THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2019-001485
Case No. 2019-CP-26-00345

Michael Marceda and Cheryl Marceda, Appellants,

v.

Winchester Oceanview Development, Inc.,
Sands Building Group, Inc., C3 Studio, LLC,
Sands Realty Group, Inc., Jonathan B. Dickerson,
and John Woodard, Defendants,

of which C3 Studio, LLC, is the Respondent.

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SC Court of Appeals

APPELLANTS' FINAL REPLY TO RESPONDENT'S INITIAL BRIEF

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The issue before this Court is whether to impose a different meaning on the Frivolous Civil Proceedings Sanctions Act ("Act") than the meaning expressed in the plain and unambiguous language used by the General Assembly. The plain and unambiguous language requires an affidavit of professional negligence in actions against architects, but not in actions against architectural firms. Respondent argues that it would be better if affidavits were also required in actions against firms. Maybe it would be. But neither the trial Court nor this Court is at liberty to set aside the plain and unambiguous language of the Act to broaden the affidavit requirement as Responded urges.

"It is well-established that the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535–36, 725 S.E.2d 693, 695–96 (2012) (internal citations and quotations omitted). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* As a result, both the trial court and this Court "must follow the plain and unambiguous language in [the] statute and have no right to impose another meaning." *Id.* "It is only when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it that [the Court may] look beyond the statute's plain language." *Id.*

The standard is clear – in order to look beyond the plain language of the Act, Respondent must show that "applying the words literally leads to a result ***so patently absurd*** that the General Assembly ***could not have intended it***." *Grier*, 397 S.C. at 536 (emphasis added). The standard is "***could not*** have intended it," not "might not have intended it" or "should not have intended it" or "would have been better had the General Assembly not intended it."

Respondent comes nowhere close to showing that applying the words literally leads to a result that is absurd, let alone "***so patently absurd*** that the General Assembly ***could not have intended it***." *Grier*, 397 S.C. at 536 (emphasis added). Respondent speculates extensively that the legislature's intent might have been different than what the plain language of the Act explicitly says. Not only is this speculation unsupported by any citation to legislative history, it is also legally immaterial. Until Respondent meets the threshold burden of showing that the plain language "leads to a result ***so patently absurd*** that the General Assembly ***could not have intended it***," the Court is not permitted to peer in the collective mind of the General Assembly in order to impose another meaning in place of what the General Assembly actually said in the Act.

Turning now to what the General Assembly actually said, Section 15-36-100(B) states that the affidavit requirement applies "in an action for damages alleging professional negligence against ***a professional*** licensed by or registered with the State of South Carolina and listed in subsection (G) . . ." (Emphasis added). If the General Assembly's use of the term "a professional" were not clear enough, the statute then goes on to list twenty-two different types of professional people – not companies – including:

(1) architects;
(2) attorneys at law;
(3) certified public accountants;
(4) chiropractors;
(5) dentists;
(6) land surveyors;
(7) medical doctors;
(8) marriage and family therapists;
(9) nurses;
(10) occupational therapists;
(11) optometrists;
(12) osteopathic physicians;
(13) pharmacists;
(14) physical therapists;
(15) physicians' assistants;
(16) professional counselors;
(17) professional engineers;
(18) podiatrists;
(19) psychologists;
(20) radiological technicians;
(21) respiratory therapists; and
(22) veterinarians.

All of the above are human beings, not companies. Which makes sense, as only a human being is capable of being "a professional" in the first place. No corporation of which Appellant is aware has attended medical school and become a medical doctor. No LLC of which Appellant is

aware has attended dental school and become a dentist. No law firm of which Appellant is aware has attended law school and sat for the bar exam.

The General Assembly's choice of language is not accidental, as the General Assembly knows the difference between an "architect" and an "architectural firm." In fact, the General Assembly itself defined the terms. In Title 40, Chapter 3, Professions and Occupations, the General Assembly said:

> ""Architect" means ***an individual*** who, by reason of the individual's general knowledge of the principles of architecture acquired by professional education and practical experience, is qualified to engage in the practice of architecture as attested by the individual's registration as an architect." SC Code Ann. § 40-3-20(1) (emphasis added). ""Individual" means a single human being."
>
> SC Code Ann. § 40-3-20(5).

In contrast, the General Assembly defined an architectural "Firm" as follows:

> ""Firm" means ***a business entity*** functioning as a partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, or other firm association which practices or offers to practice architecture"
>
> SC Code Ann. § 40-3-20(3) (emphasis added).

Thus, it is clear that "architects" are individual human beings, while architectural "firms" are business entities. Appellants have searched exhaustively for an instance where the General Assembly defined "architect" to include entities in addition to human beings. None have been found, and Respondent does not cite any.

When the General Assembly uses a term that it defined itself, it is presumed to know what that term means. *See e.g. State v. Bridgers*, 329 S.C. 11, 14, 495 S.E.2d 196, 198 (1997) ("where a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense."). The General Assembly defined "Architect" to include only human beings long before it enacted the Frivolous Civil

Proceedings Sanctions Act. Accordingly, when the General Assembly chose to include "Architects" rather than architectural "Firms" in the list of those receiving protection from the Act, it knew that it was including human beings and excluding business entities.

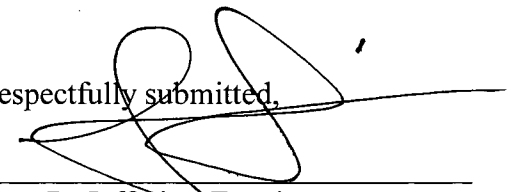
Why might the General Assembly have chosen to protect individual architects rather than architectural firms? Plausible reasons include individuals being less well capitalized than entities; individuals often operating without insurance or with significantly less insurance than entities; individuals not having large staffs to respond to burdensome document production requests; etc. A few minutes of brainstorming generates all manner of plausible reasons.

Are the above the actual reasons that motivated the General Assembly? Neither Appellants nor Respondent can claim to know. But it does not matter, because the fact that plausible reasons exist shows that protecting individual architects rather than architectural "Firms" is not absurd – there are plausible reasons for doing so. *See, e.g., Worsley Companies, Inc. v. S.C. Dep't of Health & Envtl. Control*, 351 S.C. 97, 104, 567 S.E.2d 907, 911 (Ct. App. 2002) ("The courts will uphold a legislative enactment against constitutional attack if there is any reasonable hypothesis to support it.") (applying the rational basis standard of review).

The burden is on Respondent to show that there are no such reasons as those listed above; that protecting individual architects rather than firms is so patently absurd that the General Assembly could not have intended it. Respondent cannot meet this burden.

Could the Act have been better written? Maybe. Might Respondent's view be better as a matter of public policy? Maybe. But it does not matter, because whether or not applying the words literally leads to the ***best*** result is not the question. The question is whether applying the words as written leads to a result ***so patently absurd*** that the General Assembly ***could not have intended it***. Clearly it does not. It simply leads a result that Respondent does not like.

Respectfully submitted,



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