

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

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S.C. SUPREME COURT

Supreme Court Appellate Case No. 2026-00386

Unpublished Opinion No. 2025-UP-416 (S.C. Ct.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

Appellate Case No. 2024-000171

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

Flatiron Constructors, Inc.,

Respondent,

v.

TranSystems Corporation,

Petitioner.

REPLY BRIEF OF PETITIONER TRANSYSTEMS CORPORATION

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INTRODUCTION

This case turns on a simple principle: a professional hired by the government for the government's benefit to inspect the work of a third party owes no tort duty to the entity whose work it was hired to inspect. That principle—which flows directly from existing South Carolina law—governs the relationship between TranSystems and Flatiron in this case. TranSystems was hired by Horry County as a consultant engineer to inspect the work of Flatiron, a contractor on a public construction project. The relevant contracts made clear that TranSystems' services were to be performed in the interest of the County, the South Carolina Department of Transportation, and the public, by ensuring that the project was completed safely and in accordance with the Department's requirements. TranSystems was not in privity with Flatiron; it was not hired for its benefit; and Flatiron had no reasonable basis to rely on TranSystems to let Flatiron's deviations from the County's requirements slide. TranSystems therefore owed Flatiron no duty as a matter of law.

The Restatement, leading treatises, and precedents from this Court and others all support that conclusion. Flatiron's response, however, barely engages with those authorities. Instead, Flatiron first sidesteps the merits, arguing that TranSystems never preserved its "benefit-and-reliance" argument. But the record confirms that TranSystems has pressed that theory at every turn. When Flatiron finally does address the merits, it calls the notions of benefit and reliance a mere "privity defense" and argues that this Court has already rejected that standard. Neither claim holds up: Flatiron's contrived attempts to distinguish the notions of "benefit" and "reliance" overlook or misread this Court's cases limiting tort duties to special relationships exhibiting those characteristics. Regardless, Flatiron's own test—which asks whether the plaintiff was the "object of the professional undertaking"—is merely the same standard in different words. Flatiron departs from that formulation only

to assert that any “foreseeable” plaintiff should be considered an “object” of an undertaking—an approach that this Court has expressly rejected. *See Shaw v. Psychmedics Corp.*, 426 S.C. 194, 199 n.1, 826 S.E.2d 281, 283 n.1 (2019).

Flatiron’s other arguments fare no better. It insists that this Court’s decision in *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995), created a categorical duty that exists anytime an engineer “supervises” a contractor (by which it really means anytime an engineer merely inspects the contractor’s work). From there, Flatiron urges adoption of a rule that all but guarantees that the duty question will never be able to be resolved at summary judgment. Those arguments are internally inconsistent, and (more importantly) they are wrong. *Tommy L. Griffin* did not create a broad, categorical duty to all “supervising” engineers; rather, it recognized a duty where the engineer undertook responsibilities that were to serve as a basis for reliance by the contractor in preparing a bid and carrying out construction plans.

Flatiron similarly contends that the degree of an engineer’s “authority and control” should determine whether a duty exists. To be sure, notions of authority and control will often overlap with notions of benefit and reliance. But to the extent Flatiron means to argue that a special relationship exists where an engineer purports to exercise *any* degree of control, that argument is wrong. Indeed, the cases Flatiron cites for its theory actually confirm that the pertinent question is whether the relevant contracts give the engineer the type of *final* authority or control that would permit the plaintiff *reasonably to rely* on the engineer’s actions. As TranSystems has explained, these contracts did the opposite.

Flatiron whistles past the conflict of interest that its rule creates. It argues that imposing a duty in this context would not generate a conflict of interest because clients

have no interest in “negligent supervision.” But Flatiron’s theory of negligence is that TranSystems inspected Flatiron’s work too often, reviewed it too thoroughly, and rejected too many noncompliant submissions. Those are the very duties TranSystems owed to the County, the Department, and the public. And while Flatiron repeatedly asserts that declining to impose a duty would “immunize” TranSystems and other inspecting engineers, it ignores that contractors are—and remain—free to negotiate and agree with engineers to add contractual provisions creating legal duties in projects like this one. In any event, Flatiron’s “immunity” argument ignores that Flatiron in fact had a separate contractual remedy against the County and the Department and exercised that remedy by suing them for more than \$42 million, and then—when those claims settled—continued to assert the same claims in this lawsuit against TranSystems. This Court should not allow Flatiron to warp South Carolina tort law to seek a second shot at recovery by pursuing claims against a defendant who owed Flatiron no duty.

Finally, Flatiron’s attempts to defend the court of appeals’ decision treating the existence of a duty in this case as a factual question that could not be resolved at summary judgment are unpersuasive. Duty is ultimately and predominantly a question of law, and in this case, there are no genuine disputes of material fact sufficient to preclude summary judgment. Flatiron asks this Court to draw an “inference” that TranSystems “actually wielded broad authority” over Flatiron, Resp. Br. 4 n.2, but the lone evidence it cites to support that inference is an affidavit from a Flatiron employee who never actually claimed that TranSystems in fact held such authority. In any event, how TranSystems exercised its authority “in practice” is immaterial under the correct legal standard, because Flatiron’s claims arise entirely from TranSystems’ contractual obligations. Because those contractual

obligations limited TranSystems' authority over the project, TranSystems did not have the type of special relationship with Flatiron required by South Carolina law to impose a legal duty. As a result, the court of appeals' contrary decision cannot stand.

ARGUMENT

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

In the absence of privity between the parties, the existence of a legal duty requires that the parties have some other special relationship that provides a legally cognizable basis for imposing a duty. *See* Pet. Br. 15-22; *see also South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). In the professional-liability context, that special relationship exists only where the defendant has offered its services for the plaintiff's benefit, such that the plaintiff can reasonably rely on the defendant's prudent provision of those services. That principle flows from numerous sources of law, including provisions of the Restatement and other treatises, and decisions of courts in this State and others. Accordingly, liability for negligent performance of services is generally limited to losses suffered or incurred "(a) by the person . . . for whose benefit the actor performs the service; and (b) through reliance upon it in a transaction that the actor intends to influence." Restatement (Third) of Torts § 6 (2020). From that principle, it follows that where, as here, a construction engineer is hired only to inspect the plaintiff's work for the benefit of a third party, the construction engineer lacks a special relationship with the plaintiff and thus owes the plaintiff no duty.

1. As TranSystems has explained (Pet. Br. 16-22), countless sources of law establish that the existence of a special relationship sufficient to create a legal duty in the professional-liability context depends on whether the defendant undertook services for the

benefit of the plaintiff and whether the plaintiff could reasonably rely on the defendant's prudence in providing those services. Flatiron offers no answer to those authorities. It does not, for example, substantively address the provisions of the Restatement and other treatises that explain the role that reliance plays in creating a legal duty. *See, e.g.*, Restatement (Third) of Torts § 6 (2020); Restatement (Second) of Torts § 552 (1977); 65 C.J.S. Negligence § 42 (2026). Nor does Flatiron address the weight of decisions from other States holding that a defendant tasked with inspecting the plaintiff's work for the benefit of a third party owes no duty to the plaintiff as a matter of law. *See, e.g., Lutz Engineering Co. v. Industrial Louvers, Inc.*, 585 A.2d 631, 635-636 (R.I. 1991); *Peterson v. Mutual Savings Institution*, 646 S.W.2d 327, 329 (Tex. App. 1983); *Colonial Savings Association v. Taylor*, 544 S.W.2d 116, 119-120 (Tex. 1976); *Daniels v. Army National Bank*, 822 P.2d 39, 41-44 (Kan. 1991); *Meyers v. Guarantee Savings & Loan Association*, 79 Cal. App. 3d 307, 310-313 (Cal. Ct. App. 1978).

Rather than address those authorities, Flatiron urges this Court not to consider the "benefit-and-reliance" argument at all because it contends that TranSystems failed to preserve that theory. Resp. Br. 28-30. Flatiron is wrong. Throughout the proceedings below, TranSystems repeatedly argued that the proper standard for determining whether there is a "special relationship based on professional status" (and thus a legal duty) is whether the defendant "offered a specialized service" for the plaintiff's benefit and whether the plaintiff "reasonably could rely" on the defendant's actions. App. Vol. 1 at 303. TranSystems made that argument throughout the summary-judgment stage, *see, e.g., id.* at 182, 212, 303, 305-307, 312-313; App. Vol. 2 at 977-978, and Flatiron expressly responded to it, *see, e.g.*, App. Vol. 1 at 200; App. Vol. 2 at 915-916. Likewise, the trial court expressly accepted

that argument, adopting it verbatim in its summary-judgment order. App. Vol. 1 at 36; *see also id.* at 35, 37, 40. This sequence of events confirms that TranSystems’ argument was sufficiently clear as to have “give[n] the trial court a fair opportunity to rule on”—and indeed endorse—the very theory TranSystems advances here, which is all that is required to preserve the issue. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011).

Moreover, TranSystems further preserved the issue before the court of appeals, raising arguments in its briefing at that stage about whether Flatiron could have “reasonably relied” on TranSystems’ actions and whether Flatiron was considered a “client” or “beneficiary” of TranSystems’ services to the County for purposes of creating a tort duty. App. Vol. 3 at 1286, 1307. Even Flatiron’s own brief to the court of appeals addressed the trial court’s reasoning regarding the “benefit” and “reliance” aspects of the special-relationship standard. *See id.* at 1242-1244 & n.2, 1248-1249. Further still, TranSystems advanced the argument in its petition for rehearing in the court of appeals, *see id.* at 1345, 1347-1348, and in its petition for certiorari in this Court, *see* Pet. 18-21. And while TranSystems did not include all of the exact same citations in support of its theory that it now presents in its briefs before this Court, that does not constitute a failure to preserve the issue. *Contra* Resp. Br. 29. This Court has repeatedly recognized that a party need not “use the exact name of a legal doctrine in order to preserve an argument” so long as the argument is clear from the record. *South Carolina Department of Transportation v. First Carolina Corp.*, 372 S.C. 295, 302-303, 641 S.E.2d 903, 907 (2007). So too may a party elaborate on an argument already raised and passed upon below, rather than simply filing a carbon

copy of its lower-court briefing. *See id.*; *Herron*, 395 S.C. at 466, 719 S.E.2d at 642. TranSystems’ argument was thus properly preserved.

2. When it finally turns to substance, Flatiron wrongly argues that this Court has “already rejected” the notion that a special relationship exists only where an engineer undertakes services intended for the contractor’s reliance. Resp. Br. 30. But as TranSystems has explained (Pet. Br. 19), South Carolina courts have recognized that reliance and dependency are hallmarks of any “special relationship” that can give rise to a legal duty in the professional-liability context. *See, e.g., South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376-377, 346 S.E.2d 324, 326 (1986); *Beachwalk Villas Condominium Association v. Martin*, 305 S.C. 144, 145-147, 406 S.E.2d 372, 373-374 (1991); *Roundtree Villas Association v. 4701 Kings Corp.*, 282 S.C. 415, 422-423, 321 S.E.2d 46, 50-51 (1984); *see also Johnson v. Robert E. Lee Academy, Inc.*, 401 S.C. 500, 504-505, 737 S.E.2d 512, 514 (Ct. App. 2012) (quoting Restatement (Second) of Torts § 323 (1965)). Under those decisions, the existence of a legal duty depends on whether the defendant offered a specialized professional service to be performed for the benefit of the plaintiff and whether the plaintiff reasonably could rely on the defendant to provide it with that service. *See South Carolina State Ports Authority*, 289 S.C. at 376-377, 346 S.E.2d at 326. Likewise, in other decisions, this Court has said that where there is only an “attenuated beneficial relationship,” a contract cannot give rise to a tort duty to a third party. *McCullough v. Goodrich & Pennington Mortgage Fund, Inc.*, 373 S.C. 43, 49, 644 S.E.2d 43, 47 (2007).

Again, Flatiron has little to say about those cases. It argues only that the Court’s conclusion in *South Carolina State Ports Authority* that consultants may be liable in tort to

“non-contracting parties who have reasonably relied on their reports in taking some action,” 289 S.C. at 376, 346 S.E.2d at 326, “does not relate to the holding” of that case. Resp. Br. 34-35. That suggestion is puzzling: the Court’s decision expressly reasoned that whether a consultant owes a duty “to exercise due care to accurately report objective factual data” depends on whether the consultant “knew or should have known [its] report was intended to be used”—that is, relied upon—by the plaintiff. *South Carolina State Ports Authority*, 289 S.C. at 377, 346 S.E.2d at 326. And the Court cited decisions from other States holding that, in the absence of privity, a contractor owes a duty to a third party only where the contractor’s services were for the third party’s benefit, and where the third party could reasonably rely on the contractor’s services. *See Stagen v. Stewart-West Coast Title Company*, 149 Cal. App. 3d 114, 122, 124 & n.3 (1983); *Carlotta v. T.R. Stark & Associates, Inc.*, 470 A.2d 838, 840 (Md. Ct. Spec. App. 1984). Thus, the reliance element was central to the Court’s decision in *South Carolina State Ports Authority*.

Flatiron also argues that the “benefit-and-reliance” standard is merely “a privity defense” that applies only to claims for “implied warranty” and not to claims for negligence. Resp. Br. 30. To that end, Flatiron attempts to distinguish cases in which this Court and others have pointed to notions of “benefit” and “reliance” as crucial aspects of a special relationship, waving away those cases as “decision[s] about privity” that are irrelevant to negligence claims based on an alleged special relationship. *Id.* at 30-31. But Flatiron ignores that each of those cases involved parties that indisputably *lacked* contractual privity. *See Beachwalk Villas*, 305 S.C. at 145-147, 406 S.E.2d at 373-374; *National Savings Bank of District of Columbia v. Ward*, 100 U.S. (10 Otto) 195, 200, 202 (1879). Indeed, the lack of privity in those cases was precisely what prompted the need to craft a rule of tort liability

in the first place. See *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995). And although it is true that negligence and implied-warranty claims are not always equivalent, this Court has recognized that a consultant or contractor's tort liability for negligence to a third party often depends on and overlaps with a theory of an "implied warranty of workmanship." *Beachwalk Villas*, 305 S.C. at 146, 406 S.E.2d at 374; see *Roundtree Villas*, 282 S.C. at 422-423, 321 S.E.2d at 50-51. That is so because, as Flatiron recognizes (Resp. Br. 31), a defendant who undertakes "to design and oversee a construction project for another impliedly warranted the design and quality of construction despite the lack of privity between the parties." *Tommy L. Griffin*, 320 S.C. at 56-57, 463 S.E.2d at 89.

Flatiron acknowledges that a "duty arising out of a special relationship" requires a "close nexus between the tortfeasor and the injured party," and that such a "nexus" is "apparent where the plaintiff is the *object of the professional undertaking*." Resp. Br. 35 (emphasis added). That is just a reformulation of the same "benefit-and-reliance" standard that TranSystems agrees should apply here. Where Flatiron diverges is in its apparent view that the "object" of a defendant's "professional undertaking" is any party who "suffers foreseeable injuries arising from the negligent performance." *Id.* But this Court has already rejected the argument that "foreseeability itself" can "give rise to a duty," cautioning that "the decision to impose a duty" in new contexts cannot "rest solely on foreseeability." *Shaw v. Psychmedics Corp.*, 426 S.C. 194, 199 n.1, 826 S.E.2d 281, 283 n.1 (2019) (quoting *South Carolina State Ports Authority*, 289 S.C. at 376, 346 S.E.2d at 325). That rule explains why this Court has held, for example, that an attorney owes no duty to non-client third parties, even where it is arguable that the non-party foreseeably could be affected by

the attorney's actions. *See, e.g., Argoe v. Three Rivers Behavioral Center & Psychiatric Solutions*, 388 S.C. 394, 398-401, 697 S.E.2d 551, 553-555 (2010). Flatiron's argument that a consultant owes a duty to any party toward whom the consultant's "work was directed" as a matter of foreseeability (Resp. Br. 36) is therefore without merit.

3. Throughout its brief, Flatiron bends over backwards to make this case fit within the Court's decision in *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 463 S.E.2d 85 (1995). *See, e.g.,* Resp. Br. 14-15, 25, 32-33. But as TranSystems has already explained (Pet. Br. 27-30), *Tommy L. Griffin* is distinguishable in key respects from this case and does not impose an absolute duty on every engineer or inspector who interacts with a contractor. Rather, *Tommy L. Griffin* recognizes only that a construction engineer and a contractor *may* have a special relationship when the engineer's services are intended to be relied upon by the contractor, such as when the engineer is tasked with designing the project. Flatiron's attempts to frame *Tommy L. Griffin* as creating a broad, categorical "duty running from a supervising engineer to a contractor" as a "class" (Resp. Br. 21-22) are unpersuasive.

Flatiron argues that *Tommy L. Griffin* does not support TranSystems because it "recognized a duty to a plaintiff who neither benefited from the professional's engagement nor relied on its work." Resp. Br. 32. That argument overlooks key aspects of *Tommy L. Griffin* that were central to the Court's reasoning. To be sure, as Flatiron repeatedly emphasizes, the engineer in *Tommy L. Griffin* "supervised the construction" and "had the right" to "inspect" and "halt" the construction. 320 S.C. at 56, 463 S.E.2d at 89. But the Court also observed that the engineer had "designed the project," and its designs were the basis for awarding the project contract to the contractor. *Id.* Indeed, after the contractor had

already bid on the construction project—but before its contract with the county was finalized—it was discovered that the engineer’s project designs would have to be redone. *Id.* at 51, 463 S.E.2d at 86. The design engineer’s negligence in designing the project thus caused the “award of the [project] contract” to the contractor to be delayed. *Id.* And during the construction, the engineer also “wrote a disparaging letter to [the contractor’s] bonding company” and made “false allegations of OSHA violations.” *Id.*

Those facts and features of the contract demonstrate that the design engineer’s services in *Tommy L. Griffin* were provided in large part for the benefit of the contractor and that the contractor was entitled to rely on those services in entering into its agreement with the County. Pet. Br. 28-29. The relationship in *Tommy L. Griffin* is therefore analogous to other types of circumstances that have been deemed to create a special relationship, such as a “mistake in [an] architect’s plans” that “imposes costs on the builder,” Restatement (Third) of Torts § 6 (2020), comment b, or an “audit report that an accountant supplies to a client for distribution to potential investors,” *id.*; see *South Carolina State Ports Authority*, 289 S.C. at 377, 346 S.E.2d at 326.

In addition, *Tommy L. Griffin* relied on other decisions from this Court emphasizing that a special relationship in this context exists only where the engineer’s professional services are intended to serve as a basis for reliance by the contractor. For example, *Tommy L. Griffin* cited *Gilliland v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d 577 (1990), in which the Court concluded that a defendant, an architect who designed property plans for the plaintiff, had a special relationship with the plaintiff where he made representations that “induced [the plaintiff] to contract” and where the defendant “negligently designed the project, negligently estimated construction costs, and negligently failed to obtain certain

necessary governmental approvals” for the project. *Id.* at 300, 391 S.E.2d at 580. In holding that a special relationship existed, the Court emphasized that the defendant’s architectural and design services were intended for the plaintiff’s benefit and reliance. *Id.* at 301, 391 S.E.2d at 580. The other cases that *Tommy L. Griffin* cited (from this jurisdiction and others) are of a piece. *See, e.g., Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 636 N.E.2d 503, 515 (1994).

Flatiron asserts that the facts of this case are materially identical to the facts in *Tommy L. Griffin*. *See* Resp. Br. 14-15. Not so. As TranSystems has explained (Pet. Br. 28-29), the facts here are crucially distinct. Unlike the design engineer in *Tommy L. Griffin*, here TranSystems did not design the project, *see* App. Vol. 2 at 847; App. Vol. 3 at 989, and Flatiron’s bid for the project in no way related to or depended on TranSystems’ services. *Cf.* App. Vol. 2 at 695, 819, 837-843. Flatiron dismisses those distinctions, arguing that *Tommy L. Griffin* does not have enough “contractual language available for comparison.” Resp. Br. 25; *cf. id.* at 41 n.10. But those distinctions are drawn directly from the language of *Tommy L. Griffin* itself. It is plain from that decision that the parties intended for the design engineer’s services to serve as a basis for reliance and use by the contractor. *See* 320 S.C. at 51, 56, 463 S.E.2d at 86, 89. Because the undisputed facts in this case establish that TranSystems’ services were not for Flatiron’s benefit and that Flatiron had no basis for reliance, the parties’ relationship lacks the indicia of a “special relationship” that *Tommy L. Griffin* deemed sufficient to impose a tort-law duty on TranSystems.

4. Flatiron’s core theory appears to be that the existence of a special relationship should depend only on “the engineer’s authority and control over the contractor.” Resp. Br. 13. Flatiron stitches that theory together from bits and pieces of *Tommy L. Griffin*

and *Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital*, 344 S.C. 426, 544 S.E.2d 838 (2001). Those cases do not support Flatiron’s view.

To be sure, Flatiron’s suggestion that a special relationship should depend on the degree of control an engineer exercises is not actually inconsistent with TranSystems’ argument. When undisputed facts establish that an engineer possesses final authority over some aspect of a project—such as contract terms making the engineer solely responsible for a project’s design, *see Tommy L. Griffin*, 320 S.C. at 56, 463 S.E.2d at 89, or for ensuring payment by contractors to subcontractors, *see Cullum*, 344 S.C. at 429-430, 544 S.E.2d at 840-841—it will often be true that the engineer’s final authority itself provides the basis for the plaintiff’s reliance. After all, the “corollary” of reliance in a special relationship “is control.” *See* 65 C.J.S. Negligence § 42.

But to the extent Flatiron means to argue that a special relationship exists where an engineer purports to exercise *any* degree of project control, that is incorrect. A special relationship requires that the relevant contracts—which, as Flatiron admits, the alleged duty “run[s] through,” Resp. Br. 23—vest the engineer with the type of final authority or control that would permit the plaintiff reasonably to rely on the engineer’s actions. *Cullum* confirms as much: the defendant in that case, an architect, allegedly agreed “under its contract” with a project owner to verify that the project’s general contractor “properly pa[id] [the] subcontractors.” 344 S.C. at 429-430, 544 S.E.2d at 840. The architect had expressly assumed that exclusive “responsibilit[y] under its contract,” and that responsibility was intended to benefit the subcontractors by “ensur[ing] payment to those who provided labor or materials to the project.” *Id.* This Court concluded that those “special conditions” contained in the terms of the “contract documents may have given rise to a special relationship”

between the architect and subcontractors. *Id.* at 433, 544 S.E.2d at 842.¹ And although the Court remanded for “further inquiry into the facts,” it did so only to resolve factual disputes about what the precise terms of the contracts actually were. *Id.* Much like *Tommy L. Griffin*, *Cullum* thus demonstrates that what matters for identifying a special relationship is whether the parties’ contracts allocated responsibility to the defendant to act in the plaintiff’s interest, such that the plaintiff could reasonably rely on the defendant’s conduct. As TranSystems has explained (Pet. Br. 22-26), the relevant contracts here did not allocate such authority to TranSystems: the contracts made plain that TranSystems’ services were to be provided in the interest of the County, the Department, and the general public, and that any authority TranSystems could purport to wield was always subject to the final authority of the Department. *See, e.g.*, App. Vol. 3 at 793-795, 824-825; App. Vol. 4 at 989-990.

Flatiron admits that the “project contracts are relevant,” but it claims that TranSystems’ actual conduct can override the limitations on its relationship with Flatiron, the County, and the Department. Resp. Br. 22-23. Perhaps that could be true if, for example, TranSystems voluntarily undertook additional responsibilities that were outside of the project’s scope or that were not within its authority under its contract with the County. *See, e.g., Roundtree Villas*, 282 S.C. at 422-423, 321 S.E.2d at 50-51. But that plainly is not the case here. Flatiron alleges only that TranSystems acted negligently in the “performance

¹ Flatiron claims that there were “[c]ontractual disclaimers” in *Cullum* that the architect used to “negate the existence of a special relationship.” Resp. Br. 24. Each of the “disclaimers” Flatiron points to concerned the relationships of all of the parties *except* the relationship between the architect and subcontractors. *Id.* (quoting *Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital*, 336 S.C. 423, 428 n.4, 520 S.E.2d 809, 812 n.4 (Ct. App. 1999)).

of [its] construction, engineering, and inspection services” for the project. App. Vol. 3 at 1225; *see also id.* at 1228-1229; App. Vol. 1 at 91. Thus, as Flatiron acknowledges, TranSystems’ alleged duty arises only “from its professional undertaking to supervise [Flatiron’s] work.” Resp. Br. 23. The provisions of the various contracts that limited the scope of TranSystems’ “professional undertaking” also limit the authority TranSystems could exercise and therefore foreclose any special relationship it could have had with Flatiron.

5. As TranSystems previously argued (Pet. Br. 30-35), extending *Tommy L. Griffin* to impose a negligence duty on TranSystems in this context would create unavoidable conflicts of interest for consultant engineers who are not serving as engineer of record on a project and are responsible solely for reviewing and assessing a contractor’s work. Consultant engineers like TranSystems are obligated independently to review contractors’ work to ensure that a public construction project proceeds safely and meets the requirements of the Department’s Standard Specifications and the project owner’s requirements. Contractors like Flatiron, meanwhile, have every incentive to complete their projects quickly to meet scheduled deadlines, receive payment, and avoid liquidated damages or other penalties for delay. *See* Pet. Br. 31. Those competing duties thus place consultant engineers and the contractors they inspect in an adversarial relationship, and imposing a tort duty in such circumstances would therefore create impermissible (and practically unavoidable) conflicts of interest that would compromise public safety, undermine construction efficiency, and drive up the cost of already-multimillion-dollar projects.

Flatiron dismisses all those concerns, arguing that its desire to recoup the costs of its delayed construction should outweigh the harm to the public that would occur if engineering and inspection consultants faced tort liability to contractors when performing

construction inspection tasks. *See* Resp. Br. 37-46. Among other off-base propositions, Flatiron argues that recognizing a duty would not create a conflict of interest because “the client has no interest in negligent supervision.” Resp. Br. 43. That argument misses the point. The gravamen of Flatiron’s claim for “negligent supervision” is that, in Flatiron’s own words, TranSystems was “overzealous in its inspection of Flatiron’s work,” which allegedly “impeded Flatiron’s progress on the project.” App. Vol. 2 at 859. Indeed, in an apparent reversal of course, Flatiron now claims its “position” is not that TranSystems was “overzealous” or did “‘too good’ of a job for its client.” Resp. Br. 8. But Flatiron’s complaint, discovery responses, and briefing throughout this case have all made clear that Flatiron’s negligence claim is based on allegations that TranSystems “tested and inspected” parts of the project too “frequently”; that it imposed “approval procedures” that were too rigorous; that it took too long to review Flatiron’s proposals and submissions; and that it unreasonably rejected those submissions when they “failed to comply with various requirements” (even when the Department agreed with rejecting them). App. Vol. 2 at 859-862. Flatiron’s claims thus plainly concern TranSystems’ performance of the duties it owed to the County, the Department, and the public—which underscores that imposing a duty on TranSystems toward Flatiron would be inconsistent with TranSystems’ obligation to independently and carefully inspect and critique Flatiron’s work. In other words, Flatiron asks this Court to ratify a scenario in which TranSystems becomes liable in tort to Flatiron when TranSystems’ work is acceptable to its contractual client (the County, the Department, and the public), but irritating to a non-client third part (Flatiron) to whom TranSystems owes no duty whatsoever.

Flatiron also dismisses (Resp. Br. 39-40) TranSystems’ reliance on various South Carolina statutes and regulations that describe the obligations owed by professional engineers to “protect the safety, health, property, and welfare of the public,” and the duties they owe to “their employer or client.” S.C. Ann. Code Regs. §§ 49-301, 49-304 (2022). Flatiron argues that those rules cannot create “civil duties,” but rather are “at most” “evidence” of what a particular special relationship requires. Resp. Br. 39. Fair enough. But TranSystems has not argued that those rules, by their terms, create or extinguish a duty here; rather, as TranSystems argued in its opening brief (Pet. Br. 24-25, 30-31), those rules demonstrate the unavoidable and impermissible conflicts of interest that would arise if a duty were imposed in this context. And if applicable professional rules provide “evidence” that creating a tort duty would require engineers to do something impermissible, surely that evidence confirms that such a duty should not exist at all.

Finally on this score, Flatiron repeatedly asserts that declining to impose a duty in this case would effectively “immunize” TranSystems from liability, allowing it to “act with impunity toward any party with whom it has a special relationship by creating a conflict of interest.” Resp. Br. 46; *see id.* at 39-42, 45-46. Even beyond the irony in Flatiron’s suggestion that imposing liability for an engineer’s “overzealous” inspections would promote “accountability” and public safety, Flatiron’s claim is simply misguided. In this case and others like it, contractors remain free to enter into agreements with consultant engineers to impose obligations and duties on them (or to negotiate conditions with project owners that impose such duties). *See, e.g., Cullum*, 344 S.C. at 429-430, 544 S.E.2d at 840; Sidney R. Barrett, Jr., *Recovery of Economic Loss in Tort for Construction Defects: A Critical Analysis*, 40 S.C. L. Rev. 891, 941 (1989). And in many circumstances, contractors can pursue

claims against the project owners who actually control a project's construction process. Indeed, Flatiron neglects to mention that its own contract provided it with a claims procedure and remedy against the County and the Department for certain project delays or changes in the project's scope—the very sort of claim Flatiron has asserted against TranSystems here. App. Vol. 2 at 780-782; *see* Pet. Br. 29-30. Flatiron exercised that procedure and pursued claims against the Department and the County in a separate civil action that sought over \$42 million in damages and raised allegations nearly identical to those it now asserts against TranSystems. App. Vol. 1 at 5, 96, 295. Flatiron settled those claims with the Department and the County, *see* Stipulation of Dismissal, *Flatiron Constructors, Inc. v. Horry County*, No. 2022-CP-26-06970 (Ct. Common Pleas Horry Cnty. June 22, 2023), and now it seeks a second bite at the apple. Far from proposing “immunity” from those claims, TranSystems' argument is that South Carolina law does not permit Flatiron's thinly disguised attempt to circumvent the duty requirement in order to recover from a downstream actor.

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

Applying the foregoing principles, TranSystems owed Flatiron no duty as a matter of law. The court of appeals' contrary conclusion primarily rested on its view that the existence of a special relationship between TranSystems and Flatiron was a factual question irresolvable at summary judgment. That is mistaken. As TranSystems has explained (Pet. Br. 35-38), the existence of a legal duty is ultimately and predominantly a question of law, susceptible to resolution at the summary-judgment stage. In this case especially, the existence of a duty owed by TranSystems to Flatiron can be resolved as a matter of law at summary judgment from the project contracts and engineering regulations because they

all establish that the Department had final authority over the project—meaning that TranSystems could not owe a duty to Flatiron under the circumstances. Flatiron’s contrary arguments lack merit.

Flatiron claims that it is asking this Court to find only that “the record here permits a reasonable inference” that TranSystems and Flatiron had the same kind of “supervisory relationship” as the parties in *Tommy L. Griffin and Cullum*. Resp. Br. 14; *see also* Resp. Br. 2, 22-23. The only evidence Flatiron marshals in support of that “inference” is the affidavit from Louis Hutcherson, a Flatiron project engineer, who asserted in conclusory terms that a TranSystems employee, Martin Long, “held himself out” as the Department’s Resident Engineer. *See* Resp. Br. 5, 16-17; App. Vol. 2 at 932-937. According to Flatiron, Hutcherson’s affidavit indicates that TranSystems *might* have “actually wielded broad authority” over Flatiron. Resp. Br. 4 n.2. Tellingly, however, Flatiron does not actually bring itself to assert that TranSystems ever *did* in fact wield such authority. *See id.* at 4 n.2, 17. That is unsurprising: as the trial court observed, Hutcherson never testified that he in fact believed Long was the Department’s Resident Engineer or that Long possessed the actual authority of the Department’s Resident Engineer. App. Vol. 1 at 28-29.²

² As TranSystems argued in its opening brief, the court of appeals should have rejected Flatiron’s attempt to use the Hutcherson affidavit to circumvent the unambiguous language of TranSystems’ contract with the County. Pet. Br. 40. Citing *Gilliland v. Elmwood Properties*, 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990), Flatiron argues (Resp. Br. 27-28) that the parol evidence rule did not preclude the court of appeals from considering Hutcherson’s affidavit because the rule is “inapplicable to tort causes of action.” Flatiron omits key language from *Gilliland* indicating that the rule is inapplicable to tort claims for *misrepresentation or fraud*—a longstanding principle justified by the evidence required to prove those types of claims. 301 S.C. at 302, 391 S.E.2d at 581. In other cases where the claims arise out of a contract but are not brought as a breach-of-contract claim, this Court has observed that parties cannot use artful pleading “to let in through the back door what parol evidence prevents from coming in the front door.” *Rodarte v. University*

With that in mind, the “inference” Flatiron asks this Court to draw is an unreasonable one. As TranSystems has explained (Pet. Br. 37-38), other undisputed evidence in the record establishes that Flatiron knew that Long was not the engineer of record and “in actuality” did not have “any” final authority, App. Vol. 1 at 161—a point Flatiron does not deny. *See* Pet. Br. 17-18. Indeed, it remains undisputed that Long held himself out to Hutcherson as a “consultant” and told Hutcherson that any references to the “RCE” meant the Department’s own Resident Engineer. App. Vol. 1 at 160-161, 169. And it likewise remains undisputed that the Department’s actual Resident Engineer, Travis M. Patrick, identified himself to Flatiron as such. App. Vol. 3 at 972. That undisputed evidence forecloses any reasonable inference about TranSystems’ “actual authority” that could create a genuine issue of fact in this case. *See Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

Perhaps recognizing that its factual arguments lack support in the record, Flatiron argues that, even setting those undisputed material facts aside, summary judgment is still “improper because the parties dispute the conclusion to be drawn from them.” Resp. Br. 16 (citation omitted). That argument runs into the same problem: any dispute about the “actual authority” TranSystems purported to exercise is simply immaterial under the correct legal standard. Flatiron suggests that the proper focus is on how the defendant actually “exercised its contractual authority” “in practice.” Resp. Br. 22-23. That argument commits the same legal error as the court of appeals’ analysis. As TranSystems has explained (Pet. Br. 36-37), the only relevant question is whether TranSystems had authority of the

of South Carolina, 419 S.C. 592, 604, 799 S.E.2d 912, 918 (2017); *cf. Ward*, 100 U.S. (10 Otto) at 206-208. Regardless, even if the court of appeals could properly consider Hutcherson’s affidavit, the affidavit does not create any genuine disputes of material fact.

kind that could create a special relationship with—and therefore a duty of care toward—Flatiron as a matter of law. *See* pp. 18-19, *supra*. Again, if Flatiron had alleged that TranSystems voluntarily undertook responsibilities over and beyond its responsibilities related to the project, such an undertaking could, in some circumstances, create a special relationship. *See Roundtree Villas*, 282 S.C. at 422-423, 321 S.E.2d at 50-51. But Flatiron’s claims allege only conduct based on TranSystems’ responsibilities under its contract with the County. *See* pp. 14-15, *supra*. Given the express limitations that contract imposed on TranSystems’ authority—which were made equally clear in Flatiron’s own contract with the County—any dispute about the authority TranSystems in fact wielded is immaterial.

Flatiron tries to defend the court of appeals’ reasoning by arguing that courts must distinguish between the “legal duty question” and the “factual predicate on which it depends.” Resp. Br. 19; *see also* Resp. Br. 16-18. To be sure, the existence of a duty is a case-specific inquiry that often entails subsidiary factual determinations. *See* Pet. Br. 36. But when the relevant, material facts about the parties’ conduct and relationship are undisputed and the only question concerns whether the “very nature” of that relationship gives rise to a legally cognizable duty, the question is a legal one appropriately resolved at summary judgment. *Spence v. Wingate*, 395 S.C. 148, 158-160, 716 S.E.2d 920, 926-927 (2011); *Hendricks v. Clemson University*, 353 S.C. 449, 458-459, 578 S.E.2d 711, 715-716 (2003). The question here concerns the “very nature” and the scope of the duty between an engineer and the contractor whose work it was hired to inspect, which the court of appeals should have resolved as a matter of law.

CONCLUSION

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

Respectfully submitted.

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