**THE STATE OF SOUTH CAROLINA**
In The Supreme Court

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S.C. Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

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Appellate Case No. 2015-001456

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South Carolina Electric & Gas, Co,.....Respondent,

v.

Anson Construction Company,.....Petitioner.

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# RESPONDENT'S RETURN TO PETITION FOR CERTIORARI

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## QUESTIONS PRESENTED

1. Does the standard of review and SCACR 220(c) permit the Court of Appeals to make its own determination as to the documents forming the contract based on the record and supported by settled contract law?
2. Was the Court of Appeals correct in affirming the Trial Court's Order ruling that three documents together make up the Parties' Contract, when the documents are unambiguous read together, they relate to the same subject matter, the provisions of each document explains and affects the provisions of the other documents, SCE&G accepted the Contract by signature/performance, and Anson accepted the Contract by holding and acting upon the three documents?

## STATEMENT OF THE CASE

In June of 2007, the City of Charleston ("the City") closed the Dock Street Theater ("the Theater") to begin an extensive renovation. (R. at 3). At that time, an electric transformer owned by SCE&G served the Theater and several homes in the immediate area. Id. That transformer was located inside the Theater. Id. The City and SCE&G had a number of discussions and meetings about relocating the transformer outside of the Theater, and the decision was ultimately made to relocate the transformer to an underground vault in the sidewalk adjacent to the French Huguenot Church ("the Church"), which is located directly across the street from the Theater. Id.

In the late-Fall / early-Winter of 2007, SCE&G contacted Anson Construction Co., Inc. ("Anson") to install a concrete vault in the sidewalk adjacent to the Church so that SCE&G could then install its transformer in that location. Id. at p. 1-2. On or about December 13, 2007, Anson sent SCE&G a Quotation to install the vault. (R. at 706).

Mr. Stutsman testified in his deposition that he prepared the Quotation and that no one at SCE&G helped him prepare the Quotation. (R. at 507:25-508:4). Paragraph 2 of the Quotation, stated "[t]his proposal is subject to execution of a non-modified AIA form or subcontractor approved equal." (R. at 706).

On January 3, 2008, an itemized cost breakdown was added to the bottom of the Quotation. (R. at 707). On January 4, 2008, SCE&G signed the Quotation to agree as to the price set forth therein and that other documents would be forthcoming that would also govern the Parties' relationship. (R. at 708). Also, importantly, on January 4, 2008, Anson received a Purchase Order from SCE&G. (R. at 709).

The Purchase Order stated in pertinent part that "Anson Construction Company, Inc. ("Contractor") shall provide all labor, supervision, equipment and materials required to complete the installation of the concrete vault for the Dock Street Theater project (hereinafter "Work") for South Carolina Electric and Gas Company." Id. The Purchase Order further specifically provided that the work would be performed "in accordance with ...[SCE&G 's] General Terms and Conditions dated 02/28/2006...". Id. Additionally, the Purchase Order stated that "The Work shall be performed at the Contractor's quoted Price indicated below and in Contractor's quotation dated December 11, 2007." Id.

According to Paragraph 1:30 of the General Terms and Conditions, "[SCE&G] and [Anson] shall be bound by this contract and its terms and conditions when [Anson] executes and returns the unaltered, purchase order acknowledgement *or* when [Anson] renders for [SCE&G] any of the services or delivers to [SCE&G] and of the items required herein." General Terms and Conditions. (emphasis added). In Paragraph 1:09

Anson agreed to protect the property of third parties from damage during its performance of the work contemplated by the Contract. Id. Moreover, pursuant to paragraph 1:26 of the General Terms and Conditions, Anson agreed to "save, defend, indemnify, and hold harmless [SCE&G] from any and all liabilities, claims, suits, actions, proceedings, fines, penalties, forfeitures, losses, damages, and the cost and expenses incident thereto (including but not limited to costs of investigation, defense, settlement, and attorney's fees) arising directly or indirectly out of any act or failure to act on [Anson]'s part, or the part of any agent, servant, or subcontractor, of [Anson], whether independent or otherwise, in connection with the work undertaken under the Contract." Id.

On or about January 7, 2008, Anson began the work. (R. at 412:14-18). Pursuant to the agreement between Anson and SCE&G, Anson controlled the means and methods necessary to accomplish the work. (R. 547:9-11). The work was planned in three stages; first, Anson had to remove the existing sidewalk; second, a hole had to be excavated; and finally, Anson planned to install a trench box in the hole to keep the surrounding soil from shifting while the underground vault was being installed. (R. at 541:22-542:10; R at 426:25-427:13-18).

Area residents testified that Anson broke the sidewalk into pieces with the bucket of its trackhoe by pounding the bucket on the ground and then used the trackhoe bucket to pound the trench box into place. The resulting noise and vibration alarmed everyone in the immediate area including several neighbors on both sides of the Theater. Immediately thereafter, the City issued a stop work order, and the Church and some adjacent property owners claimed that the vibration caused substantial property damage to the Church and surrounding homes. (R. at 49-59).

At this point, SCE&G stepped in to resolve the problem. (R. at 150-151). Unfortunately, Anson stepped back despite being asked to participate in the remediation process and put its insurance carrier on notice of the issue. (R. at 555:16-559:20). At the City's and the Church's urging, SCE&G hired a soil engineer to evaluate the situation and recommend a procedure for remedying the problem. Id. Ultimately, the trench box was abandoned, the hole was filled in, and the transformer was returned to its original location inside of the Theater. Id.

Anson submitted Invoices to SCE&G, which reference the Purchase Order, for the work it performed. (R. at 732). SCE&G paid Anson for the work it was able to perform as contemplated in Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions, and Anson accepted said payment without reservation of right. (R. at 468:20-25).

Mr. Stutsman conceded in his deposition that the Purchase Order was generally part of the contract with SCE&G. (R. at 524:19-25). Mr. Stutsman conceded in his deposition and acknowledges that he received the Purchase Order and General Terms and Conditions as part of the package of documents for the subject job. Id. The Anson Quotation was a bid for the work at the Theater, and it could not be the "subcontractor approved equal" described in Paragraph 2 of the same document. (R. at 3-9; R. at 706; R. at 709-710; R. at 711-731).

Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions were all entered into about the same time. Id. Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions all relate to the same subject matter. Id. The provisions of Anson's Quotation, SCE&G's Purchase Order, and

SCE&G's General Terms and Conditions limit, explain, and/or otherwise affect the provisions of said documents. Id. When read together, Anson's Quotation, SCE&G's Purchase Order, and SCE&G's General Terms and Conditions are unambiguous. Id.

In July of 2009, the Church filed suit to collect money from SCE&G and Anson to repair its building. (R. at 49-59). The Church's claims were based on the means and methods used by Anson when installing the trenchbox, of which Anson testified SCE&G had no control. (R. at 49-59; R. at 547:9-11). SCE&G tendered the defense of that case to Anson and also made a claim against Anson for indemnity. (R. at 150-151). Anson refused to accept SCE&G's defense and Anson denied the indemnity claim. (R. at 555:16-559:20). SCE&G subsequently hired the undersigned to represent it and paid the Church to settle its claim.

On July 15, 2011, Plaintiff, South Carolina Electric & Gas Co. ("SCE&G") filed this lawsuit against Anson Construction Co., Inc. ("Anson"), which is an indemnification case that arose from a prior lawsuit in which SCE&G and Anson were both defendants. (R. at 10-42). SCE&G now seeks to recoup the money it spent remediating damages it contends Anson caused, defending the prior lawsuit, settling the prior lawsuit, and pursuing its claims against Anson in this lawsuit. Id. The Complaint alleges causes of action for breach of contract, contractual indemnification, and equitable indemnification. Id. On September 13, 2011, Anson filed and served its Answer to SCE&G's Complaint. (R. at 43-48). In its Answer, Anson denied the claims and asserted affirmative defenses. Id.

On July 16, 2013, SCE&G filed a Motion for Partial Summary Judgment. (R. at 60-151). On July 18, 2013, counsel for the Parties presented oral argument at a hearing

on the Motion. (R. at 161-210). On July 22, 2013, Judge Nicholson announced his Honor's decision to grant SCE&G's Motion. (R. at 211-286). One day later, the Court signed and filed its Order Granting the Motion. (R. at 3-9).

On July 23, 2013, Anson filed and served its Notice of Appeal to the Court of Appeals. (R. at 152-160). Thereafter, the Parties briefed the issues. On March 12, 2015, the Court of Appeals heard oral argument of counsel, and on May 13, 2015, it issued an Opinion Affirming Judge Nicholson's Order to which Anson filed a Motion for Rehearing that was denied on June 12, 2015. Anson then filed its Petition for Certiorari, and this is SCE&G's Return to that Petition.

## STANDARD OF REVIEW

"A Writ of Certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." SCACR 242(b). In implementing its discretionary powers, this Court should consider the character of reasons why Certiorari is being sought. See SCACR 242(b) (setting forth a list of the types of reasons that Certiorari is granted). Although this Court has discretion or power to grant review in general, the characteristics that should be considered are the following:

1. Where there are novel questions of law.
2. Where there is a dissent in the decision of the Court of Appeals.
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
4. Where substantial constitutional issues are directly involved.
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

SCACR 242(b).

"The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." See 16 Jade St., LLC v. R. Design

Constr. Co., LLC, 728 S.E.2d 448, 454 (S.C. 2012) (applying SCACR 220(c) to affirm a lower court's decision based on the Record).

## ARGUMENTS

Certiorari on all questions/arguments in the Petition should be summarily denied per SCACR 242(b) and 220(c) because there is no novel question of law, no dissent at the Court of Appeals, no conflict with a prior decision of the Supreme Court (though it is posited in Anson's Argument II), no substantial constitutional issue, and no federal question. If, however, the Court decides the Petition does present one of the five foregoing reasons for considering to grant Certiorari, the Petition should still be denied. In sum, Anson argues that somehow there is a scintilla of evidence that its Quotation that calls for additional documentation to be exchanged is, by itself, the Parties' contract. However, each iteration of this argument fails because in response to that Quotation, SCE&G sent Anson a Purchase Order that Anson accepted by performing the work described therein and was paid as set forth in the Purchase Order.

### I. Neither the Court of Appeals nor the Lower Court erred in defining the contract terms as there was no genuine issue of material fact.

The construction of an unambiguous written contract is a question of law for the court. J.T.M. Co. v. Vane, 323 S.E.2d 794 (S.C. Ct. App.1984). Where one construction makes a contractual provision unusual or extraordinary and another construction that is equally consistent with the language employed would make it reasonable, fair and just, the latter construction must prevail. Farr v. Duke Power, 218 S.E.2d 431 (S.C. 1975). The intent and purport of a written contract must be gathered from the contents of the entire agreement and not from any particular clause or portion of the contract. Bruce v. Blalock, 127 S.E.2d 439 (S.C. 1962). In construing terms in contracts, this Court must

first look at the language of the contract to determine the intentions of the parties. Superior Automobile Insurance Co. v. Maners, 199 S.E.2d 719 (S.C. 1973); Farr, 218 S.E.2d 431. When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used to be taken and understood in their plain, ordinary, and popular sense. Warner v. Weader, 311 S.E.2d 78, 79 (S.C. 1983). Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible. Superior Automobile Insurance Co., 199 S.E.2d 719.

"No contract is formed if the acceptance varies the terms of the offer. Instead, an acceptance which adds different or additional terms is treated as a counteroffer, which may be accepted or rejected by the other party." Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus., Inc., 403 S.E.2d 146, 149 (S.C. Ct. App. 1991). In fact, it is not necessary, in order to give validity to a contract, that it should be signed because it is sufficient if it is accepted, held, and acted upon by the parties. Peddler, Inc. v. Rikard, 221 S.E.2d 115 (S.C. 1975). Just because one of the parties has signed the contract does not require that the other party should do likewise. Gladden v. Keistler, 140 S.E. 161 (S.C. 1927); Bulwinkle v. Cramer, 3 S.E. 776 (S.C. 1887). A written contract, which is not required to be in writing, is valid upon acquiescence to it. Id. Acceptance of a contract by assenting to its terms, holding it and acting upon it, is the equivalent to a formal execution. Id. When a party accepts and adopts a written contract, even though it is not signed, it is deemed to have assented to the contract's terms and conditions and to be bound by them. Id.

Where instruments entered into by the same parties at different times relate to the same subject matter, the instruments will be construed together to determine the entire

agreement between the parties. Wilbur Smith & Associates v. National Bank of South Carolina, 263 S.E.2d 643 (S.C. 1980). If the provisions of one instrument limit, explain, or otherwise affect the provisions of the other, they will be given effect to accomplish the entire agreement between the parties. Id.

Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. Southern Ry. Co. v. Springs Mills, Inc., 625 F. 2d 496 (4th Cir. 1980) (applying South Carolina law); Costas v. First Fed. Sav. & Loan Ass'n, 321 S. E. 2d 51 (S.C. 1984). Toomer v. Norfolk Southern Ry. Co., 544 S.E.2d 634 (S.C. Ct. App. 2001). Contractual indemnity involves a transfer of risk for consideration, and the contract itself establishes the relationship between the parties. Rock Hill Telephone Co., Inc. v. Globe Communications, Inc., 611 S.E.2d 235 (S.C. 2005).

In the case at hand, both the Trial Court and the Court of Appeals had the Record now before this Court. Both courts reviewed the law, the facts, the issues, and the arguments utilizing the summary judgment standard of review. In doing so, neither found even a scintilla of evidence to support Anson's arguments, which Anson is now advancing to this Court.

Relying on the Record and settled contract law concerning offer, acceptance, and counteroffer, the Court of Appeals found that the undisputed evidence showed Anson's Quotation constituted an offer to SCE&G, which SCE&G countered with its Purchase Order that contained general terms and conditions. Anson then accepted SCE&G's counteroffer by performing the work and was paid pursuant to the Purchase Order. The Court of Appeals found Paragraph 1:33 of SCE&G's terms and conditions, which Anson

received three days prior to beginning performance, particularly instructive on this point. That Paragraph provides, "[Anson] and [SCE&G] shall be bound by this CONTRACT and its terms and conditions . . . when [Anson] renders for [SCE&G] any of the services." Accordingly, the Court of Appeals correctly affirmed the Lower Court's ruling that Anson is contractually obligated to indemnify SCE&G on the well settled law that a contract does not have to be signed, but rather, it is sufficient if the contract is accepted, held, and acted upon by the Parties as Anson and SCE&G did in the case at bar.

The Lower Court reached the same conclusion as the Appellate Court that Anson must indemnify SCE&G finding that there was no genuine issue of material fact as to the contract terms between SCE&G and Anson. Specifically, it found that although Anson's Quotation and SCE&G's Purchase Order that contained general terms and conditions were exchanged, the documents related to the same subject matter, and as such, these documents should be construed together to determine the entire agreement between the Parties. Much like the Court of Appeals, the Lower Court found it dispositive that Anson received the Purchase Order that contained the indemnification provision prior to commencing work, and that Anson received, held, assented to, acted upon, and was paid with reference to the Purchase Order for its work. Id.

Both the Court of Appeals and the Lower Court properly concluded that SCE&G's terms and conditions, which include a valid indemnification clause, bind Anson to indemnify SCE&G in an amount to be determined at the trial of this matter including, but not limited to, SCE&G's expenses for remediating damages Anson caused, defending the prior lawsuit, settling the prior lawsuit, and pursuing its claims against Anson in this lawsuit. Although Anson did not sign the Purchase Order, it clearly

assented to its terms, held it, and acted upon it thereby binding it as if it was formally executed. Accordingly, the Court of Appeals and the Lower Court properly concluded as a matter of law that Anson is contractually obligated to indemnify SCE&G for damages to be determined at a trial of this matter. Therefore, this Court should deny Certiorari as to this argument.

## II. The Court of Appeals' Opinion that the signed quotation by itself was not the Parties Contract is supported by existing contract law and Supreme Court precedent.

The arguments set forth in the prior section are equally applicable to Anson's Argument II. In an effort to satisfy one of the criteria set out in Rule 242(b) Anson argues that the Court of Appeals' decision violates precedent because the evidence permits more than one reasonable inference as to the Parties' intent. To accept that argument, however, would require this Court to elevate argument over fact and completely disregard the undisputed facts in the Record and the law of this State. Specifically, this Court would have to ignore that Anson admits the Quotation it drafted contemplates the exchange of another document, that it received that document (i.e., SCE&G's Purchase Order) the day after providing the Quotation, which was three days before beginning work on the project. Additionally, this Court would have to gloss over the important fact that Anson applied for and accepted payment from SCE&G per the Purchase Order's terms and conditions.

In fact, the President of Anson conceded in his deposition that the Purchase Order was generally part of the contract with SCE&G. Likewise, he acknowledged that Anson received the Purchase Order and General Terms and Conditions as part of the package of documents for the subject job, that the Anson Quotation was a bid for the work, and that

it could not be the "subcontractor approved equal" described in Paragraph 2 of the same document. Furthermore, Anson's President did not dispute that Anson applied for payment per the Purchase Order, and he rightly acknowledged that Anson used the Purchase Order number to apply for payment and was paid as provided by the Purchase Order terms and conditions.

Accordingly, this Court should deny Certiorari as to this argument as the Court of Appeals and the Lower Court properly concluded as a matter of fact and a matter of law that Anson is contractually obligated to indemnify SCE&G for damages to be determined at a trial of this matter.

## III. The Court of Appeals correctly found that SCE&G's Purchase Order and General Terms and Conditions were a counteroffer to Anson.

Most of Anson's Argument III repeats Arguments I and II and for that reason SCE&G's responses to those arguments are incorporated by reference and will not be repeated here. However, two points that Anson emphasizes in Argument III merit separate attention.

First, Anson attempts to make much of an argument that the Court of Appeals sustained the finding of the trial court based upon a legal conclusion that was not briefed by either party. As referenced earlier in this return, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." See 16 Jade St., LLC v. R. Design Constr. Co., LLC, 728 S.E.2d 448, 454 (S.C. 2012) (applying SCACR 220(c) to affirm a lower court's decision based on the Record).

Second, Anson argues repeats in a slightly different way that SCE&G's Purchase Order was not a counteroffer because such a finding completely ignores the effect of SCE&G's signature on the Anson quotation. However, it is Anson, not SCE&G, that

would have this Court to completely disregard undisputed facts in the Record and the law of this State. Specifically, to accept Anson's position this Court would have to ignore that Anson's Quotation, which it drafted, contemplates another document exchanged between the Parties. The Court would have to ignore that the President of Anson conceded in his deposition that the Anson Quotation was a bid for the work, and that it could not be the "subcontractor approved equal" described in the second paragraph he drafted in that Quotation. That evidence leads to the inescapable conclusion that there had to be another document (i.e. SCE&G's Purchase Order) exchanged between the Parties prior to the commencement of work. Accordingly, this Court should deny Certiorari as to this argument as the Court of Appeals and the Lower Court properly concluded that Anson is contractually obligated to indemnify SCE&G for damages to be determined at a trial of this matter.

## IV. The Court of Appeals correctly concluded that there is no evidence in the record to support Anson's position that it began work based solely on its quotation, and thus rejected SCE&G's Terms and Conditions.

Again, the points set forth above are equally applicable to Anson's Argument IV, which is that there is evidence in the record to support Anson's position that it began work based solely on its quotation, and thus rejected SCE&G's Terms and Conditions. Just like Anson's other arguments, it would require this Court to completely disregard the facts in the Record and the law of this State in order to accept it. Much like Argument I, II, and III, this Court would have to ignore that Anson's Quotation, which it drafted, contemplates another document between the Parties and that it not only performed the work per the Purchase Order containing general terms and conditions but that it was paid pursuant to it.

Again, the President of Anson conceded in his deposition that the Anson Quotation was a bid for the work, and that it could not be the "subcontractor approved equal" described in the second paragraph he drafted in that Quotation. Therefore, there had to be another document (i.e. SCE&G's Purchase Order) exchanged between the Parties prior to the commencement of work. Likewise, he acknowledged that Anson received the Purchase Order that contained general terms and conditions as part of the package of documents for the subject job. Furthermore, he does not dispute that Anson applied for payment per the Purchase Order, and he rightly recognizes that Anson was paid per the Purchase Order terms and conditions.

Accordingly, this Court should deny Certiorari as to this argument as the Court of Appeals and the Lower Court properly concluded as a matter of fact and a matter of law that Anson is contractually obligated to indemnify SCE&G for damages to be determined at a trial of this matter.

## V. The Court of Appeals opinion is not internally inconsistent because it affirms the Lower Court's ruling on slightly different grounds supported by the record and the law of our State.

In SCE&G's Final Brief to the Court of Appeals, it requests the Court to affirm the Lower Court's Order. However, SCE&G also asks the Court of Appeals to please consider the entire Record, and in doing so, gives leave for the Court of Appeals to affirm on any grounds in the Record and the laws of our State. More importantly, it is the law of our State that the Court of Appeals "may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." See 16 Jade St., LLC v. R. Design Constr. Co., LLC, 728 S.E.2d 448, 454 (S.C. 2012) (applying SCACR 220(c) to affirm a lower court's decision based on the Record). Just because the Court of

Appeals reached the same, proper conclusion does not mean that the Lower Court's Order is invalid. Accordingly, this Court should deny Certiorari as to this argument as the Court of Appeals and the Lower Court properly concluded as a matter of fact and a matter of law that Anson is contractually obligated to indemnify SCE&G for damages to be determined at a trial of this matter.

## VI. The Court of Appeals properly affirmed the Lower Court's ruling and summarily dismissed all other arguments raised by Anson.

### A. In affirming the Lower Court, the Court of Appeals did not have to specifically address Anson's argument that it waived the condition precedent of a subsequent contract.

The points set forth above are equally applicable to Anson's Argument VI(A), which is that the Court of Appeals Opinion had to discuss all arguments made by both Parties. Specifically, Anson would like Certiorari granted because an argument about waiving a condition precedent to the contract was not addressed. However, the Court of Appeals is not obligated to address every single issue/argument presented to it.

If, however, this Court decides this section of Anson's Argument does present one of the SCACR 242(b) reasons for considering granting Certiorari, the Petition should still be denied. Much like every other Argument, this Court would have to ignore that Anson's Quotation, which it drafted, requires another document be exchanged between the Parties (i.e. the condition precedent) and that it not only performed the work per the Purchase Order but that it was paid per the Purchase Order.

Again, the President of Anson conceded in his deposition that the Anson Quotation was a bid for the work, and that it could not be the "subcontractor approved equal" described in the second paragraph he drafted in that Quotation. Therefore, there had to be another document (i.e. SCE&G's Purchase Order) exchanged between the

Parties prior to the commencement of work. Likewise, he acknowledged that Anson received the Purchase Order and General Terms and Conditions as part of the package of documents for the subject job. Furthermore, he does not dispute that Anson applied for payment per the Purchase Order, and he rightly recognizes that Anson was paid per the Purchase Order terms and conditions.

Accordingly, this Court should deny Certiorari as to this argument as the Court of Appeals and the Lower Court properly concluded as a matter of fact and a matter of law that Anson is contractually obligated to indemnify SCE&G for damages to be determined at a trial of this matter.

**B. In affirming the Lower Court, the Court of Appeals did address Anson's argument that the condition precedent was actually satisfied.**

The points set forth above are equally applicable to Anson's Argument VI(B), which is that the Court of Appeals Opinion had to discuss all arguments made by both Parties. Specifically, Anson would like Certiorari granted because an argument about satisfying the condition precedent by signing the Purchase Order was not addressed.

Much like every other Argument, this Court would have to ignore that the facts in the Record and the law of our State. Specifically, the condition precedent (i.e. the exchange of another document between the Parties) was satisfied when SCE&G provided its Purchase Order to Anson, which Anson then acted on and was paid by reference. The lack of a signature by Anson is immaterial.

Accordingly, this Court should deny Certiorari as to this argument as the Court of Appeals and the Lower Court properly concluded as a matter of fact and a matter of law that Anson is contractually obligated to indemnify SCE&G for damages to be determined at a trial of this matter.

### C. In affirming the Lower Court, the Court of Appeals should not overturn its construction of the contract documents

The points set forth above are equally applicable to Anson's Argument VI(C), which is that the Court of Appeals Opinion erred in failing to overturn the Lower Court's ruling that multiple documents (i.e. Anson's Quotation and SCE&G's Purchase Order that contained general terms and conditions) together make up the Parties' contract. In SCE&G's Final Brief to the Court of Appeals, it requests the Court to affirm the Lower Court's Order. However, SCE&G also asks the Court of Appeals to please consider the entire Record, and in doing so, gives leave for the Court of Appeals to affirm on any grounds in the Record and the laws of our State. More importantly, it is the law of our State that the Court of Appeals "may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." See 16 Jade St., LLC v. R. Design Constr. Co., LLC, 728 S.E.2d 448, 454 (S.C. 2012) (applying SCACR 220(c) to affirm a lower court's decision based on the Record). Just because the Court of Appeals reached the same, proper conclusion does not mean that the Lower Court's Order is invalid. Accordingly, this Court should deny Certiorari as to this argument as the Court of Appeals and the Lower Court properly concluded as a matter of fact and a matter of law that Anson is contractually obligated to indemnify SCE&G for damages to be determined at a trial of this matter.

## CONCLUSION

For the foregoing reasons as well as any ground appearing on the record as provided by SCACR 220(c), the Supreme Court of South Carolina should deny the Petition for Certiorari and remand the case for a trial as to Respondent's damages.

Respectfully submitted,

September 22, 2015

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**THE STATE OF SOUTH CAROLINA**
In The Supreme Court

RECEIVED

SEP 25 2015

S.C. Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

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**PROOF OF SERVICE**

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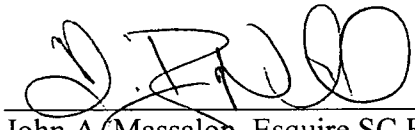
I certify that I served Respondent's Return to Petition for Certiorari on Petitioner by depositing a copy of it in the United States Mail, postage prepaid, on September 22, 2015, addressed to its attorneys of record, Everett A. Kendall, II, Esquire and J. Eric Cavanaugh, Esquire, 1515 Lady Street, Columbia, SC 29211.

September 22, 2015



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