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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2020-000651

Martha M. Fountain and Curtis Fountain ..... Plaintiffs

v.

Fred's, Inc. and Wildevco, LLC,..... ..Respondents

v.

Tippins-Polk Construction, Inc. and Rhoad's Excavating Services, LLC.....Third-Party Defendants

Of Whom Tippins-Polk Construction, Inc. is the Petitioner.

PETITIONER'S CONSOLIDATED REPLY TO RESPONDENTS' RETURNS TO PETITION FOR WRIT OF CERTIORARI

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In response to Fred's, Inc. ("Fred's") and Wildevco, LLC's ("Wildevco") (collectively, "Respondents") Return opposing certification, Petitioner Tippins-Polk Construction, Inc. ("Petitioner"), submits this consolidated Reply in support of its Petition for Writ of Certiorari pursuant to Rule 242(g) of the South Carolina Appellate Court Rules.

I. THE COURT OF APPEALS' DECISION MISAPPLIES PREMISIS LIABLITY JURISPRUCENCE REGARDING RESPONDENTS' INDEPENDENT DUTIES OF CARE OWED TO PLAINTIFFS UNDER COMMON LAW, SO AS TO FIND RESPONDENTS FREE FROM FAULT TO SUSTAIN AN EQUITABLE INDEMNITY CAUSE OF ACTION.

A. Petitioner properly preserved its arguments on appeal.

In an effort to misdirect the Court, Wildevco argues that Petitioner failed to preserve certain issues on appeal. Specifically, Wildevco argues in its Return that Petitioner "failed to argue that the [Plaintiffs in the underlying action] did not assert a duty in their Complaint under which [Petitioner] would be liable and thus, Respondents could not establish that [Petitioner] was an indemnitor for causing the [Plaintiff's] damages." (Wildevco's Return at p. 5). Petitioner's position is not, and has never been, that Petitioner was without fault in causing Plaintiffs' damages. Rather, Petitioner's contention throughout the duration of this appeal is that Respondents were sued for and, at the very least, partially at fault in causing Plaintiffs' damages by breaching, in part, independent duties of care owed to Plaintiffs under common law premises liability which serves as a bar to a claim of equitable indemnity. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 60-61, 518 S.E. 2d 301, 305 (Ct. App. 1999) (requiring party seeking indemnity to be free of fault).

"Ordinarily, no point will be considered on appeal which is not set forth in the statement if the issues on appeal." Rule 208(b)(1)(B), SCACR. "When an issue is not specifically set out in the statements of issues, the appellate court may nevertheless consider the issue if it is *reasonably*

clear from an appellant's arguments." Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (emphasis in original). However, "[e]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." Id. "Similarly, a petition for rehearing must 'state with particularity the points supposed to have been overlooked or misapprehended by the court.'" Id. (citing Rule 221(a), SCACR).

Throughout this appeal, Respondents have attempted to skirt their obligations as owners/occupiers of real property by arguing that they did not construct the premises and, therefore, are without fault in the existence of a dangerous condition thereon. However, during the approximately five years that the dangerous condition existed at the subject property, Respondents owed Plaintiffs and other patrons a duty to discover the dangerous condition and either warn of or eliminate the condition, which they did not do. Petitioner has argued time and time again that Respondents were sued for breaching, and did breach, duties of care owed to Plaintiffs under common law premises liability and cannot do an about-face and argue that they should be insulated from responsibility simply because they did not construct the building, thereby ignoring well-established duties of care which they owed to Plaintiffs. As set forth in Petitioner's motion to reconsider the trial court's order:

> Under South Carolina premises liability law, an owner/occupier owes patrons an independent, separate and distinct duty to exercise ordinary care to keep the passageways, sidewalks and such other parts of the premises as are ordinarily used by the customers in transacting business in a reasonably safe condition, and to discover risks and to warn of or eliminate foreseeable unreasonable risks. . . . Under these principles, there is no possibility, and no evidence, that Wildevco and Fred's have no fault in causing Plaintiff's injuries based on the testimony of the expert for Wildevco and Fred's, and the testimony of Tad Barber.

(App. p. 47). Included within Petitioner's issues on appeal was the following: "Did the trial court err in finding that Respondents were without fault?" (App. p. 698). As set forth in Petitioner's Final Brief to the Court of Appeals:

> Conversely, if [Respondents] were "potentially liable" under Plaintiffs' claims against Respondents, they are not free from fault[,] i.e., breached the duty of care as provided under shopkeeper liability in South Carolina, and, thus, cannot recover under a theory of equitable indemnification.
>
> [and]
>
> Applying the trial court's conclusion logically, it stands for the premise that despite a shopkeeper's admission that it has an obligation to inspect its premises to discover defects so as to avoid injury to its invitees, admittedly fails to perform that duty at any point in time, [and] is subsequently sued by a patron as a result of the condition which existed for years, [that] shopkeeper has no liability. Instead, the trial court's ruling mandates that the patron's sole recourse should lie against the builder (who was never sued by Plaintiffs). . . . Such a conclusion is counter to decades of premises liability jurisprudence.

(App. at pp. 723, 726 n.6). These arguments were also made during oral argument by Petitioner's counsel. Lastly, Petitioner's Petition for Rehearing sets forth as follows:

> The foregoing duties of care [of a shopkeeper] are independent duties owed by Fred's and Wildevco to Plaintiffs under common law premises liability; however, [Petitioner], who completed construction of the Fred's store approximately five years prior to the subject incident, did not owe any such duties to Plaintiffs. . . . Respondents' duty to Plaintiffs and other patrons is separate and apart from any duty related to the construction of the Fred's store. Plaintiffs' claims against Respondents were based upon the allegation that Respondents breached this duty to discovery and warn of or eliminate risks. However, Plaintiffs' claims against Respondents were not based on the creation of an unsafe condition.

(App. pp. 849–50).

It has always been Petitioner's position that the trial court's and, by extension, the Court of Appeals' rulings run counter to well established precedent that a landowner owes an invitee a

duty of care to discover risks and to warn of or eliminate foreseeable unreasonable risks, a principle which applies whether or not the shopkeeper constructed the premises. Petitioner's arguments in this regard are subsumed within Petitioner's second issue on appeal and, regardless, are reasonably clear from the pleadings submitted by Petitioner and do not require this Court to "grope in the dark" to ascertain Petitioner's points. See Herron, 395 S.C. at 466, 719 S.E.2d at 642. Petitioner's arguments are properly preserved on appeal.

B. Respondents breached duties of care owed to Plaintiffs under common law premises liability.

It is undisputed that Plaintiff Martha Fountain was considered an invitee at the time of her trip-and-fall and, as such, Respondents owed her the most stringent duty of care. "A landowner owes an invitee a duty of due care to discover risks and warn of or eliminate foreseeable unreasonable risks." Landry v. Hilton Head Plantation Prop. Owners Ass'n, Inc., 317 S.C. 200, 203, 42 S.E.2d 619, 621 (Ct. App. 1994) (citing F. Patrick Hubbard & Robert L. Felix, *The South Carolina Law of Torts* 76 (1990)). To that extent, "the owner of the premises owes the customers the duty of exercising ordinary care to keep the passageways, sidewalks and such other parts of the premises as are ordinarily used by the customers in transacting business in a reasonably safe condition." O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 240, 348, 638 S.E.2d 96, 100 (Ct. App. 2006).

Fred's argues that it did not have actual or constructive notice of the defective curbing. Specifically, Fred's states that "[Petitioner] contends simply that [Fred's] had been operating this business for several years with the curb ramp such that constructive notice of the condition existed[;] [h]owever, the foregoing contention is akin to [Petitioner] arguing [Fred's] had constructive knowledge of a dangerous condition exists in a case where a customer is injured by the entrance door simply because they knew the entrance door was there without any obligation

for establishing the shopkeeper knew of the danger inherent in the condition." (Fred's Return at 9). What Fred's wants to ignore is the fact that, as a shopkeeper, it had an affirmative duty under South Carolina law to discover the dangerous condition. See Wimberly v. Winn-Dixie Greenville, Inc., 252 S.C. 117, 121, 165 S.E.2d 627, 629 (1969) ("Constructive notice may be proved by showing in this case that the [dangerous condition existed] sufficiently long that the defendant should have discovered it."); see also Singleton v. Sherer, 377 S.C. 185, 201, 659 S.E.2d 196, 204 (Ct. App. 2008) ("The duty owed to a licensee differs from the duty owed to an invitee in that the landowner has no duty to search out and discover dangers or defects in the land or to otherwise make the premises safe for a licensee."). During the approximately five years that the dangerous condition existed at the subject property, Fred's (and Wildevco) owed Plaintiffs and other patrons a duty to *discover* the alleged defective curb and either warn of or eliminate the condition, which they failed to do. Plaintiffs advanced this independent theory of liability against Respondents. (App. 148 at ¶ 7(f)).

Wildevco makes a similar argument, stating that it is not responsible for inspecting the premises for defects which "would be imperceptible to someone without specialized knowledge and skill." (Wildevco's Return at p. 10). In support of this argument, Wildevco cites Larimore v. Carolina Power & Light, which stands for the proposition that a landowner has a duty to warn an invitee only of latent or hidden dangerous which the landowner has knowledge or should have knowledge. Id., 340 S.C. 438, 445, 531 S.E.2d 535, 538 (Ct. App. 2000). While it is true that a landowner owes a *duty to warn* an invitee only of latent or hidden dangers which the landowner has knowledge or should have, courts which have analyzed the separate duty of a landowner to an invitee to *discover* dangerous conditions have not considered the landowner's level of expertise and sophistication in determining whether the landowner has complied with this duty. Rather, our

courts have held that a landowner owes an invitee a general duty of due care to discover risks; after the landowner gains knowledge or is charged with knowledge of the existence of a dangerous condition, it is then required to warn of or eliminate those risks. See, e.g., Singleton, 377 S.C. at 201, 659 S.E.2d at 204 Wildevco (and Fred's) owed a duty to Plaintiffs to discover the dangerous condition, which they failed to do.

Respondents' own expert testified that there is a recognized safety standard for owners and occupants of buildings to conduct inspections of the premises looking for tripping hazards similar to the condition that caused Plaintiffs' injuries, and further testified that "this is a maintenance issue [and] [i]t is also something that – a condition of that can be observed by management, so [Respondents] do have the duty to inspect." (App. pp. 361–62). Tad Barber ("Barber"), Wildevco's representative, admitted that Wildevco did not conduct any inspections to determine whether the building complied with applicable building codes and standards (App. p. 279); did not specifically look for safety issues with the exception of the lighting of the parking lot (App. p. 303); and did not ever conduct an inspection around the store looking for tripping hazards and never hired anyone to do so (App. p. 305–06). Wildevco sat on its hands for five years and now disingenuously argues that it did not have the "specialized knowledge" to know what it was looking for. (Wildevco's Return at p. 10). Such conduct contradicts decades of premises liability law that a landowner has a duty to "search out and discover" dangers or defects in the land. See Singleton, 377 S.C. at 201, 659 S.E.2d at 204.

As it relates to Fred's conduct, Fred's did not have any representatives testify at trial. The record is completely devoid of Fred's undertakings except Barber's testimony that Fred's would have performed a punch list inspection prior to it taking possession of the property. (App. pp. 288–89). The Court of Appeals also noted that

> Barber also testified that he did not conduct an inspection for tripping hazards at the Fred's store. However, the lease agreement between Fred's and Wildevco provided that Wildevco was only responsible for "keeping and maintain[ing]" the exterior of the premises while Fred's was responsible for the interior of the store.

(App. p. 827 n.17). Even assuming Wildevco's obligation under the lease to "keep and maintain" the sidewalks and curbs does not include inspecting them for defects and thereafter warning of or eliminating said defects, then this duty to do so falls squarely on Fred's as the occupier in control of the premises. It is clear that Fred's never discovered and remedied/warned of the alleged defective condition, and there is no evidence of any conduct on the part of Fred's to the contrary.

Again, Petitioner is not arguing that it is without fault; rather, it is arguing that Respondents are at least partially at fault (i.e., at least 1%) in violating the above-described duties of care required of them under common law premises liability, which was the theory of liability against them alleged by Plaintiffs. (App. 147-49). Should the Court of Appeals' decision stand, not only will shopkeepers not be held accountable for their actions and omissions, but an injured plaintiff may potentially be without recourse at all if he or she is injured at a premises constructed before the applicable limitations or repose period expires. In addition to this being contrary to sound public policy, such a conclusion is counter to well-established precedent that a "landowner owes an invitee a duty of due care to discover risks and to warn of or eliminate foreseeable unreasonable risks." See Landry, 317 S.C. at 203, 42 S.E.2d at 621. This principal of well-established law applies whether or not shopkeeper constructed the building all of which demonstrates at least *some* liability on the part of Respondents serving as a bar to an equitable indemnity claim.

C. Wildevco negligently oversaw the development and construction of the property which serves as a bar to the equitable indemnity claim.

Wildevco argues in its Return that there is "no evidence that Wildevco provided defective plans to [Petitioner]," but two sentences later admits that its own expert testified at trial that the

"two lines depicted on the plans in front of each entry door 'could be' confusing." (Wildevco's Return at p. 12). After contradicting itself in the first three sentences of its argument, Wildevco then attempts to shift Court's attention to Petitioner's conduct, arguing that Petitioner should have notified the architect of discrepancies in the drawings. See id. Perhaps that is true — but again, Petitioner is not arguing that it is without fault. Even if it were, Petitioner's failure to notify the architect of discrepancies in the architectural and site plans in no way, shape, or form relieves Wildevco of its concurrent negligence in supplying defective and discrepant plans. See Hill v. Polar Pantries, 219 S.C. 263, 271, 64 S.E.2d 885, 888 (1951) ("If a party furnishes specifications and plans for a contractor to follow in a construction job, he thereby impliedly warrants their sufficiency for the purpose in view."). Wildevco was the developer of the subject premises and supplied defective plans to Petitioner. This very discrepancy is what led to the creation of the construction defect which caused Plaintiff Martha Fountain to trip and fall. As Wildevco was the party that supplied the plans which contained this discrepancy, and in supplying the plans impliedly warranted their sufficiency, Wildevco is at least partially at fault in causing the defective condition over which Plaintiff Martha Fountain tripped and fell.

Wildevco also argues that there is "no evidence that Wildevco negligently tasked Barber with managing the subject construction project." (Wildevco's Return p. 14). However, Wildevco must have overlooked that its representative who managed and oversaw construction testified as follows at trial:

Q: Do you have any education or work experience involving construction?
A: No.
Q: Do you have any education or work experience involving architecture?
A: No.
Q: Do you have any education or work experience involving engineering?

A: No.
Q: . . . [C]an you tell the court what your affiliation was with Wildevco and what Wildevco is[?]
A: I'm one of the partners of the LLC and I was responsible for managing the construction of the [subject premises].
. . .
Q: [Y]ou'd agree with me that there's some confusion between the architect's plans and the engineer's plan, correct?
A: There was some differences apparently, yes.
Q: And those differences could cause some confusion, correct?
A: I suppose.
Q: And you hired the architect, you hired the engineer, correct?
A: Correct.
Q: And then you took those plans and you gave them to [Petitioner], correct?
A: Correct.

(App. pp. 271, 280–81). Barber also testified that he is "not qualified" to read he architectural and site plans, but that "somebody who had the expertise to be able to read the plans would pick up on [discrepancies in the as-built conditions with the plans]"—a tacit admission that, if he was qualified, he would have discovered the discrepancies in the architectural and site plans and/or discrepancies in the as-built conditions with those plans. (App. p. 292, 294).

Based upon the above testimony, Wildevco tasked a person with no background in construction and who was not qualified to read the plans to hire the architect and engineer, secure the plans and provide them to Petitioner, and to oversee and manage construction. Barber's lack of knowledge and experience were, at the very least, a link in the causal chain of Plaintiffs' injuries which renders Wildevco to be at least 1% at fault, which in turn is a bar to a claim for equitable indemnity under South Carolina law as espoused by this Court. See Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971). Petitioner respectfully requests the Court grant its Petition for Writ of Certiorari to consider this issue as the Court of Appeals decision is contrary to South Carolina law.

II. THE COURT OF APPEALS' DECISION HOLDING FRED'S POSSESSES A VIABLE CAUSE OF ACTION FOR EQUITABLE INDEMNITY AGAINST PETITIONER IS CONTRARY TO SOUTH CAROLINA LAW BECAUSE THIS IS NOT A CASE OF IMPUTED FAULT AND THERE IS NO SPECIAL RELATIONSHIP BETWEEN FRED'S AND PETITIONER.

Fred's argues in its Return that it possesses a "sustainable claim" for equitable indemnity against Petitioner "under the accepted principle of imputed liability" and on the basis that there exists a special relationship between Fred's and Petitioner which obviates the need to establish a special relationship. (See Fred's Return p. 3). The Court of Appeals did not address the issue of imputed fault, and instead determined that there existed a special relationship between Fred's and Petitioner, these two purported bases for Fred's equitable indemnity claim will be discussed in turn.

A. This is not a case of "imputed fault" between Fred's and Petitioner such that Fred's may maintain a cause of action against Petitioner for equitable indemnity.

South Carolina law generally stands for the proposition that a party may maintain an equitable indemnification action if it was compelled to pay damages because of negligence imputed to it as the result of another's tortious act. In Atlantic Coast Line R.R. Co. v. Whetstone, 243 S.C. 61, 69, 132 S.E.2d 172, 176 (1963), the South Carolina Supreme Court stated the rule applicable in imputed fault cases:

> Ordinarily, if one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another, he may maintain an action over for indemnity against the person whose wrong has thus been imputed to him; but this is subject to the provision that no personal negligence of his own has joined in causing the injury.

Id. (emphasis added). "According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one

party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." Vermeer Carolina's, 336 S.C. at 60-61, 518 S.E. 2d at 305. Thus, for all the reasons set forth in Section I, *supra*, Fred's hands are unclean and it is not able to sustain this cause of action, under either an "imputed liability" theory or "special relationship" theory.

Even in cases of imputed fault, it is the relationship between the indemnitor and indemnitee which gives rise to an equitable indemnity claim. See Rock Hill Tel. Co. v. Globe Commc'ns., Inc., 363 S.C. 385, 390 n.3, 611 S.E.2d 235, 237 n.3 (2005) ("[W]e find that there must be some kind of relationship between the parties beyond the relationship established by virtue of one party alleging that he was sued because of another party's wrongdoing."). The only commonality between Fred's and Petitioner is that they each entered into separate contracts with Wildevco relating to the subject premises—with Fred's agreeing to lease the premises and Petitioner agreeing to construct the premises. There is no direct relationship between them. Fred's and Petitioner do not enjoy an agent-principal relationship, master-servant relationship, employer-employee relationship, or other similar relationship; Fred's had no control over Petitioner and was not responsible for or chargeable to the acts or knowledge of Petitioner; and Fred's and Petitioner were not in privity with each other.

Accordingly, Fred's may not maintain its equitable indemnity claim against Petitioner on the basis of imputed fault.

B. The Court of Appeals' decision affirming a special relationship between Fred's and Petitioner is in direct conflict with Rock Hill Telephone and/or is inconsistent with previous appellate court decisions.

This Court held in Rock Hill Telephone that the relationship between a utility company and a subcontractor hired by the utility company's independent contractor is an "attenuated one"

and is insufficient to support an equitable indemnity claim between the utility company and the subcontractor. The relationship among Respondents and Petitioner are analogous to those scrutinized in Rock Hill Telephone, and this Court should adhere to the principles espoused in Rock Hill Telephone and determine that there exists no special relationship between Fred's and Petitioner.

Fred's argues that Rock Hill Telephone "is easily distinguishable from the case at bar as this action for equitable indemnification is a direct claim being made against the general contractor rather than a subcontractor with whom a contract was made for services rendered to knowingly benefit [Fred's]." (Fred's Return p. 4). But what Fred's fails to grasp is that there must be a *special relationship* between it and Petitioner, not merely *any* relationship. The "relationship" between Fred's and Petitioner is that of a tenant of a building and a general contractor who constructed the building, with the only commonality between the two parties being that they each entered into separate contracts with Wildevco related to the subject premises. Fred's contracted with Wildevco to have a building constructed and for Fred's to lease the building from Wildevco as a Fred's store. (App. pp. 22–23). Pursuant to their contract, "[a]ll of said construction [was to] be done by [Wildevco] at its sole cost and expense . . . ." (App. p. 482). Petitioner is not mentioned in the contract, nor does Fred's have any control over the selection of the general contractor by Wildevco. (App. pp. 481–94). Wildevco thereafter contracted with Petitioner pursuant to a separate contract[1] to construct the building pursuant to the architectural and site plans provided to it. (App. p. 476). Indeed, as stated in Fred's own Return, "Fred's . . . had no direct

[1] It should be noted that the terms of the contract between Wildevco and Fred's were not referenced or incorporated by reference into the contract between Wildevco and Petitioner. (App. p. 476) ("The Contract Documents consist of the Agreement and the Drawings with Specifications thereon, furnished by Chris Booker & Associates and the Site Plans, furnished by Hass & Hilderbrand, Inc.").

involvement either in the development of the plans or construction of the premises." (Fred's Return p. 9).

Like the relationship between the utility and the subcontractor, the relationship between Fred's and Petitioner is an attenuated and tangential one. The Court of Appeals' decision, as it currently stands, is in direct conflict with Rock Hill Telephone, in which this Court rightfully held that "there must be some kind of relationship between the parties beyond the relationship established by virtue of one party alleging that he was sued because of another party's wrongdoing." Id. at 390 n.3, 611 S.E.2d at 237 n.3.

To bolster a relationship which, in essence, is insignificant and inconsequential, the Court of Appeals and Fred's focused on previous unrelated projects and course of dealings between Fred's and Petitioner. Specifically, the Court of Appeals determined the following in its opinion:

> (1) Petitioner was recommended to Wildevco for the Fred's project because Petitioner had experience constructing other Fred's stores;
> (2) Polk testified that Petitioner had previously constructed ten to fifteen other Fred's stores; and
> (3) Petitioner owned a Fred's store located in a neighboring county.

Based on the foregoing, the Court of Appeals determined that a special relationship exists between Fred's and Petitioner. Respectfully, the Court's reliance upon previous course of dealings and prior construction projects is misguided, especially considering that there is no nexus between the previous projects and the subject project.[2] There is no opinion of which Petitioner is aware which has considered, either expressly or implicitly, previous construction projects and/or previous course of dealings in determining whether a special relationship exists between parties related to

[2] The trial court and Court of Appeals refused to allow Petitioner to introduce evidence of similar incidents at a Fred's store in a neighboring county. Fountain v. Fred's Inc., 429 S.C. 533, 562, 839 S.E.2d 475, 490 (Ct. App. 2020). Yet, the Court of Appeals considers the existence of another store being constructed by Petitioner as evidence of a special relationship.

the subject project, occurrence, or transaction underlying the equitable indemnity claim. Respectfully, the Court of Appeals' decision is inconsistent with prior appellate court rulings considering the existence of a special relationship between an indemnitor and indemnitee.[3] Indeed, in all other decisions in which our appellate courts have determined the existence of a special relationship, there is a contractual relationship between the indemnitor and indemnitee or, at the very least, a direct relationship between the two. Of note, in Rock Hill Telephone, there was no contractual relationship or direct relationship between the purported indemnitor and indemnitee.

Rather, the appropriate inquiry is whether there existed a special relationship between Fred's and Petitioner *with respect to the subject project* which underlies the equitable indemnity claim. As discussed above, Fred's admits in its Return that it "had no direct involvement either in development of the plans or construction of the premises . . . ." (Fred's Return p. 9). There is no special relationship between Fred's and Petitioner with respect to this project. The only commonality between the two is that they each entered into separate contracts with Wildevco relating to construction of the subject building, and there is no relationship between them beyond which was established by virtue of Fred's alleging that it was sued because of Petitioner's wrongdoing. Petitioner's previous experience constructing other Fred's stores and its ownership of a separate Fred's store (which Petitioner did not build) has no bearing on the subject project.

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[3] See McCoy v. Greenwave Ents., Inc., 408 S.C. 355, 360, 759 S.E.2d 136, 138 (2014) (finding a special relationship between a property owner and a former owner of the same property by virtue of a purchase agreement between the two); First Generation Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 443, 445 S.E.2d 446, 448 (1994) (finding special relationship between contractor and subcontractor); Stuck v. Pioneer Logging Mach., Inc., 279 S.C. 22, 24, 301 S.E.2d 552, 554 (1983) (finding special relationship between purchaser of a defective vehicle and the seller of said vehicle); Addy v. Bolton, 257 S.C. 28, 33, 183 S.E.2d 708, 709 (1971) (finding a special relationship between a landlord and a general contractor hired by the landlord who damaged a tenant's property); Griffin v. Van Norman, 302 S.C. 520, 527, 397 S.E.2d 378, 382 (Ct. App. 1990) (finding a special relationship between the seller of a home and an exterminator hired by the seller).

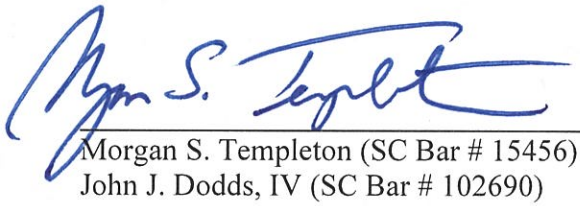
Accordingly, there is no special relationship between Fred's and Petitioner to support Fred's claim for equitable indemnity, and the Court of Appeals' decision is in direct conflict with Rock Hill Telephone and, at the very least, is inconsistent with previous appellate court decisions and warrants review by this Court.

CONCLUSION

Accordingly, for the foregoing reasons, Petitioner Tippins-Polk Construction, Inc. respectfully requests this Court issue a Writ of Certiorari to consider all questions presented and consider this appeal fully on its merits.

Dated this 2nd day of July, 2020.

WALL TEMPLETON & HALDRUP, P.A.



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