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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2026-000077
Case No. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated,.. Appellants,

vs.

Island Pointe, LLC; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc; American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston; Anderson Windows, Inc; Atlantic Building Construction Services, d/b/a Gale Contractor Services; Novus Architects, Inc., f/k/a SGM Architects, Inc.; Tallent and Sons, Inc; W C Services, Inc.; CRG Engineering, Inc; CertainTeed Corporation; Kelly Flooring Products, Inc, d/b/a Carpet Baggers; Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; Chris a/k/a John Doe 61; Alderman Construction; Stanley's Vinyl Fences Designs; Cohen's Drywall Company, Inc; Mosley Concrete; Hand A Framing Construction, LLC a/k/a H&A Framing Construction, LLC and d/b/a H and A Framing, LLC, H&A Construction, and Hand A Construction; JMC Construction, Inc; JMC Construction, LLC; John Doe 1-15,.. Defendants,

of which
Tri-County Roofing, Inc. is the ....Respondent.

INITIAL BRIEF OF RESPONDENT
TRI-COUNTY ROOFING, INC.

CHRISTIAN STEGMAIER
SC Bar No. 68648
cstegmaier@collinsandlacy.com
EVAN M. GESSNER
SC Bar No. 77704
egessner@collinsandlacy.com
ROBERT S. FORNEY
SC Bar No. 101923
rforney@collinsandlacy.com
COLLINS & LACY, P.C.
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

ATTORNEYS FOR RESPONDENT
TRI-COUNTY ROOFING, INC

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STATEMENT OF THE CASE

This matter arises from post-trial orders by the trial court relating to the disbursement of a $1,000,000 supersedeas bond.

In May 2019, Appellants Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Elizabeth A. Bushey, individually, and on behalf of all others similarly situated, obtained a jury verdict against Respondent Tri-County Roofing, Inc. ("TCR") in the amount of $7,000,000, including $500,000 in punitive damages. (See 8/28/2025 Order, p. 1.) Following post-trial motions, the trial court entered judgment on July 23, 2019, in the amount of $5,330,000 after applying certain setoffs. (See id.) Respondent appealed the trial court's Order denying them additional setoffs. (See id.)

By Order dated January 28, 2020, the trial court stayed the execution of the judgment and set an appellate bond in the amount of $1,000,000.00. (See 1/28/2020 Order.) The supersedeas/appellate bond, guaranteed by Respondent's insurers Builders Mutual Insurance Company ("BMIC"), Certain Underwriters of Lloyd's London ("Lloyd's"), and Scottsdale Insurance ("Scottsdale"), was filed on February 4, 2020. (See 2/4/2020 Supersedeas/Appellate Bond.)

By opinion dated June 28, 2023, this Court affirmed the trial court's rulings in part and reversed in part, granting Respondent an additional $500,000 set-off for a post-trial settlement. (See 8/28/2025 Order, p. 1.) Respondent then sought review from the South Carolina Supreme Court. (See id.)

While the appeal to the Supreme Court was pending, BMIC and Scottsdale entered into settlement agreements, prompting them to move to revoke the previously issued bond. (See 1/29/2024 Mot. to Revoke Supersedeas/Appellate Bond.) By Consent Order dated January 2, 2025, the trial court found that "[d]uring the pendency of Tri-County's appeal, Scottsdale and BMIC reached separate agreements with Plaintiffs and Tri-County, resolving Scottsdale's and BMIC's portion of the claim, leaving Lloyd's as the only carrier still participating in Tri-County's appeal, which is still pending." (1/2/2025 Consent Order, p. 3.) The trial court went on to conclude that Scottsdale and BMIC should not continue to serve as guarantors of the bond "because [they] are no longer potential indemnitors with regard to the May 16, 2019 judgment, if Tri-County's appeal is unsuccessful." (Id. p. 4.) A replacement supersedeas/appellate bond was filed on February 7, 2025, guaranteed by Lloyd's. (See 2/7/2025 Supersedeas/Appellate Bond.)

On certiorari, the Supreme Court affirmed the Court of Appeals on certain set-off allocations but granted Respondent an additional $1,000,000 set-off for a pre-trial covenant-not-to-execute, resulting in a final principal judgment amount of $3,830,000. (See 8/28/2025 Order, p. 1.) The Supreme Court remitted the matter to the trial court for calculation and entry of the amended judgment with applicable post-judgment interest. (See id.)

Following remittitur, Appellants sought entry of judgment and for immediate disbursement of the supersedeas bond, arguing that the purpose of the bond is to protect the judgment holder from loss through delay or nonperformance and because the appeals have concluded, they are entitled to immediate payment of the bond proceeds in partial satisfaction of the judgment. (See 6/5/2025 Mot. for Entry of J. and Disbursement of Bond.)

In response, Respondent moved to stay disbursement pending resolution of a related insurance coverage action filed by Appellants against Lloyd's[1], arguing that forcing payment prior to the resolution of the companion coverage action would impair Respondent's insurer's rights before those coverage issues are resolved. (See 7/28/2025 Resp. in Opp'n.)

[1] Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380.

A hearing was held on Appellants' Motion on July 31, 2025, and the parties submitted proposed orders. (See 7/31/2025 Tr.; Pls.' Proposed Order; Def.'s Proposed Order.) The trial court agreed with Respondent and, and by Order dated August 28, 2025, found that the present dispute concerned only funds sought from Lloyd's as the sole remaining non-settling insurer, and Appellants had filed an action seeking a declaration of Lloyd's coverage obligations, which was set for trial no later than November 13, 2025. (See 8/28/2025 Order, pp. 3-4.)

The trial court held that while the purpose of supersedeas bonds are to ensure funds are available to satisfy the judgment when due and would ordinarily be subject to disbursement upon remittitur of the case by the appellate court and entry of judgment by the trial court, the present case presented a different situation and a stay of disbursement was necessary to "safeguard[] the insurer's due process rights and avoid[] the potential for disbursements that may not be recoverable." (Id., p. 4.) Specifically, the trial court determined that:

> [T]he equitable and prudent course is to preserve the bond proceeds within the custody of the trial court until the coverage dispute is finally adjudicated, thereby ensuring that the funds remain available for satisfaction of the judgment should Plaintiffs prevail, while safeguarding the insurer's due process rights and

> avoiding the potential for disbursements that may not be recoverable.

(Id.) The trial court ordered that Lloyd's deposit $1,000,000.00 into the registry of the Court, that the supersedeas bond be cancelled/released, and directed the Clerk to discharge the surety and close the bond on the Court's records. (See id. p. 5.)

The trial court also ordered that the funds be retained pending the final resolution of the companion coverage action, and that "[i]f Plaintiffs prevail in the coverage action, the funds and accrued interest shall be disbursed to them in accordance with that judgment. If coverage is denied in whole or in part, the funds (or applicable portion) shall be returned to the insurers." (Id. p. 6.)

The trial court also set an outside deadline of 120 days from the issuance of the order and directed that the funds be disbursed at the earlier of the resolution of the coverage action or the 120 day deadline.[2] (See id.)

[2] The trial of the companion coverage action, expected to occur in November 2025, was delayed and the matter was referred to the Master in Equity. On December 30, 2025, the trial court entered a Form 4 Order, directing the Clerk to disburse the funds. (See 12/30/2025 Order.) Respondent immediately filed a Motion to Reconsider requesting the funds not be disbursed until the companion coverage action was resolved. (See 12/30/2025 Mot. for Recons.) After a hearing and supplemental submission by Appellants, the trial court denied Respondent's Motion. (See 2/3/2026 Order.) Respondent then appealed the trial court's Order, which is currently pending with this Court under appellate case number 2026-000531.

On September 8, 2025, Appellants filed a Motion to Reconsider the August 28, 2025 Order, arguing that Appellants' right to receive the bond proceeds is unrelated to any question of insurance coverage; the trial court improperly considered the equities; and the trial court erroneously relied on facts not in evidence. (See 9/8/2025 Mot. for Recons., pp. 1-6.) Appellants also sought clarification on whether the funds should be disbursed no less than 120 days from the date of the Subject Order and further sought a ruling on each and every issue raised by Appellants. (See id. pp. 7-8.) Respondent opposed the Motion and, by Form 4 Order dated December 11, 2025, the trial court denied Appellants' Motion in part and granted in part to correct a clerical error. (See 9/26/2025 Resp. in Opp'n.; 12/11/2025 Order.)

On January 8, 2026, Appellants initiated this appeal by filing a Notice of Appeal relating to the August 28, 2025 and December 11, 2025 Orders. (See 1/8/2026 Notice of Appeal.)

STANDARD OF REVIEW

This appeal involves multiple questions of law relating to post-trial orders, statutory interpretation, and contractual provisions and, is subject to *de novo* review. See Doe v. Bishop of Charleston, 407 S.C. 128, 134, 754 S.E.2d 494, 498 (2014) ("the interpretation of a judgment is a question of law for the court.") (citing 46 Am. Jur. 2d Judgments § 73); Univ. of S. California v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) ("An issue regarding statutory interpretation is a question of law."); Lee v. Univ. of S.C., 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014) ("the construction of a clear and unambiguous contract is a matter of law for the court") (citing Watts v. Monarch Builders, Inc., 272 S.C. 517, 520, 252 S.E.2d 889, 891 (1979)); Callawassie Island Mbrs. Club, Inc. v. Dennis, 425 S.C. 193, 198, 821 S.E.2d 667, 669 (2018) ("the ambiguity of contracts . . . are questions of law").

"Questions of law are reviewed de novo" "with no particular deference to the trial court." Doe, 407 S.C. at 134, 754 S.E.2d at 498 (citing Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008); Campbell v. Campbell (In re Campbell), 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008) (citing Dreher v. Dreher, 370 S.C. 75, 79, 634 S.E.2d 646, 648 (2006)).

LAW/ANALYSIS

I. THE TRIAL COURT PROPERLY DENIED PLAINTIFFS' MOTION FOR THE IMMEDIATE AND UNCONDITIONAL DISBURSEMENT OF THE $1,000,000 APPEAL BOND.

The crux of this appeal is Appellants' argument that upon remittitur the trial court was required to order the immediate payment of the appellate bond and lacked any ability to order otherwise or even consider the matter any further. Essentially, Appellants seek to divest the trial court of any discretion in directing the payment of a supersedeas bond and require our trial courts to blindly accept a potential payee's demand to be paid. Appellants' position lacks merit entirely. As further explained herein, no authority requires immediate payment and the trial court properly considered a wider range of factors in reaching its conclusion that a stay of disbursement was necessary.

A. The Trial Court Properly Considered an Active Controversy Relating to Insurance Coverage when Determining Plaintiffs' Right to Appellate Bond Proceeds.

To obtain the relief they desire, Appellants aver that the controlling authorities require immediate payment of the bond and argue that the trial court was forbidden from considering anything outside of the narrow scope they advance. Specifically, Appellants cite to South Carolina Code § 18-9-130 and the language of the bond itself in support of their position.

When interpreting the directives of a statute, trial courts "must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535-36, 725 S.E.2d 693, 695 (2012) (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "Words in the statute should be given their plain and ordinary meaning without resulting to forced or subtle construction." Original Blue Ribbon Taxi Corp. v. S.C. DMV, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008) (internal citations omitted).

The statute cited by Appellants, § 18-9-130, governs the setting of an appellate bond, including limits on the bond amount required for staying the execution of a money judgment, conditions for enforcing the sale of a defendant's property after an appeal, and automatically staying the execution of a judgment during the appeal process, but does not set any requirements or provide any guidance on the timeframe by which disbursement must be made. In fact, it does not contain any reference to disbursement. Consequently, this statute does not require a trial court to order the immediate payment of a supersedeas bond.

Similarly, the language of the bond itself does not require immediate payment. "Like other written contracts, a bond is to be construed according to the fair import of its language." Socar, Inc. v. St. Paul Fire & Marine Ins. Co., 288 S.C. 287, 289, 341 S.E.2d 822, 823 (Ct. App. 1986) (citing 11 C.J.S. Bonds § 38 at 417 (1938)). "If the language used by a bond is plain and unambiguous, the bond should be interpreted as any other contract so as to arrive at the intention of the parties." Id. at 289-90 (citing 12 Am. Jur. (2d) Bonds § 25 at 493 (1964)).

The operative language of the bond is as follows:

> if Tri-County and/or its insurers shall satisfy in full such . . . modification of the judgment and such costs, attorney's fees, interest and damages as . . . the South Carolina Supreme Court may adjudge or award, . . . then the obligation shall be void, otherwise to remain in full force and virtue. In no event shall the aggregate under this bond exceed One Million Dollars ($1,000,000.00).

(2/7/2025 Supersedeas/Appellate Bond.) While the bond states that it pays out only if Respondent or its insurers fail to satisfy the judgment, it does not clearly dictate that payment be made if the judgment is not immediately satisfied. As a result, Appellants' contention that the bond itself requires immediate payment regardless of the ongoing controversy over Lloyd's coverage obligations lacks merit.

Admittedly, the bond is silent on the timeframe by which Respondent or its insurers must satisfy the judgment before the bond is triggered. To the extent the bond language is capable of more than one meaning or its meaning is unclear and is therefore ambiguous, the court must seek to determine the parties' intent by "striv[ing] to discover the situation of the parties, along with their purposes at the time the contract was entered." Ellie, Inc. v. Miccichi, 358 S.C. 78, 94, 594 S.E.2d 485, 493 (Ct. App. 2004) (internal citations omitted).

The trial court properly considered the situation as a whole when determining that a stay of payment on the bond was necessary to allow the determination of whether Lloyd's is obligated to satisfy any portion of the judgment. Indeed, it is inconceivable that Lloyd's would intend to pay a judgment in the absence of coverage. Under the applicable law, the trial court did not commit any error in making this determination. To find otherwise would put insurers and other parties in an untenable situation and risk the insurers' rights to challenge coverage.

Accordingly, this Court must affirm the portion of the trial court's August 28, 2025 Order staying disbursement until the coverage action is resolved and affirm the trial court's denial of Appellants' Rule 59(e) Motion for Reconsideration.

B. Appellants Failed to Properly Preserve Their Arguments Relating to the Trial Court's Alleged Consideration of Equitable Principles and Evidence that was Not Contained in the Record.

In their Brief, Appellants argue that the trial court erred in considering equitable principles and by considering evidence they contend was not in the record. However, Appellants failed to timely object when those points were made in the proposed order submitted by Respondent. (See Def.'s Proposed Order.) The first objection made by Appellants was in their Motion to Alter, Amend, and/or Reconsider the trial court's August 28, 2025 Order. (See 9/8/2025 Mot. for Recons.)

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke,330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). A contemporaneous objection is required to preserve an issue for appellate review. See South Carolina Dep't of Soc. Servs. v. Lisa C., 380 S.C. 406, 414-15, 669 S.E.2d 647, 652 (Ct. App. 2008). A party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not. See Dixon v. Dixon, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005).

Accordingly, Appellants failed to preserve any argument they may have had regarding the trial court's consideration of equitable principles or evidence they contend was not in the record, and this Court may dispense with further consideration of those issues.

C. To the Extent the Trial Court made Equitable Considerations in Determining that a Stay of Disbursement was Necessary, it was Not Erroneous.

Assuming, *arguendo*, that Appellants did not fail to preserve their argument relating to the trial court's purported consideration of equitable principles, their argument fails nevertheless. Appellants assume that the trial court, by stating that "the equitable and prudent course is to preserve the bond proceeds within the custody of the Court until the coverage dispute is finally adjudicated", made equitable considerations in reaching its decision. (See 8/28/2025 Order.) However, the mere use of the word "equitable" does not establish that the trial court fashioned an equitable remedy. See Key Corp. Capital, Inc. v. Cty. of Beaufort, 373 S.C. 55, 62, 644 S.E.2d 675, 678 (2007) ("While the Court of Appeals did note that the County's errors and omissions created the 'inequitable situation' present in the case, this does not establish that the Court of Appeals fashioned an equitable remedy in favor of the appellant.") (citing H&K Specialists v. Brannen, 340 S.C. 585, 589, 532 S.E.2d

617, 620 (Ct. App. 2000)). Moreover, even when further assuming, *arguendo*, that the trial court was in fact swayed by equitable considerations, Respondent contends that it was proper for the trial court to do so.

The well-known equitable maxim that “equity follows the law” serves to prevent courts from performing legislative functions. See Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007); Henderson v. Evans, 268 S.C. 127, 130, 232 S.E.2d 331, 333 (1977). To that end, “the court's equitable powers must yield in the face of an unambiguously worded statute.” Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989); see also Key Corp. Capital, Inc., 373 S.C. at 61, 644 S.E.2d at 678. “The function of equity is to supplement the law, not to displace it.” Spoone v. Newsome Chevrolet Buick, 306 S.C. 438, 440, 412 S.E.2d 434, 435 (Ct. App. 1991) (citing Town of Zebulon v. Dawson,216 N.C. 520, 5 S.E.2d 535 (1939)). Accordingly, “equity follows the law” is relevant when equity is invoked to override a clear statutory mandate. Indeed, in cases where it is held that equity does not provide relief, it is in the face of a clear statutory mandate. See, e.g., Smith, 375 S.C. at 164, 650 S.E.2d at 490 (“the Tax Office failed to properly post the required statutory notice on the Property. As a result, the law mandates that we set aside the tax sale. Consequently, equity does not provide Dr. Barr relief because equity follows the law.”).

Here, there is no unambiguously worded statute that directed disbursement in the way Appellants wish. As Respondent has already pointed out, § 18-9-130 does not contain any directive on how funds are to be disbursed or even mention disbursement. Consequently, to the extent the trial court made any equitable considerations, doing so was as a supplement to the law and, because no unambiguously worded statute was displaced, such considerations would have been entirely proper.

Accordingly, this Court must affirm the portion of the trial court’s August 28, 2025 Order staying disbursement until the coverage action is resolved and affirm the trial court’s denial of Appellants’ Rule 59(e) Motion for Reconsideration.

D. The Trial Court Did Not Err by Relying on Facts Not in Evidence.

Assuming it was properly preserved, Appellants’ argument that the trial court improperly considered facts not in evidence, specifically, settlements with other insurers and a release of Respondent, lacks merit.

Appellants contend that "[t]he settlement agreements between Plaintiffs and TCR's other insurers are not of record, and TCR's counsel's argument about what he suspects the terms of the settlement agreements to be is not evidence." (Appellant's Initial Br., p. 11.) However, while the full text of any settlement agreement between Appellants and Respondent's other insurers was not before the trial court, the operative portions of those agreements, as was pertinent to the issues before the trial court, was properly before the court by Appellants' consent.

In response to BMIC and Scottsdale's Motion to Revoke the initial supersedeas bond, Appellants and Respondent agreed to a Consent Order wherein the settlements with BMIC and Scottsdale were acknowledged, along with the fact that BMIC and Scottsdale should not continue to serve as guarantors of the bond "because [they] are no longer potential indemnitors with regard to the May 16, 2019 judgment, if Tri-County's appeal is unsuccessful." (1/2/2025 Consent Order, p. 4.) Accordingly, Appellants' contention that this evidence was not properly before the court lacks merit entirely.

Turning to Appellants' argument that there was no evidence supporting a finding that Appellants released Respondent, even if the issue was properly preserved, it was at most harmless error. As previously explained, because the issue of whether Lloyd's would satisfy any portion of the final judgment amount was in controversy, payment of the bond had to be stayed. As a result, the trial court would have come to the same conclusion even without a belief that Respondent had obtained a release. The trial court's decision did not rely solely on counsel's argument. It was based the on interrelated nature of the bond and the companion coverage action.

Accordingly, this Court must affirm the portion of the trial court's August 28, 2025 Order staying disbursement until the coverage action is resolved and affirm the trial court's denial of Appellants' Rule 59(e) Motion for Reconsideration.

II. THE 120-DAY DEADLINE CAN NO LONGER TRIGGER DISBURSEMENT DUE TO THE SIGNIFICANT CHANGE IN CIRCUMSTANCES.

In their final argument, Appellants argue that if this Court disagrees with them and finds that the trial court properly determined that a stay of the disbursement of the supersedeas bond was necessary, this Court should direct that the bond be disbursed anyway due to the trial court's inclusion of the 120 day deadline. Notably, Appellants do not cite any authority in support of their argument. Instead, they simply point out that the 120 day deadline is in the

Order and ask this Court to comply with it despite the clear contradiction and manifest injustice that would result from such a decision.

The relief requested by Appellants is specifically prohibited by the laws of the State of South Carolina. “Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits.” S.C. Code Ann. § 18-7-170 (2026). South Carolina policy “favor[s] the disposition of issues on their merits rather than on technicalities.” Mictronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). The interests of justice and fair play require that cases be decided on the merits whenever a technical issue can be corrected. See Pertuis v. Front Roe Rests., Inc., 423 S.C. 640, 648 n.3, 817 S.E.2d 273, 277 (2018) (quoting Silk v. Terrill, 898 S.W.2d 764, 766 (Tex. 1995)).

Appellants ask this Court to direct a manifestly unjust result that is inapposite to South Carolina law. The trial court’s 120 day deadline to disburse funds was entered when it was understood that the companion coverage action would be resolved within that timeframe. The referral of the coverage action to the Master in Equity resulted in a significant change to the circumstances supporting the trial court’s August 28, 2025 Order. Respondent unsuccessfully sought to rectify that deadline with the trial court and is seeking review and reversal of that Order under a separate appellate case. In this appeal, Appellants contend that even if they lose on the substantive issues before this Court and, presumably, regardless of Respondent's appeal regarding the 120 day deadline, they should nevertheless win based on a technicality.

Accordingly, this Court must deny Appellants' request to enforce the 120 day deadline and direct the trial court to refrain from ordering the disbursement of the supersedeas bond until after the companion coverage action is resolved.

CONCLUSION

Consequently, and for the reasons stated herein, the trial court properly denied Appellants' request to order the immediate disbursement of the appellate bond. Accordingly, Respondent respectfully requests this Court:

1. Affirm the portions of the trial court's August 28, 2025 Order Denying Appellants' Motion for Entry of Judgment and Disbursement of Bond and staying disbursement pending the resolution of the companion coverage action;
2. Affirm the trial court's December 11, 2025 Order Denying Appellants' Motion for Reconsideration;

3. Reverse the trial court's setting of a 120 day deadline to disburse funds; and

4. Reverse the trial court's February 3, 2026 Order denying Respondent's Motion to Reconsider.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

COLLINS & LACY, P.C.

By: *s/Christian Stegmaier*

CHRISTIAN STEGMAIER
SC Bar No. 68648
cstegmaier@collinsandlacy.com
EVAN M. GESSNER
SC Bar No. 77704
egessner@collinsandlacy.com
ROBERT S. FORNEY
SC Bar No. 101923
rforney@collinsandlacy.com
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

ATTORNEYS FOR APPELLANT
TRI-COUNTY ROOFING, INC.

INITIAL BRIEF OF RESPONDENT TRI-COUNTY ROOFING, INC.

August 21, 2026
Columbia, South Carolina