these breaches, or the applicable standard of care to these breaches. In fact, the affidavit fails to parallel the Complaint in any meaningful way. Thus, the affidavit is deficient and should have resulted in the dismissal of Transocean's claims.

Because Transocean's Complaint allegations for the standard of care and breaches thereof do not mirror Transocean's late-filed expert's opinion, the expert affidavit was defective, and the affidavit failed to satisfy the requirements of § 15-36-100, the circuit court should have dismissed Transocean's professional negligence-based claims against Page and Jones.

CONCLUSION

Transocean failed to comply with the requirements of § 15-36-100, an omission that the circuit court appeared to disregard. For the foregoing reasons, Respondents-Appellants respectfully request this Court reverse the circuit court's order denying Page and Jones' motions to dismiss.

August 28, 2026.

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