**ORIGINAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge
John C. Few, Circuit Court Judge

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Appellate Case No. 2012-212137

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The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of others similarly situated, .. Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc., Defendants Of Whom City of Greenville and Mayor Knox H. White are the Respondents/Appellants,.....Respondents/Appellants.

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# APPELLANTS' FINAL BRIEF OF APPELLANTS/RESPONDENTS

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May 28, 2013

Other Counsel of Record:
Kathleen Kempe, S.C. Bar No. 3382
City Attorney's Office
P.O. Box 2207
Greenville, SC 29602-
Tel. (864) 467-4420
Attorney for Respondent/Appellant
Fax (864) 467-4424

James G. Carpenter, S.C. Bar No. 1136
Jennifer J. Miller, S.C. Bar No. 13611
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorneys for Appellants/Respondents

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## STATEMENT OF THE CASE

The Circuit Court awarded Edward D. Sloan, Jr. and the South Carolina Public Interest Foundation ("SCPIF," "Sloan," "Appellants") partial fees under S.C. Code Ann. § 15-77-300. Appellants appeal the limitation of the award and request an award of full attorneys' fees. The Respondents City of Greenville and Mayor Knox White ("City") appeal any award of attorneys' fees.

Through its redrawing of property lines, the Cliffs at Glassy, Inc. ("Cliffs") had asserted control over about 3.5 acres of City-owned land in the mountains of northern Greenville County. For eight years, the City had constructive notice and tolerated this ongoing trespass and purpresture.

On March 24, 2008, Appellants filed this action against the City and Cliffs, requesting *inter alia* an injunction requiring the City to end the eight-year purpresture. R. pp. 47-50 (Complaint). On June 24, 2008, by deed recorded in Book 2329 at Page 817, the City divested ownership of .29 acres of its encroached land, where Cliffs had built Mountain Summit Road. R. pp. 95-101 (Deed recorded June 24, 2008). Cliffs paid the City $100,000 cash plus $35,000 in in-kind services as consideration for that conveyance. R. p. 112 (Affidavit of Attorney David Ward). By this deed, the City reduced, but did not eliminate, the purpresture. The City argued that because it had sold the .29 acres, no purpresture existed R. pp. 51-54; (Answer of the City filed April 23, 2008). However, the record demonstrates a continuing purpresture of approximately 3 acres, above and beyond the .29 acres.

On or about October 6, 2008, the Court granted Appellants permission to file a Supplemental Complaint. R. pp. 73-77.

At the hearing, Appellants showed the Court plats drafted for the Cliffs, which place the City's property line well west of the .29-acre parcel. R. pp. 69 and 102; (Lindsey plats 42-S-38 and 42-L-49). These plats demonstrated apparent errors in the Lindsey surveys and suggested that the Cliffs had wrongfully taken far more than the .29 acres and that the .29 acres conveyed was less than the entire purpresture. The Court ruled that Appellants could have the property surveyed, and if sufficient cause existed, could move the Court again to address this issue.

In January 2009, the Court invited counsel for Cliffs to submit a proposed Order denying Appellants SCPIF and Sloan any further relief, based on its evidence of the proper location of the property line. Appellants objected to several factual errors in the proposed Order, and suggested, "If a deed related to the subject 3.2 acres were prepared and filed, it would clarify the ownership issue, minimize future controversy, and facilitate the work of the Greenville County Tax Assessor" R. pp. 209-212 (Plaintiff's Response to Cliff's Proposed Order of 2009). (The 3.2 acres formerly owned by the City was now taxable property.) On January 29, 2009, the Court entered the Order drafted by Cliffs. R. pp. 2-16. On February 12, 2009, Appellants/Respondents filed a Motion to Alter or Amend the Judgment alleging numerous errors of fact.

> In 1956 when the City acquired the subject 3.2 acres, along with the rest of its property, that land became exempt from property taxes. When the property line changed from the Wiswall Line to the Lindsey Line, the 3.2 acres became taxable property. The Tax Map requires revision to reflect the new property line, the new ownership, and taxability of the 3.2 acres. **Plaintiffs object** to the lack of a documentary basis for such a revision. If a deed related to the subject 3.2 acres were prepared and filed, it would clarify the ownership issue, minimize future controversy, and facilitate the work of the Greenville County Tax Assessor.

R. p. 121 (Motion to Alter or Amend the Judgment, p. 8).

In response, on February 16, 2009, the City recorded a "Boundary Line Agreement, Quitclaim and Release" in Book DE2353 at Page 1209-thereby fully ended the purpresture by divesting its ownership of the remaining 3.2 acres encroached upon. R. pp. 129-131 1211 (Deed recorded Feb. 16, 2009). This quitclaim deed mooted the case.

The Court never ruled upon Appellants' Motion to Alter or Amend. Instead, by Consent Order and Judgment, the parties and the Court memorialized the agreement as follows:

1. On March 24, 2008, Plaintiffs filed a Complaint alleging that for many years the Defendant Cliffs at Glassy, Inc. ("Cliffs") had trespassed . . . on land owned by the Defendant City of Greenville ("City").
2. On June 19, 2008, the City by its deed conveyed its title to .29 acres of land described therein to the Defendant Cliffs. This deed was recorded June 24, 2008, Greenville County Deed Book 2329 on pages 817-20.
3. On January 30, 2009, this Court entered an Order and Judgment.
4. On February 12, 2009, Plaintiffs moved to Alter or Amend the Order and Judgment.
5. On February 13, 2009, the City by its deed quitclaimed its title to additional land described therein to the Defendant Cliffs. The Quitclaim deed was recorded February 16, 2009 at the Greenville County Deed Book 2353, on pages 1209-11.
6. The deed referenced in paragraph 5 supplemented the deed referenced in paragraph 2, ended the City's ownership of the subject land, and ***thereby ended the trespass on the subject land by the Defendant Cliffs.***
7. On February 17, 2009, Cliffs filed a Memorandum in Response to the Plaintiffs' Motion to Alter or Amend.
8. On February 25, 2009, Plaintiffs filed a Reply Memorandum.
9. When the City disposed of its ownership of the land being trespassed upon, the trespass ended, and this case became moot.
10. The Court hereby revokes its January 30 2009 Order, and dismisses this action on the grounds of mootness.

R. pp. 35-42 (Consent Order entered August 18, 2011 (emphasis added)).

On May 4, 2009, Appellants petitioned the Court for costs and attorneys fees. Appellants incurred $39,816.60 in attorneys' fees and $8,970.00 in surveyor costs pursuing this matter. Appellants incurred most of the fees after the City conveyed .29 acres, but before it conveyed the remaining 3.2 acres of the purpresture. R. pp. 132-165 (Motion for Attorneys Fees).

On January 12, 2012, the Court awarded Appellants attorneys' fees and costs only through June 24, 2008, the day the deed partially ending the purpresture was recorded. R. pp. 35-42 (Order entered November 23, 2011).

On March 7, 2012, Appellants filed a Motion to Alter or Amend the Order arguing that Plaintiffs should receive their full, actual attorneys' fees and costs, including those incurred after June 24, 2008, and up through the elimination of the purpresture on February 13, 2009. R. pp. 213-214 (Motion to Alter or Amend). The Court denied the motion without a hearing. R. pp. 43-44 (Order entered March 14, 2012). The Court also denied the City's Motion to Alter or Amend arguing against the award of any fees. R pp. 45-46 (Order entered May 16, 2012). On May 23, 2012, Appellants filed Notice of Appeal from the denial of full attorneys' fees.

## STATEMENT OF FACTS

### I. THE WISWALL LINE SEPARATES CITY-OWNED LAND FROM THE CLIFFS LAND.

For many years the City has owned land in northern Greenville County east of a line that begins at the crest of Corbin Mountain running south 20 degrees east for 31.00 chains or 2,046 feet to a standing stone ("the Wiswall Line"), as shown on a map dated 1918 through 1921, by Howard Wiswall, C.E., and recorded in the Greenville County RMC office in Plat Book Y, at pages 114 through 118. R. p. 123 ("the Wiswall Map") (Map).

At all times relevant to this action, Cliffs owned the land west of the Wiswall Line. The history of ownership and surveys is as follows:

- Timber-Lands, Inc. conveyed to Gap Creek L.P. the land to the west of the Wiswall Line, by specific reference to the Wiswall Map, being denominated Parcel 25, on page 15 of the deed, recorded in Deed Book 1347, Page 621 (Deed recorded December 20, 1988).

- Dan E. Collins, RLS, surveyed the same boundary line for Timber-Lands, Inc. and issued a drawing dated February 15, 1960, which used the bearing of the Wiswall Line, beginning at the crest of Corbin Mountain, running south, 20 degrees east, 1,896 feet, to an iron pipe, Station 114, and continuing to a rock, 3X, the standing stone (Collins Survey dated Feb. 15, 1960).

- Cliffs bought the Gap Creek L.P land west of the Wiswall Line.

### II. CLIFFS' SURVEYOR CREATES MULTIPLE NEW BOUNDARY LINES.

Beginning in 2000, Cliffs began commissioning a series of surveys of its land west of the Wiswall Line. Cliffs engaged Lindsey & Associates, Inc. to survey and prepare plats of its property. These surveys laid out the property line between the City's land and the Cliffs' land, but every time the Cliffs commissioned a survey or plat, the line moved increasingly onto City land.

A. In or around the year 2000, a plat dated June 14, 2000, and recorded in the Register of Deeds office August 21, 2000, designated 42-S-38 shows the Cliffs' eastern boundary ("the June, 2000 Lindsey Line"), beginning at the crest of Corbin Mountain, running south 25 degrees, 30 minutes, 30 seconds east, a bearing different from that of the Wiswall Line, and lying east of the Wiswall Line (June 14, 2000 plat).

B. A second Lindsey Plat dated August 8, 2000, and recorded in the Register of Deeds office August 21, 2000, file no. 00-255, and designated 42-L-49 shows the Cliffs' eastern boundary ("the August, 2000 Lindsey Line") beginning at the crest of Corbin Mountain, running south 25 degrees, 39 minutes, 10 seconds east (August 211, 2000 plat). This is a bearing different from both the Wiswall Line and the June, 2000 Lindsey Line, which line lies east of the Wiswall Line, and east of the June, 2000 Lindsey Line. R. p. 423.

C. A third Lindsey Plat dated October 9, 2001, recorded in the Register of Deeds office December 28, 2001, and designated 45-A-93 shows the Cliffs' eastern boundary ("the October, 2001 Lindsey Line") beginning at a point on Corbin Mountain, running south 24 degrees, 49 minutes, 51 seconds east, a bearing different still from the Wiswall Line and the two previous Lindsey lines, lying east of the Wiswall Line (December 28, 2001 Plat).

D. A fourth Lindsey Plat dated November 5, 2004, a portion of which is recorded in the Register of Deeds office at Plat Book 1069, Page 58, **Exhibit D** (shows the Cliffs' eastern boundary ("the November, 2004 Lindsey Line") beginning at a point on or near the top of Corbin Mountain, running south 22 degrees, 24 minutes, 20 seconds east, approximately 1,600 feet, and continuing south 15 degrees, 47 minutes, 40 seconds east 77.46 feet to a point known as Station 115, totally different from any previously surveyed line, and again, lying east of the Wiswall Line (Nov. 5, 2004 Plat). Station 115 (the terminus of the November 2004 Lindsay Line) lies approximately 200 feet northeast of Station 114, referenced in the Collins drawing (Nov. 5, 2004 Lindsay Plat; Collins Drawing dated Feb. 15, 1960). Both stations 114 and 115 are on the ridgeline separating the basins of the North Saluda River and Terry Creek. Neither Station 115 nor 114 is on the Wiswall Line (Nov. 5, 2004 Lindsay Plat; Collins Drawing dated Feb. 15, 1960). R. p. 102.

## III. CLIFFS APPROPRIATED 3.5 ACRES OF CITY LAND.

By relying upon this series of surveys recording these various lines purporting to mark the eastern boundary (which effectively moved the Wiswall Line), Cliffs appropriated about three and a half acres of City land without permission or justification.

Cliffs also constructed Mountain Summit Road that encroached approximately 60

feet on City land, for the use of the residents of its gated development. Without these three and a half acres, Cliffs would have been required to build a bridge for Mountain Summit Road across a steep and wide ravine. Instead, by building their road on the City's land, Cliffs relatively inexpensively circumvented the ravine.

Appellants filed suit complaining of this purpresture, primarily related to Mountain Summit Road, on March 24, 2008. R. pp. 47-50. The City filed an Answer on April 23, 2008. R. pp. 51-54.

## IV. THE CITY SELLS .29 ACRES TO THE CLIFFS.

On April 28, 2008, the City enacted Ordinance 2008-33, authorizing the City to convey title to .29 acres of the land in question to Cliffs, where Cliffs admitted that Mountain Summit Road was built on City land. R. pp. 92-94. The .29 acres represented less than one-tenth of the land that Cliffs had appropriated for itself. On June 19, 2008, the City executed a deed of conveyance for the .29 acres, recorded June 24 which relies on the November 5, 2004 Lindsey Plat. R. pp. 95-98; p. 102. The City never commissioned a survey of its boundary.

## V. APPELLANTS SURVEY THE WISWALL LINE.

When the Court authorized Appellants to resurvey the land, Appellants engaged Freeland & Associates, Inc. Freeland's Surveyor's Report indicates that the historic boundary line is the Wiswall Line, the southern terminus of which is a standing stone R. pp. 103-107 (Freeland's Surveyor's Report dated October 28, 2008). According to Freeland's survey and report, even after the conveyance of the .29 acres, Mountain Summit Road continued to encroach on City land that was not a part of the .29 acres conveyed. Accordingly, Appellants continued its litigation challenging the purpresture.

Appellants' survey also disclosed that Cliffs had used the August 2000 Lindsey Line to mark the boundary of three residential lots that Cliffs sold to third parties as residential building lots. Sections of these lots were on land owned by the City, pursuant to the historic Wiswall Line. R. pp. 103-107 (Freeland's Surveyor's Report dated October 28, 2008).

## VI. THE CITY GRANTS ANOTHER 3.2 ACRES TO THE CLIFFS.

As recounted above, on February 16, 2009, the City granted a quitclaim deed to Cliffs for the land between the Wiswall line and the August 2000 Lindsey Line, thereby ending the purpresture, not only by Mountain Summit Road, but also by the three residential building lots. R. pp. 128-131. (Deed recorded February 16, 2009). This event mooted the case. The parties later filed a Consent Order of Dismissal. Appellants moved for attorneys' fees, and the Court awarded fees incurred only through June 24, 2008.

## ARGUMENT

Appellants moved the Court pursuant to SCRCP 54 and S.C. Code Ann. § 15-77-300 for costs and attorneys fees incurred in this case from the City.

## I. APPELLANTS ARE ENTITLED TO ATTORNEYS' FEES.

> In any civil action brought by . . . any party who is contesting state action, . . . the court may allow the ***prevailing party*** to recover ***reasonable attorney's fees to be taxed as court costs*** against the appropriate agency if:
>
> (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
>
> (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust."

S.C. Code Ann. § 15-77-300. The citizen must prove three elements to claim attorney's fees: (1) the citizen must be the prevailing party; (2) the government entity must have acted without substantial justification; and (3) no special circumstances would have made the award of attorney's fees unjust. *Heath v. County of Aiken,* 302 S.C. 178, 394 S.E.2d 709 (1990); *Richland County v. Kaiser*, 351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002).

Appellants meet the three elements for an award of attorney's fees under this statute. The City did not know the location of its property line and failed to exercise its duty of reasonable care and diligence to know its location.

### A. Appellants Are Prevailing Parties.

For eight years Cliffs encroached upon City-owned land creating a purpresture. Only after Appellants filed suit did the City end the purpresture by divesting its ownership of the land encroached upon. On June 19, 2008, by a deed recorded in Book 2329 at Page 817, the City divested title to .29 acres in the eastern part of its land

encroached. R. pp. 95-101 (Deed recorded June 24, 2008). By this divestiture, the City reduced the extent of, but did not eliminate, the encroachment.

On February 16, 2009, by deed recorded in Book DE2353 at Page 1209-1211 Register of Deeds office, the City divested itself, by donation, of the remainder of its land encroached upon. R. pp. 129-131 (Deed recorded February 16, 2009). Thus, Appellants' lawsuit pushed the City to divest its land and end the Cliffs' encroachment and purpresture. Appellants' lawsuit obtained the relief sought: "a unilateral change in position by the [City]." *Sloan v. Friends of the Hunley*, Inc., 393 S.C. 152, 157, 711 S.E.2d 895, 897-98 (2011). [Appellants accomplished the objective of the litigation and prevailed.]

The Montana Supreme Court addressed the appeal of a similar award of attorney's fees against a city. The City of Havre had denied a newspaper some unredacted public documents, and the newspaper sued to acquire them. *Havre Daily News, LLC v. City of Havre,* 333 Mont. 331, 351, 142 P.3d 864, 878 (2006). The City eventually produced the documents and moved to dismiss the newspaper's action for mootness. The Court granted the City's motion, and the newspaper moved for fees. The City opposed the motion because the Court had awarded judgment to the City based on mootness. The Court nevertheless awarded fees because the Plaintiff actively prevailed in obtaining the remedy for which it litigated.

> Although Havre correctly observes that the Newspaper did not technically "prevail" in its action in the District Court, the court granted summary judgment in favor of Havre precisely because Havre mooted the case by providing the Newspaper with unredacted copies of the Reports. Absent Havre's conduct, the case would not have become moot. In mooting the case, ***Havre provided the Newspaper with the very relief it sought to procure through litigation; thus, the Newspaper has prevailed in substance, albeit without court intervention.*** Given these circumstances, we will consider the Newspaper to be the prevailing party

> with respect to its request for unredacted copies of the Reports. ***Otherwise, a similarly situated party could, after extensive litigation, at the eleventh hour, and facing imminent defeat, simply moot a case in order to dodge this fee-shifting statute.***

*Id.* (emphasis added). By its February 16, 2009 deed, the City of Greenville did exactly the same thing: it mooted the action for declaratory judgment in the eleventh hour in an effort to dodge a fee-shifting statute, S.C. Code § 15-77-300. R. pp. 129-131 (Deed recorded February 16, 2009). The purpresture had existed for eight years, and was resolved only after eleven months of litigation with the Appellants, the prevailing party.

**B. Respondent Acted Without Substantial Justification.**

Second, Respondent acted without substantial justification in pressing its claims in this lawsuit rather than repelling the encroachment or otherwise ending the purpresture when Appellants first brought the action eleven months earlier. In analyzing this element, courts look to whether the governmental defendant had a reasonable basis in law and fact. *Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue,* 358 S.C. 647, 595 S.E.2d 890 (Ct. App. 2004).

Respondent City did not have a reasonable basis in law and fact for eleven months. Respondent did not know the location of its property line and failed to exercise reasonable care to discover it. Respondent City inaccurately argued that no purpresture existed because it had sold .29 of the acres encroached upon. R. pp. 95-101. After eleven months of litigation, the City conveyed the remaining 3.2 acres of the land encroached upon. R. pp. 129-131. Because Respondent fought this action while continuing to resist confirming the boundaries of its own property, Respondent was not "substantially justified" in pressing their claims.

### C. No Special Circumstances Make an Award of Fees Unjust.

Finally, no special circumstances make an award of fees unjust. Appellants funded this litigation with their own resources. The State benefits when civic minded citizens bring such actions. "It is very commendable that public-spirited citizens should endeavor to protect the taxpayers of a county from the efforts of an accommodating fiscal court to make unauthorized and unlawful appropriations of public funds." *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E.2d 95 (1948), *quoting Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139. The Court continued, "Citizens should be encouraged to bring suits like these." *Id.*

Under these circumstances, the defense of these matters was not substantially justified. Respondent contested this action at every turn, yet Appellants established that Respondent City had failed to repel a purpresture for eight years, and failed to remedy the situation until eleven months into the litigation. Accordingly, Appellants meet the qualifications for an award of attorneys' fees under S.C. Code Ann. § 15-77-300.

## II. USING A JUNE 24, 2008 CUTOFF BEFORE THE END OF LITIGATION AND FINAL CONVEYANCE FOR PAYMENT OF APPELLANTS' ATTORNEYS' FEES WAS AN ABUSE OF DISCRETION.

The order stopping the accrual of attorneys' fees on June 24, 2008 was an abuse of discretion. The City's actions on June 24, 2008 eliminated only one-tenth of the purpresture. The City did not eliminate the majority of the purpresture until February 16, 2009, when the City issued a quitclaim deed to the Cliffs for the rest of the land wrongfully taken. R. pp. 129-131 (Deed recorded February 16, 2009).

The award of attorneys' fees is discretionary with the trial court. *Heath v. County of Aiken,* 302 S.C. 178, 394 S.E.2d 709 (1990). "An abuse of discretion occurs when the

conclusions of the trial court . . . are based on unsupported factual conclusions." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). The trial court order granting fees articulated no factual basis for selecting the earlier conveyance of the initial .29 acres as the cut-off point for the accumulation of attorneys' fees and costs, rather than on February 16, 2009 conveyance of the remainder of the purpresture, which rendered the case moot. In *Sloan v. Friends of the Hunley*, the South Carolina Supreme Court awarded attorneys' fees for all actions up until the agency action rendered the case moot.

> Here, Sloan's complaint prompted Friends to do what a series of FOIA letter-requests could not accomplish—produce the requested documents. ***Accordingly, Sloan prevailed and is entitled to an award of attorney's fees***. However, we are constrained to reverse the award of fees beyond the time Friends produced the requested documents. In *Sloan I,* we affirmed the trial court's grant of summary judgment because the production of the requested documents ***rendered the complaint moot and non-justiciable***. 369 S.C. at 26, 630 S.E.2d at 477 ("[O]nce the requested documents are produced, a justiciable controversy no longer exists."). These declarations of mootness and non-justiciability are the law of this case. The parties and this Court are bound by *Sloan I,* which ***clearly limits the time period for which Sloan would be entitled to an award of attorney's fees***.

*Id.* 393 S.C. 152, 158, 711 S.E.2d 895, 898 (2011). In the case at bar, the incident that rendered the case moot and "limits the time period" for entitlement to fees was the recording of the quitclaim deed February 16, 2009. *Id.* Accordingly, fees should be paid for the litigation until the City's final transfer rendered Plaintiff's claims moot.

The City and the public benefited from this litigation by having the City protect the integrity of publicly owned land, and received $100,000 cash, plus $35,000 in in-kind services. R. pp. 95-101. Appellants incurred $37,109.61 in attorneys' fees and nearly $8,000.00 in costs pursuing this matter. R. pp. 132-165. Appellants' counsel attached an affidavit and statements documenting attorneys' fees and costs (Affidavit and Exhibit A to Affidavit). In this matter, Respondent failed for eight years to repel the purpresture.

The City has never surveyed the purpresture. The Cliffs' surveyor used four different bearings for the boundary line, none of which matched the historic Wiswall Line. A reasonable examination of the filed surveys on public record by the City would have disclosed this aberration. The City should have enforced its long-held boundary line. "The substance and outcome of the matter litigated is . . . relevant to the determination of whether there was substantial justification in pressing a claim." *Layman v. State*, 376 S.C. 434, 445, 658 S.E.2d 320, 326 (2008).

The Court articulated no legal or factual basis whatsoever for limiting the rationale limiting the payment of attorneys' fees to the time period by the date that the City conveyed less than one-tenth of the purpresture or for declining to award fees and costs necessary to finally and fully end the purpresture. Accordingly, limiting the time period for fees to June 24, 2008 was an abuse of discretion. "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). Appellants are entitled to a full award of attorneys' fees and costs.

## III. APPELLANTS' FEES AND COSTS WERE REASONABLE.

Respondent has not objected to any individual entries on the Motion for Attorneys Fees or in the affidavit in support of the Motion for Attorneys Fees. The Court did not criticize any entries in the Appellants' Motion or Affidavit. Appellants' actual attorneys' fees and costs were reasonable, and Appellants requested fees that amount to a fair percentage of the money that the City recovered.

"There are six factors for the trial court to consider when determining an award of attorneys fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Burton v. York County Sheriff's Dept.*, 358 S.C. 339, 357, 594 S.E.2d 888, 898 (Ct. App. 2004), *citing Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). "Upon request for attorneys fees that are authorized by contract or statute, the trial court should make specific findings of fact on the record for each of these factors." *Id., citing Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 and *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427.

First, as to the nature, extent and difficulty of the case, the City failed to remedy the purpresture that had existed for eight years, until Appellants brought this action. Appellants were required to expend considerably more time, effort, and money to engage a land surveyor, because the City failed to commission its own survey and properly defend its own real property.

Second, as to the time necessarily devoted to the case, Appellants were required to participate in extensive discovery. Appellants gathered evidence by engaging land surveyors and researching deeds.

Third, Appellants' counsel are experienced attorneys of high professional standing and well known to the courts of this State. *See, inter alia, Sloan v. Friends of the Hunley*, Inc., 393 S.C. 152, 711 S.E.2d 895 (2011); *Sloan v. Greenville Hospital System*, 388 S.C. 152, 694 S.E.2d 532 (2010); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*,

379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee,* 371 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005), *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v. Greenville County,* 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000).

Fourth, counsel did not arrange payment by a contingency fee. Appellants paid these fees as they accrued. Accordingly, Appellants should be reimbursed for their fees and expenses.

Fifth, Appellants obtained beneficial results. The City divested the property only after eleven months of litigation. In the process, the City obtained $100,000 cash, plus $35,000 in in-kind services for the City. R. pp. 95-101. The City did not fully end the purpresture until it disputed the claims for over eleven months of litigation and after Appellants had incurred several thousand dollars in surveying costs. Ending the purpresture was the Appellants' sole objective. Appellants' litigation benefits every citizen of the City by prohibiting the City from tolerating encroachments on public land without payment.

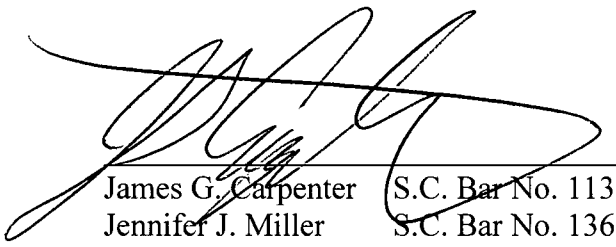
Sixth, as to the customary legal fees for similar services, Appellants have presented Counsel's affidavit supported by detailed time records showing that Appellants incurred attorneys' fees and costs exceeding $46,000 (Affidavit in Support of Motion for Attorneys Fees). Appellants respectfully suggest that the time spent and the hourly rates requested by Counsel are reasonable and modest. In fact, Counsel has discounted normal rates due to the public interest served by this litigation. The Court should find that

Appellants' actual attorneys' fees and costs were reasonable, and that Appellants are entitled to a full award of attorney's fees and costs.

## CONCLUSION

Appellants pray the Court for a full award of actual attorneys' fees and costs from the City.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



James G. Carpenter S.C. Bar No. 1136
Jennifer J. Miller S.C. Bar No. 13611
819 East North Street, Suite 230
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorneys for Appellants

Certificate of Counsel

Appellant/Respondent certifies that as required by SCACR 211, the Final Appellant's Brief of Appellant-Respondent is identical to the brief previously served under Rule 208 except for references to the record and correction of typographical errors and misspellings.

Jennifer J. Miller, Esq.
S.C. Bar No. 13611
Carpenter Law Firm, PC
819 E. North St.
Greenville, SC 29601
(864) 235-1269
Attorney for Appellant/Respondent

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The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of others similarly situated, .. Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc., Defendants Of Whom City of Greenville and Mayor Knox H. White are the Respondents/Appellants,.....Respondents/Appellants.

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**PROOF OF SERVICE**

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The undersigned attorney hereby certifies that she caused to be served the Final Briefs and Record on Appeal upon counsel for the Respondents by hand delivery, postage prepaid this Tuesday, May 28, 2013, addressed as follows:

Kathleen Kempe
City Attorney's Office
P.O. Box 2207
Greenville, SC 29602
February 11, 2013

Jennifer J. Miller, Esq.,
S.C. Bar No. 13116
CARPENTER LAW FIRM, PC
819 E. North St.
Greenville, South Carolina 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorneys for
Appellants/Respondents