THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2019-001485
Trial Court 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., Johnathan B. Dickerson, and John Woodward, ... Defendants,

Of which C3 Studio, LLC, is the ..... Respondent.

FINAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF THE FACTS AND CASE

Appellant homeowners filed this single-family residential construction defect case in January 2019 against Respondent architectural firm C3 Studio, LLC ("Respondent") and others. Appellants allege miscellaneous defects within the subject house, *e.g.*:

1. That the master bedroom door handle does not work as it should;
2. That the handrail for the interior steps has not been stained as it should;
3. That one or more of the air ducts in the attic are not hanging straight;
4. That the closet door stoppers are not adjusted as they should be and are now sticking;
5. That the kitchen sink is unreasonably slow to drain;
6. That the screws are coming back out of the decking on the front deck;
7. That the light and fan in the master bath toilet closet do not work; and
8. That the electrical panel cover is being held in place with wood screws rather than appropriate fasteners.

(R. pp. 5-7).

Appellants' Complaint contains no allegations of negligence specific to Respondent; it only contains a list of alleged defects and general allegations of negligence on the part of all Defendants

(and specific alleged representations by the developer/seller of the subject property). (*See, generally,* R. pp. 3-13). However, given the nature of Respondent's relevant services and the Complaint in general, it is clear and undisputed that Appellants are making a professional negligence claim against Respondent. For that reason, Respondent filed a Motion to Dismiss the Complaint on March 11, 2019, for Appellants' failure to attach the statutorily-required affidavit of an expert witness identifying at least one negligent act by Respondent. S.C. Code Ann. § 15-36-10, *et seq* (the "Act"). (*See,* R. pp. 16-21). An explanation of the grounds for that motion was contained therein: that Appellants had filed professional negligence-based claims against a defendant protected by the Act, but failed to attach to their Complaint an affidavit of an expert witness. (R. pp. 17-19).

Appellants chose not to submit a memorandum or brief in opposition to Respondent's Motion to Dismiss, but informed Respondent via e-mail of the specific grounds upon which Appellants intended to defend against the Motion to Dismiss (namely, that the Act did not apply to corporations). (R. p. 143). In this email exchange, counsel for Appellants asked for any authority supporting Respondent's position, and Respondent provided Appellants' counsel with same, in the form of two court orders applying the Act's contemporaneous affidavit requirement to corporations. (*See,* R. p. 143). One of those orders, Order Granting Defendant Cottingham & Associates, Inc.'s Motion to Dismiss, *Collins v. Harrison Investments and Technological Enterprises, Inc., et al*, C.A. No. 2016-CP-04-01577 (March 3, 2017), included a detailed analysis of the Act's applicability to corporations, touching on points such as: (1) that *Oakman v. Lincare, Inc.* (discussed below), did not bind that court and was distinguishable; (2) the intent behind and reading of the Act and South Carolina's licensing laws evidenced that the Act was intended to

apply to corporations; and (3) that excluding corporations from the Act's purview would be an absurd result, also violating Equal Protection principles. (*See*, R. pp. 103-112).

The specific issue of the Act's applicability to corporations was not addressed in the explanation of grounds contained within the Motion to Dismiss. For that reason, Respondent submitted a Supplemental Memorandum in Support of the Motion to Dismiss to brief the issue for the lower court. (*See*, *generally*, R. pp. 22-30).

On April 24, 2019, the Honorable Benjamin Culbertson heard Respondent's Motion to Dismiss. During the hearing, Respondent argued the same points made in the Motion to Dismiss, the email exchange between counsel, and the Supplemental Memorandum. (R. pp. 46-52, 61-62). Having never filed a brief, Appellants presented their argument for the first time at this hearing. (R. pp. 52-60). Judge Culbertson granted Respondent's Motion to Dismiss via Form 4 Order that day, except that Culbertson granted Appellants thirty (30) days to file the required affidavit to survive dismissal. (R. p. 41). Judge Culbertson asked counsel for Respondent to prepare a formal order, (R. p. 65, line 16-p. 66, line 1), which was entered May 8, 2019. (R. pp. 68-72).

Instead of filing the required affidavit, Appellants filed a Rule 59, SCRCP, Motion to Alter/Amend on May 20, 2019. (*See*, R. pp. 73-93). Just as Respondent did in its Motion to Dismiss, Appellants included in their Motion to Alter/Amend an explanation of the grounds therefor, obviating the need for a supporting memorandum. Appellants argued that: (1) the Act does not apply to corporations (relying on *Oakman*); (2) the Supplemental Memorandum was untimely; and (3) the trial improperly relied upon facts not in the record. (R. pp. 74-82). These are the same arguments Appellants make in this appeal. On June 7, 2019, Respondent submitted its Brief in Opposition to Appellants' Motion to Alter/Amend, which included several lower court orders dismissing professional negligence claims against firms for failing to meet the Act's

affidavit requirement. (R. pp. 94-148). Appellants could have filed a reply brief, but did not. Appellants' Motion to Alter/Amend was heard on July 23, 2019, by Judge Culbertson. Appellants asked Judge Culbertson only to provide additional explanation of the basis of his ruling. (R. p. 160, lines 7-12). Judge Culbertson determined that the Order granting dismissal contained all required explanation, and thus denied Appellants' Motion to Alter/Amend, except that Culbertson again gave Appellants thirty (30) days to file an affidavit of an expert to sustain their claims against Respondent. (R. pp. 164-65). Instead of obtaining such an affidavit, Appellants initiated this appeal on August 21, 2019.

ARGUMENTS

I. The Lower Court Properly Interpreted The Frivolous Civil Proceedings Sanctions Act In Dismissing Appellants' Claims Against Respondent For Failing To Attach The Statutorily-Required Expert Affidavit To Appellants' Complaint.

In 2005, as part of its tort reform efforts and in an attempt to curtail frivolous claims against professionals, the South Carolina Legislature enacted the Act, S.C. Code Ann. § 15-36-10 to -100; *see also* 2005 S.C. Acts 32. Among other things, the Act sets forth the mandatory pre-suit procedure a plaintiff must follow in order to make professional negligence damage claims in a civil action. *See* S.C. Code Ann. § 15-36-100.

Specifically, § 15-36-100 of the Act applies to actions "for damages alleging professional negligence," including those against members of the architectural profession. S.C. Code Ann. §§ 15-36-100(B) & (G)(1). In such actions, "the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim . . . ." S.C. Code Ann. § 15-36-100(B). If a plaintiff fails to comply with the Act's affidavit requirement, the complaint "is subject to dismissal for failure to state a claim." S.C. Code Ann. § 15-36-100(C)(1). As the Act's title indicates, the purpose of the Act is

to eliminate frivolous lawsuits against this state's professionals by forcing would-be plaintiffs to investigate their purported claims, and provide evidence of the merits of those claims through an expert's affidavit. Notably, expert testimony eventually would be required to support such professional negligence (and related breach of contract) claims, regardless of the Act. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 473, 570 S.E.2d 197, 204 (Ct. App. 2002) (holding that a party claiming professional negligence was required to support both its tort and contract claims with expert testimony to establish the applicable standard of care).

All of Appellants' claims against Respondent fall squarely within the purview of the Act's affidavit requirement, because Appellants must prove that Respondent breached its professional duties to them. (R. pp. 5-14). Therefore, Appellants were required by the Act to investigate those claims before suing Respondent, and to evidence such investigation by an expert architect's affidavit filed contemporaneously with the Complaint. Appellants failed to meet this requirement. Instead, Appellants filed precisely the type of unsubstantiated lawsuit the Act is intended to prevent: one without a threshold showing that the claim potentially has merit.

A. The intent of the Act and South Carolina's licensing laws concerning the practice of architecture through a firm evidence that the Act applies to professional negligence-based claims against firms.

Appellants contend that the Act's affidavit requirement applies only when an individual architect (and not a firm) is sued. (R. pp. 74-82). This contention is contrary to both the letter and intent of the Act. "All rules of statutory construction are subservient to the one that the legislative intent must prevail it if can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). Where a statute is in derogation of common law, "it must be strictly

construed and not extended in application beyond clear legislative intent;" however, "the statute must also be read as a whole and in harmony with its purpose" and ". . . as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *16 Jade Street, LLC v. R. Design Constr. Co., LLC*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012) (emphasis added). "Any ambiguity in a statute must be resolved in favor of a just, equitable, and beneficial operation of the law." *Sweat*, 386 S.C. at 350, 688 at 575. Thus, this Court must take a holistic view of the Act in order to properly assess its intent.

First, the Act's title, and its reference to the architecture "profession" evidence that it is intended to apply to the claims *sub judice*. Section 15-36-100 of the Act is entitled: "Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission." S.C. Code Ann. § 15-36-100 (emphasis added). Moreover, Section (G) of the Act states that its affidavit requirement applies to the architecture "profession." *See* S.C. Code Ann. § 15-36-100(G)(stating: "this section applies to the following professions: . . . (1) architects") (emphasis added). Obviously, firms and architects alike are part of the architecture "profession" protected by the Act; and Appellants are making a "professional negligence" claim against Respondent, which is part of the architecture profession. Therefore, it matters not whether the architect or the firm is named in the lawsuit; the Act applies regardless.

Moreover, South Carolina's architecture licensing laws, S.C. Code Ann. § 40-3-5, *et. seq.* (the "Licensing Statute"), make clear that, although a plaintiff may choose to sue the corporation/firm, such claims are, in reality, nothing more than claims asserted against the professional services of the individual licensed architect practicing through the firm.

The Licensing Statute permits an architect to affiliate with a firm, but only if the firm possesses a certificate of authorization. S.C. Code Ann. § 40-3-30(C). As described by the

Licensing Statute, this certificate of authorization permits the architect to practice through a firm. *Id.* The Licensing Statute does not confer upon the firm an ability to perform professional architectural services without the involvement of a licensed professional; rather, a licensed professional must be involved with, and responsible for, such services. *Id.* (describing that each firm must employ one or more architects registered in this State who are designated as being in full authority and responsible charge of the architecture practice); *see also* S.C. Code Ann. § 40-3-270(B) (providing that, as a prerequisite to obtaining a certificate of authorization, a firm must designate a licensed professional as being in full authority and responsible charge). In sum, when professional services are performed by virtue of a professional's association with a firm, the professional services nonetheless are rendered by, and traceable directly to, a licensed architect with professional responsibility for such services.

The General Assembly's (1) use of the phrase "through a firm" when describing the services rendered by a professional affiliated with a firm, (2) requirement that licensed professionals perform all architectural services offered by the firm, and (3) statutorily rendering the firm responsible for the acts of the professional, evidence that no distinction of consequence exists between the professional and the firm with respect to their professional responsibilities. S.C. Code Ann. § 40-3-30(C). Thus, at their core, claims against a professional architecture firm are claims "against a professional licensed by . . . the State of South Carolina," S.C. Code Ann. § 15-36-100(B), and such claims rightly fall within the purview of the Act.

B. This Court should refuse to adopt a statutory interpretation which excludes from the Act's purview claims against firms, because this would lead to an absurd result completely antagonistic to the Act's intent.

"However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not

possibly have been intended by the Legislature or would defeat the plain legislative intention." *Kiriakides v. UA Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect. *Id.*

The Act was implemented by the South Carolina General Assembly as part of 2005 S.C. Act 32 ("Act 32"). As described in Part I of Act 32, the laws contained therein shared the common purpose of "tort and other civil action reform." *Id*. In addition to implementing new laws and modifying existing tort laws, Act 32 also implemented and modified numerous measures tailored specifically to protecting professionals, including laws establishing: (1) liability caps on medical malpractice claims; (2) pre-litigation requirements for medical malpractice claims; and (3) limitations on the liability of members of professional committees (including, specifically, professional engineer committees). *Id*. Stated simply, the changes contained in Act 32 were intended to decrease the civil action liability exposure of South Carolina's professionals.

An interpretation excluding professional firms from the Act would render the Act largely nugatory by practically narrowing its protections to only those few professionals who practice in their individual name, without the protection of a corporate or business form. This would be an absurd result. For instance, as to architects specifically, because the Licensing Statute renders the firm through which the architect practices statutorily responsible for the professional's actions, S.C. Code Ann. § 40-3-30(C), a plaintiff which cannot obtain an affidavit evidencing the legitimacy of its professional malpractice claim can simply circumvent the Act by suing the firm, thereby embroiling the firm in the exact type of frivolous litigation the Act is intended to limit or prevent. South Carolina's corporate laws allow professionals to operate in a corporate form to enjoy the benefits of pooling capital, as well as reducing personal risk in certain circumstances.

Adopting an interpretation of the Act which renders the Act inapplicable to professional firms would be deleterious to professional corporate formation and would serve no useful purpose. No logical reason exists for the Act to protect individual professionals but not professional corporations. Accordingly, Respondent respectfully submits that interpreting the Act to apply only to claims against individual professionals would be an absurd result, which this Court is empowered to prevent.

C. An interpretation of the Act that excludes firms would violate Equal Protection principles.

All statutes are "presumed constitutional and, if possible, will be construed to render them valid." *State v. Neuman*, 384 S.C. 395, 683 S.E.2d 268 (2009). When interpreting a statute, a "possible constitutional construction must prevail over an unconstitutional interpretation." *Id.*

"The constitutional guarantee of equal protection of the laws requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." *Marley v. Kirby*, 271 S.C. 122, 123-24, 245 S.E.2d 604, 605 (1978); *see also* U.S. CONST. amend. XIV, § 1; S.C. CONST. art. I, § 3 (containing South Carolina's Equal Protection Clause). The Equal Protection Clause applies to both natural persons and business entities. *See generally Southern Bell Tel. & Tel. Co. v. Spartanburg*, 285 S.C. 495, 331 S.E.2d 333 (1985) (applying the equal protection clause to a business entity, and finding an ordinance unconstitutional).

The requirements of the Equal Protection Clause are satisfied if: "1) the classification bears a reasonable relation to the legislative purpose sought to be effected; 2) the members of the class are treated alike under similar circumstances and conditions; and 3) the classification rests on some reasonable basis." *Samson v. Greenville Hospital Systems*, 295 S.C. 359, 364, 368 S.E.2d 665, 666 (1988). While great deference is provided to the legislature, a classification must not be

arbitrary. *See, e.g., Robinson v. Richland County Counsel*, 293 S.C. 27, 31-32, 358 S.E.2d 392, 395 (1987).

Applying the Act to professional firms comports with Equal Protection principles by treating the similarly-situated professionals and professional firms uniformly, despite the technical fact that professional firms are corporate business entities through which licensed professionals practice. Conversely, an interpretation which excludes professional service firms from the Act's purview arbitrarily and inexplicably: (1) excludes professional service firms from the class of protected persons; and (2) treats members of the class of individual professionals differently based on whether or not the professional practices through a firm or happens to be named individually in a lawsuit. In interpreting the Act, this Court should do so in a way which comports with the Equal Protection Clause as opposed to one which strains or violates same.

D. Public policy also dictates that the Act be interpreted to apply to firms.

As the employer of the affiliated architects practicing through them, it is axiomatic that firms are vicariously liable for any negligent architectural services provided by its affiliated architects. Respondent has no more or less liability than the allegedly-negligent affiliated architect; therefore, it must be granted the same statutory protections afforded to its affiliated, individual architects. Forcing this state's professionals to choose between the protections of the corporate form or the protections of the Act, as Appellants would have this Court do, is both nonsensical and completely antagonistic to the intent of the Act. Such a decision would incentivize this state's professionals to practice in a state where both the professional and firm are protected against frivolous lawsuits.

Moreover, Appellants eventually must support their professional negligence claims with expert testimony. *Tommy L. Griffin*, 351 S.C. at 472, 570 S.E.2d at 203. Thus, in (properly) applying the Act's contemporaneous affidavit requirement in this case, the lower court did not add

an obstacle to Appellants' case; it merely moved that preexisting obstacle to the outset of the case. This (1) effectuates the letter and intent of the Act, (2) promotes judicial economy by dismissing untenable lawsuits from the court system at an early stage, and (3) protects Respondent from a frivolous lawsuit.

E. *Oakman* is patently inapplicable to the case *sub judice*, because it is a federal product defect case.

Appellants rely on *Oakman v. Lincare, Inc.*, for the proposition that the Act's affidavit requirement is inapplicable to corporations. C.A. No. 1:13-cv-00428-JMC, 2013 WL 3549848 (D.S.C. July 10, 2013). This is not binding precedent, and is not persuasive.

Oakman involved a product defect claim against the manufacturer and suppliers of a medical device, which allegedly caused the user to breathe fire and die. *Id.* at *2-3. The *Oakman* plaintiff asserted UCC breach of warranty and strict liability claims against the defendants. *Id.* at *7-8. As noted by the court in *Oakman*, the circumstances at hand did not involve a "professional engineering consulting firm." *Id.* at *18. Instead, the defendant was a manufacturer, which apparently claimed that some tangential engineering would typically have been performed to develop the product at issue. *Id.* at *10. The distinction between product defect claims against manufacturers and professional negligence claims against architectural firms is both significant and obvious with respect to analyzing the applicability of the Act, because nowhere in the Act is there any reference to or implication of an intention to cover product defect claims. Instead, the Act expressly covers professional negligence claims involving the architecture profession. S.C. Code Ann. § 15-36-10, *et seq*.

Stated simply, in *Oakman*, the court was faced with deciding whether the Act should be extended outside of the realm of the listed claim types and covered professions to product defect claims against sellers and manufacturers, and that Court understandably declined. Conversely, the

issue in this appeal is whether, read in its entirety and in light of the Act's intent, the Act's affidavit requirement applies when a plaintiff sues an architectural firm alleging professional negligence with respect to its architectural services delivered on a construction project.

F. The Act's reference to the protected "health care facility" does not establish that an architectural firm is excluded from the purview of the Act.

Appellants have pointed to a subsection of the Act referencing the protected "health care facility," to argue that the converse must be true for the architectural industry (*i.e.*, that architectural firms must not be covered, because the Act does not similarly expressly reference same). (R. p. 75). This contention ignores that the Act does expressly reference the architecture "profession." S.C. Code Ann. § 15-36-100(G)(1). The lower court (and several other circuit courts) correctly found that the architecture "profession," which includes both individuals and firms, is covered by the Act. (Order Granting Mot. Dismiss 4). Moreover, Appellants' argument exhibits the fallacy of the converse. The Act's reference to the "health care facility," S.C. Code Ann. § 15-36-100(B), is not intended to preclude protection of other industries' firms/facilities. Instead, it is explained easily by the unique nature of the healthcare industry, where doctors regularly practice inside hospitals which do not actually employ them (*cf*, architectural firms which directly employ their affiliated architects). In this scenario, the hospital could be sued for the actions of a doctor whom it does not employ. This unique characteristic of the healthcare industry warranted the Act's specific attention; the legislature wanted to ensure that the Act's protections of the firms employing the architects, attorneys, etc., were equally available to the facilities/hospitals housing, but not employing, doctors. The location of the Act's reference to "health care facility" further supports this common-sensical explanation. This reference is not contained in subsection (G), the list of protected "professions;" rather, it is contained in subsection (B), the paragraph enumerating the contemporaneous affidavit requirement, as a supplement to subsection (G)'s list. Accordingly, a

proper reading of the entire Act clearly evidences that it is intended to apply to firms and persons alike.

II. The Lower Court Had Discretion To Consider Respondent's Supplemental Memorandum In Support Of Its Motion To Dismiss.

Appellants contend that the Supreme Court's Civil Motions Pilot Program (the "CMP Program") prohibited Respondent from submitting, and the lower court from considering, Respondent's Supplemental Memorandum in Support of its Motion to Dismiss (the "Supplemental Memorandum"). (R. pp. 81-82). In so doing, Appellants mistake both the nature of the subject pleading and the authority possessed by the lower court.

A. Respondent Was Entitled To File The Supplemental Memorandum, and the Lower Court was Entitled to Rely on Same.

The CMP Program provides that, if no explanation of the basis for the argument is contained therein, a supporting memorandum should be filed with the motion. Order on Civil Motions Pilot Program, 2015-09-10-01, at ¶ 1 (2015). By mischaracterizing the *Supplemental* Memorandum as a *supporting* memorandum, Appellants contend that the Supplemental Memorandum failed to comply with this provision of the CMP Program, because it was filed subsequent to the motion. (R. p. 81).

Because an explanation of Respondent's (four-page) Motion to Dismiss was contained in the motion itself, no supporting memorandum was required at that time. (*See, generally*, R. pp. 16-19). Appellants never filed an opposing memorandum. Through e-mail communications with Appellants' counsel, Respondent's counsel thereafter became aware of Appellants' primary opposition position, which position was not specifically addressed in Respondent's explanation contained in the Motion to Dismiss. Therefore, Respondent filed and served its Supplemental Memorandum, (*see, generally*, R. pp. 22-30), so as to fully brief the lower court on the issues,

which were fully argued in the subsequent hearing. Stated otherwise, it was Appellant's failure to file and serve an opposing memorandum that necessitated Respondent's Supplemental Memorandum; otherwise, Respondent could have simply filed a reply to Appellant's opposing memorandum. Regardless, Appellants cite no authority or provision prohibiting *supplemental* memoranda (there is none), especially in this scenario wherein Appellants' own actions necessitated same. Lastly, the lower court possesses discretionary powers to extend the deadlines contained in the CMP Program. Order on Civil Motions Pilot Program, 2015-09-10-01, at ¶ 4 (2015) ("The court may extend or expedite the briefing schedule in its discretion."). Therefore, the lower court properly exercised its discretion in considering Respondent's Supplemental Memorandum in order to rule on the merits of all arguments.

B. Appellants Suffered No Prejudice From The Court's Consideration of Respondent's Supplemental Memorandum, Because They Were Already Abundantly Aware Of Respondent's Position Stated Therein.

Appellants claim that Respondent's Supplemental Memorandum prejudiced them, because they were "ambushed" and unable to submit a responsive brief. (Appellants' Initial Br. 16-17).

Appellants were not "ambushed" with Respondent's position. In the above-referenced email exchange between counsel, Appellants first raised the issue of the Act's application to firms (after previously relying on the common knowledge exception to the Act). (R. pp. 144-45). Respondent's counsel informed Appellants' counsel of its position that the Act applies to architectural firms, just as it applies to architects themselves, and even provided two court orders so holding. (R. p. 143). One of those orders involved Respondent's counsel and was based on the identical arguments Respondent has made in this case, which the lower court found persuasive. Order Granting Defendant Cottingham & Associates, Inc.'s Motion to Dismiss, *Collins v. Harrison Investments and Technological Enterprises, Inc., et al*, C.A. No. 2016-CP-04-01577

(March 3, 2017) (noting that *Oakman* was not binding and was distinguishable, the Licensing Statute evidenced that claims against professional firms are truly claims against the professionals themselves, interpreting the Act to exclude firms would be an absurd result antagonistic to the intent of the Act, and that including firms within the purview of the Act comported with Equal Protection principles). Appellants never responded to this March 26, 2019, email, inquired further into Respondent's position, or filed a memorandum addressing this argument with the lower court; they were apparently satisfied with the information Respondent had provided. Therefore, Appellants' claim that they were prejudiced by the Supplemental Memorandum, which merely further detailed Respondent's position of which Appellants were already aware, is untenable. Finally, Appellants did file a Motion to Alter/Amend the Order granting Respondent's Motion to Dismiss, in which Appellants were free to brief their entire position for the lower court's consideration. (*See, generally*, R. pp. 73-83). Notably, however, Appellants did not file a single supporting or opposition brief in this case. Thus, Appellants' contention that they were stripped of a right to fully brief their position also runs contrary to their chosen course of action.

III. The Lower Court Made No Necessary Factual Findings Without Evidentiary Support.

Appellants' Complaint defines Respondent as "Architect," and specifically identifies Greg Huddy as an agent for Respondent. (R. p. 4). They allege that the "Defendants, individually and collectively, undertook responsibility for: … designing the homes," and that they did so negligently. (R. p. 5). Accordingly, it is clear that Appellants assert professional negligence claims against Respondent as the architect which designed this home, which claims fall under the purview of the Act. Appellants have not argued otherwise.

Appellants complain that three factual findings are unsupported by the evidence: (1) that Greg Huddy is an architect; (2) that Greg Huddy is licensed in South Carolina; and (3) that Greg

Huddy is Respondent's CEO. (R. p. 82). Appellants have failed to identify how or why these findings were impactful in the lower court's ruling, or were otherwise prejudicial to them. Regardless, as to the first and second findings (that Greg Huddy is an architect licensed in South Carolina), Mr. Huddy's South Carolina architectural license was contained in the lower court's record. (R. p. 21). Moreover, the South Carolina Rules of Evidence allowed the lower court to take judicial notice of this publicly-accessible information. SCRE Rule 201. Therefore, these findings were supported by evidence in the record. As to the third finding (that Greg Huddy is Respondent's CEO), Appellants' Complaint alleges that Greg Huddy is an agent of Respondent; his exact company title is wholly irrelevant to the lower court's Order Granting the Motion to Dismiss. Appellants have failed to show otherwise.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the lower court's Order granting Respondent's Motion to Dismiss.

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The undersigned hereby certifies that the foregoing ***Final Brief of Respondent*** complies with Rule 211(b), South Carolina Appellate Court Rules.

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