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SC Court of Appeals

IN THE COURT OF APPEALS OF SOUTH CAROLINA

Appellate Case No. 2026-001231

Appeal from Charleston County Court of Common Pleas

Trial Court Case No. 2023-CP-10-00524

The Honorable Jennifer B. McCoy, Circuit Court Judge

Craig L. Peterkin, Appellant,

v.

Michael Holt d/b/a Liberty Services, HomeServe USA, and John Doe, Defendants,
of which Michael Holt d/b/a Liberty Services is the Respondent.

AMENDED INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Whether the circuit court erred as a matter of law by deciding Appellant's pleaded negligence claim on the ground that Appellant had a contract with HomeServe and did not pay Holt, when privity and payment are not elements of negligence, and by making no findings on duty, breach (including Holt's admitted failure to obtain a permit), causation, or damages.
- II. Whether the May 19, 2026 judgment, which states only that Appellant "has not met the burden of proof as to the Defendant Holt," permits meaningful review under Rule 52(a), SCRCF, where it makes no findings of fact or conclusions of law on the claim tried.
- III. Whether the circuit court erred by admitting Defense Exhibit 2 over Appellant's objection that it had never been produced despite his discovery requests and subpoena, and by leaving undecided Appellant's discovery requests, including discovery concerning the settlement underlying HomeServe's setoff defense, and by denying his Motion to Strike without stating reasons.
- IV. Whether the circuit court erred by resolving Appellant's jury-trial request by requiring an "amended pleading" instead of deciding it under Rules 38 and 39(b), SCRCF, and by leaving unaddressed the delay in ADR, Appellant's objections to e-mail service, and his request to add the South Carolina Department of Labor, Licensing and Regulation ("SCLLR") as a party.

STATEMENT OF THE CASE

This action began on November 30, 2022, in Charleston County Small Claims Court and was transferred to the Court of Common Pleas by order dated January 31, 2023, entered February 2, 2023. Appellant, who has proceeded pro se for most of the case, sued Michael Holt

d/b/a Liberty Services ("Holt") for negligence and for violations of S.C. Code Ann. § 40-11-110(A), (A)(5), and (A)(13) arising from plumbing work Holt performed at Appellant's home in January 2020 after HomeServe USA Repair Management Corp. ("HomeServe") dispatched him under Appellant's home-protection plan. The Complaint sought \$7,077.22; Appellant later claimed additional damages (Tr. 5-6-26, p. 8). Holt answered on October 10, 2024, pleading fourteen affirmative defenses, including the statute of limitations (ROA Item 27).

On August 15, 2024, Judge McCoy heard Appellant's motion for summary judgment and Holt's motion for judgment on the pleadings. She denied both by orders entered August 20, 2024, and gave Appellant thirty days to amend (ROA Items 23-25). On October 15, 2024, Judge Young granted Appellant's motion to add HomeServe and John Doe and denied his motion to add SCLLR, Charleston Water System, and Ameritrust, stating no reasons (ROA Item 28). On November 15, 2024, HomeServe filed a partial motion to dismiss and an answer with crossclaims against Holt (ROA Items 30-31). On December 4, 2024, the court continued the December 16, 2024 trial (order of Judge McCoy, ROA Item 38). On April 10, 2025, Judge Pope granted "Defendants' Motion for Judgment on the Pleadings and Partial Motion to Dismiss" (ROA Item 59) and, by separate order, denied Appellant's Motion to Strike and Motion for Separate Trials (ROA Item 58), stating no reasons in either order. On May 26, 2025, on the joint motion of HomeServe and Holt (ROA Item 61), Judge McCoy dismissed HomeServe's crossclaims against Holt without prejudice. On October 6, 2025, Judge DeBerry relieved Appellant's attorney and ordered mediation within fifteen days (ROA Items 64-65). On January 6, 2026, Judge McCoy heard Appellant's pending motions; by Form 4 order entered January 9, 2026, she denied his Motion to Compel and Set Case for Jury Trial and stated that the case was on the non-jury roster. On May 6, 2026, the case was tried to Judge McCoy without a jury. On

May 19, 2026, the court entered a Final Judgment finding that Appellant "has not met the burden of proof as to the Defendant Holt." (ROA Item 74) On May 26, 2026, Judge Van Slambrook denied Appellant's pretrial-violation motion as moot (ROA Item 76). Appellant filed a Notice of Appeal on May 20, 2026, and the clerk received a mailed copy on May 21, 2026 (ROA Item 77).

STANDARD OF REVIEW

Whether the circuit court applied the correct legal standard to a claim is a question of law reviewed de novo. Whether a bench-trial judgment contains the findings and conclusions Rule 52(a), SCRCF, requires is reviewed to determine whether the court substantially complied with the rule and adequately stated the basis for its result. *Noisette v. Ismail*, 304 S.C. 56 (1991). Evidentiary and discovery rulings are reviewed for abuse of discretion, and reversal requires both error and resulting prejudice. *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475 (2005). A trial court's decision whether to order a jury trial despite an untimely demand is discretionary under Rule 39(b), SCRCF, and the court must actually exercise that discretion. *Hannah v. United Refrigeration Servs., Inc.*, 305 S.C. 394 (1991). A ruling based on an error of law is an abuse of discretion. *Vaught*, 366 S.C. 475. Findings in a non-jury action must be sufficient to allow appellate review. *In re Treatment & Care of Luckabaugh*, 351 S.C. 122 (2002).

ARGUMENT

I. THE CIRCUIT COURT DECIDED A NEGLIGENCE CLAIM ON A CONTRACT-AND-PAYMENT RATIONALE AND NEVER DECIDED THE ELEMENTS OF NEGLIGENCE

The only operative ruling in the May 19, 2026 judgment is that Appellant "has not met the burden of proof as to the Defendant Holt" (Final Judgment, p. 2). The judgment does not say what the burden was, which element Appellant failed to prove, or why. From the beginning Appellant alleged two things: that Holt performed the work without a required permit, and that the work damaged his home. Holt admitted that he performed the work (Tr. 5-6-26, p. 25), that

he did not obtain a permit (*id.*, p. 31), that he cut a hole in a vent pipe (*id.*, p. 41), and that he left the job unfinished (*id.*, pp. 53-54). The judgment does not find that any of these facts was unproved, and it does not apply the permit requirement to them.

A. The claim pleaded and tried was negligence.

From the Complaint forward, Appellant alleged that Holt negligently performed plumbing work, cut unnecessary holes in walls and a vent pipe, left the work unfinished, and performed construction without the building permit required by local law, and that the City of Charleston building inspector posted a stop-work order on January 29, 2020 (Complaint, p. 3). The Complaint cites § 40-11-110(A)(13), which lists "failure to obtain a building permit as required by a local or state government before engaging in construction" as a ground for contractor discipline. At the August 15, 2024 hearing, when the court asked what the claim was, Appellant agreed that Holt was negligent in his practice of plumbing (Tr. 8-15-24, p. 8). At trial, Appellant argued that the work required a permit under the City of Charleston Building Code § 105.1 and was unsafe and exposed to freezing (Tr. 5-6-26, pp. 8, 66). Appellant raised the missing permit at the first hearing, on August 15, 2024 (Tr. 8-15-24, pp. 5, 7, 19), and described the building inspector's stop-work notice (*id.*, p. 20). HomeServe's counsel later acknowledged that Appellant's exhibits "referenced a January 2020 Stop Work Order issued by the City of Charleston regarding the work completed by Holt," and that "it's really not disputed that this whole case arises out of work that Holt completed or attempted to complete at Plaintiff's residence back in January of 2020" (Tr. 3-18-25, pp. 25-26). Appellant raised the permit again on March 18, 2025 (*id.*, pp. 5, 23, 30), on January 6, 2026 (Tr. 1-6-26, pp. 7, 13), and at trial (Tr. 5-6-26, pp. 7-9, 66). At the first hearing defense counsel addressed contract and damages but not the permit: Mr. Tesoriero argued there was "no contract between these parties" (Tr. 8-15-24, p.

15), and Mr. Koon argued that the contract was with the warranty company, not Appellant, and that Appellant alleged "[a]t most . . . \$1,077 to cover up the holes" (*id.*, p. 22). Neither responded to the allegation that Holt obtained no permit.

B. The trial testimony the court was required to weigh.

It is undisputed that Holt performed the work. His own counsel stated that "[i]n January of 2020, Defendant arrived at Plaintiff's residence and began performing the necessary work which was not able to be completed that same day" (Def. Mem. in Supp. of Mot. for J. on the Pleadings, p. 4) (ROA Item 18), and Holt admitted at trial that he and his company performed the work (Tr. 5-6-26, p. 25). Holt testified that he did not obtain a building permit from the city (Tr. 5-6-26, p. 31). He testified, "We installed PEX pipe" (*id.*, p. 25), that the line was "just a rough-in. It was not a final" (*id.*, p. 51), and that he planned to return to insulate the portion he put in the ground, but that never happened (*id.*, p. 58). He testified that he cut a hole in a vent pipe (*id.*, p. 41), that he did not complete the job (*id.*, pp. 53-54), and that HomeServe instructed him not to return (*id.*, pp. 31, 52, 54). Holt's January 2023 reply to the small-claims complaint asserted that Appellant "refused us access to complete the project" and that "per the LLR . . . by not allowing us access and this alone he has no case" (Holt Reply, Jan. 9, 2023, p. 1) (ROA Item 5). At trial Holt instead testified that HomeServe told him not to return, and agreed that he did not finish the job "solely because your contracting party, HomeServe, instructed you not to" (Tr. 5-6-26, pp. 31, 54). Holt disputed that the work required a permit, stating that "[n]ot all plumbing work requires a permit" (*id.*, p. 32). Appellant's wife testified to the condition of the home after Holt left (*id.*, pp. 13, 21-23).

The defense relied on the warranty's exclusion for "damages necessary to reasonably access the repair area" (Tr. 8-15-24, p. 13; Tr. 5-6-26, pp. 47-50). Neither the defense nor the

court addressed whether the damage was necessary. Holt testified that "[t]he leak is not upstairs. No. The leak is under the slab" (Tr. 5-6-26, pp. 38-39), that he cut holes "[a]s necessary" (*id.*, p. 38), and that he cut a hole in a vent pipe to see how much cantilever he was dealing with (*id.*, p. 41). The judgment does not mention the exclusion or whether the holes were necessary.

Appellant described the property and the work to Judge McCoy at the August 15, 2024 hearing with documentation in hand. He offered the court a copy of the residence record (Tr. 8-15-24, p. 3), referred to the photograph showing how the vent pipe was cut (*id.* p. 6), and referred to the photographs of the debris Holt left (*id.* p. 21). Whether or not those photographs were formally marked, Appellant's witness testified at trial that she took pictures of the work Holt performed after he left and believed they were part of the record (Tr. 5-6-26, p. 14), and defense counsel himself asked Holt whether he had viewed "the photos -- the evidence that's in the record." (*Id.* p. 43.) Holt answered, "No." (*Id.*) The same judge heard both proceedings, and the May 19, 2026 judgment recites that she reviewed "all documents on the record and received from the parties." (Final Judgment, p. 1.)

Holt's description of the property and the work rested on his recollection alone. The transcript identifies no photograph, measurement, or other document on which he relied to describe the property or the work, apart from an invoice that Appellant first saw at trial. (Tr. 5-6-26, pp. 54-55.) He testified that there was "never a scope of work" (*id.* p. 41), and when asked whether he left debris he answered, "I don't think so. I don't remember. It's six years." (*Id.* pp. 42-43.) On the points where the two accounts can be compared, Appellant's description was borne out or was not contradicted.

Location of the leak and the work upstairs. Appellant told the court the leak was in the slab "in the laundry room, which is at the back side of the house in a small area," and that Holt

nevertheless went "upstairs in the attic, in the -- all over the house," cutting holes in the walls and in two vent pipes of a two-story house. (Tr. 8-15-24, pp. 5-6.) At trial Holt testified, "The leak is not upstairs. No. The leak is under the slab." (Tr. 5-6-26, p. 39.) He admitted cutting holes in the walls upstairs and downstairs "[a]s necessary" (id. pp. 38-39) and testified, "I cut a hole in the vent pipe to see just how much cantilever I was dealing with." (Id. p. 41.)

Unfinished work. Appellant told the court that Holt "rerouted the plumbing," left, and "never came back." (Tr. 8-15-24, pp. 6-7, 17.) Holt testified the work "was just a rough-in. It was not a final," that it involved running "a half-inch of PEX" leader line through the ceiling and attic, and that he never finished the job. (Tr. 5-6-26, pp. 51-54.)

Permit and stop-work notice. Appellant told the court Holt "never obtained . . . a building permit" and that a building inspector "issued a stop-work permit describing the damage." (Tr. 8-15-24, pp. 5, 20.) Holt testified that he did not obtain a building permit from the city. (Tr. 5-6-26, p. 31.)

The line outside the house. Asked by defense counsel whether a portion of the temporary line was outside the home, Holt answered "No"; asked by Appellant about the three-quarter line outside the house, he testified, "we put it in the ground, so any kind of vermin wouldn't eat it. We were going to come back and insulate it Monday," and that this "never happened." (Tr. 5-6-26, pp. 57-58.) In argument at the close of trial Appellant told the court that "that line he installed, that cracked pipe in January of 2025, they were aware of." (Id. p. 72.)

The judgment addresses none of this. It makes no finding on the property or the work. It states only that Appellant "had a contract with HomeServe and did not pay Defendant individually" and that HomeServe told Holt not to return. (Final Judgment, p. 2.) A description

supported by what Appellant showed the court was not weighed against a description supported by nothing but Holt's memory.

C. The judgment rests on contract and payment.

The May 19, 2026 Final Judgment states in full the court's reasoning:

"It appears Plaintiff had a contract with HomeServe and did not pay Defendant individually for any service. Defendant further testified that HomeServe instructed him not to return to the Plaintiff's residence. Based on the evidence presented and arguments of both the Plaintiff and Defendant, the Court finds the Plaintiff has not met the burden of proof as to the Defendant Holt." (Final Judgment, p. 2).

The judgment does not mention negligence, duty, breach, the permit, causation, or damages.

The judgment itself recites that "[t]he Plaintiff's complaint asserted causes of action under SC Code Section 40-11-110(A), SC Code Section 40-11-110(A)(5), and SC Code Section 40-11-110(A)(13) as a result of the Defendant's non-completion of plumbing work on Plaintiff's property in January of 2020" (Final Judgment, p. 1). It never returns to those statutes, does not address the permit requirement of the City of Charleston Building Code that Appellant argued at trial (Tr. 5-6-26, p. 66), and describes the claim as one of "non-completion" rather than negligence. The Complaint pleads negligence and statutory violations and asserts no contract claim against Holt. None of the earlier orders in the record mentions contract, privity, or payment: the August 20, 2024 order denying summary judgment finds only "a genuine issue of material fact" (ROA Item 23), and the orders of October 15, 2024, December 4, 2024, April 10, 2025, May 26, 2025, and October 6, 2025 do not address them. Defense counsel argued at the August 15, 2024 hearing that the contract was between HomeServe and Holt (Tr. 8-15-24, pp. 21-22), but the first order to treat contract or payment as a basis for decision is the May 19, 2026 judgment. Holt asserted that Appellant's policy was with HomeServe, not him, and that

Appellant had no contract with him and had paid him nothing, in January 2023 (Holt Reply, Jan. 9, 2023, p. 1), and his August 9, 2024 motion for judgment on the pleadings rested on the same facts (Def. Mem. in Supp., pp. 2, 4) (ROA Item 18). The court denied that motion at that time and gave Appellant leave to amend (ROA Items 24-25), and it denied summary judgment on a finding of "a genuine issue of material fact" (ROA Item 23). The judgment does not explain why facts known since January 2023 became dispositive only after trial.

Privity of contract is not required for a negligence claim in South Carolina; the key inquiry is foreseeability, and a contractor's duty of care exists independent of any contract. *Terlinde v. Neely*, 275 S.C. 395 (1980); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335 (1989). That Appellant's contract was with HomeServe and that HomeServe, not Appellant, paid Holt therefore does not answer whether Holt was negligent. To the extent the judgment treated the absence of a contract between Appellant and Holt, or the fact that HomeServe rather than Appellant paid him, as defeating the claim, it applied the wrong rule of law. Pleadings are construed by their substance and "[n]o technical forms of pleading . . . are required." Rule 8, SCRPC. The claim was pleaded and tried as negligence, and a case-type label assigned administratively does not change what was pleaded.

The rule applies to a contractor who works under a contract with someone else. "A tortfeasor may be liable for injury to a third party arising out of the tortfeasor's contractual relationship with another, despite the absence of privity between the tortfeasor and the third party." *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 556 (2004) (contractor working under a contract with the Department of Transportation owed foreseeable motorists a common-law duty of due care). And "one who assumes to act, even though under no obligation to do so, thereby

becomes obligated to act with due care," including where the undertaking arises from the provider's contract with a third party. *Madison v. Babcock Center, Inc.*, 371 S.C. 123 (2006).

Holt undertook the repair at Appellant's home. He came to the house and performed the work (Def. Mem. in Supp., p. 4 (ROA Item 18); Tr. 5-6-26, p. 25), cut holes in the walls and a vent pipe (*id.*, pp. 38-41), and installed new PEX line (*id.*, pp. 25, 51-58). That HomeServe, and not Appellant, hired and paid him ("HomeServe paid me") (*id.*, p. 51), and that "we're on their contractor list, and they call us, and we go out" (*id.*, p. 45), describe the contract with another that these cases address. They do not excuse due care toward the homeowner whose house he worked on. Holt's position from the start, that Appellant "does not have a contract with us and has not paid us a penny" (Holt Reply, Jan. 9, 2023, p. 1 (ROA Item 5)), that there was "no contract between these parties" (Tr. 8-15-24, p. 15), and that the contract was "with the warranty company" (*id.*, p. 22), is an argument about privity. It is not a defense to negligence.

D. The questions the court never decided.

The judgment does not decide: (1) whether Holt, as a licensed plumber, owed and breached a duty of reasonable care, including in performing permit-requiring work without a permit; (2) whether the permit requirement supplies the standard of care, is evidence of negligence, or establishes negligence per se, which requires analysis of whether Appellant is within the class the requirement protects and whether his harm is of the kind it addresses (the statute Appellant cited is a licensing-discipline provision, § 40-11-110(A)(13), and a building-code violation is admissible as evidence, § 15-3-670(B)); (3) whether Holt's unpermitted, unfinished, and uninsulated work proximately caused the damage and the continuing freeze condition; (4) what damages resulted; (5) whether HomeServe's instruction not to return bears on Holt's duty or on anything other than who should have completed the work; and (6) any of the

affirmative defenses Holt pleaded, including the statute of limitations, on which he bore the burden. Appellant does not ask this Court to decide those questions. He asks that they be decided by the circuit court under the correct law.

Appellant's position is that Holt's failure to obtain a required permit before performing the work is negligence per se. The permit requirement exists to protect homeowners such as Appellant from unpermitted and uninspected plumbing, and the harm he alleges, an unsafe hot-water line left unfinished and exposed to freezing, is the kind of harm that permitting and inspection exist to prevent. Whether a permit was required, as Holt disputed (Tr. 5-6-26, p. 32), and whether the violation is negligence per se are questions the judgment does not decide. Defense counsel argued at the first hearing that § 40-11-110 empowers the LLR board and "is not a remedy to be brought in court" (Tr. 8-15-24, p. 15). Appellant's claim is negligence, and the permit requirement supplies the standard of care whether or not the statute itself provides a private remedy.

The central question is whether the work was a repair or a new installation. Holt testified that "[r]epairs don't require all that. New construction, yes." (Tr. 5-6-26, p. 32). He also testified that the work was to "run a line . . . an independent line" to the hot water access points, including "the vanity in the bathroom, in the kitchen, and all that" (*id.*, pp. 29-30), that he "installed PEX pipe" (*id.*, p. 25), and that part of the line was put "in the ground" (*id.*, p. 58). Appellant argued that removing and re-piping a hot-water line inside and outside the house is not a repair (*id.*, pp. 8, 71). South Carolina requires municipalities to enforce the adopted building and plumbing codes. S.C. Code Ann. §§ 6-9-10, 6-9-50. The plumbing code requires a permit before regulated plumbing is installed, altered, repaired, removed, or replaced, exempts only narrow categories such as stopping leaks and clearing stoppages, and treats the removal and replacement of

defective concealed water pipe with new material as new work for which a permit must be obtained. 2018 International Plumbing Code § 106.2, in effect in South Carolina from January 1, 2020; *see also* S.C. Code Ann. § 40-59-265(A)(5). The Court itself described the testimony as "that applies to new construction, not repairs" (*id.*, pp. 32-33), and then did not decide the question. The judgment does not decide whether the work was a repair or a new installation, or whether the City of Charleston Building Code required a permit for it.

Nor does the judgment explain how any event after January 2020 displaces the claim that arose from Holt's work: the payment arrangement between HomeServe and Holt, HomeServe's later instruction not to return, the timing of ADR, or the procedural history of the case. If the court rested its decision on any of those matters, it was required to say so and to explain why a later event relieves Holt of liability for the work he performed and the permit he did not obtain. The judgment does not address the permit requirement at all.

The Rules of Civil Procedure govern practice and procedure, and the Supreme Court makes them "[s]ubject to the statutory law." S.C. Const. art. V, § 4. A rule of practice does not extinguish a claim that arises under a statute or a local building-code permit requirement. To the extent the circuit court relied on a rule or on the procedural history of the case to leave Appellant's statutory claims undecided, it was required to identify the rule and to explain how it displaced those claims. The judgment does neither.

E. Preservation.

Appellant raised each ground on which the judgment turns in the circuit court and obtained a ruling. The negligence claim, the permit requirement, and the stop-work order were pleaded in the Complaint (Complaint, pp. 2-3), and Appellant raised them at the first hearing (Tr. 8-15-24, pp. 5, 7, 8-9, 19-20), on March 18, 2025 (Tr. 3-18-25, pp. 5, 23, 30), on January 6, 2026

(Tr. 1-6-26, pp. 7, 13), in his Memorandum in Support of Motion for Pre-Trial Relief and Trial on the Merits, which the court confirmed it had received (Tr. 5-6-26, p. 9) and reviewed (Final Judgment, p. 1), and at trial (Tr. 5-6-26, pp. 7-9, 66). The court ruled on the claim by its May 19, 2026 judgment. Issues and arguments are preserved when they are raised to and ruled on by the circuit court. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9 (2004). In a non-jury action, "[r]equests for findings are not necessary for purposes of review." Rule 52(a), SCRPC.

F. The damage and causation record.

The Complaint alleged that Holt cut holes in walls in the second-floor walk-in closet and both upstairs bathrooms, removed tile under a toilet and a mirror, cut a vent pipe, and cut holes under a sink (Complaint, p. 2); that the City of Charleston building inspector posted a stop-work order on January 29, 2020; that McAtee Plumbing had to be called in to redo the work, which was not corrected until February 2020; and that Appellant incurred \$1,077.22 in repair costs to Mr. Handyman on February 26 and 27, 2020 (*id.*, p. 3). On August 15, 2024, Appellant described repair costs of \$772.22 and \$300, about \$1,700 in total, and a hole that remained unrepaired (Tr. 8-15-24, pp. 10-11). At trial Appellant's wife testified that she took photographs of the work after Holt left (Tr. 5-6-26, p. 14), that she still did not have hot water, and that "[t]he pipes to the toilet is broken" (*id.*, pp. 18-23). Holt admitted cutting access holes upstairs and downstairs and a hole in a vent pipe, installing a PEX rough-in, and never completing or insulating the line (*id.*, pp. 38-41, 51-58). Appellant told the court that Holt left "debris, material -- building materials, dirt, garbage" (Tr. 8-15-24, p. 6), that the building inspector's stop-work notice described "cabinet walls, walls cut, holes in vent pipes" (*id.*, p. 20), and that the garbage Holt left "is in the pictures" (*id.*, p. 21). Appellant first filed photographs of the damage with his June 10, 2024 Motion for Summary Judgment (ROA Item 16). Holt could not say whether he left debris ("I don't think so. I

don't remember. It's six years."), and he had not viewed the photographs that accompanied the SCLLR complaint and are part of the record (Tr. 5-6-26, pp. 42-43). The judgment weighs none of this.

G. Prejudice.

An appellant must show error and resulting prejudice. *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475 (2005). The error here was not harmless. The judgment's only ruling is that Appellant "has not met the burden of proof as to the Defendant Holt," on a rationale, contract and payment, that is not an element of the claim tried. Holt admitted that he performed the work, obtained no permit, cut a hole in a vent pipe, and left the job unfinished. Had the court applied negligence law to those admissions, there is a reasonable probability that the result would have differed. The payment rationale is also the point on which Defense Exhibit 2, a Liberty Services invoice to HomeServe first produced at trial (Tr. 5-6-26, pp. 54-55), bears, and the court states that it reviewed "the two exhibits from the Defendant" (Final Judgment, p. 1).

H. No other ground in the record supports the judgment.

Rule 220(c), SCACR, allows an appellate court to affirm on any ground appearing in the Record on Appeal, but it does not allow reversal for a ground not raised below. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406 (2000). No other ground in the record supports this judgment. Limitations: Holt pleaded the statute of limitations (ROA Item 27; Rule 8(c), SCRCP), but the work was performed in January 2020 and Appellant sued on November 30, 2022 (ROA Item 4), within three years of the work on any measure of accrual, S.C. Code Ann. §§ 15-3-530(5), 15-3-535, and thirty-five days after SCLLR dismissed his complaint on October 26, 2022 (ROA Item 3), following a regulatory process that began in February 2020 (ROA Item 1) and that Appellant pursued before suing. Appellant does not concede an earlier accrual date. Repose:

the eight-year period in S.C. Code Ann. § 15-3-640 runs from substantial completion of the improvement and had not run. Access: Holt's January 2023 assertion that Appellant refused him access (ROA Item 5) was contradicted by his own testimony that HomeServe told him not to return and that he did not finish the job "solely because" HomeServe instructed him not to (Tr. 5-6-26, pp. 31, 54). Warranty: the exclusion for access damage appears in the HomeServe warranty (Tr. 5-6-26, pp. 47-50), and the judgment does not mention it or rest on it. The judgment rests on none of these grounds.

I. Relief.

Because the judgment rests on contract and payment, which are not elements of the claim tried, and makes no findings on the elements of negligence, it should be vacated and the matter remanded for decision under negligence law with findings and conclusions on each element.

II. THE MAY 19, 2026 JUDGMENT DOES NOT PERMIT REVIEW UNDER RULE 52(a)

A. Rule 52(a).

In an action tried without a jury, "the court shall find the facts specially and state separately its conclusions of law." Rule 52(a), SCRPC. The rule is directory, and a judgment will not be vacated where the court substantially complied and adequately stated the basis for its result. *Noisette*, 304 S.C. 56. Here the stated basis is the contract-and-payment rationale quoted above and a finding that Appellant did not meet his burden "as to the Defendant Holt." That statement does not identify which element Appellant failed to prove or what law the court applied, and so does not permit a reviewing court to determine whether the correct law was applied.

Each order recites that the court considered Appellant's filings, and none addresses what they raised. Judge Pope's April 10, 2025 orders state only that, "[a]fter review of the motions,

applicable law, and arguments of counsel," the motions were granted or denied (ROA Items 58-59). The May 19, 2026 judgment states that the court "reviewed Plaintiff's Memorandum in Support of Motion for Pre-Trial Relief and Trial on the Merits, the two exhibits from the Defendant, and all documents on the record and received from the parties" (Final Judgment, p. 1). Yet none of these orders mentions the permit requirement, the statutory violations, or the code provisions Appellant raised at the hearings and at trial.

B. Relief.

The judgment should be vacated and remanded so that the circuit court can make findings of fact and conclusions of law on the negligence claim tried against Holt. Where the findings are not sufficient to allow review, the appellate court vacates and remands for an order that complies with Rule 52(a). *Luckabaugh*, 351 S.C. 122.

III. THE CIRCUIT COURT ADMITTED DEFENSE EXHIBIT 2 OVER OBJECTION AND DENIED OR LEFT UNDECIDED RELATED DISCOVERY AND MOTIONS

A. The invoice.

On January 6, 2026, Appellant told the court that a subpoena duces tecum issued by the Clerk on November 12, 2025, and served by a private process server on that date on Holt's counsel, Kerry Koon, who stated he was authorized to accept service for Holt (affidavits of service attached to Appellant's November 17, 2025 motion), had not been complied with and had drawn no objection (Tr. 1-6-26, pp. 6-7, 14). By Form 4 order entered January 9, 2026, the court denied the motion to compel "as defense counsel indicated they have turned over all responsive documents in their possession." At trial, the defense offered the Liberty Services invoice to HomeServe as Defense Exhibit 2. Appellant objected: "If I may, I've never seen that. And we requested that information." (Tr. 5-6-26, p. 54). He added: "I've never seen that. Yes. That's new

evidence. And because the defendant had said in your January 6th answer that . . . they had provided all responses. And this is new." (*Id.*, p. 55). The court responded, "Okay. Noted," and the invoice was received (*id.*, pp. 54-55). Appellant appeared by video at his request (Final Judgment, p. 1). The court explained that "if you were here in person, we could hand you a copy right now," that "I don't have another way to show it to you right now," and that she would "try to hold it up to the screen"; Appellant then said, "I can't see that" (Tr. 5-6-26, p. 55). The transcript does not show that the invoice was held up to the screen or that Appellant ever saw or received it. Holt had already testified to its contents, including the dates of the work and that "HomeServe paid me," before it was offered (*id.*, pp. 51, 54). The January 9 order denied production on the premise that all responsive documents had been produced; the invoice's first appearance at trial shows that premise was wrong. Appellant could not prepare to examine Holt about a document he first saw during trial. Admitting it over this objection, after production was denied on that premise, was an abuse of discretion that prejudiced Appellant. *Vaught*, 366 S.C. 475.

B. Settlement discovery and the Motion to Strike.

On November 27, 2024, Appellant moved to strike Defendants' affirmative defenses, including HomeServe's setoff defense, which refers to funds paid in settlement by other parties (Motion to Strike, p. 7). Appellant also sought discovery concerning that settlement (Tr. 1-6-26, p. 11). Judge Pope denied the Motion to Strike on April 10, 2025, stating no reasons and not addressing the setoff defense (ROA Item 58). The court's May 26, 2025 order dismissing the crossclaims recites that HomeServe and Holt "have since entered into a confidential agreement."

C. Preservation and prejudice.

Appellant objected when the exhibit was offered and the court ruled by receiving it (Tr. 5-6-26, pp. 54-55), so the ruling is preserved. *Elam*, 361 S.C. 9. The Motion to Strike (ROA Item 36) was heard on March 18, 2025 and denied on April 10, 2025 (ROA Item 58). The invoice was first produced at trial, after the January 9, 2026 order denied production on the premise that all responsive documents had been produced. Appellant had no opportunity to examine Holt on it before trial. Reversal requires error and resulting prejudice. *Vaught*, 366 S.C. 475. The invoice bears on the payment point on which the judgment turns, and the court states that it reviewed the defendant's exhibits (Final Judgment, p. 1).

D. Relief.

The evidentiary ruling should be reversed and, on remand, the circuit court should reconsider the denial of the Motion to Strike in light of the setoff defense and rule on Appellant's discovery requests, including the settlement discovery, before any further trial.

IV. THE CIRCUIT COURT DID NOT DECIDE THE JURY REQUEST UNDER RULES 38 AND 39(B), AND LEFT ADR DELAY, SERVICE OBJECTIONS, AND THE REQUEST TO ADD SCLLR UNADDRESSED

A. Jury trial.

Appellant filed a Motion to Compel and Set Case for Jury Trial on November 17, 2024, two days after HomeServe filed its answer and crossclaims (ROA Items 33, 31); the ROA index lists no ruling on that motion, and the April 10, 2025 order does not mention it (ROA Item 59). Appellant renewed the request by a motion submitted November 17, 2025, which invoked Rule 38 and Article I, § 14 of the South Carolina Constitution and asked that the case be placed on the jury roster (Motion, pp. 1-3). The motion's cover sheet describes it as a "Rule 40 Demand for jury trial and set trial date," and its notice asks for an order "setting the above-captioned matter

for trial and granting Plaintiff's request for a jury trial pursuant to Rule 38 of the South Carolina Rules of Civil Procedure" (Motion, pp. 1-2). Defense counsel objected at the January 6, 2026 hearing, stating "[t]he defense does object to a jury trial" (Tr. 1-6-26, p. 9). The Form 4 order entered January 9, 2026 states:

"The case is currently on the non-jury roster and will be set accordingly. If Plaintiff wishes to demand for jury trial he must file an amended pleading in accordance with the South Carolina Rules of Civil Procedure."

The order recites that the motion "came before this Court January 6, 2025"; the hearing was held January 6, 2026 (Tr. 1-6-26, p. 5). The order makes no finding that the demand was untimely.

A jury demand under Rule 38(b) is made by serving a written demand, not by an amended pleading, and Rule 39(b) allows the court, in its discretion, to order a jury trial despite a late demand. *Hannah*, 305 S.C. 394. The order does not state whether the court found the request untimely, whether it considered Rule 39(b), or on what ground it required an amended pleading. At trial, after the court had placed the case on the non-jury roster, Appellant stated that "[t]his is a single witness case that will take no more than 30, 45 minutes," asked "for these reasons" that the trial proceed the same day, and said he was "ready to proceed" (Tr. 5-6-26, p. 9). The case was captioned a non-jury trial (*id.*, p. 1). The jury request should be remanded for decision under Rules 38 and 39(b) before any new trial.

B. ADR.

On August 31, 2023, the docket stated "ADR: COMPLETED," although Appellant states that no ADR conference, mediator, or report existed. Appellant raised the absence of ADR on October 15, 2024 (Tr. 10-15-24, pp. 28-29) and on March 18, 2025 (Tr. 3-18-25, p. 37). The April 10, 2025 order did not address it (ROA Item 59). Mediation was first ordered on October 6,

2025, and at the January 6, 2026 hearing the court declared Appellant's motion to compel ADR moot after he confirmed ADR had occurred (Tr. 1-6-26, pp. 5-6). The court did not address why ADR took more than two years or what effect the delay had on the progress of the case, and on remand should consider it in setting the schedule.

The ADR Rules require that the ADR conference be held within 300 days of the filing of the action and provide that "[t]he case shall not be on the circuit court trial roster until a Proof of ADR is filed." S.C. Ct.-Annexed ADR R. 5(f). If no Proof of ADR has been filed by the 210th day, the clerk must appoint mediators, and the mediator must file the Proof of ADR within ten days of the conference. *Id.* R. 4(c), 7(f). The case was placed on the non-jury trial roster for December 16, 2024 (ROA Items 34, 38), and defense counsel told the court on January 6, 2026 that it "has now been on the non-jury trial roster twice" (Tr. 1-6-26, p. 9), although mediation was not ordered until October 6, 2025 (ROA Item 65). The 210th day after the ADR clock began on February 2, 2023 (ROA Item 13) was August 31, 2023, the same day the docket was marked "ADR: COMPLETED" (ROA Item 14), and the 300th day was November 29, 2023. From the February 2, 2023 transfer until the roster notice of May 14, 2024 (ROA Item 15), the ROA index lists a single entry, the August 31, 2023 docket entry (ROA Item 14). The docket entry "ADR: COMPLETED" (ROA Item 14) is not a Proof of ADR. The rules provide for enforcement by rule to show cause, *id.* R. 10, and the circuit court never addressed the missing Proof of ADR before the case was placed on the roster and tried.

C. Pending motions.

On January 6, 2026, the court took the pending motions under advisement and said, "I'll issue a ruling on these by the end of the week" (Tr. 1-6-26, p. 13). The January 9 order addressed the Motion to Compel and Set Case for Jury Trial.

D. Service by e-mail.

Appellant objected in his November 25, 2024 Reply (pp. 14-15), in his January 27, 2025 memorandum (pp. 10-11), and at trial (Tr. 5-6-26, p. 66) that filings were served on him by e-mail without his written consent, as Supreme Court Administrative Order 2022-05-06-04 requires of a self-represented litigant. After Appellant's counsel was relieved on October 6, 2025, defense counsel served him by e-mail on October 25, 2025 (ROA Item 65a). The record shows no ruling on these objections. Under the Supreme Court's order, a self-represented litigant who is not a lawyer admitted in South Carolina "may consent in writing to be served by e-mail and designate a correct e-mail address for service." S.C. Sup. Ct. Admin. Order 2022-05-06-04 (App. Case No. 2022-000029). Absent that consent, service of papers is by the methods in Rule 5(b), SCRCP, and Appellant stated that he never gave written consent (Tr. 5-6-26, p. 66).

E. SCLLR.

On October 15, 2024, the court denied Appellant's motion to add SCLLR without stating reasons in its order (ROA Item 28). At the hearing the court said that SCLLR is a government agency and that dissatisfaction with its decision was not a legal basis for suit, and it advised Appellant that he could appeal (Tr. 10-15-24, pp. 21-24, 31). Appellant disagreed on the record and cited authority (*id.*, p. 24). Claims against LLR are governed by the Tort Claims Act and the special-duty analysis. See *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373 (1999). The ruling should be reviewed under that standard on remand.

A circuit court may deny leave to amend or to add a party for prejudice or another substantial reason, and a proposed amendment that is not clearly futile should not be denied. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175 (2019) (cited in the circuit court's August 20, 2024 order, ROA Item 24). Claims against SCLLR are governed by the Tort Claims

Act, which provides the exclusive remedy for torts by governmental entities. S.C. Code Ann. § 15-78-70. An order denying leave to add a party is reviewable after final judgment. *Baldwin Constr. Co. v. Graham*, 357 S.C. 227 (2004); see S.C. Code Ann. § 14-3-330. The October 15, 2024 order states no reason for the denial (ROA Item 28), and the only reason given at the hearing was that SCLLR is a government agency (Tr. 10-15-24, pp. 21-24).

Appellant argued that SCLLR renewed Holt's license in October 2019, before the January 2020 work, and that had SCLLR taken disciplinary action or not renewed it, "we would never have crossed paths" (Tr. 10-15-24, pp. 12-13), and that SCLLR owed the public a duty of care (*id.*, p. 24). The court answered that Appellant had "no right to sue LLR" because it is "a government agency," that he did not "like their decision," and that it would "dismiss any complaint that you have against them" (*id.*, pp. 21-23). The special-duty test asks, among other things, whether "the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty." *Steinke*, 336 S.C. at 388-89. The court did not address that factor, or what SCLLR knew or had reason to know when it renewed Holt's license.

F. Preservation.

Each ground was raised to and ruled on by the circuit court. The jury request was made by motion (ROA Item 33; Motion, pp. 1-3), opposed by defense counsel (Tr. 1-6-26, p. 9), and ruled on in the January 9, 2026 order. The absence of ADR was raised on October 15, 2024 (Tr. 10-15-24, pp. 28-29) and March 18, 2025 (Tr. 3-18-25, p. 37), by a motion to compel ADR filed September 29, 2025, and ruled on January 6, 2026, when the court declared the motion moot (Tr. 1-6-26, pp. 5-6). The request to add SCLLR was made by motion (ROA Item 26) and ruled on October 15, 2024 (ROA Item 28). The e-mail service objections were raised in Appellant's

November 25, 2024 reply (ROA Item 35) and January 27, 2025 memorandum (ROA Item 45) and at trial (Tr. 5-6-26, p. 66). *Elam*, 361 S.C. 9.

G. Prejudice.

Appellant lost the factfinder he requested on every contested question, including the cause and extent of the damage. The case was placed on the non-jury trial roster before any Proof of ADR was filed (ROA Items 34, 38), and nearly three years passed between the filing of the action on November 30, 2022 and the first mediation order on October 6, 2025 (ROA Items 4, 65). The delay cost the record its best evidence. At trial Holt could not say whether he left debris: "I don't think so. I don't remember. It's six years." (Tr. 5-6-26, pp. 42-43). The court observed that he "can only answer what he remembers . . . from six years ago," and Holt answered, "Who would?" (*id.*, p. 61). Appellant's wife could not fix the date of Holt's visit (*id.*, pp. 15-16), and defense counsel acknowledged, "It certainly has been a while." (*Id.*, p. 16). The denial of leave to add SCLLR, without stated reasons, ended Appellant's ability to obtain through discovery from that agency the documents and statements that bear on the notice factor of the special-duty test.

CONCLUSION

Appellant respectfully requests that this Court, at a minimum, vacate the May 19, 2026 Final Judgment and remand with instructions that the circuit court:

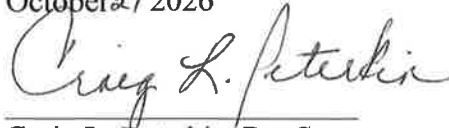
1. Adjudicate Appellant's negligence claim against Holt under negligence law, with findings of fact and conclusions of law on duty, breach (including the failure to obtain a permit), causation, and damages, as Rule 52(a), SCRPC, requires;
2. Decide Appellant's jury-trial request under Rules 38 and 39(b), SCRPC;
3. Rule on Appellant's discovery requests, and reconsider the denial of the Motion to Strike in light of the setoff defense; and

4. Reconsider the admission of Defense Exhibit 2 in light of the discovery record.

Appellant requests such further relief as the Court deems just.

Respectfully submitted,

October 17 2026

A handwritten signature in cursive script, reading "Craig L. Peterkin". The signature is written in dark ink and is positioned above a horizontal line.

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IN THE COURT OF APPEALS OF SOUTH CAROLINA

Appellate Case No.: 2026-001231

(Trial Court Case No. 2023-CP-10-00524)

Craig L. Peterkin,

Appellant,

v.

Michael Holt d/b/a Liberty Services, HomeServe USA, and John Doe,

Defendants,

of which Michael Holt d/b/a Liberty Services is the Respondent.

RECEIVED

Oct 27 2026

SC Court of Appeals

APPELLANT'S CERTIFICATIONS

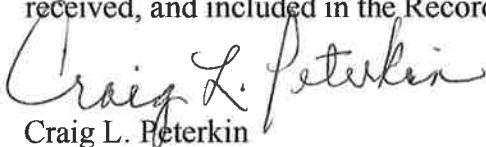
Pursuant to Rule 267, SCACR, and Rule 211, SCACR, Appellant Craig L. Peterkin, Pro Se, hereby certifies as follows:

CERTIFICATION OF BRIEF

I hereby certify that Appellant's Amended Initial Brief complies with Rule 211(b), SCACR, and contains approximately 7723 words, 24 pages, exclusive of pages containing the caption, table of contents, table of authorities, certifications, and any addendum.

CERTIFICATION REGARDING TRANSCRIPTS

I hereby certify that all transcripts necessary for review of the issues on appeal have been received, and included in the Record on Appeal.



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