
THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal From Georgetown County
Court of Common Pleas

Larry B. Hyman, Presiding Circuit Court Judge

Case No. 09 – CP – 22 -0325

Willie Singleton and Julia Thomas, Heirs at
Law of Victoria Gadson, deceased,

Plaintiffs,

Of whom Willie Singleton,

Petitioner,

v.

City of Georgetown Building Official Stephen Stack,
Mayor Lynn Wood Wilson, Mayor Pro Temp
Brendon M. Barber, Sr., Council Member Clarence Smalls,
Council Member Paige B. Sawyer, III, Council Member
Rudolph A. Bradley, Council Member Jack Scoville,
Director of Building Planning Sabrina Morris, Steve Thomas,
City Administrator, and The City of Georgetown,

Respondent,

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Willie Singleton and Julia Thomas, Heirs at Law
of Victoria Gadson, deceased, Plaintiffs,

Of whom Willie Singleton is the Appellant,

v.

City of Georgetown Building Official Stephen
Stack, Mayor Lynn Wood Wilson, Mayor Pro
Temp Brendon M. Barber, Sr., Council Member
Clarence Smalls, Council Member Paige B.
Sawyer, III, Council Member Rudolph A. Bradley,
Council Member Jack Scoville, Director of
Building Planning Sabrina Morris, Steve Thomas,
City Administrator, and The City of Georgetown,
Respondents.

Appeal From Georgetown County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-061
Submitted January 3, 2012 – February 8, 2012

AFFIRMED

Willie Singleton, pro se, of Georgetown.

Douglas Charles Baxter, of Myrtle Beach, and
Mason A. Summers, of Columbia, for
Respondents.

PER CURIAM: Willie Singleton appeals the dismissal of individual defendants and his claim for punitive damages from his civil action, arguing the circuit court erred in: (1) dismissing individual defendants from the complaint; (2) dismissing his claim for punitive damages; (3) not supporting its order with proper legal authority; (4) concluding the demolition of the building

was an accident; and (5) not considering "dual capacity" and "dual persona" theories. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in dismissing individual defendants from the complaint: Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010) ("In deciding whether the [circuit] court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. . . . [T]his [c]ourt . . . must presume all well pled facts to be true." (citations and quotation marks omitted)); S.C. Code Ann. § 15-78-70(a)-(b) (2005) ("An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable . . . [unless] the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude."); S.C. Code Ann. § 15-78-30(i) (2005) ("Scope of official duty'. . . means (1) acting in and about the official business of a governmental entity and (2) performing official duties."); Flateau v. Harrelson, 355 S.C. 197, 205, 584 S.E.2d 413, 417 (Ct. App. 2003) (holding an employee of a governmental entity may exceed his authority, but an action still falls within the scope of official duty if done in furtherance of his master's business); S.C. Code Ann. § 5-7-80 (2004) (stating municipalities are empowered to enact ordinances to abate public nuisances).

2. As to whether the circuit court erred in dismissing Singleton's claim for punitive damages from the complaint: S.C. Code Ann. § 15-78-70(a) (2005) (stating the Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity"); S.C. Code Ann. § 15-78-120(b) (2005) (stating punitive damages are precluded by the Tort Claims Act).

3. As to Singleton's remaining issues: West v. Newberry Elec. Coop., 357 S.C. 537, 543, 593 S.E.2d 500, 503 (Ct. App. 2004) (holding an issue that is neither addressed by the circuit court in its final order nor raised by way of a Rule 59(e), SCRCR, motion is not preserved for review).

AFFIRMED.

HUFF, PIEPER, and LOCKEMY, JJ., concur.

^[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**Appeal From Georgetown County
Court of Common Pleas**

Larry B. Hyman, Presiding Circuit Court Judge

Case No. 18533

Unpublished Opinion No. 2012-UP-061

Willie Singleton and Julia Thomas, Heirs at Law of Victoria Gadson,

Appellant.

v.

City of Georgetown Building Official Stephen Stack, et. Al.

Respondent,

RULE 221 REHEARING & REMITTITUR

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This is a request for a rehearing and remittitur hearing based on Rule 221, SCACR. From Unpublished Opinion No. 2012-UP-061. The Circuit Court granted summary judgment pursuant to Rule 56(c), SCRCP. A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; In this case that was not done, the request for summary judgment was filed the same day the Defendants filed the answer to the Summons and Complaint. The standard of review in this case was not and is not Rule 12(b)(6), SCRCP, but Rule 56(c), SCRCP. The Appellant is asking this Court to without undue delay, rehear this case, and make a written published opinion that would allow a trial on the facts of the cases so a jury can determine if the named Defendants intentionally went outside the scope of their official duties or course of employment with the intent to cause harm, or in the alternative make a written published opinion and the case can move forward to The South Carolina Supreme Court.

SELF SERVING STATEMENT

The Court of Appeals affirm the lower court decision pursuant to Rule 220(b)(1) SCACR, Here is Rule 220(b)(1) and (2)

(b) Decision by the Court. In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case. This rule does not apply to the following:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

(2) The Court of Appeals need not address a point which is manifestly without merit.

Unless something change, this court is not the Supreme Court, Rule 220(b)(1) SCACR, does not apply to the South Carolina Court of Appeals, you are govern by the requirements of Rule 220(b)(2) SCACR,

It's a shame that in 2012 that a under privilege person would have to go all the way to the Supreme Court to receive the same protections of law that others have. I understand that clerks read the case and give their opinions to the judges. If I was those clerks and made the same decision, I would be ashamed to hold my head up in public or look anyone in the eye and said, "I took an oath to uphold the law and today I had a cast before me, I knew what the law was and chose not to follow it." The Appellant feel that this case sets a precedent and that the justices need to take a look at it.

ARGUMENTS

I. DID THE TRIAL JUDGE COMMIT REVERSIBLE ERR BY ASSERTING THAT INDIVIDUAL DEFENDANTS BE DISMISSES FROM THE ACTION PURSUANT TO § 15-70-70 (a) CODE OF LAWS OF SOUTH CAROLINA WHEN NO SUCH LAW EXIST.

The Appellant is asking this court to reconsider the position raised in issue I of the Brief on Appeal. In that, the issue was raised that the Circuit Court based its decision on the wrong section of law, in fact the Circuit Court cited a section of law that does not exist. In the order, Judge Hyman states "This matter is before the court upon motion of Defendants requesting that the individual Defendants be dismissed from the action (pursuant to § 15-70-70(a) Code of Laws of South Carolina)" {RoA Page 1 line 28 to 30}.

The Appellant can state that based on the clear and unambiguous language that § 15-70-70(a) Code of Laws of South Carolina was the intended section of law upon which the dismissal accorded and is based on a section of law that does not exist. It would be easy to conclude that reversible err did occur and that the individual Defendants were never dismissed from the action. If the appeals court cannot substitute it's opinion for the trier

of fact, as a matter of law, the individual Defendants cannot be dismissed from this action pursuant to a section of law that does not exist.

In its Unpublished Opinion No. 2012-UP-061, This Court stated: *the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. . . . [T]his [c]ourt . . . must presume all well pled facts to be true.*" (citations and quotation marks omitted);

After reading Rule 220(b)(1) and (2) SCACR, Unpublished Opinion No. 2012-UP-061, and knowing that South Carolina Code of Laws § 15-70-70(a) does not exist, all I can ask is that you reconsider your position. If you're going to rewrite South Carolina Law, why wouldn't you want it on the record? Why wouldn't you want everyone to know that as a matter of law, the law does not apply?

II **DID THE TRIAL COURT ERR IN FINDING THAT S. C. CODE OF LAWS § 15-7-80 GIVES A MUNICIPALITY THE AUTHORITY TO DEMOLISH A BUILDING.**

The Appellant is asking this court to reconsider the position raised in issue II of the Brief on Appeal. In that, the issue was raised that the Circuit Court based its decision on the demolition of the building on a section of law that does not apply to building. In the order, Judge Hyman states "In the present case, the Plaintiffs' damages arise out of the demolition of a building, and Section 5-7-80 Code of Laws of South Carolina provides that a municipality may take such actions." {RoA Page 2 line 17 to 19} However S.C. Code Ann. § 15-7-80 has nothing to do with the demolition of buildings and does not give municipality that authority to take such actions. It does give a municipality the authority to go onto lots and property and cut grass.

This Court in its Unpublished Opinion No. 2012-UP-061, stated *S.C. Code Ann. § 5-7-80 (2004) (stating municipalities are empowered to enact ordinances to abate public nuisances)*. As to that point the Appellant agrees with the Court, but there is one problem, S.C. Code Ann. § 5-7-80 does not apply to building and has nothing to do with the case at

bar. A municipality has the right to enact laws; this is not about that, this is about the application of those laws. There were proper laws in the South Carolina Code of Laws to address the demolition of building; the State of South Carolina and the City of Georgetown also adopted the International Building Code, to deal with the demolition of building. Yet those laws were not used.

The Building Official, Mr. Steven Stack wrote letter after letter to the Appellant telling him that the International Building Code was the code to use in the demolition of building. In other letters to the Appellant, Mr. Stack stated that the condemnation process would be done in accordance with the International Building Code. But it was not used. See the Record on Appeal.

In its Unpublished Opinion No. 2012-UP-061, This Court stated: *the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. . . . [T]his [c]ourt . . . must presume all well pled facts to be true.*" (citations and quotation marks omitted);

After reading Rule 220(b)(1) and (2) SCACR, Unpublished Opinion No. 2012-UP-061, and knowing that South Carolina Code of Laws § 5-7-80 does not apply to building and has nothing to do with the case at bar, all I can ask is that you reconsider your position.

III DID THE TRIAL COURT ERR IN FINDING THAT THE DEFENDANTS ACTIONS CONSTITUTED A TORT.

See the Record . . .

The Appellant is asking this court to reconsider the position raised in issue III of the Brief on Appeal. In that, the issue was raised that the Circuit Court erred its decision on Tort Liability. There is a saying that all poodles are dogs, but not all dogs are poodles. All actions committed by the Defendants are torts but not all torts committed by the Defendants are covered by the Tort Claim Act.

In its Unpublished Opinion No. 2012-UP-061, This Court stated: *the appellate court must*

consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. . . . [T]his [c]ourt . . . must presume all well pled facts to be true." (citations and quotation marks omitted));

In the complaint the Appellant stated that the Defendant Mr. Steven Stack pled guilty before a South Carolina LLR Building Codes Council Tribunal for internally violating State Law in the demolition of the home. That guilty plea was the first time in history of South Carolina that a sitting building official was ever convicted of violating state law in the demolition of a home. This case set a precedent that hopefully will never be repeated. Based on his education and training, the building official either knew or should have known the proper laws to enforce. This Court must presume this well pled fact to be true. The Appellant claim that the Defendants committed an "Ultra Vires Acts" and as this Court knows, an "Ultra Vires Acts" is any act that lies beyond the authority of a Defendant to perform. Ultra Vires acts fall outside the powers that are specifically listed in an ordinance or state law. There is no law or ordinance or state law that gives the Defendants the power to internally break the law in an attempt to enforce it. This Court must presume this well pled fact to be true.

Not every wrongdoing committed by a governmental entity falls under the torts claim act. Under S.C. Code Ann. § 15-78-30 The act goes to great lengths to established and define the term "Scope of official duty" and "scope of state employment" by stating it's means as (1) acting in and about the official business of a governmental entity and (2) performing official duties. However under S.C. Code Ann. § 15-78-20 Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity. You will find in the last part of that section these words: "Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty." The reading of this section should lead anyone to conclude that the Act was never intended to protect anyone for intentional act's of wrongdoing where the appearance of an act being performed based upon legal right or enforcement of statute, when in reality no such right exists but their actions were conducted under the "color of law." In this case elected officials were

notified there actions were not within the scope of the law. Other employees were notified there actions were not within the scope of the law. The building official, whose duty it was to enforce the law, was notified his actions were not within the scope of the law. Even the city attorney was notified that the cities actions were not within the scope of the law. {RoA Page 37,42, 43, 46, and 47} The demolition of the building was no accident, but rather an intentional and deliberate act which is not protected by law, and does not fall within the scope of the torts claim act.

After reading Rule 220(b)(1) and (2) SCACR, Unpublished Opinion No. 2012-UP-061, and knowing that South Carolina Tort Claim Act does not protect every act committed by a municipality, the Appellant ask that you reconsider your position. The Appellant is not asking this Court to rewrite State Law, just force the Lower Court to enforce the law.

IV DID THE TRIAL COURT ERR IN FINDING THAT THE DEFENDANTS ^{whose} ACTIONS WERE WITHIN THE SCOPE OF OFFICIAL DUTY OR WITHIN THE SCOPE OF EMPLOYMENT.

The Appellant is asking this court to reconsider the position raised in issue IV of the Brief on Appeal. In that, the issue was raised that the Circuit Court erred its decision on Tort Liability. This Court just jump on the "Tort Clams Act" wagon without really studying the facts of this case and reading what it says and applying it to the case at bar.

Wording is everything. Let's look at S.C. Code Ann. § 15-78-20 (b) *The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein.* In this section the distinction was made as to "employees, while acting within the scope of official duty" and when you read that in concert with exceptions to waiver of immunity. S.C. Code Ann. § 15-78-60 (17) *employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, **intent to harm**, or a crime involving*

moral turpitude;

In reading this Court opinions in case after case after case since the "Tort Clams Act" was placed into law in 1986, I have not found a case where this court found the actions of any person covered by the "Tort Clams Act" fell outside the scope of official duty. You have a law that this Court has concluded that no one has ever broken.

As it relates to the case at bar, nothing was done in compliance with the law, The law was internally broken by the defendants, so how can it be within the scope of employment or within the scope of official duty? The determination of immunity based on being within the scope of official duty or scope of employment should turn on the question of whether the acts in question were discretionary rather than ministerial. A finding of immunity under the Act "is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards." Wooten ex rel. Wooten v. South Carolina Dep't of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). "The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense." Sabb v. South Carolina State Univ., 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002).

When viewing the complaint, though it is a tort, it was not brought under the "Tort Clams Act" but rather as the wrongful taking of property. {RoA Page 11 line 6 to 11}

After reading Rule 220(b)(1) and (2) SCACR, Unpublished Opinion No. 2012-UP-061, and knowing that South Carolina Tort Clam Act does not protect every act committed by a municipality, the Appellant ask that you reconsider your position and give a written opinion on the issued raised so that the facts can be presented at trial or before the South Carolina Supreme Court or the United States Supreme Court.

V DID THE TRIAL COURT ERR IN FINDING THAT PUNITIVE DAMAGES BE STRICKEN FROM THE COMPLAINT.

The Appellant is asking this court to reconsider the position raised in issue V of the Brief

on Appeal. In that, the issue was raised that the Circuit Court erred its decision that punitive damages be stricken from the complaint.

When you view the case at bar with respect to punitive damages you find S.C. Code Ann. § 15-78-120. Punitive damages can and should be capped, if and only if the governmental entity actions falls within the scope of the "Tort Clams Act" and those actions of an employee falls within an employee acting within the scope of official duty.

This Court upheld the Circuit Court summary judgment pursuant to Rule 56(c), SCRPC. This decision by the Circuit Court to strike punitive damages was made before and the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits were completed and presented to the court. A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC;

Even at some point if the Court decides that it wants to strike punitive damages, it cannot be done at this time based on the law, as it is written today. The standard of review in this case was not and is not Rule 12(b)(6), SCRPC, but Rule 56(c), SCRPC. Nothing in the Defendant's request for a hearing or in the transcript was a request for a Rule 12(b)(6) determination. Because of this fact alone the Court in its view must be in a light most favorable to the non-moving party.

VI DID THE TRIAL COURT ERR IN FINDING THAT THE INDIVIDUAL DEFENDANTS BE STRICKEN FROM THE COMPLAINT.

The Appellant is asking this court to reconsider the position raised in issue VI of the Brief on Appeal. In that, the issue was raised that the Circuit Court erred its decision that the named Defendant's be stricken from the complaint.

The law recognizes joint tortfeasors. When viewing S.C. Code Ann. § 15-78-70. The city

was added, as well as the named defendants. What's not found in § 15-78-70 is the term "named sole defendant" and without that wording, the named defendants should not be removed. Nothing in § 15-78-70 states that the named defendants cannot be placed on the complaint.

Where the employee was acting outside the scope of his official duty or outside the scope of his official employment and have a cause of action and it will fall outside S.C. Code Ann. § 15-78-10, et. seq. the decision to remove all named defendants was made before and the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits were completed and presented to the court. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.

All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. In general, if the pleadings and the evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented.

Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues.

In this case the trial judge did not exercise discretion in keeping the named defendants on the complaint. The well-established proposition is that the circuit court commits an error of law where it fails to exercise its discretion. Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."); State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)

It is apparent here that the judge did not exercise any discretion but based his ruling on an

erroneous view of the law, which it's not hard to do when you're basing your decision on a law that does not exist. It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. The standard of review in this case was not and is not Rule 12(b)(6), SCRCp, but Rule 56(c), SCRCp.

VII DID THE TRIAL COURT ERR BY DETERMINING THAT THERE WERE NO GENUINE ISSUES TO ANY MATERIAL FACTS BY ENTERING A JUDGMENT AS A MATTER OF LAW.

The Appellant is asking this court to reconsider the position raised in issue VII of the Brief on Appeal. In that, the issue was raised that the Circuit Court erred its decision that there were no genuine issues exist in the complaint. This decision to remove named defendants and strike punitive damages should not have been made at this time.

It is a well-established rule that a motion to dismiss cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to relief on any theory of the case. In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.

The standard of review in this case was not and is not Rule 12(b)(6), SCRCp, but Rule 56(c), SCRCp. This decision to remove named defendants and strike punitive damages was made before and the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits were completed and presented to the court. A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCp; A Rule 12(b)(6) would have been a ruling on the face of the complaint which the Defendant had

pled guilty to internally breaking the law. Nothing in the Defendant's request for a hearing or in the transcript was a request for a Rule 12(b)(6) determination. Because of this fact alone the Court in its view must be in a light most favorable to the non-moving party.

VIII DID THE TRIAL COURT ERR BY USING DOE V. MARION 605 S.E. 2d 556 AS A CASE OF AUTHORITY IN THIS CASE.

The Appellant is asking this court to reconsider the position raised in issue VIII of the Brief on Appeal. In that, the issue was raised that the Circuit Court erred its decision that Doe V. Marion, 605 S.E. 2d 556 (Ct. App 2004) applied.

The standard of review in this case was not and is not Rule 12(b)(6), SCRPC, but Rule 56(c), SCRPC. Doe V. Marion, 605 S.E. 2d 556 (Ct. App 2004) is a case based on Rule 12(b)(6). The inclusion or exclusion of words can change the outlook of a case. In the order Judge Larry Hyman states: "Generally in a motion to dismiss based upon a failure upon a failure to state facts sufficient to constitute a cause of action the court must base its ruling solely upon the allegations set forth on the face of the complaint {Doe V. Marion) 605 S.E. 2d 556 (Ct. App 2004) A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC;

After reading Rule 220(b)(1) and (2) SCACR, Unpublished Opinion No. 2012-UP-061, and knowing that the standard of review in this case was not and is not Rule 12(b)(6), SCRPC, but Rule 56(c), SCRPC. Also that Doe V. Marion, 605 S.E. 2d 556 (Ct. App 2004) is a case based on Rule 12(b)(6). The Appellant ask that you reconsider your position and give a written opinion on the issued raised so that the facts can be presented at trial or before the South Carolina Supreme Court or the United States Supreme Court.

IX DID THE TRIAL COURT ERR BY CONCLUDING THAT THE DEMOLITION OF THE BUILDING WAS AN ACCIDENT.

The Appellant is asking this court to reconsider the position raised in issue IX of the Brief on Appeal. In that, the issue was raised that the Circuit Court erred its decision that the demolition of the building was an accident.

Black's law defines accident this way. **accident**.,(14c) 1. An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated.

Judge Hyman states in his ruling that; what is within the scope of employment may be determined by implication from the circumstances of the case.(Padget V South Carolina Insurance Reserve Fund},531 S.E, 305(ct.App.2000) One factor is whether the employee was acting in the furtherance of the employer's business when the accident happened. {RoA Page 2 line 23 to 25} The demolition of the building was no accident. The City of Georgetown planned the demolition of the building from 2006 and 2007 until the building was demolished, the Appellant did everything according to the law to prevent the demolition. The Defendants, were made aware of the laws and codes that were in place and quoted them to the appellant on several occasions in 2006 and 2007 before the building was demolished.

The building official, Mr. Steven Stack gave the appellant in writing the section of the codes that the City of Georgetown was governed by in dealing with the demolition of building. {RoA Page 38 line 10 to 12} The appellant requested and received a copy of the law and code used for demolition and then asked the City of Georgetown to abide by and enforce the laws and codes of this state as it related to the demolition of building in the City of Georgetown. {RoA Page 42 and page 43} The City decided not to abide by or enforce the laws of the State of South Carolina and informed the appellant that they were not going to allow them to fix the house and that the building official, Mr. Steven Stack was going to start a condemnation process as required by state law and the building code.

A few weeks later the city, by and through it's agents and the building official, Mr. Steven Stack demolished the house without ever starting the condemnation process. The building official, Mr. Steven Stack plead guilty to these facts and more. He pled guilty to having full knowledge that he was breaking the law.

Would you call the City of Georgetown, and the building official, Mr. Steven Stack's action an accident? Judge Hyman was incorrect in calling the City of Georgetown, and the building official, Mr. Steven Stake's action an accident. The paper trail and the complaint to the state LLR, Building Codes Council also shows that all the other defendant and attorney were fully aware of the codes and laws beforehand and that their action as well as the building official, Mr. Steven Stack's actions were incorrect. However by law, S.C. Code Ann. § 6-8-40 (A) the state LLR, Building Codes Council only has jurisdiction over licensed building inspectors and building officials and not other elected or appointed officials. Despite the fact that they were all given a copy of state laws concerning their actions, there is no state agency to regulate their actions. These defendants action can be call a lot of things, but accident is not one of them.

In its Unpublished Opinion No. 2012-UP-061, This Court stated: *the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. . . . [T]his [c]ourt . . . must presume all well pled facts to be true.* " (citations and quotation marks omitted);

The Appellant ask that you reconsider your position.

X DID THE TRIAL COURT ERR BY CONCLUDING THAT THE SERVANT WAS ACTING IN FURTHERANCE OF THE MASTERS BUSINESS.

The Appellant is asking this court to reconsider the position raised in issue X of the Brief on Appeal. In that, the issue was raised that the Circuit Court erred its decision that the servant was acting in furtherance of the masters business.

In the order, Judge Hyman use the case {South Carolina Budgeting Control Broad V. Prince} 43 S.E.2d 643 (1991)(It is not necessary to find a particular act creating liability was within the servant's authority. If the servant was doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment although he may exceed his authority.) {RoA Page 2 line 25 and page 3 line 1 to 4}

In considering "in furtherance of the master's business," you have to consider, what master and what business. The only two masters can be the State of South Carolina and The City of Georgetown. How can illegally tearing down a building be in furtherance of the master's {State of South Carolina} business? It cannot! How can illegally tearing down a building be in furtherance of the master's {City of Georgetown} business? It cannot! What illegal act can be in furtherance on any governmental agency business? Most would conclude that building officials are given absolute power to intrepid and enforce the building code by their master's. The building official did not perform his action in furtherance of the code, he perform his actions outside of the code. The citizens of Georgetown never directed the elected, appointed, or employees to demolish any house in Georgetown outside of the code which the city had adopted, so how were they doing the master's business? The building official is governed by state law and regulated by a state agency. The state never directed the building official to violate any state law to demolish any building so how was he doing his master's business. Their must be a second master at work here that is not seen, so who is that other master? The building official must be working for that master, the other party if you will. This third master uses his power to abuse the ones whom was given the power to protect and serve.

After reading Rule 220(b)(1) and (2) SCACR, and the Unpublished Opinion No. 2012-UP-061, its clear that there are many masters taking on many forms working just on the other side of the law doing his master's business, but it has nothing to do with upholding the law, or giving fair and equal protection to all. The Appellant is asking this court to reconsider its position.

QUESTIONS RAISED

Being a pro se Appellant, I do not have the benefit or understanding of knowing the law, but I understand when something does not appear proper to me. There are several questions raised by this decision that should be addressed.

1. The Court of Appeals affirm the lower court decision pursuant to Rule 220(b)(1) SCACR, and did not answer or responded to any issue raised by the Appellant. The Court of Appeals decision should have been rendered pursuant to Rule 220(b)(2) SCACR, and a published, written opinion should have been rendered. Based on what has been done, how can the public have any trust in this Court?
2. This Court ruling is saying that even though the city did not use the proper laws that were adopted by the city and in place at the time, their actions were still proper. How?
3. This Court ruling is saying that even though Mr. Steven Stack wrote a letter telling the Appellant that the home needed some repairs, and over the course of a year the Appellant applied for several building permit to fix the home, but Mr. Stack refused to allow the Appellant to repair the home. Despite the fact that South Carolina State Law, the International Building Code, and The City of Georgetown Code of Ordinances all requires a person to first make the repairs and when a person refuses or do not make the repairs then a condemnation process can start, but that's only if the person does not make the repairs. In this case Mr. Stack refused to issue a permit to allow the Appellant to make the repairs, then demolished the home because the repairs were not made. How can anyone say that Mr. Stack was acting in furtherance of the master's business when the Master's wanted the home fixed, not demolished?
4. This Court ruling is saying that even though Mr. Steven Stack had several meeting with the Appellant and in those meeting told the Appellant that the International Building Code was the law that he would use to condemn the home, yet he never used that law and simply demolished the home without and kind of condemnation process, or following any

law, and that Mr. Stack was acting in furtherance of the master's business. How?

5. This Court ruling is saying that even though Mr. Steven Stack and others wrote several letter to the Appellant and in those letter told the Appellant that the International Building Code was the law that would be used to condemn the home, yet Mr. Stack never used that law or any other law, and simply demolished the home without and kind of condemnation process, or following any law, that Mr. Stack was acting in furtherance of the master's business. How?
6. This Court ruling is saying that even though Mr. Stack is the only person allowed by law to enforce the condemnation procedure set forth in South Carolina State Law, the International Building Code, and The City of Georgetown Code of Ordinances. That Mr. Stack pled guilty before a State tribunal to violating State Law in the demolition. Mr. Stack was fired by the City of Georgetown for his actions, and his licensed to work in this state as a building official was taken away by the state. This court is saying that he was acting in furtherance of their business. If that is the case, the City of Georgetown and the State of South Carolina has a strange way of rewarding him. Firing him and taking away his licensed to work in this state for acting within the scope of his official duty is something that does not seem right because neither the State of South Carolina nor the City of Georgetown based on their action felt what Mr. Stack did was correct, or acting in furtherance of their business or within the scope of his official duty, so how did this Court come to that conclusion?
7. This Court ruling is saying that even though South Carolina Code of laws Ann. § 15-78-20 (f) establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, that a determination of summary judgment can be made without having a full and open hearing on the facts as to whether or not such a violation happen. Rule 56(c), SCRPC states that a trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

moving party is entitled to a judgment as a matter of law." The requirements of Rule 56(c), SCRPC; were not met so how can this Court liberally construed in favor of limiting the liability of the City of Georgetown without the facts that only a hearing reveals?

8. This Court ruling is saying that even though there are exceptions to waiver of immunity in South Carolina Code of Laws found in § 15-78-60 (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude; that there is no such thing as an exception. This Court has conclude that every action that a governmental entity does falls within the scope of the "Tort Clams Act" even those actions of an employee when it can be clearly show that the employee was acting outside the scope of his official duty. How?
9. This Court ruling is saying that even though the City of Georgetown was notified at a public city council meeting and in writing, by and through the city attorney, city administrator, mayor, and members of city council that their actions were in direct violation of the laws of South Carolina and the City of Georgetown Code of Ordinances, that the named Defendants were acting in furtherance of the master's business, when they were the masters. How?
10. This Court ruling is saying that even though the City of Georgetown was notified at a public city council meeting and in writing, by and through the city attorney, city administrator, mayor, and members of city council that their actions were in direct violation of the laws of South Carolina and the City of Georgetown Code of Ordinances, that the named Defendants were acting within the scope of their official duty and or scope of employment. How?



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 29, 2012

Willie Singleton
501 North Condon Street
Georgetown, SC 29442

Re: Singleton, Willie v. City of Georgetown

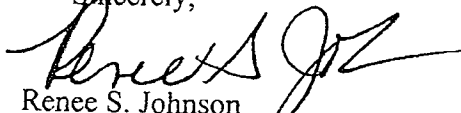
Dear Mr. Singleton:

Enclosed is a copy of an Order of the Court denying your Petition for Rehearing in the above case.

The Remittitur in this case will be held in this Court only so long as required by Appellate Court Rule 221 (b).

Please notify this office, in writing, within ten (10) days from the date of this letter, whether or not you want any of the remaining Records on Appeal and briefs we may have in this case. Also enclose a check payable to the S. C. Court of Appeals, in the amount of \$7.50, to cover mailing costs. If we have not heard from you within ten (10) days, the Record on Appeal and briefs will be disposed of.

Sincerely,


Renee S. Johnson
Case Specialist II

JAK/tj

cc: Douglas Charles Baxter, Esquire
Mason A. Summers, Esquire

The South Carolina Court of Appeals

Willie Singleton and Julia Thomas,
Heirs at Law of Victoria Gadson,
deceased,

Plaintiffs,

Of whom Willie Singleton is the

Appellant,

v.

City of Georgetown Building Official
Stephen Stack, Mayor Lynn Wood
Wilson, Mayor Pro Temp Brendon M.
Barber, Sr., Council Member Clarence
Smalls, Council Member Paige B.
Sawyer, III, Council Member Rudolph
A. Bradley, Council Member Jack
Scoville, Director of Building Planning
Sabrina Morris, Steve Thomas, City
Administrator, and The City of
Georgetown,

Respondents.

The Honorable Larry B. Hyman Jr.
Georgetown County
Trial Court Case No. 2009-CP-22-00325

ORDER DENYING PETITION FOR REHEARING

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. Furthermore, Singleton's contention that this court does not have the authority to issue opinions under Rule 220(b)(1), SCACR, is without merit. See In re Memorandum Decisions by Court of Appeals, 322 S.C. 53, 55, 471 S.E.2d 456, 457 (1993) (holding the court of appeals may use the same format as the supreme court in issuing

opinions under Rule 220(b)(1), SCACR). It is, therefore, ordered that the Petition for Rehearing be denied.

Thomas E. Hoff J.
D. Reper J.
James E. Kirby J.

Columbia, South Carolina

FILED

29 March 2012

18533

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Georgetown County
Court of Common Pleas

Larry B. Hyman, Presiding Circuit Court Judge

Case No. 09 – CP – 22 -0325

Willie Singleton and Julia Thomas, Heirs at
Law of Victoria Gadson, deceased,

Plaintiffs,

Of whom Willie Singleton,

Appellant,

v.

City of Georgetown Building Official Stephen Stack,
Mayor Lynn Wood Wilson, Mayor Pro Temp
Brendon M. Barber, Sr., Council Member Clarence Smalls,
Council Member Paige B. Sawyer, III, Council Member
Rudolph A. Bradley, Council Member Jack Scoville,
Director of Building Planning Sabrina Morris, Steve Thomas,
City Administrator, and The City of Georgetown,

Respondent,

RECORD ON APPEAL

Willie Singleton, Pro Se
501 North Congdon Street
Georgetown, SC 29440
843 240-1315

Mason A. Summers
RICHARDSON PLOWDEN & ROBINSON, P.A.
P.O. Drawer 7788
Columbia, SC 29202
803 771-4400

Douglas C. Baxter
RICHARDSON PLOWDEN & ROBINSON, P.A.
P.O. Box 3646
Myrtle Beach, SC 29578

ATTORNEYS FOR RESPONDENTS

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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 09-CP-22-0325

Willie Singleton and Julia Thomas,)
Heirs at Law of Victoria Gadson,)
deceased,)

Plaintiffs,)

vs.)

ORDER

City of Georgetown Building Official)
Stephen Stack, Mayor Lynn Wood)
Wilson, Mayor Pro Temp Brendon)
M. Barber, Sr., Council Member)
Peggy P. Wayne, Council Member)
Clarence Smalls, Council Member)
Paige B. Sawyer, III, Council)
Member Rudolph A. Bradley,)
Council Member Jack Scoville,)
Director of Building Planning)
Sabrina Morris, Steve Thomas, City)
Administrator, and The City of)
Georgetown,)

Defendants,)

This matter is before the court upon motions of the Defendants requesting that the individual Defendants be dismissed from the action (pursuant to §15-70-70(a) Code of Laws of South Carolina) and that the Plaintiffs request for punitive damages be stricken from the Complaint (pursuant to §15-78-120(b) Cod of Laws of South Carolina). This lawsuit arises out of the demolition of a building located at 1929 Front Street in Georgetown, South Carolina. The Plaintiffs allege that they are the owners of the property and contend that the Defendants failed to follow "proper statutory procedures" in effectuating the demolition.

Generally in a motion to dismiss based upon a failure to state facts sufficient to constitute a cause of action, the Court must base its ruling solely upon the allegations set forth on the face of the Complaint. Doe v. Marion, 605 S.E.2d 556 (Ct. App. 2004). The Court must consider

Willie Singleton

ROA 1

whether the Complaint, viewed in the light most favorable to the Plaintiffs, states any valid claim for relief. Id. If the alleged facts and inferences reasonably deducible from the allegations show that the Plaintiffs can not prevail on any theory of the case, then the motion should be granted. Id.

In the Complaint, the Plaintiffs allege that the individual Defendants were either elected officials or employees of the City of Georgetown and that "at all times relevant to these proceedings were serving in such capacity." The South Carolina Tort Claims Act is the exclusive remedy for the torts committed by an employee of a governmental entity while acting within the course and scope of their employee (§15-78-10 Code of Laws of South Carolina). Section 15-78-70(a) Code of Laws of South Carolina provides that an employee with a governmental entity to commit tort by acting within the scope of his official duty is not liable therefore. Section 15-78-30(c) Code of Laws of South Carolina provides that employee means any officer, employee, or agent, including elected or appointed officials. Section 15-78-30(i) Code of Laws of South Carolina provides that "scope of the official duty" or "scope of their employment" means (1) acting in and about the official business of the governmental entity and (2) performing official duties.

In the present case, the Plaintiffs' damages arise out of the demolition of a building, and Section 5-7-80 Code of Laws of South Carolina provides that a municipality may take such actions. However, the Plaintiffs contend that the individual Defendants failed to follow the proper procedure and this therefore takes their actions outside the course and scope of their official duties.

What is within the scope of employment may be determined by implication from the circumstances of the case. Padgett v. South Carolina Insurance Reserve Fund, 531 S.E.2d 305 (Ct. App. 2000). One factor is whether the employee was acting in furtherance of the employer's business when the accident happened. Id. See also, South Carolina State Budgeting Control

Willie Singleton

ROA 2

Board v. Prince, 43 S.E.2d 643 (1991) (It is not necessary to find a particular act creating liability was within the servant's authority. If the servant was doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority.)

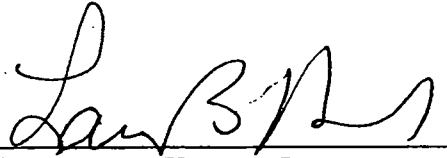
In the present case, viewing the allegations in this Complaint most favorable to the Plaintiff, the alleged actions on the part of the individual Defendants involved acts all which were in furtherance of the City's "business." Thus, the fact that the proper procedure may or may not have been followed does not take their actions outside the course and scope of their official duties. Based upon the foregoing comments it is therefore

ORDERED, ADJUDGED, AND DECREED that Defendants City of Georgetown Building Official Stephen Stack, Mayor Lynn Wood Wilson, Mayor Pro Temp Brendon M. Barber, Sr., Council Member Peggy P. Wayne, Council Member Clarence Smalls, Council Member Paige B. Sawyer, III, Council Member Rudolph A. Bradley, Council Member Jack Scoville, Director of Building Planning Sabrina Morris, and Steve Thomas, City Administrator hereby dismissed from this action.

FURTHER ORDERED that this action is governed by the South Carolina Tort Claims Act and the Plaintiffs cannot recover punitive damages from the City; according, the request for same is hereby stricken from the Complaint.

It is so Ordered

8-4, 2009



Judge Larry B. Hyman, Jr.
Fifteenth Judicial Circuit

Willie Singleton

ROA 3

Grace L. Hurley
P.O. Box 30878
Myrtle Beach, SC 29598
February 17, 2010

Willie L. Singleton
501 North Congdon Street
Georgetown, SC 29442

Re: Willie Singleton, et al. versus
Stephen Stack, et al.
09-CP-22-0325
Date of Hearing: June 18, 2009

Mr. Singleton:

This is in response to your letter of February 7,
2010, concerning the above case.

I did not take any motion heard in your case on that
date. According to my notes, during the initial roster
call for all motions scheduled that day, only Attorney
Douglas C. Baxter was present appearing for the motion in
the above case. Your attorney, nor you, were present. Mr.
Baxter stated that Plaintiff's attorney was in Columbia and
that your attorney had sent the court an e-mail and that
the motions scheduled for that day would be heard via
telephone.

Later in the day when all the motions in other cases
scheduled for that day had concluded, Mr. Baxter and the
Judge exited the courtroom stating that the motions would
be heard via telephone. Attorney Baxter was asked if the
motions needed to be on the record and he responded no
thus, they were not put on the record and there is no
transcript of same.

Sincerely,

Grace L. Hurley
Grace L. Hurley

Glh

Willie Singleton

ROA 4

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown

Willie Singleton and Julia Thomas

vs.

City of Georgetown, et. al

Plaintiff(s)

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009 CP 22-03-25

COPY

ALAN WHITE
CLERK OF COURT

2009 MAR -6 AM 10:28

FILED
GEORGETOWN COUNTY, S.C.

(Please Print)

Submitted By: Joseph Henry

Address: 1708-B Richland Street

Columbia, S.C. 29201

SC Bar #: 007898

Telephone #: (803) 929-3484

Fax #: (803) 929-3485

Other:

E-mail: josephhenry929@bellsouth.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Joseph Henry

Date:

March 5, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Willie Singleton

ROA 5

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

Willie Singleton and Julia Thomas,)
Heirs at Law of)
Victoria Gadson, deceased)
Plaintiff,)

CIVIL ACTION NO: 08-CP-
2009CP220325

SUMMONS

V.)

City of Georgetown Building)
Official Stephen Stack, Mayor)
Lynnwood Wilson, Mayor Pro)
Temp Brendon M. Barber, Sr.,)
Council Member Peggy P. Wayne,)
Council Member Clarence Smalls,)
Council Member Paige B. Sawyer,)
III, Council Member Rudolph A.)
Bradley, Council Member Jack)
Scoville, Director of Building)
Planning Sabrina Morris, Steve)
Thomas City Administrator, and)
The City of Georgetown,)
Defendants.)

COPY

FILED
GEORGETOWN COUNTY, S.C.
2009 MAR -6 AM 10:28
ALLAN J. WHITE
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

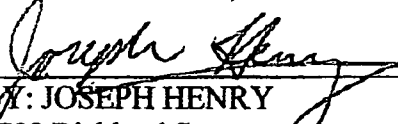
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, Joseph Henry, Joseph Henry, P.C., 1708 Richland Street, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Willie Singleton

ROA 6

Respectfully submitted,

JOSEPH HENRY, P.C.


BY: JOSEPH HENRY

1708 Richland Street
Columbia, South Carolina 29201
(803) 929-3484
ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina
February 5, 2009

Willie Singleton

ROA 7

-STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

Willie Singleton and Julia Thomas,)
Heirs at Law of)
Victoria Gadson, deceased)
Plaintiff,)

V.)

City of Georgetown Building)
Official Stephen Stack, Mayor)
Lynnwood Wilson, Mayor Pro)
Temp Brendon M. Barber, Sr.,)
Council Member Peggy P. Wayne,)
Council Member Clarence Smalls,)
Council Member Paige B. Sawyer,)
III, Council Member Rudolph A.)
Bradley, Council Member Jack)
Scoville, Director of Building)
Planning Sabrina Morris, Steve)
Thomas City Administrator, and)
The City of Georgetown,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

COPY

CIVIL ACTION NO: ~~08~~-CP-
2009CP220325

COMPLAINT
(JURY TRIAL REQUESTED)

FILED
GEORGETOWN COUNTY, S.C.
2009 MAR - 6 AM 10:28
ALMA Y. WHITE
CLERK OF COURT

The Plaintiffs complaining of the Defendants herein, would allege and show as follows:

1. That Plaintiffs are citizens and residents of Georgetown County, South Carolina and the legal heirs of Victoria Gadson, deceased.
2. That Defendant, Stephen Stack, is a citizen and resident of Georgetown County, South Carolina and serves as the Building Official for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.
3. That Defendant, Lynnwood Wilson, is a citizen and resident of Georgetown County, South Carolina and serves as the Mayor for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.

Willie Singleton

ROA 8

4. That Defendant, Brendon M. Barber, Sr., is a citizen and resident of Georgetown County, South Carolina and serves as the Mayor Pro Temp for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.
5. That Defendant, Peggy P. Wayne, is a citizen and resident of Georgetown County, South Carolina and serves as a member of the City Council for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.
6. That Defendant, Clarence Smalls, is a citizen and resident of Georgetown County, South Carolina and serves as a member of the City Council for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.
7. That Defendant, Paige B. Sawyer, III, is a citizen and resident of Georgetown County, South Carolina and serves as a member of the City Council for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.
8. That Defendant, Rudolph A. Bradley, is a citizen and resident of Georgetown County, South Carolina and serves as a member of the City Council for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.
9. That Defendant, Jack Scoville, is a citizen and resident of Georgetown County, South Carolina and serves as a member of the City Council for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.
10. That Defendant, Sabrina Morris, is a citizen and resident of Georgetown County, South Carolina and serves as the Director of Building Planning for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant to these proceedings was serving in such capacity, except as otherwise indicated herein.
11. That the Defendant Steve Thomas is citizen and resident of Georgetown County, South Carolina and served as the City Administrator for the City of Georgetown, County of Georgetown, and the State of South Carolina and at all times relevant

Willie Singleton

ROA 9

to these proceedings was serving in such capacity, except as otherwise indicated herein.

12. That the Defendant City of Georgetown is a body politic and corporate which acts through the actions of its agents, servants, employees, and elected government officials and is responsible for their conduct.
13. That Plaintiffs, as the legal heirs of Victoria Gadson, are the owners of property located in the City of Georgetown, South Carolina bearing the address of 1929 Front Street, Georgetown, South Carolina 29440.
14. That Plaintiff, Willie Singleton, has the legal right to manage, repair, and otherwise control the property due to his legal relationship with the decedent and the Power of Attorney granted to him by Plaintiff, Julia Thomas, evidencing such rights.
15. That the property which is the subject of this litigation is located in Georgetown County, South Carolina.
16. That this court has jurisdiction over the subject matter of this action and venue is proper in proper in Georgetown County as the property which is the subject matter of this action is located in Georgetown County and all parties reside in Georgetown and Horry County.
17. That the property which is the subject of this action was in need of repairs and Plaintiff, Willie Singleton, was in the process of attempting to obtain the necessary permit to effectuate the repairs when officials of the City of Georgetown, without proper notice to Plaintiff or the opportunity for a hearing, demolished the premises and removed all contents of the same causing Plaintiff to suffer great pecuniary loss as a direct and proximate result of such actions.

FOR A FIRST CAUSE OF ACTION
(Improper Taking)

18. Plaintiffs reallege, reassert, and incorporate herein by reference the allegations of the foregoing paragraphs as if repeated herein verbatim.
19. Plaintiff, as the heir of Victoria Gadson and the person with Power of Attorney, had the legal right to do all things necessary to repair and preserve the property and was in the process of making arrangements to do the same when the City of Georgetown, through the wrongful conduct of its agents, servants, employees and elected officials, deprived Plaintiffs of the value of such property by ordering demolition of the same in violation of the statutory and common law of this state.
20. That such denial of access and wrongful demolition of the property with the knowledge, acquiescence, and consent of such agents, servants, employees and

Willie Singleton

ROA 10

elected officials constituted a wrongful taking of such property and constitutes a performance of official duties, or failure to perform such duties, in a grossly negligent, willful and wanton fashion thereby entitling Plaintiffs to actual and consequential damages for such wrongful taking suffered as a direct and proximate result of such taking.

21. That Defendants' action in wrongfully denying Plaintiffs' access to their property and demolishing the same without following proper statutory procedures applicable to such action amounts to a wrongful taking of Plaintiffs' property and entitles Plaintiffs to have judgment against Defendants for all damages proximately caused by the same including actual, consequential, and punitive damages, costs and reasonable attorney's fees.

22. Plaintiffs are informed and believe that they are entitled to have judgment against all Defendants for an appropriate amount to compensate them for the actual and consequential damages they have suffered to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(Denial of Due Process)

23. Plaintiffs reallege, reassert, and incorporate herein by reference the allegations of the foregoing paragraphs as if repeated herein verbatim.

24. That Plaintiffs were deprived of Due Process of Law by Defendants' failure to give them notice and an opportunity to be heard and failing to follow prescribed statutory procedures governing condemnation and demolition of alleged unsafe properties before demolishing their property, thereby entitling Plaintiffs to the value of all property which was destroyed as a direct and proximate result of Defendants' wrongful conduct.

25. That Plaintiffs are informed and believes that they are entitled to have judgment against all Defendants in an appropriate amount to compensate them for all losses sustained including, but not limited to, actual and consequential damages, and costs including reasonable attorney's fees, as determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Waiver of Sovereign Immunity)

26. Plaintiffs reallege, reassert, and incorporate herein by reference the allegations of the foregoing paragraphs as if repeated herein verbatim.

Willie Singleton

ROA 11

27. That the Defendants who are public and elected officials acted outside the scope of their official positions when they failed to allow Plaintiffs to repair their property.
28. That as a result of such wrongful conduct, Defendants waived any claim for sovereign immunity or other statutory protections granted to elected officials and public employees protecting them from liability for acts performed in their official capacity, thereby making them liable to Plaintiffs for all damages proximately caused by such actions.
29. That Defendants' conduct deprived Plaintiffs of the use and value of the property and its contents making Defendants liable to Plaintiffs for the value of the same and all consequential damages associated therewith, including , but not limited to, all costs associated with prosecution of this action including reasonable attorney's fees.

FOR A FOURTH CAUSE OF ACTION
(Violation of S. C. Condemnation Statute)

30. Plaintiffs reallege, reassert, and incorporate herein by reference the allegations of the foregoing paragraphs as if repeated herein verbatim.
31. That Defendants failed to follow prescribed statutory procedures necessary to effectuate condemnation of Plaintiffs' property which is a prerequisite to demolition of such property.
32. That Defendants' conduct in improperly demolishing the property without adherence to such procedures was the proximate cause of Plaintiffs' being deprived of the replacement value of the property and its contents, fruit trees, shrubbery, fencing, and property elements, and the additional expenses Plaintiffs have incurred seeking redress of the same including, but not limited to, loss of use, diminution in value, and legal costs, including reasonable attorney's fees.

FOR A FIFTH CAUSE OF ACTION
(Violation of S.C. Code 1-23-320)

33. Plaintiffs reallege, reassert, and incorporate herein by reference the allegations of the foregoing paragraphs as if repeated herein verbatim
34. That Defendants violated the provisions of the Administrative Procedures Act by failing to afford Plaintiffs notice and the opportunity to be heard on a contested case resulting in the wrongful taking of Plaintiffs' property thereby entitling them to have judgment against all Defendants in an amount sufficient to compensate

Willie Singleton

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them for the actual, consequential, and punitive damages, costs and reasonable attorney's fees they incurred as a direct and proximate result of such wrongful conduct.

FOR A SIXTH CAUSE OF ACTION
(Negligence/Gross Negligence)

35. Plaintiffs reallege, reassert, and incorporate herein by reference the allegations of the foregoing paragraphs as if repeated herein verbatim.
36. That the actions of Defendants in wrongfully denying Plaintiffs access to their property, failing to follow prescribed statutory procedures governing condemnation and demolition of property, violation of the provisions of the Administrative Procedures Act governing contested cases, violation of statutory laws governing unsafe dwellings and demolishing Plaintiffs' property without allowing them an opportunity to repair the same constitutes negligence in that the officials knew or should have known that such conduct was wrongful in that it violated the statutory laws of this state and that Plaintiffs would suffer the type of damages proximately caused by the same which were foreseeable.
37. That Defendants' failure to properly investigate the circumstances surrounding the demolition of Plaintiffs' property and to follow proper procedures for the same constitutes gross negligence, willfulness, and wantonness entitling Plaintiffs to have judgment against all Defendants for the damages proximately caused by the same including, actual, consequential, and punitive damages as such conduct was outside the scope of the official duties of such officials, employees, agents and servants.

FOR A SEVENTH CAUSE OF ACTION
(Conversion)

38. Plaintiffs reallege, reassert, and incorporate herein by reference the allegations of the foregoing paragraphs as if repeated herein verbatim.
39. That Defendants' conduct in removing the contents of Plaintiffs' property without Plaintiffs' consent, secreting such contents from Plaintiffs, using the property for their own purposes without Plaintiffs' consent, and disposing of the property without Plaintiffs' consent amounts to conversion of the property.
40. That Plaintiffs are informed and believe that Defendants' conversion of their property entitles them to have judgment against all Defendants in an appropriate amount to compensate them for all damages resulting from such conversion including, but not limited to, the value of such property, consequential damages

Willie Singleton

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relating to the same, costs, including reasonable attorney's fees, and all other expenses proximately caused by the wrongful conversion.

RESERVATION OF ADDITIONAL CAUSES OF ACTION

38. Plaintiffs reallege, reassert and incorporate by reference the allegations of the foregoing paragraphs as if repeated herein verbatim.

39. Plaintiffs hereby reserve the right to amend their pleadings as necessary to assert any additional causes of action revealed during the discovery process.

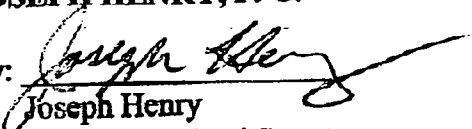
WHEREFORE, Plaintiffs pray this honorable court inquire into the matters raised in their Complaint and issue its Order awarding Plaintiffs judgment against all Defendants for actual, consequential and punitive damages, and costs including reasonable attorney's fees as follows:

- a. City of Georgetown \$ 3,675,000.00;
 - b. Building Official, Stephen Stack, \$2, 675,000.00
 - c. Mayor Lynwood Wilson \$ 1,000,000.00;
 - d. Mayor Pro Temp Brendon M. Barber, Sr. \$ 1,000,000.00;
 - e. Council Member Peggy P. Wayne \$ 1,000,000.00;
 - f. Council Member Clarence C. Smalls \$ 1,000,000.00;
 - g. Council Member Paige B. Sawyer, III \$ 1,000,000.00;
 - h. Council Member Rudolph A. Bradley \$ 1,000,000.00;
 - i. Council Member Jack M. Scoville \$ 1,000,000.00;
 - j. Director of Planning and Building Sabrina Morris \$ 1,000,000.00;
 - k. City Administrator Steven E. Thomas \$ 1,000,000.00; and
- such other and further relief as the court deems just and proper.

Willie Singleton

ROA 14

JOSEPH HENRY, P. C.

By: 

Joseph Henry

1708-B Richland Street

Columbia, S.C. 29201

Telephone: (803) 929-3484

ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina
March 5, 2009

Willie Singleton

ROA 15

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 09-CP-22-0325

Willie Singleton and Julia Thomas,)
Heirs at Law of Victoria Gadson,)
deceased,)

Plaintiffs,)

vs.)

ANSWER OF THE DEFENDANTS

(Jury Trial Requested)

City of Georgetown Building Official)
Stephen Stack, Mayor Lynn Wood)
Wilson, Mayor Pro Temp Brendon)
M. Barber, Sr., Council Member)
Peggy P. Wayne, Council Member)
Clarence Smalls, Council Member)
Paige B. Sawyer, III, Council)
Member Rudolph A. Bradley,)
Council Member Jack Scoville,)
Director of Building Planning)
Sabrina Morris, Steve Thomas, City)
Administrator, and The City of)
Georgetown,)

Defendants,)

The Defendants respond to the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. The Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraph 1.
3. With regards to Paragraph 2, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.

Willie Singleton

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4. With regards to Paragraph 3, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.
5. With regards to Paragraph 4, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.
6. With regards to Paragraph 5, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, admit the remaining allegations.
7. With regards to Paragraph 6, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.
8. With regards to Paragraph 7, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.
9. With regards to Paragraph 8, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.
10. With regards to Paragraph 9, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.

Willie Singleton

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11. With regards to Paragraph 10, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.
12. With regards to Paragraph 11, the Defendants are unable to admit or deny the statement "except as otherwise indicated herein"; however, upon information and belief, they admit the remaining allegations.
13. With regards to Paragraph 12, the Defendants admit the City of Georgetown is a body politic and would show that this action is governed by the South Carolina Tort Claims Act.
14. The Defendants have insufficient information in which to admit or deny the allegations as contained in Paragraphs 13 and 14 of the Complaint.
15. The Defendants, upon information and belief, admit the allegations as contained in Paragraphs 15 and 16 of the Complaint.
16. The Defendants deny the allegations as contained in Paragraph 17 of the Complaint.
17. With regards to Paragraph 19, the Defendants deny any allegations of wrongful conduct; they have insufficient information in which to admit or deny the allegations as contained in Paragraph 19.
18. The Defendants deny the allegations as contained in Paragraphs 20, 21, 22, 24, 25, 27, 28, 29, 31, 32, 34, 36, 37, 39 and 40 of the Complaint.

FOR A SECOND DEFENSE

19. The Defendants reiterate the allegations as contained in the first defense as if repeated verbatim within this the second defense.

Millie Singleton

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20. The Defendants would show that this action is governed by the South Carolina Tort Claims Act, and the Defendants asserts the applicable provisions, immunities, limitations on recovery and statutory cap as affirmative defenses.

FOR A THIRD DEFENSE

21. The Defendants reiterate the allegations as contained in the first two defenses as if repeated verbatim within this the third defense.
22. The Defendants assert the applicable exceptions to waiver of immunity as contained in §15-17-60 of the *Code of Laws of South Carolina*.

FOR A FOURTH DEFENSE

23. The Defendants reiterate the allegations as contained in the first three defenses as if repeated verbatim within this the fourth defense.
24. The Defendants assert the Plaintiffs' lack of standing.

FOR A FIFTH DEFENSE

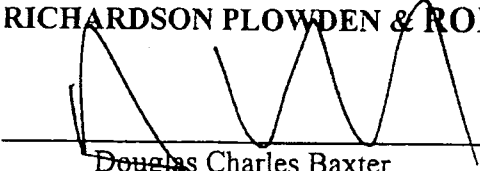
25. The Defendants reiterate the allegations as contained in the first four defenses as if repeated verbatim within this the fifth defense.
26. The Defendants assert equitable estoppel as an affirmative defense.

Wherefore, having fully responded to the Complaint of the Plaintiff, the Defendants request that same be dismissed with prejudice together with the costs and disbursements in the defense of this matter and for such other and further relief as this Court deems just and proper.

Willie Singleton

ROA 19

RICHARDSON PLOWDEN & ROBINSON, P.A.



Douglas Charles Baxter
S. C Bar No.: 4778
2103 Farlow Street, Suite B
Post Office Box 3646
Myrtle Beach, SC 29578

(843) 448-1008
(843) 448-1533 (fax)
dbaxter@richardsonplowden.com

Attorney for the Defendants

March 31, 2009

Willie Singleton

ROA 20

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 09-CP-22-0325

Willie Singleton and Julia Thomas,)
Heirs at Law of Victoria Gadson,)
deceased,)

Plaintiffs,)

vs.)

NOTICE OF MOTION AND MOTION TO
DISMISS INDIVIDUAL DEFENDANTS

City of Georgetown Building Official)
Stephen Stack, Mayor Lynn Wood)
Wilson, Mayor Pro Temp Brendon)
M. Barber, Sr., Council Member)
Peggy P. Wayne, Council Member)
Clarence Smalls, Council Member)
Paige B. Sawyer, III, Council)
Member Rudolph A. Bradley,)
Council Member Jack Scoville,)
Director of Building Planning)
Sabrina Morris, Steve Thomas, City)
Administrator, and The City of)
Georgetown,)

Defendants,)

TO: THE PLAINTIFFS ABOVE NAMED BY AND THROUGH THEIR
ATTORNEY, JOSPEH HENRY, ESQUIRE:

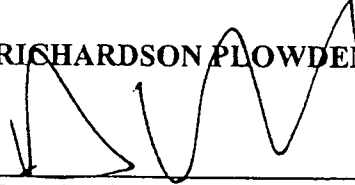
YOU WILL PLEASE TAKE NOTICE, that the above-named Defendants,
Stephen Stack, Lynnwood Wilson, Brendon M. Barber, Sr., Peggy P. Wayne, Clarence
Smalls, Paige B. Sawyer, III, Rudolph A. Bradley, Jack Scoville, Sabrina Morris and
Steve Thomas by and through their undersigned attorney, will move before this
Honorable Court upon ten (10) days notice or as soon thereafter as possible for an Order
dismissing this action as against these Defendants. Said Motion is made pursuant to The
South Carolina Tort Claims Act, and it is based upon the fact these Defendants were

Willie Singleton

ROA 21

acting within the scope of their official duties with the City of Georgetown and cannot be sued individually.

RICHARDSON PLOWDEN & ROBINSON, P.A.



Douglas Charles Baxter
S.C. Bar No.: 6272
2103 Farlow Street, Suite B
Post Office Box 3646
Myrtle Beach, SC 29578

(843) 448-1008
(843) 448-1533 (fax)
dbaxter@richardsonplowden.com

Attorney for the Defendants
Stephen Stack, Lynnwood Wilson,
Brendon M. Barber, Sr., Peggy P. Wayne,
Clarence Smalls, Paige B. Sawyer, III,
Rudolph A. Bradley, Jack Scoville,
Sabrina Morris and Steve Thomas

March 31, 2009

Willie Singleton

ROA 22

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 09-CP-22-0325

Willie Singleton and Julia Thomas,)
Heirs at Law of Victoria Gadson,)
deceased,)

Plaintiffs,)

vs.)

NOTICE OF MOTION AND MOTION
TO STRIKE PUNITIVE DAMAGES

City of Georgetown Building Official)
Stephen Stack, Mayor Lynn Wood)
Wilson, Mayor Pro Temp Brendon)
M. Barber, Sr., Council Member)
Peggy P. Wayne, Council Member)
Clarence Smalls, Council Member)
Paige B. Sawyer, III, Council)
Member Rudolph A. Bradley,)
Council Member Jack Scoville,)
Director of Building Planning)
Sabrina Morris, Steve Thomas, City)
Administrator, and The City of)
Georgetown,)

Defendants,)

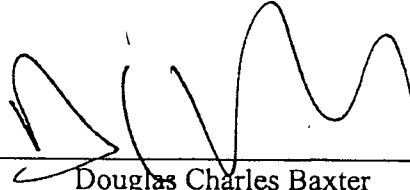
TO: THE PLAINTIFF ABOVE NAMED, BY AND THROUGH THEIR
ATTORNEY, JOSEPH HENRY, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the Defendants will move before this
Honorable Court, upon ten days notice of as soon thereafter as possible, for an Order
striking punitive damages. Said Motion is made pursuant to the South Carolina Tort
Claims Act (§15-78-10, et. seq.) which prohibits the recovery of punitive damages.

Willie Singleton

ROA 23

RICHARDSON PLOWDEN & ROBINSON, P.A.



Douglas Charles Baxter
S.C. Bar No.: 6272
2103 Farlow Street, Suite B
Post Office Box 3646
Myrtle Beach, SC 29578

(843) 448-1008
(843) 448-1533 (fax)
dbaxter@richardsonplowden.com

Attorney for the Defendants

March 31, 2009

Willie Singleton

ROA 24

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Presiding Circuit Court Judge

Case No. 09-CP-22-0325

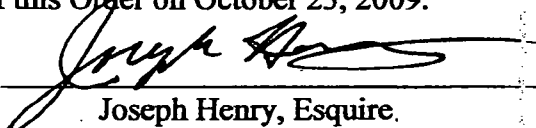
Willie Singleton and Julia Thomas, Heirs at Law of Victoria Gadson.....Appellant
vs.

City of Georgetown Building Official Stephen Stack, et. al....Respondent

NOTICE OF APPEAL

Willie Singleton, by and through his undersigned attorney, appeals from the Orders of the Honorable Larry Hyman, Dated August 4, 2009 granting Summary Judgment to all individual Defendants and striking Punitive Damages from the Complaint (received on August 19, 2009), and the Order Dated October 23, 2009 (received on October 23, 2009) denying the Rule 59(e) motion to alter or amend the August 4, 2009 Order which granted Summary Judgment to all individual Defendants on Plaintiff's claim for personal liability against such Defendants and struck Plaintiff's claim for Punitive Damages. Appellant received written notice of the entry of this Order on October 23, 2009.

November 23, 2009


Joseph Henry, Esquire.
1708-B Richland Street
Columbia, South Carolina 29201
(803) 929-3484

Attorney for Appellants

Other Counsel of Record:

Willie Singleton

ROA 25

FILED
2009 DEC - 1 PM 4:12
ALMA Y. WHITE
CLERK OF COURT

GEORGETOWN COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

Willie Singleton and Julia Thomas,)
Heirs at Law of)
Victoria Gadson, deceased)
Plaintiff,)

V.)

City of Georgetown Building)
Official Stephen Stack, Mayor)
Lynnwood Wilson, Mayor Pro)
Temp Brendon M. Barber, Sr.,)
Council Member Peggy P. Wayne,)
Council Member Clarence Smalls,)
Council Member Paige B. Sawyer,)
III, Council Member Rudolph A.)
Bradley, Council Member Jack)
Scoville, Director of Building)
Planning Sabrina Morris, Steve)
Thomas City Administrator, and)
The City of Georgetown,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT

CIVIL ACTION NO: 08-CP-22-0325

PLAINTIFF'S
MOTION PURSUANT TO RULE 59(e)

FILED
GEORGETOWN COUNTY S.C.
2009 AUG 20 PM 3:21
ALMA Y. WHITE
CLERK OF COURT

TO THE DEFENDANTS AND THEIR ATTORNEY:

PLEASE TAKE NOTICE that Plaintiffs, through their undersigned counsel, will move before the Honorable Larry B. Hyman, Jr., at the Horry County Courthouse, ten (10) days from the service hereof or at such other time and place as may be designated by the Court, for an Order of the Court, pursuant to Rule 59(e), SCRCP, altering or amending that certain order of the Honorable Larry B. Hyman, Jr., in the above-captioned action dated August 4, 2009 (a copy of which is attached hereto) and received by Plaintiff on August 11, 2009. Plaintiff will move that the order of August 11, 2009, be altered or amended to reinstate the claims against the Horry County officials released from the suit and to reinstate Plaintiff's claim for punitive damages and to allow suit to proceed accordingly for, but not limited to, the following reasons:

- a) that the Court erred in its interpretation of the averments of Plaintiffs' Complaint to state that the individual Defendants were either elected officials or employees of the City of Georgetown and that "at all times relevant to these proceedings were serving in such capacity." The Complaint actually alleges that the individual Defendants were either elected officials or employees of

Willie Singleton

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the City of Georgetown and that at all times relevant to these proceedings were serving in such capacity **except where otherwise indicated**. [Emphasis Added] The difference in the language is crucial as it determines the level of exposure of these Defendants and whether a claim for punitive damages can be maintained.

- b) that the Court erred in relying on the provisions of the Torts Claims Act to determine that the Defendants were acting in the scope and course of their employment when Defendants did not follow prescribed statutory procedures for carrying out the specific function of which Plaintiffs complain which would have insulated Defendants from personal liability by placing their actions within the scope and course of their employment pursuant to the provisions of the Torts Claims Act. The acts committed in the instant case were acts *ultra vires* due to Defendants failure to follow prescribed statutory procedures and thus strip Defendants of any statutory protection otherwise available to them.
- c) that Defendant, Stephen Stack, entered a Consent Agreement with the South Carolina Building Codes Council wherein he admitted to violating the provisions of the South Carolina Code regulating demolition of structures. The Consent Agreement entered was as a direct result of his actions involving this particular structure. [See attached copy]
- d) that discovery in this case is not complete and it is premature to issue an order with a dispositive impact on any issue wherein meaningful discover has not been exhausted.
- e) that dismissal of Plaintiffs' claims against the individual Defendants was reversible error when Plaintiffs advanced viable claims in their complaint which, if proven, would allow recover to be had against these defendants pursuant to several theories of recovery contained in the complaint. See Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E. 2d 69, 73 (1999)(holding **that a 12(6) motion will not be granted if the facts and inferences therefrom would entitle the Plaintiff to any relief on any theory**). [Emphasis Added]

Plaintiff respectfully requests the provisions of the August 4, 2009 Order be altered or amended in accordance with and based upon those matters set forth above.

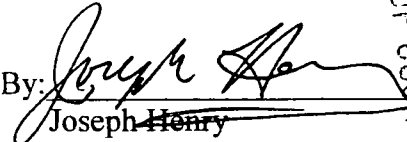
Willie Singleton

ROA 27

Rule 11 Certification

Counsel for the Plaintiffs hereby certifies that, prior to filing this motion, he conferred with opposing counsel regarding the same and opposing counsel did not concur.

JOSEPH HENRY, P.C.

By: 
Joseph Henry
1708-B Richland Street
Columbia, South Carolina
Telephone: (803) 929-3484
Facsimile: (803) 929-3485

FILED
GEORGETOWN COUNTY, SC
2009 AUG 20 PM 3:21
ALMA Y. WHITE
CLERK OF COURT

Columbia, South Carolina
August 20, 2009

Willie Singleton

ROA 28

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE BUILDING CODES COUNCIL**

In the Matter of:

**Stephen Stack
City of Georgetown Building Official
P.O. Box 939
Georgetown, S.C. 29442**

Case No. 2007-11

Respondent.

CONSENT AGREEMENT

By agreement of the South Carolina Building Codes Council (Council) and the above named Respondent, the following disposition of this matter is entered pursuant to the provisions of S.C. Code of Laws. §1-23-320(f) (1976, as amended) of the South Carolina Administrative Procedures Act:

FINDINGS OF FACT

1. Respondent is licensed as a provisional building official (BCO.2047) in South Carolina and was so licensed at all times relevant to the matters asserted in this case. The Council has jurisdiction over the Respondent and the subject matter herein.
2. In April 2007, the Respondent demolished a residential structure that was owned by Willie Singleton at 1929 Front Street, Georgetown, South Carolina.
3. The Respondent failed to follow the provisions of the South Carolina Code of Laws as required to demolish (tear down) the structure.
4. Respondent waives any further findings of fact with respect to this matter.

CONCLUSIONS OF LAW

Respondent further admits that as a result of the previous admissions herein, Respondent has violated S.C. Code of Laws §31-15-30 (1976, as amended). Respondent waives any further conclusions of law with respect to this matter.

Willie Singleton

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THEREFORE, IT IS ORDERED WITH RESPONDENT'S CONSENT THAT

1. Respondent is herein issued a public reprimand. Respondent's license shall be placed on a six-month probationary period. Respondent shall adopt an ordinance covering the correct procedures in the demolishing of a residential structure within the six-month probation period.
2. It is further understood and agreed that if Respondent fails to abide by any of the aforementioned terms and conditions then Respondent's license may be immediately temporarily suspended pending hearing into the matter and until further Order of the Council.
3. It is further understood and agreed that this Consent Agreement does not satisfy, prejudice, or stay any disciplinary action currently pending before the Council or which may be filed in the future.
4. It is further understood and agreed that Respondent has full knowledge that he has the right to a hearing and to be represented by counsel in this matter, and freely, knowingly, and voluntarily waives such rights by entering into this Consent Agreement. Respondent understands and agrees that by entering into this Consent Agreement he voluntarily relinquishes any right to judicial review of this or any other Council action(s) which may be taken concerning this and any related matters. Respondent understands and agrees that this Consent Agreement will not become effective unless and until approved by the Council. Respondent understands and agrees that this Consent Agreement, if approved, will be disseminated as a public action of the Council in the manner provided by law. Respondent understands and agrees that if this Consent Agreement is not approved, it shall not constitute an admission against interest in this proceeding or prejudice the right of the Council to adjudicate this matter.
5. Pursuant to the South Carolina Freedom of Information Act, this Consent Agreement, with attachments, is a public document.
6. This Consent Agreement shall take effect upon approval of the Council and the service upon Respondent or Respondent's counsel.

Millie Singleton

ROA 30

AND IT IS SO ORDERED.

SOUTH CAROLINA BUILDING CODES COUNCIL

2-3-08, 2007

Frank P. Hodge, Jr.
Frank P. Hodge, Jr., Chairman

I CONSENT:

Stephen Stack
Stephen Stack, Respondent

11-30-07
(Date)

[Signature]
Attorney for the Council

12/11/07
(Date)

Willie Singleton

ROA 31

SECTION 114 STOP WORK ORDER

114.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the building official is authorized to issue a stop work order.

114.2 Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

114.3 Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

SECTION 115 UNSAFE STRUCTURES AND EQUIPMENT

115.1 Conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

115.2 Record. The building official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

115.3 Notice. If an unsafe condition is found, the building official shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order.

115.4 Method of service. Such notice shall be deemed properly served if a copy thereof is (a) delivered to the owner personally; (b) sent by certified or registered mail addressed to the owner at the last known address with the return receipt requested; or (c) delivered in any other manner as prescribed by local law. If the certified or registered letter is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.

115.5 Restoration. The structure or equipment determined to be unsafe by the building official is permitted to be restored to a

safe condition. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of Section 105.2.2 and Chapter 34.

City of Georgetown

Building Department

120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442
Phone: (843) 545-4010
Fax: (843) 527-1285

Jason Goude, Building Official

NOTICE OF UNSAFE STRUCTURE

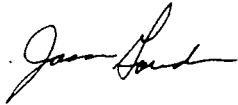
Date: 5/31/2006
Attn: Victoria Gadson
Tax Map #: 5-17-162
Subject: 1929 Front St.

Dear Victoria Gadson,

The City of Georgetown Building Department is hereby serving notice that the subject property cited above has been declared unsafe due to inadequate maintenance. This department has conducted a general inspection of the property and has found it to be in desperate need of repair.

Please notify the City of Georgetown Building Department immediately concerning the terms of this notice, as we will do everything that we can to assist you in resolving this matter. An appointment for a formal inspection must be set up and conducted before the proper permits can be issued to do any and all work. Affirmative action regarding this issue must take place within thirty (30) days of the date of this notice. Failure to comply with this notice will result in this building being condemned.

Jason Goude



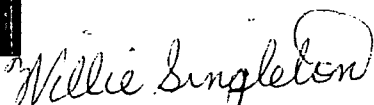
Building Official

City of Georgetown

Building Department

120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442

Victoria Gadson
7764 Clements Rd.
Wyncote, PA 19095



ROA 33

City of Georgetown

Building Department

120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442
Phone: (843) 545-4010
Fax: (843) 527-1285

Jason Goude, Building Official

SECOND NOTICE OF UNSAFE STRUCTURE

Date: 7/7/2006
Attn: Victoria Gadson
Tax Map #: 5-17-162
Subject: 1929 Front St.

Dear Victoria Gadson,

The City of Georgetown Building Department is hereby serving notice that the subject property cited above has been declared unsafe due to inadequate maintenance. This structure must be made safe or taken down immediately. A notice was sent out to on May 31, 2006 stating that affirmative action regarding this issue must take place within thirty (30) days. Thirty days have expired without anyone notifying the City of Georgetown Building Department that action is being taken to remedy the unsafe condition of the property cited above. Therefore, the City of Georgetown Building Department is following the guidelines of the 2003 International Building Code and South Carolina state law by posting an Unsafe Structure Notice on the premises and issuing this second notice.

If the City of Georgetown Building Department is not notified immediately concerning the terms of this notice, we will begin to acquire bids to have the structure demolished. Affirmative action regarding this issue must take place within thirty (30) days of the date of this notice. Failure to comply with this notice will result in this building being condemned.

Jason Goude



Building Official

City of Georgetown

Building Department

120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442

Victoria Gadson
7764 Clements Rd.
Wyncote, PA 19095

Willie Singleton

ROA 34



Permit # _____
(Office Use)

City of Georgetown Building Permit Application

Location: <u>1929 Front St</u>		Zoning: <u>R-5</u>
TMS#: <u>5-17-162</u>		Proposed Use: _____
Owner: <u>Julia Thomas (Willie Singleton)</u>		Mailing Address: _____
Phone #: <u>843-527-0039</u> <u>C-344-3101</u>		Fax: _____
Contractor: <u>Willie Singleton</u>		Mailing Address: _____
Phone #: <u>843-527-0039</u>		Fax: _____
City Business License # _____ State License # <u>KBB-978E</u> Exp. Date: <u>6-30-00</u>		
Architect _____ Designer _____ Name: _____ Mailing Address: _____ Phone #: _____ Fax: _____		
Engineer(s): _____ Mailing Address: _____ State Registration #: _____ Phone #: _____ Fax: _____		
Type of Work: ☐ New ☐ Addition ☐ Alteration ☒ Repair ☐ Move ☐ Remove ☐ Electric ☐ Plumbing ☐ Gas ☐ Other		
Explain: <u>100F 1 door + 1 window</u>		
Describe work: ☐ Commercial ☒ Residential ☐ Other Explain Work Specifically: _____		
Signature of Contractor or Authorized Agent <u>Willie Singleton (Julia Thomas)</u> Please Print Name Here		Valuation of Work: \$ <u>3,000</u> (Materials & Labor)
Signature of Owner <u>Willie Singleton</u> Please Print Name Here		Total Square Footage: _____ (If Applicable)
Appl. Accepted By: _____	Permit Approved: _____	Zoning <u>com</u> W&S Paid: _____

ROA 35



120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442
Phone: (843) 545-4010
Fax: (843) 545-4009

City of Georgetown Building Department

FINAL NOTICE UNSAFE STRUCTURE

Date: 12/8/06
Attn: Victoria Gadson
Tax Map #: 5-17-162
Subject: 1929 front St.

Dear Ms. Gadson,

The City of Georgetown Building Department is hereby serving notice that the subject property cited above has been declared unsafe due to inadequate maintenance. A notice was sent out on May 31, 2006 stating that affirmative action regarding this issue must take place within thirty (30) days. A second notice was sent out on July 15, 2006. This property has also been posted on site as an Unsafe Structure. At least Sixty days have expired without anyone notifying the City of Georgetown Building Department that action is being taken to remedy the unsafe condition of the property cited above. Therefore, the City of Georgetown Building Department is taking the necessary actions to condemn this structure and have it demolished. Any and all cost incurred to the City for this process will be billed to the homeowner, if the charges are not paid within thirty days they will be levied against your City tax bill.

Stephen Stack
Building Official

Willie Singleton

ROA 36

501 N. Congdon

C.C. Mayor Wilson
C.C. attorney M^r Farland
C.C. Building inspectors

To Building inspectors

The former building inspector wrote John Madison my brother about our property at 1929 Front Street. The State of D.C. is under the S.B.C.C.I. Building codes therefore any building that the city of Georgetown condemns before that building can be demolished a paper trail is required, that procedure is in the S.B.C.C.I. which is the 1986 abatement code which consists of six steps even though the city under the former inspector chose to ignore the abatement code, I went to the building department and filled out the necessary paper work to fix the house at 1929 Front St. Being a State license contractor I know my paper work was proper, I have gotten several permits from this office since then to do work for customers. I spoke to one of the inspectors about the permit weeks ago and after ward the building department sent my brother another letter. I would like a response to my complaint in writing. no 1. why the city chose not to use the 1986 abatement code, no two the city would not respond to an application that was brought to their attention and choose to write another notice to John Madison. no three - a copy of the procedure used by the city when condemning a building.

W. J. J. Singleton

ROA 37



120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442
Phone: (843) 545-4010
Fax: (843) 545-4009

City of Georgetown Building Department

January 26, 2007

Willie Singleton
501 N. Congdon
Georgetown, SC 29440

Mr. Singleton,

I am writing in response to the letter that you hand delivered to this office on Thursday January 11, 2007 concerning property at 1929 Front Street. I will address your questions as follows:

Number one: Your question is, Why the City choose not to use the 1986 abatement code? Response, The SBCCI you referred to in the first paragraph was used prior to year 2000. At this time we are under the International Building Code (IBC).

Number two: Your question is, Why the city did not respond to an application that was brought to their attention and choose to write another letter? Response, The property at 1929 Front Street is in need of removal due to safety concerns and also, the ability to rebuild maybe beyond reason due to the lack of preventive maintenance to the property. The request was for window replacement, does not resolve the structural integrity of this structure.

Number three, A copy of the procedure used by the City when condemning a building? Response, The city follows the IBC.

Stephen Stack
Building Official

ROA 38

City of Georgetown

GEORGETOWN, SOUTH CAROLINA

- ☐ BUILDING PERMIT
☐ PLUMBING
☐ ELECTRICAL
☐ MECHANICAL
☐ GAS

1

Applicant to complete numbered spaces only.

JOB ADDRESS 1529 Front St														
1	LEGAL DESCR	Map No.	Parcel No.	DATE OF APPLICATION 3-1-07	PLOT PLAN	YES ☐	NO ☐	BUILDING PLANS	YES ☐	NO ☐				
OWNER		MAIL ADDRESS			ZIP	PHONE								
2	Willie Singleton		John Gadsden			Julia Thomas								
3	CONTRACTOR		MAIL ADDRESS			PHONE 344-3161		State License No. 609788						
4	BUSINESS LICENSE NO.													
5	ARCHITECT OR DESIGNER		MAIL ADDRESS			PHONE		REGISTRATION NO.						
6	ENGINEER		MAIL ADDRESS			PHONE		REGISTRATION NO.						
7	USE OF BUILDING Storage													
8	Class of work: ☐ NEW ☐ ADDITION ☐ ALTERATION ☒ REPAIR ☐ MOVE ☐ REMOVE													
9	Describe work: Roof Windows Door Sill													
10 Valuation of work: \$ 8000.00					Permit No.		PERMIT FEE							
SPECIAL CONDITIONS:					Type of Const.		Occupancy Group		Flood Zone					
					Size of Bldg. (Total) Sq. Ft.		No. of Stories		Use Zone					
APPLICATION ACCEPTED BY					PLANS CHECKED BY		APPROVED FOR ISSUANCE BY		Final Inspection Approval For Occupancy/Use					
					No. of Dwelling Units		OFFSTREET PARKING SPACES:							
NOTICE This application shall become the BUILDING PERMIT when approved by the Building and Zoning Administrator Inspector. The permit issued shall be construed to be a license to proceed with the work and shall not be construed as authority to violate, alter or set aside any of the provisions of the Building Code or Zoning Ordinance, nor shall such issuance of the Permit prevent the Building Official from hereafter requiring a correction of error in plans or in construction of or violations of the Building Code or Zoning Ordinance. This Permit shall become invalid unless the work authorized is commenced within six (6) months after its issuance and work is completed within 18 months after its issuance. IT IS THE RESPONSIBILITY OF THE APPLICANT TO SCHEDULE ALL REQUIRED INSPECTIONS. I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of Law and Ordinances governing this type of work will be complied with. Signature of Contractor or Authorized Agent: Willie Singleton (DATE) 3-11-07 Signature of Owner (if Owner Builder) (DATE)					Zoning:		Front		Left		Right		Rear	
					Setbacks									
					Permit Fees		Permit		Review		Zoning		Fire	
Notes: This structure is beyond Repair. Request for permit denied, for Roof windows door sill?														

RDA 39

This house at the corner of Front Street and Anthuan Maybank Drive is one of 192 structures that have been declared dilapidated or unsafe. City officials are hoping to demolish at least five such structures in the upcoming budget year.

Planner wants to remove dilapidated city buildings

By SCOTT HARPER

sharper@gtowntimes.com

Dilapidated structures in the City of Georgetown have become not only an aesthetics problem but a safety and environmental danger.

That's why the staff of the city's Building and Planning Department is hoping to receive more funding in the 2007-08 budget to help fight the problem.

At a recent retreat, Sabrina Morris, the city's director of development, presented Georgetown City Council with a four-page list containing the addresses — and the names of the owners — of 192 structures within the city that are dilapidated and/or have been declared unsafe.

Morris says it costs about \$7,250 if the city pays to have a structure removed. That was the lowest price quoted when the city put the job up for bids.

There is currently only \$10,300 budgeted for such tasks. Morris said she is hoping Council will agree to give her department enough money for the demolition of five buildings in the upcoming year.

If it costs \$7,250 per building to remove

them, the total cost for all 192 structures would be \$1.4 million.

Morris said if the city has to pay to have a building removed, a lien is placed against the owners for reimbursement.

Before the city demolishes such a structure, the owners are sent three letters warning them the building needs to be renovated or removed. In many cases, the owners comply but there are instances where the letters seem to be ignored.

Some of the houses that need to be removed are rat-infested, which causes problems for people in the neighborhoods, Morris said.

One example that was used during the presentation was an abandoned two-story home in the 1900 block of Front Street. In that case, the owner, who lives in Pennsylvania, was sent letters to do something about the house in May, July and December of 2006. The run-down, unsafe eyesore is still standing.

Mayor Lynn Wood Wilson said he hopes that once people start seeing the city is serious about having the condemned dwellings removed, others who get warning letters will do something about their property.

THUR. MARCH 15, 2007

Willie Singleton

ROA 40



120 N. Fraser Street
P. O. Drawer 939
Georgetown, SC 29442
Phone: (843) 545-4010
Fax: (843) 545-4009

City of Georgetown Building Department

March 20, 2007

Willie Singleton
501 N. Congdon St.
Georgetown, SC 29440

Mr. Singleton,

This letter is in response to your request for a building permit concerning 1929 Front St. The permit makes a request for roof, windows along with doorsill replacements. As you are aware from previous letters along with personal contact with this office the structure located at 1929 Front St. is on the City's unsafe structure list. You are in receipt of the letters concerning this. Mr. Singleton as we have discussed the repairs requested on the permit application will not sustain the integrity of the structure. This letter is denying your permit application.

Also this structure is under contact for removal and will be under demolition activities within the next 10 working days.

Stephen Stack
Building Official

7004 2510 0003 2165 8400

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$4.64
Sent To <u>W. Singleton</u>	
Street, Apt. No., or PO Box No. <u>501 N. Congdon</u>	
City, State, ZIP+4	

TOWN SC
Postmark Here
MAR 21 2007

Willie Singleton

ROA 41

Mr. Stephen Stack
Provisional Building Official #2047
City of Georgetown
120 North Fraser Street
P.O. Drawer 939
Georgetown, SC 29442

RECEIVED
3/23/57

Dear Steve

I am in receipt of a letter that you sent, stating that the building permit application for the renovation of the building located at the corner of Front Street and Alex Alford Street was denied. In the letter you stated sever thing that were not true. I requested in the permit application to renovate and repair the floor sills {Floor system} the exterior windows and doors and the roof. Those repairs in and of itself would bring the building up to the minimum standards set forth in the International Existing Building Code. Those repairs would make the building into a building that could be occupied.

It's my understanding that you are using the International Existing Building Code to condemn buildings in the City of Georgetown. I have reads the book, wonderful book, you should try reading that book sometime. Under the International Existing Building Code it has a provision to declare a building unsafe. To protect the life, safety and welfare of people living in or working in unsafe building, or any building that is other wise occupied. But if a building is vacant that level of threat goes away and most of the provision of declaring a building unsafe does not apply. Under section 115.1 of the existing building code, last sentence says that "A vacant structure that is not secured against entry shall be deemed unsafe." Based on the code if a vacant structure is secured against entry, it can not be deemed unsafe. If you can not deem it unsafe, you can not condemn it.

I have on two {2} occasion, eight {8} months apart applied for building permits to renovate and repair the house on the corner of Front Street and Alex Alford Street. It's my understanding after reading the International Building Code that there is nothing that you or the city can do to stop me from renovating the house within the boundaries of the code, short of not giving me a building permit. But not giving me a building permit to renovate and repair the building is still not within the boundaries of the code. Even if you condemn the building, if I request to fix it, you cannot under the law deny me the opportunity to fix it. I understand that is what you did but it's my understanding that you cannot do that under the law.

If you are using the International Existing Building Code to condemn the building should you use the code in its entirety? I can not stop you from breaking the law. You can do what ever you wish until a judge stops you. I know that doing what you are doing now place you outside the law, and outside the scope of your official duties as a "Provisional Building Official" in the State of South Carolina. If that is true you are holding yourself out to be personally liable for anything that happens. You are the one out front, you are the one leading the charge, you are the one that could be sued personally under state law.

Willie Singleton

ROA 42

When a person sues the city it's just that the city, that's not personal to you, when they sue you, it should get personal.

Like I said you started several things that were incorrect in you letter to me those things were:also you stated to me that a engineer was required and I said I thought that was against the law but I would get one if you requested that to me in writing and you chose not to which tells me you are intent on breaking the law .

As always I remain very truly yours,

Willie Singleton

CC: Attorney
City Administrator
Mayor
Building Code Council

Willie Singleton

ROA 43

City of Georgetown

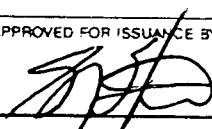
GEORGETOWN, SOUTH CAROLINA

Demo

- ☐ BUILDING PERMIT
- ☐ PLUMBING
- ☐ ELECTRICAL
- ☐ MECHANICAL
- ☐ GAS

1

Applicant to complete numbered spaces only.

JOB ADDRESS 1929 Front St.																		
1	LEGAL DESCR	Map No. 5-17	Parcel No. 162	DATE OF APPLICATION 4-6-07	PLOT PLAN ☐	YES ☐	NO ☐	BUILDING PLANS ☐	YES ☐	NO ☐								
OWNER		MAIL ADDRESS			ZIP		PHONE											
2																		
CONTRACTOR					PHONE													
3	RE Miller Const. - Georgetown SC				843-545-7700		State License No.											
BUSINESS LICENSE NO.																		
4																		
ARCHITECT OR DESIGNER		MAIL ADDRESS			PHONE		REGISTRATION NO.											
5																		
ENGINEER		MAIL ADDRESS			PHONE		REGISTRATION NO.											
6																		
USE OF BUILDING																		
7																		
8	Class of work: ☐ NEW ☐ ADDITION ☐ ALTERATION ☐ REPAIR ☐ MOVE ☒ REMOVE																	
9	Describe work: Demo																	
10 Valuation of work: \$ 2000 to \$7250 gsm					Permit No. 07319		PERMIT FEE 150.00											
SPECIAL CONDITIONS:					Type of Const.		Occupancy Group		Flood Zone									
					Size of Bldg. (Total) Sq. Ft.		No. of Stories		Use Zone									
APPLICATION ACCEPTED BY		PLANS CHECKED BY		APPROVED FOR ISSUANCE BY														
																		
					Final Inspection Approval For Occupancy/Use													
					No. of Dwelling Units		OFFSTREET PARKING SPACES:											
NOTICE This application shall become the BUILDING PERMIT when approved by the Building and Zoning Administrator Inspector. The permit issued shall be construed to be a license to proceed with the work and shall not be construed as authority to violate, alter or set aside any of the provisions of the Building Code or Zoning Ordinance, nor shall such issuance of the Permit prevent the Building Official from hereafter requiring a correction of error in plans or in construction of or violations of the Building Code or Zoning Ordinance. This Permit shall become invalid unless the work authorized is commenced within six (6) months after its issuance and work is completed within 18 months after its issuance. IT IS THE RESPONSIBILITY OF THE APPLICANT TO SCHEDULE ALL REQUIRED INSPECTIONS. I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of Law and Ordinances governing this type of work will be complied with.					Zoning:		Front		Left		Right		Rear					
					Setbacks													
					Permit Fees		Permit		Review		Zoning		Fire		Const. Sign		Total	
																	150.00	
					Notes:													
					PAID APR 13 2007 CH													
SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT																		
(DATE)																		
SIGNATURE OF OWNER (IF OWNER BUILDER)																		
(DATE)																		

JOB ADDRESS
1929 Front St.
OWNER
Victoria Gadsden

M. M. Lunsford

APPLICATION FOR BUSINESS AND PROFESSIONAL LICENSE

1. Name of business: RK Miller Construction Tax map #: _____
2. Mailing address: Street Johnny on City Georgetown
State SC Zip 29440
3. Business physical address: same as above
4. Contact numbers: Business 8432408954 Home 8035467501 Fax _____
5. Type of business: Construction
6. Business owner(s): R Kevin Miller
7. Owner address: Street same as above City _____
State _____ Zip _____
8. Federal Identification #: _____ and/or Social Security #: _____
9. Computation of license tax based on gross receipts:
 - a. For new business or change of ownership:
Gross receipts (estimated) \$ _____
 - b. For renewal:
Gross receipts (for preceding calendar year or fiscal year) \$ _____
 - c. For per job contractor's/peddler's license:
Gross receipts of \$ 7250 -Location of job/peddler 1929 Front Street
Owner of property _____
Start date 4/12/07 End date _____
10. This application is for:
New business ☐ Start date _____
Renewal ☐ Renewal date _____
Location change ☐ Change date _____
Ownership change ☐ Change date _____
Amusement machines ☐ Yes ☐ No
(If yes, please list) _____

I CERTIFY THAT ALL OF THE INFORMATION STATED ABOVE IS TRUE AND CORRECT. I UNDERSTAND THAT THE CITY ORDINANCE PROVIDES FOR PENALTIES AND LICENSE REVOCATION FOR MAKING FALSE OR FRAUDULENT STATEMENTS ON THIS APPLICATION.

Print name RK Miller

Title President

Signature [Signature]

Date 4-10-07

For City of Georgetown office use only:

NAICS code: 23 Rate class#: 8.1 Business type: ☐ Annual ☒ Job ☐ Peddler ID #: 6538
Basic license fee \$ 70.00
Rate schedule charge 17.50
Total license fee 87.50
Amusement Machine fee/other: _____
Penalty _____ %
Total amount due \$ 84.50
4/12/07
PAID
APR 11 2007
CITY OF GEORGETOWN
BY: [Signature]

Approvals (for new businesses, change of ownership, or change of location):

Zoning (compliance with zoning ordinance)	☐ Approved	☐ Disapproved	Date _____
Building Official (compliance with building code)	☒ Approved	☐ Disapproved	Date <u>[Signature] 4-11-07</u>
Department (compliance with fire code)	☐ Approved	☐ Disapproved	Date _____
UHEC (compliance with health regulation)	☐ Approved	☐ Disapproved	Date _____
Finance (compliance with license ordinance)	☒ Approved	☐ Disapproved	Date <u>4/11/07</u>

ROA 45

Willie L. Singleton

501 North Condon Street
Georgetown, SC 29442

May 9, 2007

Mr. Stephen Stack
Provisional Building Official #2047
City of Georgetown
120 North Fraser Street
P.O. Drawer 939
Georgetown, SC 29442

RE: 1929 Front Street.

Dear Mr. Stack

I would like for you to reproduce and provide to me a copy of every document that was generated in reference to the property located at the corner of Front Street and Alex Alford Street {Also known as 1929 Front Street} from January 1, 2006 until May 8, 2007. Now this would include, but not limited to copies of all letters sent by your office in connection with condemnation of the building, copies of all permits and permit application, copies of all internal memos, copies of all inspection reports where the building was inspected and declared it unsafe, copies of all min. of board meeting where the building was discussed, copies of all bid's for demolition, copies of the award of demolition, copies of contract, business license, and permits in connection with the demolition.

If you have any digital or electronic images associated with 1929 Front Street, I would like a copy of that as well. I am not asking you to print or make copies of photos, but you can copy those to a cd or disk and give that to me.

In the future when you produce any record or correspondent in connection with this property, I want you to send me a copy of that as well. I want you to make an attempt to provide me with every record that exist on this property.

I would like to have this information within the next five (5) working days. If you feel that this date is unreasonable or does not provide you sufficient time to copy the

Willie Singleton

ROA 46

records in your possession, please respond in writing and let me know how long this process will take.

I am a party in interest to the above referenced property. I also have a power of attorney that is filed with the Georgetown County Clerk of Court from another of the owners of the property; based on that I do not expect there to be a charge for any information provided to me. It would be foolish on your part to try and require any owner of property in the city to pay for any information concerning that property.

As always

I remain very truly yours,


Willie Singleton

CC: Attorney
City Administrator
Mayor
Building Code Council

Willie Singleton

ROA 47

Attachment 1 Complaint Description

The substance of the complaint:

There was an unoccupied house, located at 1929 Front Street in the City of Georgetown that was torn down on Thursday April 12, 2007 by the City of Georgetown. I believe the building official acted improperly and in violation of state law and the building code in the demolition of the building. I also believe that the building official acted outside the scope of his official duties in the demolition of the building. I also believe that the building official violated the provisions of South Carolina code of laws 31-15-10 and 31-15-20, 30, 40, 50, as well as sections 60.

I am a licensed builder in the state of South Carolina and from August 2006 until March 2007 I submitted two (2) different applications to the building officials office for building permits to renovate the house located at 1929 Front Street. Each time the building official refused to issue a permit and refused to give me an opportunity to renovate the building.

Time line of events:

May 31, 2006	Notice of unsafe structure sent to my family.
July 15, 2006	Notice of unsafe structure sent to my family.
August, 2006	I applied for a building permit to renovate the home.
Dec. 8, 2006	Final Notice of Unsafe Structure. The Building Official stated that "At least Sixty days have expired without anyone notifying the City of Georgetown Building Department that action is being taken to remedy the unsafe condition of the property cited above. Therefore, the City of Georgetown Building Department is taking the necessary actions to condemn this structure."
Jan 11, 2007	Letter by me to Building Official stating my intent to renovate the house. I reminded the Building Official that they had not responded to my building permit application from August 2006 then I requested a copy of the procedure used by the city when condemning a building because at that time based on the

Willie Singleton

ROA 48

Building Officials letter of December 8, 2006 the building had not been condemned.

Jan 26, 2007

Letter from Building Official stating that the City is under the International Building Code. The Building Official also stated that the reason the city did not respond to the application was because he (The Building Official) felt that the building needed to be removed, so he felt that he had the authority to deny a permit to renovate.

Mar 1, 2007

I applied for another building permit to renovate the house at 1929 Front Street.

Mar 20, 2007

Letter from Building Official denying the second building permit application. The Building Official stated that the house was on the City's unsafe structure list and that the building was under contract for removal and that it would be under demolition activities within 10 days.

Mar 23, 2007

In a letter to the Building Official I stated that "Under the International Existing Building Code it has a provision to declare a building unsafe. To protect the life, safety and welfare of people living in or working in unsafe building, or any building that is other wise occupied. But if a building is vacant that level of threat goes away and most of the provision of declaring a building unsafe does not apply. Under section 115.1 of the existing building code, last sentence says that "A vacant structure that is not secured against entry shall be deemed unsafe." Based on the code if a vacant structure is secured against entry, it can not be deemed unsafe. If you can not deem it unsafe, you can not condemn it."

Based on all the information back and forth, you need to zero in on several facts that prove the level that the Building Official broke the law. As of December 8, 2006 the building had not been condemned, that is based on the Building Officials letter to me. There is no evidence on the record that the Building Official started any condemnation process after December 8, 2006. The building was torn down without going through a condemnation process. That is a violation of the law.

Two building permit applications to repair and renovate the home were denied by the Building Official. That is a violation of the law.

Willie Singleton

ROA 49

Under the International Building Code Section 115.1 it has a provision to declare a building unsafe. To protect the life, safety and welfare of people living in or working in unsafe building, or any building that is other wise occupied. But if a building is vacant that level of threat goes away and most of the provision of declaring a building unsafe does not apply. Under section 115.1 of the existing building code, last sentence says that "A vacant structure that is not secured against entry shall be deemed unsafe." Based on the code if a vacant structure is secured against entry, it can not be deemed unsafe.

The building was boarded up and thereby making it a safe building based on the International Building Code, that was until the Building Official order the police department to remove the plywood from the doors, enter the build, then had it demolished. That is a violation of the law.

Under the International Building Code Section 115 the Building Official should have made a list of the unsafe conditions and what was needed to bring the building into compliance. This list should have been sent along with the letter of unsafe building. That was not done, and that is a violation of the code.

The Building official did not fallow the provisions of Section 115 of the International Building Code or the requirements of South Carolina Code of Laws, Sections 31-15-10 through 31-15-120.

This is something that has already occurred once but the Building Official has a list of 192 other homes in Georgetown and 1.4 million dollars to tear down the other houses the same way.

The building official stated that he used the provisions of the International Building Code to declare the building unsafe due to inadequate maintenance the International Building Code is not a maintenance code. This is just a violation of the law and building code. This is also a man working out side the scope of his official duties, there is no law, code, or ordnance to give the Building Official the right to do what he did.

Willie Singleton

ROA 50

W 2-C

Willie L. Singleton

501 North Condon Street
Georgetown, SC 29442

May 18, 2007

Mr. Andy Dempsey, Investigator
LLR, Division of Legal Services
Office of Investigation & Enforcement
P.O. Box 11329
Columbia, SC 29211

RE: Building Codes Council File#: 2007-11

Dear Mr. Dempsey

This follow-up letter is an attempt to jump start your investigation and to assist you your investigation. While the complaint is specific to my building, it is my understanding that the Building Official intends to tear down several {192} other homes the same way he had my home torn down. It's my understanding that he has a 1.4 million dollar war chest to support him in his actions. If he tear them down the same way, I believe that way to be contrary to the building code and public law. In this letter I will attempt to point you to the state law and the building code that were violated, then I plan to point you to a criminal act and allow you to take the right actions. You are a state investigator in the division of legal services, you are the first and only line of defense the common man has. I know that you will protect me and the public from bad building inspectors that don't follow the law. Let's review the case at hand. In your investigation I think that you should first try and determine several things.

1. Did the Building Official follow the provision of the building code or the state law in condemning the house located at 1929 Front Street. Let's look at the options open to the Building Official.

In South Carolina there are three (3) and only three ways to condemn a building. The first way is to use the provisions of state law 31-15-10 through 31-15-120, the second way is the provision of the International Existing

1

Willie Singleton

ROA 51

Building Code and the third is the provisions of the International Property Maintenance Code.

The provisions of South Carolina code of laws 31-15-10 and 31-15-20, 30, 40, 50, as well as sections 60 is a little unclear as to wheatear you can condemn a vacant house. At the same time it's clear that he, the building official, did not use the State law to condemn and remove the building, so let's look at the other two.

The provisions of the International Existing Building Code is very clear on this point. Under section **115.1 Conditions**, the last part states "*A vacant structure that is not secured against entry shall be deemed unsafe.*" This is the only reference to vacant building in the whole section dedicated to unsafe buildings and equipment in the International Existing Building Code, the International Property Maintenance Code or even the International Building Code. The plane language of the code states that If a building is secured from entry; you can not declare it unsafe and if you can not declare it unsafe, you can not condemn it and if you can not condemn it, you cannot tear it down.

The provision's of the International Property Maintenance Code is also very clear on this point. Just take the statement above and insert it here and we can move on. Just keep in mind that the building was secured from entry.

The state law or the code are the only way to declare a building unsafe and remove the same. You needed to use one of the above to start the process. You have to use one to be within the law; as a building official you cannot make it up as you go, you cannot break the law in an attempt to enforce the mandate set forth by city council to spend 1.4 million dollars to tear down 194 homes in the city.

In the January 26, 2007 letter to me, the Building Official stated that he was using the International Building Code to remove the building. It is a clear and well established fact that the building code only apply to new building and certain repairs to existing building, once a building is completed and occupied, the codes that take over are the Existing Building Code and the Property Maintenance Code. The names of the codes in and of itself bear out that position. Let me explain this a little more. Every three years there is a new building code. Once a building is occupied, you cannot just come to a building and demand that it follow or comply to the guidelines of the new building code, if you did that or took that approach, every three (3) years every building in this country will be out of compliance to the code. This

building was built before the building code was even written. That is why a code like the Existing Building Code or the Property Maintenance Code must be used to address issues in an existing building that does not exist in the building code.

It is clear that the Building Official did not use any one of the three processes allowed by law, instead he claimed to use another process.

That should be a violation of something.

I know that you are a very good investigator and I know that you will take the time to read the City's Code of Ordinances, and look under the adoptions of codes to see if the city even adopted the International Existing Building Code or the International Property Maintenance Code.

When you read the City of Georgetown Code of Ordinances and you are standing you will go weak in your knees when you read **Sec. 5-17. Effect of conflict with other regulations.** and find out that it states *"If any conflict arises between the provisions of the code adopted by this article and any other state law or city ordinance, rule or regulation, the provisions of state law and such other city ordinance, rule or regulation shall prevail and be controlling."*
(Ord. of 7-28-83)

State law references: *Applicability of chapter 25 of title 5, S.C. Code 1976, to cities adopting Standard Building Code, S.C. Code, 1976, § 5-25-10.*

That ordinances {City of Georgetown, section 5-17} states that if the city writes any ordinances differing from the state law or building code that the city ordinance will prevail and be controlling.

After reading ordinance 5-17 you know that is in direct conflict with state law and the building code, you will sit down and when you get to City of Georgetown Ordinance section 12-1 you should fall out of your chair.

City Code of Ordinances Sec. 12-1. Code--Adopted, incorporated by reference. *There is hereby adopted by the city, for the purpose of establishing minimum requirements which any habitable structure must provide for safe and healthful living, the 1997 Standard Housing Code, a copy of which is on file in the office of the municipal clerk and the building and planning department. This code is hereby adopted and incorporated by reference as fully as if set out at length herein.*

The City of Georgetown has adopted the 1997 Standard Housing Code and according to there ordinance, that is the code that must be used because that code is more restrictive that the State Law, the International Existing Building Code, the International Property Maintenance Code, or the International Building Code.

One of those inconvenient truths is the fact that the City did not adopt the International Existing Building Code or the International Property Maintenance Code. What should be frightening to you is the fact that they did not use any code to condemn the building and that should be a violation of something.

2. Another area that should be addressed by you is weather or not there was an inspection made of the property to determine what conditions made the building unsafe.

The building code and state law requires that an inspection be made of the building and a list of defects made. That list must then be given to the owner and allow the owner an opportunity to address those defects.

We can find where the city adopted the 2003 International Building Code. **Sec. 5-16. Adopted, incorporated by reference.** *There is hereby adopted by the city for the purpose of establishing rules and regulations for the construction, alteration, use, demolition, and removal of buildings or other structures, or any appurtenances connected or attached thereto, Chapter 1, Administration and appendices B through J of the International Building Code, 2003 Edition, a copy of which has been and is now filed in the office of the municipal clerk and the building and planning department. In the event any provisions of the aforementioned code and appendices are in conflict with other provisions of the Code of Ordinances, the more restrictive provisions shall prevail.*

Even though when the statement was made "*In the event any provisions of the aforementioned code and appendices are in conflict with other provisions of the Code of Ordinances, the more restrictive provisions shall prevail.*" that bought that adoption into question, let's use something as a place to start to see if wrongdoing has accorded.

IBC Section 115.2 Record. *The building Official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.*"

There is no evidence that the building Official ever made such an inspection. You will find no evidence that such a list was given to the owner.

The other day I requested that the Building Official give me a copy of every document relating to the property. If an inspection was made, it will turn up in the information that he sends to me. If I don't receive one, you will not receive one.

If the Building Official never made an inspection, how can the property owner fix anything that the Building Official thinks needed to be fixed?

That must be a violation of something.

3. Another area that should be addressed by you is weather or not there was even a condemnation process.

The Building Official sent a letter on Dec. 8, 2006 that was entitled "Final Notice of Unsafe Structure." The Building Official stated that "At least Sixty days have expired without anyone notifying the City of Georgetown Building Department that action is being taken to remedy the unsafe condition of the property cited above. Therefore, the City of Georgetown Building Department is taking the necessary actions to condemn this structure."

There is no evidence that the building Official ever started that process. Pick any one of the codes or laws that you feel the Building Official was following and determine if he followed the process set forth in that law or code to condemn the building.

If no process was followed, that should be a violation of something.

4. The provision of state law and the building code allow the property owner the opportunity to address and repair any defects pointed out as a result of any property inspection made by the Building Official.

There were several attempts made by me to repair the building, this included meetings with the Building Official, and two different building permit application to renovate and repair the building.

Willie Singleton

There is written documentation from the Building Official where he refused to allow the building to be renovated. That position is not in keeping with state law or the building code.

Take the one code that the Building Official said that he used and that is the International Building Code, under section **115.5 Restoration** it states that *"The structure or equipment determined to be unsafe by the building official is permitted to be restored to a safe condition...."*

There is written notice in several letter, but the one of March 20, 2007 clearly denying the application for a building permit to restore the building to a safe condition. When you review the plain, clear language of the building code any building that the building official determines to be unsafe, is not required to be brought to a habitable condition, only to a safe condition. The building inspector wanted a habitable building repaired to his satisfaction; that should be a violation of something.

5. Another area that should be addressed by you is notice.

For this we need to look at the International Building Code Section **115.3 Notice**, reading the whole thing will do you a lot of good but for now let's just go to the bottom part of that section, it states *"Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order"* it's hard for me to get away from that plain language thing. If I am reading this right, the building official give an order to condemn any building, the owner can reject the terms of the order. Applying for two building permits to renovate and repair the building, if that is not evidence of rejection of any order to tear the building down, I don't know what is.

Because the code does not give the building official and authority to accept or reject the terms of renovation given by the owner, to do so should be a violation of something.

I can go on and on pointing out things that the building official did that was not in keeping with the letter of the law or the code. I would hope that you address the issues that I have placed before you. There is one more thing! I told about a criminal act let me quickly address that. After the Building Official did his little process to condemn the building, he went out and took bids to have the building torn down. Now keep in mind that he has 1.4 million dollars to tear down buildings. Now there were several people that submitted bids to tear the building down. The building official did not accept any of those bids; instead he used a

CD 2-C

construction company that did not submit a bid. Sounds like a problem. No? Let me add the fact that the construction company is owned by the husband of the City of Georgetown Finance Director. One city employee awards a contract to the husband of another city employee. Both city employees have high positions within the city. There are procedures for awarding contracts, there are several federal laws to prevent collusion and bid rigging, and the government has procedures in place for awarding contracts. One or more of the companies bidding on the demolition were minority owned, were there civil right violated in that process? You are a state investigator in the division of legal services, when tax payer's money being used like that, what questions does that cause you to think about? Does that rise to the level of a criminal act? If you think that it does, do you have an obligation to inform SLED and ask them to investigate that because it came up in your investigation?

I have pointed you in several directions if I can be of any more help please do not hesitate to call on me.

Sincerely,

Willie Singleton

cc: File

Willie Singleton

CERTIFICATE OF COUNSEL

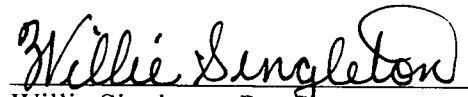
The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not other material. With the exception of:

1. Judge Larry Hyman Jr., "Order" dated October 23, 2007 denying Plaintiff's Motion Pursuant to Rule 59(e)

Reason:

Judge Larry Hyman Jr., "Order" dated October 23, 2007 denying Plaintiff's Motion Pursuant to Rule 59(e) is not on file or part of the official record on file with the Clerk of Court for Georgetown County.

Oct 1, 2010



Willie Singleton, Pro Se
501 North Congdon Street
Georgetown, SC 29440
843 240-1315

1 STATE OF SOUTH CAROLINA

2 COUNTY OF GEORGETOWN

3

4 WILLIE SINGLETON,
5 PLAINTIFF

6

VS.

7

CASE NO. 08-CP-22-235

8 CITY OF GEORGETOWN,
9 DEFENDANTS

10

11

OCTOBER 15, 2009
GEORGETOWN, S.C.

12

13

BEFORE THE HONORABLE LARRY B. HYMAN, JUDGE.

14

15 A-P-P-E-A-R-A-N-C-E-S

16

MR. JOSEPH HENRY, (PER SPEAKER PHONE)
ATTORNEY FOR PLAINTIFF

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18

MR. DOUGLAS BAXTER,
ATTORNEY FOR DEFENDANTS

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MARGARET T. SULLIVAN,
COURT REPORTER

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1 THE CLERK: Hi, Mr. Henry.

2 MR. HENRY: Good morning.

3 THE CLERK: You are on the speaker phone
4 in front of Judge Hyman.

5 THE COURT: Hello, Mr. Henry.

6 MR. HENRY: Hello.

7 THE COURT: Mr. Henry, we are here on your
8 Motion to Reconsider. Ms. Sullivan is the Court
9 Reporter. And she tells me that she can hear you.
10 Mr. Baxter is here.

11 MR. HENRY: I am having a little
12 difficulty hearing you.

13 THE COURT: Can you hear me now?

14 MR. HENRY: Yes, I can hear you now.

15 THE COURT: All right, Mr. Henry you are
16 the moving party.

17 MR. HENRY: Yes, good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. HENRY: This is a Motion to Reconsider
20 the court's previous ruling on regarding release
21 of federal defendants from the Willie Singleton
22 case.

23 THE COURT: Yes, sir.

24 MR. HENRY: This case was heard by the
25 court, well actually a motion was heard by the

1 court and the court ruled that the county council
2 members as well as the mayor, and other city
3 officials, would be released from the case.

4 THE COURT: Yes.

5 MR. HENRY: We have filed a Motion to
6 Reconsider because the court in its order, cited
7 from the Complaint indicating that all the
8 defendants are either elected officials or
9 employees of the city acting in the course and
10 scope of their employment at all times relevant to
11 a proceeding.

12 THE COURT: Yes, sir.

13 MR. HENRY: The actual language of the
14 Complaint says that they were either elected or
15 appointed officials acting in the course and scope
16 of their employment except where otherwise
17 indicated. And there were indications that at
18 points where they acted, they were acting outside
19 the scope and course of their employment because
20 they were performing functions that did not comply
21 with the laws regulating what they were doing.

22 Therefore, it was not within the scope and
23 course of their employment, because it was
24 actually a violation of the law. And if it is a
25 violation of the law, it cannot be within the

1 scope and course of their employment. And as
2 such, they would have personal liability for the
3 actions taken outside of the scope and course of
4 their employment, because they would not fall
5 under the provisions that protect them with
6 immunity under the Torts Claims Act.

7 THE COURT: All right, sir.

8 MR. HENRY: And so we would ask that the
9 court to reconsider that ruling. And at the time
10 the ruling was made, discovery had not been
11 completed in the case. And we subsequently had a
12 deposition of Mr. Singleton taken. Wherein
13 Mr. Singleton further illustrated the fact that
14 the county -- that the city officials were acting
15 outside the scope of their employment. And one
16 instance is where they told the city building
17 officials to take action that violated the law.

18 They have him going out there tearing down
19 buildings and houses without doing any form of
20 condemnation. And in fact they have not adopted
21 the ordinances that would authorize the
22 condemnation. So at the time when they tore down
23 Mr. Singleton's house, that was no authority for
24 them to do that. Mr. Singleton had been in
25 communication with the city, with the mayor, with

1 the city building officials and the city council.
2 And he made them aware that they were acting in a
3 way that was contrary to the law.

4 And despite that information given to
5 them, he addressed the council during council
6 meeting. He addressed individual council members
7 and he addressed the mayor. And the city building
8 officials themselves. Therefore, they were aware
9 that what they were doing violated the law, and
10 proceeded with knowledge of that violation. And
11 thereby deprived Mr. Singleton of his property.
12 And in addition to that, the city failed to adopt
13 the international building code that they were
14 supposed to adopt in order to authorize them to do
15 what they were trying to do. So the city building
16 officials were subsequently reprimanded by the
17 licensing board, because his actions violated the
18 law.

19 In the proceedings he admitted that he
20 violated state law when he did what he did. And
21 the city council was aware of it. So was the
22 mayor. And the buildings officials indicated that
23 he that had been pressured by these individuals in
24 to doing that. Therefore, they could not claim
25 the sanctity of any kind immunity under the law,

1 because they were aware that their actions were
2 outside of the law.

3 THE COURT: All right, Mr.---

4 MR. HENRY: The statutes that protect
5 people with immunity intimately require you to
6 comply with the provisions of law regulating what
7 you are supposed to be doing.

8 THE COURT: Mr. Baxter, I will hear from
9 you.

10 MR. BAXTER: Your Honor, a couple of
11 things. The -- when you look at the complaint and
12 the allegations in the complaint and this
13 complaint---

14 MR. HENRY: I can barely hear Mr. Baxter.

15 THE COURT: Mr. Baxter, move up by the
16 phone.

17 MR. BAXTER: Can you hear me now?

18 MR. HENRY: I can hear you better now.

19 MR. BAXTER: This complaint was brought
20 pursuant to the South Carolina law, and which is
21 governed by the Tort Claims Act. A lot of what he
22 is talking about the proper remedy, they,-- if
23 what he says is true, the 1983 actions in Federal
24 Court versus a State Court cause of action.
25 Because he brought a State Court cause of action

1 condemnation was -- inverse condemnation were
2 all -- for negatives. All those things---

3 THE COURT: Of course he can bring a 1983
4 in the State Court.

5 MR. BAXTER: Right. But he did not -- he
6 had alleged in a 1983 action.

7 THE COURT: I understand.

8 MR. BAXTER: If he said I want to amend to
9 include a 1983 action, would be a different thing.
10 So we looked at the Tort Claims Act. The Tort
11 Claims Act, if you look at the scope of their
12 employment, the law says whether they are in the
13 furtherance of their employment, business, which
14 part of the cities, they have the right to condemn
15 property. He was doing what was within the course
16 and scope of his employment, which is the city's
17 business. Therefore, he was within the scope.

18 Now whether or not he did right or wrong,
19 doesn't take it outside the Tort Claims Act. That
20 would be like saying well somebody is driving a
21 car, and they were told about the speed limit.
22 And they went over the speed limit; therefore,
23 they are personally liable. If you must look at
24 what they are doing, not how they did it. That's
25 what, all of the allegations come within the Tort

1 Claims Act. All the allegations are that they are
2 doing things within the scope of their employment.
3 And really just boils down to the city had not --
4 the main allegation here, assuming what they are
5 talking about is that the city had not adopted --
6 they had ordinances, but the State said we should
7 have adopted a different building code versus the
8 one you did.

9 So to say well because he was doing what
10 he was supposed to be doing, and the city had
11 adopted the wrong ordinance, he therefore is
12 personally liable. Again, all this is, if he had
13 been doing something outside the scope of his
14 employment, I would agree. If he was clearly
15 within the scope, the mere fact that they are
16 alleging he didn't do it the right way, doesn't
17 make it outside the complaint.

18 I just think your Order is proper, and the
19 their motion should be denied. And again,
20 everything you are talking -- these other things
21 that you are talking about, are things that they
22 could plead those causes of action that were not
23 pled in the 1983 action.

24 THE COURT: In 1983, in my understanding,
25 Mr. Henry, would be an action against an

1 individual for depriving your client of his
2 constitutional rights under color of law. Isn't
3 that what we are talking about?

4 MR. HENRY: Well under this -- under these
5 circumstances -- the 1983 action, is based on
6 deprivation of rights. Constitutional rights on
7 the color of law. But here we are not talking,
8 these people knew before they acted that they were
9 violating the law. This was not even on the color
10 of law, because they made no attempts to comply
11 with any law.

12 THE COURT: Isn't that what color of law
13 is?

14 MR. HENRY: The law that governs what they
15 were doing, and they were aware that the actions
16 they were taking were outside of that law. There
17 was no question -- there was an issue of core of
18 law because you don't have -- your actions are not
19 even covered by what you are saying the law is
20 that regulates this. And you are aware of that
21 before you take the action. If it were done in
22 compliance with or in attempts to comply with the
23 law, I would agree. But because of the situation
24 here, there is no issue of color of law. But this
25 is not a proper 1983 action.

1 THE COURT: All right.

2 MR. HENRY: These people knew before they
3 acted that what they did was outside the law. And
4 my client made numerous attempts to call them into
5 check on that issue. They went to them and told
6 them they were violating the law. If they wanted
7 to comply with the law, they would have gone back
8 and at least have the county attorney, city
9 attorney or somebody, look at the law and say,
10 what you are doing may very well skirt the law;
11 therefore, you don't look at this action. Or they
12 should have sought some kind of Attorney General
13 opinion or something. They made no effort to
14 comply with the law even after they were made
15 aware of that the action was outside the law.

16 Therefore, I would disagree that this is
17 even an issue for a 1983 action. If you have a
18 1983 action, it has to be based on someone acting
19 on the color of law. That's not the case here.
20 These people acted in their derivation of my
21 client's rights without even attempting to comply
22 with the law they knew they were violating. And
23 they never even instituted a condemnation action.
24 So that's another indication that they didn't
25 intend to comply with the law. They didn't

1 attempt to condemn this property except for
2 clearing the scene, which meant he had no right to
3 have entry into the property because of safety
4 issues. And that's fine under police power. But
5 once they condemn and tear the property down, and
6 to indicate in so doing that they were doing to
7 make an example of him so other people would know
8 they were serious, that shows that they were not
9 trying to comply with the law. They were trying
10 to set an example by making a political statement.

11 THE COURT: Anything further Mr. Henry?

12 MR. HENRY: They didn't comply with any
13 particular laws. They never instituted a
14 condemnation action. Therefore, everything they
15 did was improper and they knew it before they did
16 it. And the present officials who were charged
17 with certain duties under the law to ignore the
18 law and do what they wanted them to do. And they
19 knew they didn't have the authority to do. And
20 therefore, the officials were supposed to be able
21 to act on his independent genuineness of whether
22 or not the building should have been torn down and
23 whether or not a condemnation action would be
24 appropriate.

25 They took that away from him, and did --

1 and forced him to do what they wanted done rather
2 than allowing him to do his job. And under the
3 form of government adopted by the City of the
4 Georgetown, that was inappropriate.

5 THE COURT: Anything further from the
6 plaintiff?

7 MR. HENRY: I'm sorry?

8 THE COURT: Anything further?

9 MR. HENRY: Nothing further.

10 THE COURT: Mr. Baxter, anything further?

11 MR. BAXTER: Nothing, Your Honor.

12 THE COURT: I find that my order is
13 appropriate, and I am going to deny the Motion to
14 Reconsider. Thank you, gentlemen.

15 MR. BAXTER: 1,4?

16 THE COURT: Yes.

17 MR. HENRY: Thank you, Your Honor.

18 MR. BAXTER: I'm hanging up.

19 -----End of Requested Transcript of Record---

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1 STATE OF SOUTH CAROLINA

2
3 COUNTY OF GEORGETOWN
4
5

6 I, Margaret T. Sullivan, Official Court Reporter for
7 the Third Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the above captioned case,
11 relative to appeal, in Common Pleas nonjury, on October
12 15, 2009, for Georgetown County, Georgetown, South
13 Carolina.

14 I do further certify that I am neither of kin,
15 counsel nor interest to any party hereto.
16

17 March 19, 2010
18 Date

19 Margaret T. Sullivan
20

21 Margaret T. Sullivan, Court Reporter
22 My commission expires October 3, 2011
23
24
25

opinions under Rule 220(b)(1), SCACR). It is, therefore, ordered that the Petition for Rehearing be denied.

Thomas E. Huff J.
D. Reper J.
James E. Hays

Columbia, South Carolina

FILED

29 March 2012

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**Appeal From Georgetown County
Court of Common Pleas**

Larry B. Hyman, Presiding Circuit Court Judge

Case No. 09 – CP – 22 -0325

Willie Singleton and Julia Thomas, Heirs at
Law of Victoria Gadson, deceased,

Plaintiffs,

Of whom Willie Singleton,

Appellant,

v.

City of Georgetown Building Official Stephen Stack,
Mayor Lynn Wood Wilson, Mayor Pro Temp
Brendon M. Barber, Sr., Council Member Clarence Smalls,
Council Member Paige B. Sawyer, III, Council Member
Rudolph A. Bradley, Council Member Jack Scoville,
Director of Building Planning Sabrina Morris, Steve Thomas,
City Administrator, and The City of Georgetown,

Respondent,

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL JUDGE COMMIT REVERSIBLE ERR BY ASSERTING THAT INDIVIDUAL DEFENDANTS BE DISMISSES FROM THE ACTION PURSUANT TO § 15-70-70 (a) CODE OF LAWS OF SOUTH CAROLINA WHEN NO SUCH LAW EXIST.
2. DID THE TRIAL COURT ERR IN FINDING THAT S. C. CODE OF LAWS § 15-7-80 GIVES A MUNICIPALITY THE AUTHORITY TO DEMOLISH A BUILDING.
3. DID THE TRIAL COURT ERR IN FINDING THAT THE DEFENDANTS ACTIONS CONSTITUTED A TORT.
4. DID THE TRIAL COURT ERR IN FINDING THAT THE DEFENDANTS ACTIONS WERE WITHIN THE SCOPE OF OFFICIAL DUTY OR WITHIN THE SCOPE OF EMPLOYMENT.
5. DID THE TRIAL COURT ERR IN FINDING THAT PUNITIVE DAMAGES BE STRICKEN FROM THE COMPLAINT.
6. DID THE TRIAL COURT ERR IN FINDING THAT THE INDIVIDUAL DEFENDANTS BE STRICKEN FROM THE COMPLAINT.
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8. DID THE TRIAL COURT ERR BY USING DOE V. MARION 605 S.E. 2d 556 AS A CASE OF AUTHORITIE IN THIS CASE.
9. DID THE TRIAL COURT ERR BY CONCLUDING THAT THE DEMOLITION OF THE BUILDING WAS AN ACCIDENT.
10. DID THE TRIAL COURT ERR BY CONCLUDING THAT THE SERVENT WAS ACTING IN FURTHERANCE OF THE MASTERS BUSINESS.
11. DID THE TRIAL COURT ERR IN NOT CONSIDERING "DUAL CAPACITY" AND "DUAL PERSONA".

STATEMENT OF THE CASE

On April 12, 2007 the appellant's house was demolished by the City of Georgetown.

On February 3, 2008, the City of Georgetown Building Official consent agreement with the State LLR, Building Codes Council was accepted. In the agreement, the findings of fact revealed that the building official "failed to follow the provisions of the South Carolina Code of Laws as required to demolish (tear down) the structure." The conclusions of law were: "Respondent further admits that as a result of the previous admissions herein, Respondent has violated S.C. Code of Laws § 31-15-30 (1976, as amended). Respondent waives any further conclusions of law with respect to this matter."

On March 6, 2009, Willie Singleton and Julia Thomas, Heirs at Law of Victoria Gadson brought this action alleging the Defendants action in wrongfully denying the appellant access to their property and demolishing the same without following proper statutory procedures applicable to such action amount to a wrongful taking of Appellants' property and entitled Appellant to have a judgment against Defendants for all damages proximately cause by the same including actual, consequential, and punitive damages, cost and reasonable attorney's fees.

On April 2, 2009 the Defendant answered, and filed motions to dismiss individual Defendants and strike punitive damages.

On May 21, 2009, the motion was heard by a judge Larry Hyman, Jr. By order of the court dated August 4, 2009, the named individual Defendants were dismissed from this action. It was also further ordered that this action is governed by the South Carolina Tort Claims Act and the Plaintiffs cannot recover punitive damages from the City; according, the request for same was stricken from the complaint.

On August 20, 2009, a timely motion pursuant to rule 59(e) was filed. One October 15, 2009 the motion was heard by a judge Larry Hyman, Jr. and was denied, this appeal followed.

FACTS

The City Council for the City of Georgetown, at one of it's budget retreat meeting in the early part of 2006 identified over 190 homes in the City of Georgetown that in their opinion need to be torn down. The City of Georgetown also set aside 1.4 million dollars to pay for the demolition of the homes they targeted for demolition.

On May 31, 2006, the City of Georgetown building official served notice on the appellants in the form of a letter stating that the building department had declared the property unsafe due to

inadequate maintenance and stated that the appellants had to contact the department within 30 days to set up a meeting to inspect the property. {RoA Page 33}

On July 15, 2006 the City of Georgetown building official sent the appellants a letter stating that the building department had declared the building unsafe due to inadequate maintenance and stated that the building had to either be made safe or taken down immediately. The letter went on to say that the city was following the guidelines of the 2003 International Building code and South Carolina state law. {RoA Page 32}

In August, 2006 the appellant / contractor applied for a building permit to renovate the home. The City received the application but never grant permission to renovate the house. {RoA Page 35}

On Dec. 8, 2006 The Building official Mr. Steven Stack, sent a Final Notice of Unsafe Structure. The Building Official stated that "At least Sixty days have expired without anyone notifying the City of Georgetown Building Department that action is being taken to remedy the unsafe condition of the property cited above. Therefore, the City of Georgetown Building Department is taking the necessary actions to condemn this structure." It was at that point the city stated they were starting the condemnation process. {RoA Page 36}

On Jan 11, 2007 the appellant hand delivered a letter to Mr. Steven Stack, Building Official and to Mayor Lynwood Wilson, City Administrator, Steven Thomas, and City Attorney, Elaine Crosby, stating there intent to renovate the house. The appellant reminded the city that they had not responded to the building permit application from August 2006 then the appellant requested a copy of the procedure used by the city when condemning a building because at that time based on the Building Officials letter of December 8, 2006 the building had not been condemned. {RoA Page 37}

On Jan 26, 2007 Mr. Steven Stack, building official responded to the appellant's letter of January 11, 2007. In that letter the Building Official stating that the City was under the International Building Code. The Building Official also stated that the reason the city did not respond to the application was because he (The Building Official) felt that the building needed to be removed, so he felt that he had the authority to deny a permit to renovate. {RoA Page 38}

On Mar 1, 2007 the appellant applied for another building permit to renovate the house. {RoA Page 39}

On Mar 4 and 5, 2007 City Council for the City of Georgetown, held a budget retreat in Pinopolis. During the meeting over 190 homes in the City of Georgetown was identified as home that in their opinion need to be torn down.

On Mar 15, 2007 on page 1B of Vol 209 No. 52 of the Georgetown Times news paper, appeared a photo of the appellant's home located at 1929 Front Street, along with an article. The article stated:

At a recent retreat, Sabrina Morris, the city's director of development presented Georgetown City Council with a four page list containing the addresses – and the names of the owners – of 192 structures within the city that that are dilapidated and/or have been declared unsafe.

The article went on to say:

Before the city demolishes such a structure, the owner are sent three letters warning them the building needs to be renovated or removed. In many cases, the owners comply but there are instances where the letters seem to be ignored.

Some of the houses that need to be removed are rat-infested, which causes problems for people in the neighborhoods, Morris said.

One example that was used during the presentation was an abandoned two-story home in the 1900 block of Front Street. In that case, the owner, who lives in Pennsylvania, was sent letters to do something about the house in May, July and December of 2006. The run-down unsafe eyesore is still standing.

Mayor Lynn Wood Wilson said he hopes that once people start seeing the city is serious about having the condemned dwellings removed, others who get warning letters will do something about their property.

{RoA Page 40}

On Mar 20, 2007 Mr. Steven Stack, Building Official, sent a letter to the appellant, denying the second building permit application. Mr. Stack stated that the house was on the City's unsafe structure list and that the building was under contract for removal and that it would be under demolition activities within 10 days. This letter was sent in spit of the fact that the house had not gone through a condemnation process. Mr. Stack stated in earlier letters that he was aware of the process required to condemn a house. {RoA Page 41}

On March 22, 2007 the appellant boarded up the windows and doors and secured the home from entry, to the point that it complied with the International Building Code. The house was also posted with "no trespassing" signs.

On Mar 23, 2007 the appellant sent a letter to the Mayor, City Administrator, City Attorney and Building Official and informed them that according to the International Building Code the house was in compliance and that under the law the City of Georgetown could not deem the house unsafe, and they could not condemn it. {RoA Page 42 and page 43}

On April 12, 2007 the house was demolished at the directions of the City of Georgetown.

On April 17, 2007 the owner filed a complaint with the state of South Carolina, LLR, Building Codes Council. In the body of the letter the appellant listed five {5} separate sections of either state law or the building code that was violated by the City of Georgetown. {RoA Page 48 to 59}

On Nov 30, 2007 after an investigation by the state of South Carolina, LLR, Building Codes Council the City of Georgetown signed a "Consent Order" and pled guilty to violating state law in the demolition of the building. {RoA Page 29 to 31}

On Feb 27, 2008 the state signed and agreed to the consent order. {RoA Page 29 to 31}

On Mar, 6, 2009 the appellant filed a summons and complaint naming the City of Georgetown, Steven Stack, Building Official, Lynn Wood Wilson, Mayor, Brendan M. Barber, Sr. Mayor Pro Temp, Peggy P. Wayne, Councilmember, Clarence C. Smalls, Councilmember, Paige B. Sawyer, III., Councilmember, Rudolph A. Bradley, Councilmember, Jack M. Scoville, Jr. Councilmember, Sabrina Morris, Director of Development, Steven E. Thomas, City

Administrator. {RoA Page 5 to page 15}.

On Apr 2, 2009 the defendant filed an answer as well as a motion and motion to strike punitive damages and motion and motion to dismiss individual defendants. {RoA Page 16 to page 24}

On May 21, 2009 Just 49 days after the motion was filed, Judge Larry B. Hyman, Jr. conducted a motion hearing in Horry County. As part of that motion's hearing, the Defendant's attorney informed the court reporter that there would be no transcript of the motion hearing.

{RoA Page 4}

On Aug 4, 2009 Judge Larry B Hyman, Jr. sign the order granting the Defendant's motion in motion to remove the individual defendants and stricken the punitive damages. {RoA Page 1 to page 3}

The appellant timely filed a Rule 59(e), SCRCp, motion, arguing the issues were ripe for review and asking the Court to address them. Judge Larry B. Hyman, Jr. conducted that motion hearing as well. The circuit court denied the Rule 59 motion on October 15, 2009. This appeal follows.

{RoA Page 25 to page 28}

ARGUMENTS

I. **DID THE TRIAL JUDGE COMMIT REVERSIBLE ERR BY ASSERTING THAT INDIVIDUAL DEFENDANTS BE DISMISSES FROM THE ACTION PURSUANT TO § 15-70-70 (a) CODE OF LAWS OF SOUTH CAROLINA WHEN NO SUCH LAW EXIST.**

In the order, Judge Hyman states "This matter is before the court upon motion of Defendants requesting that the individual Defendants be dismissed from the action (pursuant to § 15-70-70(a) Code of Laws of South Carolina)" {RoA Page 1 line 28 to 30} I cannot comment on what § 15-70-70(a) Code of Laws of South Carolina says because that section of law does not exist.

It would be easy to conclude that reversible err did not occur if you were to conclude that the trial judge intent was to site § 15-78-70(c) as the law to remove individual

Defendants, and this was simply a harmless error that does not rise to a level that brings the validity of the judgment into question and thus should not lead to a reversal upon appeal. However in the whole of the order, there was no mention of § 15-78-70(c) {RoA Page 1 through 3}

If you extend the "harmless error" concept to the Defendant's motion to dismiss, in the whole of the motion you will not find S. C. Code of Laws, section § 15-78-70(c) listed anywhere in the motion. {RoA Page 21 through 22} There is nothing in the record to make the bridge from § 15-70-70(a) Code of Laws of South Carolina, to § 15-78-70(c) Code of Laws of South Carolina.

If the appeals court cannot substitute it's opinion for the trier of fact, as a matter of law, the individual Defendants cannot be dismissed from this action pursuant to a section of law that does not exist.

II DID THE TRIAL COURT ERR IN FINDING THAT S. C. CODE OF LAWS § 15-7-80 GIVES A MUNICIPALITY THE AUTHORITY TO DEMOLISH A BUILDING.

In the order, Judge Hyman states "In the present case, the Plaintiffs' damages arise out of the demolition of a building, and Section 5-7-80 Code of Laws of South Carolina provides that a municipality may take such actions." {RoA Page 2 line 17 to 19} However S.C. Code Ann. § 15-7-80 has nothing to do with the demolition of buildings and does not give municipality that authority to take such actions. It does give a municipality the authority to go onto lots and property and cut grass. The order of Judge Hyman went on to state "However, the Plaintiffs contend that the individual Defendants failed to follow the proper procedure and that therefore takes their actions outside the course and scope of their official duties." {RoA Page 2 line 19 to 21}

S.C. Code Ann. § 15-7-80 Ordinances relating to upkeep of property within municipality.
(1) Any municipality is authorized to provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance.

(2) The municipality may provide by ordinance for notification to the owner of conditions needing correction, may require that the owner take such action as is necessary to correct the conditions, may provide the terms and conditions under which employees of the municipality or any person employed for that purpose may go upon the property to correct the conditions and may provide that the cost of such shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes.

III DID THE TRIAL COURT ERR IN FINDING THAT THE DEFENDANTS ACTIONS CONSTITUTED A TORT.

No governmental employee, elected or otherwise has an official duty to break the law. In the scope of official employment, or official duty how, can one break the law and be within that duty?

Not every wrongdoing committed by a governmental entity falls under the torts claim act. Under S.C. Code Ann. § 15-78-30 The act goes to great lengths to established and define the term "Scope of official duty" and "scope of state employment" by stating it's means as (1) acting in and about the official business of a governmental entity and (2) performing official duties. However under S.C. Code Ann. § 15-78-20 Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity. You will find in the last part of that section these words: "Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty." The reading of this section should lead anyone to conclude that the Act was never intended to protect anyone for intentional act's of wrongdoing where the appearance of an act being performed based upon legal right or enforcement of statute, when in reality no such right exists but their actions were conducted under the "color of law." In this case elected officials were notified there actions were not within the scope of the law. Other employees were notified there actions were not within the scope of the law. The building official, whose duty it was to enforce the law, was notified his actions were not within the scope of the law. Even the city attorney was notified that the cities actions were not within the scope of the law. {RoA Page 37,42, 43, 46, and 47} Everything was done short of act's of civil disobedience to notify the city that there actions were not proper or in keeping with the

law. The demolition of the building was no accident, but rather an intentional and deliberate act which is not protected by law, and does not fall within the scope of the torts claim act.

Under the provision of the International Building Code, International Property Maintenance Code, and International Existing Building Code, all require that the proper procedure to condemn a building is to first make an inspection of the building, then develop a list of the things wrong with the building, then give the building owner an opportunity to fix the things wrong with the building. All of the codes allow the owner the opportunity to fix their building. According to the letter sent to the Appellant on May 31, 2006 the building official requested the opportunity to perform a walk through inspection. {RoA Page 33} That inspection was not done and there was "no" list of things wrong with the building ever generated or given to the building owner / Appellant. The Appellant was mindful that their property was in need of some minor repairs at that point, and applied for a building permit to repair the building. However members of City Council, along with other key staff members generated a list of homes that they wanted to demolish. The list totaled some 192 buildings in all.

The appellant notified the city attorney, the mayor, members of council, city administrative staff and the building official that their proposed actions were in violation of state law. It was incumbent upon each and every person named, to insure that what they were doing was in accordance with the law. Instead there was a list developed and the elected officials {government employer} mayor, members of council, and government employee, city administrative staff, other than the building official determined what building should be demolished within the city. The decisions as to what building were in need of "repair" rest solely with the building official. That is the mandate established by law and the building official can only determine if a building is in need of repair by making an inspection of the building and generate a list of defects in the building. When the elected officials {government employer} mayor, members of council, and government employee, city administrative staff, other than the building official determined what building should be demolished within the city, that action was clearly

outside the scope of there official duties, and outside the scope of there employment. At that point you have to look at the doctrine of "dual capacity" and "dual persona".

IV **DID THE TRIAL COURT ERR IN FINDING THAT THE DEFENDANTS ACTIONS WERE WITHIN THE SCOPE OF OFFICIAL DUTY OR WITHIN THE SCOPE OF EMPLOYMENT.**

One thing is clear, everyone just jump on the "Tort Clams Act" wagon without really studying it and reading what it says.

Wording is everything. Let's look at S.C. Code Ann. § 15-78-20 (b) *The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein.* In this section the distinction was made as to "employees, while acting within the scope of official duty" and when you read that in concert with exceptions to waiver of immunity. S.C. Code Ann. § 15-78-60 (17) *employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;* you must conclude that not every action that a governmental entity does falls within the scope of the "Tort Clams Act" but only those actions of an "employees, while acting within the scope of official duty." Here is a perfect example: Today, there is a big backlash toward large box stores like Wal Mart, and Lowe's just to name a few because most small communities feel that those type of stores destroy small local businesses. A governmental entity can simply take it's police force, surround the building, evacuate everyone out of the building, then have the building demolished, destroying all the contents along with the building. If the large box store complain, simply say, "Hey, it's a tort" but in reality it is not a tort.

Let's look at the law once more. S.C. Code Ann. § 15-78-20 (f) *The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must*

~~be liberally construed in favor of limiting the liability of the State.~~ There is that wording—
once more “scope of official duty” In this section the distinction was made as to
“employees, while acting within the scope of official duty” and when you read that in
concert with exceptions to waiver of immunity. S.C. Code Ann. § 15-78-60 (17)
*employee conduct outside the scope of his official duties or which constitutes actual
fraud, actual malice, intent to harm, or a crime involving moral turpitude;* you must
conclude that not every action that a governmental entity does falls within the scope of
the “Tort Clams Act” but only those actions of an “employees, while acting within the
scope of official duty.”

Under South Carolina Code of Laws, Ann. § 1-34-30 it required that the latest edition of
the building code be adopted. Enforcement of building codes by municipalities is
established by S .C. Code Ann. § 6-9-10 (A) *All municipalities, as defined by Section
5-1-20, and counties in this State shall enforce building, energy, electrical, plumbing,
mechanical, gas, and fire codes, referred to as building codes in this chapter, ...* As it
relates to the demolition of building, the latest edition of the International Building Code
becomes the scope of the official duty.

In the definition section of S .C. Code Ann. § 6-8-10 (1) *"Building codes enforcement
officer" means a person employed by a local jurisdiction, who is responsible for
administering a building inspection department, enforcement or rendering
interpretations of building, residential, plumbing, electrical, mechanical, fuel gas and
energy conservation codes, performing building plan reviews, or performing inspections
on one or more building systems.* Reasonable men and woman must agree that the scope
of employment or official duty was to hire a building official and allow that person to
follow the International Building Code and when a person steps outside the International
Building Code, they are outside the scope of employment or official duty.

In this case you have to look at the International Building Code to set the standard for
scope of employment and scope of official duty. International Building Code, {RoA Page
32} Section 115, UNSAFE STRUCTURES AND EQUIPMENT:

115.1 Conditions. *Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.*

115.2 Record. *The building Official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.*

115.3 Notice. *If an unsafe condition is found, the building official shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order "*

115.5 Restoration. *The structure or equipment determined to be unsafe by the building official is permitted to be restored to a safe condition....*

That's a lot to understand, so let's just take some basic points and break it down based on the code and dwellings unfit for human habitation. The provisions of the International Building Code is very clear on this point. Under section 115.1 Conditions, the last part states "*A vacant structure that is not secured against entry shall be deemed unsafe.*" This is the only reference to vacant building in the whole section dedicated to unsafe buildings and equipment in the International Existing Building Code, the International Property Maintenance Code or even the International Building Code. The plain language of the code states that if a building is secured from entry, you can not declare it unsafe and if you can not declare it unsafe, you can not condemn it and if you can not condemn it, you cannot tear it down.

International Building Code Section **115.2 Record**. *The building Official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.* There is no “record” that the building official did.

International Building Code Section **115.3 Notice**, reading the bottom part of that section, it states “*Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order*” it’s hard for me to get away from that plain language thing. If I am reading this right, the building official give an order to condemn any building, the owner can reject the terms of the order and that is the end of that process.

You have to keep in mind if you work through all the hoops and you’re at condemnation, you still have to get past the International Building Code, under section **115.5**

Restoration it states that “*The structure or equipment determined to be unsafe by the building official is permitted to be restored to a safe condition....*” Based on that, if the person decided that they want to restore the building to a safe condition, they can and comply with the code and if it’s a vacant building, all they have to do is secure it from entry. If you tell a person that their only option is to tear it down, and they tear it down based on that being their only option that might be a problem.

On Mar 20, 2007 Mr. Steven Stack, Building Official, sent a letter to the appellant, denying the second building permit application. Mr. Stack stated that the house was on the City’s unsafe structure list. {RoA Page 41 line 10}

S.C. Code Ann. § 6-8-40 (A) requires that the person be registered to do that job.

As it relates to the case at bar, nothing was done in compliance with the law, so how can it be within the scope of employment or within the scope of official duty? The determination of immunity based on being within the scope of official duty or scope of employment should turn on the question of whether the acts in question were discretionary rather than ministerial. A finding of immunity under the Act “is contingent

on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.” Wooten ex rel. Wooten v. South Carolina Dep’t of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). “The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense.” Sabb v. South Carolina State Univ., 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002).

When viewing the complaint, though it is a tort, it was not bought under the “Tort Clams Act” but rater as the wrongful taking of property. {RoA Page 11 line 6 to 11}

V DID THE TRIAL COURT ERR IN FINDING THAT PUNITIVE DAMAGES BE STRICKEN FROM THE COMPLAINT.

When you view that in respect to punitive damages you find this. S.C. Code Ann. § 15-78-120. *Limitation on liability; prohibition against recovery of punitive or exemplary damages or prejudgment interest; signature of attorney on pleadings, motions, or other papers.*

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

The punitive damages can and should be capped if and only if the governmental entity actions falls within the scope of the “Tort Clams Act” and those actions of an employees falls within an employee acting within the scope of official duty.

This decision to strike punitive damages was made before and the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits were

completed and presented to the court. A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; accord *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); see also *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997) ("Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.").

VI **DID THE TRIAL COURT ERR IN FINDING THAT THE INDIVIDUAL DEFENDANTS BE STRICKEN FROM THE COMPLAINT.**

The named Defendants are placed on the complaint because this action was not bought under the "Tort Clams Act" but even if it were, the law recognizes joint tortfeasors.

When viewing S.C. Code Ann. § 15-78-70 *Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.* They were, the city was added, as well as the named defendants. What's not found in § 15-78-70 is the term "named sole defendant" and without that wording, the named defendants should not be removed. Nothing in § 15-78-70 states that the named defendants cannot be placed on the complaint. The closes thing to excluding the named defendants is S.C. Code Ann. § 15-78-70 (c) *On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.....*

Under S.C. Code Ann. § 15-78-70 (c) it states that "when a person bringing an action against a governmental entity under the provisions of this chapter" that the only party

defendants is the governmental entity. You can have a tort where the employee was acting outside the scope of his official duty or outside the scope of his official employment and have a cause of action and it will fall outside S.C. Code Ann. § 15-78-10, et. seq. In the motion hearing, the Appellant attorney argued that the action was not brought against the governmental entity under the provisions of § 15-78-10, et. seq. therefore the named defendants should remain on the complaint. {RoA Page 10 to 13} This decision to remove all named defendants was made before and the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits were completed and presented to the court. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing and Regulation, et al.*, Op. No. 3061 (S.C. Ct. App. filed October 25, 1999)(Shearouse Adv. Sh. No. 33 at 1). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Vermeer, supra*. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. In general, if the pleadings and the evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Carolina Alliance, supra*.

In this case the trial judge did not exercise discretion in keeping the named defendants on the complaint. The well-established proposition is that the circuit court commits an error of law where it fails to exercise its discretion. *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."); *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981)

It is apparent here the judge did not exercise any discretion but based his ruling on an erroneous view of the law. It is an equal abuse of discretion to refuse to exercise

discretionary authority when it is warranted as it is to exercise the discretion improperly.

VII DID THE TRIAL COURT ERR BY DETERMINING THAT THERE WERE NO GENUINE ISSUES TO ANY MATERIAL FACTS BY ENTERING A JUDGMENT AS A MATTER OF LAW.

This decision to remove named defendants and strike punitive damages should not have been made at this time. Blacks Law Dictionary defines theory of the case (1800) as: *A comprehensive and orderly mental arrange of principles and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision- maker's mind a definite result or conclusion favored by the advocate.* It is a well established rule that a motion to dismiss cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to relief on any theory of the case. In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina*, 346 S.C. 194, 552 S.E.2d 18 (2001); see also *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) (motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case).

This decision to remove named defendants and strike punitive damages was made before and the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits were completed and presented to the court. A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC; accord *Trivelas v. South Carolina Dep’t of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998); see also *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997) (“Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”).

VIII DID THE TRIAL COURT ERR BY USING DOE V. MARION 605 S.E. 2d 556 AS A CASE OF AUTHORITY IN THIS CASE.

The inclusion or exclusion of words can change the outlook of a case. In the order Judge Larry Hyman states: “Generally in a motion to dismiss based upon a failure upon a failure to state facts sufficient to constitute a cause of action the court must base its ruling solely upon the allegations set forth on the face of the complaint {Doe V. Marion} 605 S.E. 2d 556 (Ct. App 2004) The court must consider whether the complaint viewed in the light most favorable to the plaintiffs, states any valid claim for relief. Id. If the allegations show that the plaintiff has not prevail on any theory of the case, then the motion should be granted.” {RoA Page 1 line 31 to 33, page 2 line 1 to 3} Now that’s true, but you cannot stop there, you have to look a little deeper. In the next paragraph the judge went on to say “In the Complaint, the Plaintiffs allege that the individual Defendant were either elected officials or employees of the City of Georgetown and that “at all times relevant to these proceedings were serving in such capacity.” The South Carolina Tort Claims Act is the exclusive remedy for the torts committed by an employee of a governmental entity.....” {RoA Page 2 line 5 to 8} Let’s go back to this statement. The inclusion or exclusion of words can change the outlook of a case. In the order Judge Larry Hyman, Jr. stop short on adding a few words that should change the meaning of what was said. The complaint stated; “at all times relevant to these proceedings were serving in such capacity, except as otherwise indicated herein.” {RoA Page 8 and page 9}

This case law is based on the (the theory of law) (the theory-of-pleading)(theory of case). The case turned on “at all times relevant to these proceedings were serving in such

capacity.” and not “at all times relevant to these proceedings were serving in such capacity, except as otherwise indicated herein.” The exclusion of just a few words changed the intent of the complaint. This case was decided without the benefit of deposition, answer to interrogatories, and admissions on file with the affidavits. Judge Hyman ruled incorrectly based on the lack of information and also based on the information before him. Furthermore Judge Hyman theory of this case is the legal premise of principles on which a case rest was determined without the benefit of deposition, answer to interrogatories, and admissions on file with the affidavits.

In the initial complaint and verbal argument at the summary judgment hearing the fact was stated that the plaintiff had presented a theory of the case not in keeping with “working within the scope of employment or working within the scope of official duty” The building official pleaded guilty to the state of SC LLR, Building Codes Council. {RoA Page 29 and 30} In the complaint the plaintiff listed several sections of state laws, building codes, and Georgetown city code of ordinances that was violated by elected officials, appointed officials, and employees of the City of Georgetown. The complaint also encompasses a paper trail that spanned from 2006 to 2007. {RoA Page 33 to page 59} The paper trail and complaint should have been considered as a part of the theory of the case. The documents pointed out that several employees and elected officials were notified in writing that their action was unlawful, and outside the scope of their official duties. It is clear by the court’s order that Judge Hyman err in his ruling when it came to the building official, Mr. Steven Stack. Mr. Stack pleaded guilty to violating state law, and the judge ruled that his actions were within the scope of his official duty. It’s also clear that he was incorrect in his ruling with the other named defendant because he never considered the theory of the cases including them that was presented.

IX DID THE TRIAL COURT ERR BY CONCLUDING THAT THE DEMOLITION OF THE BUILDING WAS AN ACCIDENT.

Black’s law defines accident this way. **accident**, (14c) 1. An unintended and unforeseen injurious occurrence: something that does not occur in the usual course of events or that could not be reasonably anticipated.

"Policies of liability insurance as well as property and personal injury insurance frequently limit coverage to losses that are caused by 'accident' in attempting to accommodate the layman's understanding of the term, courts have broadly defined the word to mean an occurrence which is unforeseen, unexpected, extraordinary, either by virtue of the fact that it occurred at all, or because of the extent of the damage. An accident can be either a sudden happening or a slowly evolving process like the percolation of harmful substances through the ground. Qualification of a particular incident as an accident seems to depend on two criteria; 1. The degree of foreseeability, and 2. The state of mind of the actor in intending or not intending the result." John F. Dobby, insurance law in a Nutshell 128 (3d ed. 1996)

Judge Hyman states in his ruling that; what is within the scope of employment may be determined by implication from the circumstances of the case.(Padget V South Carolina Insurance Reserve Fund},531 S.E, 305(ct.App.2000) One factor is weather the employee was acting in the furtherance of the employer's business when the accident happen. {RoA Page-2-line-23 to-25}-The demolition of the building was no accident. The City of Georgetown planned the demolition of the building from 2006 and 2007 until the building was demolished, the Appellant did everything according to the law to prevent the demolition. The Defendants, were made aware of the laws and codes that were in place and quoted them to the appellant on several occasions in 2006 and 2007 before the building was demolished.

The building official, Mr. Steven Stack gave the appellant in writing the section of the codes that the City of Georgetown was govern by in dealing with the demolition of building. {RoA Page 38 line 10 to 12} The appellant requested and received a copy of the law and code used for demolition and then asked the City of Georgetown to abide by and enforce the laws and codes of this state as it related to the demolition of building in the City of Georgetown. {RoA Page 42 and page 43} The City decided not to abide by or enforce the laws of the State of South Carolina and informed the appellant that they were not going to allow them to fix the house and that the building official, Mr. Steven Stack was going to start a condemnation process as required by state law and the building

code. A few weeks later the city, by and through it's agents and the building official, Mr. Steven Stack demolished the house without ever starting the condemnation process. The building official, Mr. Steven Stack plead guilty to these facts and more. He pled guilty to having full knowledge that he was breaking the law.

Would you call the City of Georgetown, and the building official, Mr. Steven Stack's action an accident? Judge Hyman was incorrect in calling the City of Georgetown, and the building official, Mr. Steven Stake's action an accident. The paper trail and the complaint to the state LLR, Building Codes Council also shows that all the other defendant and attorney were fully aware of the codes and laws beforehand and that their action as well as the building official, Mr. Steven Stack's actions were incorrect.

However by law, S.C. Code Ann. § 6-8-40 (A) the state LLR, Building Codes Council only has jurisdiction over licensed building inspectors and building officials and not other elected or appointed officials. Despite the fact that they were all given a copy of state laws concerning their actions, there is no state agency to regulate their actions. These defendants action can be call a lot of things, but accident is not one of them.

X **DID THE TRIAL COURT ERR BY CONCLUDING THAT THE SERVENT WAS ACTING IN FURTHERANCE OF THE MASTERS BUSINESS.**

In the order Judge Hyman use the case {South Carolina Budgeting Control Broad V. Prince} 43 S.E.2d 643 (1991)(It is not necessary to find a particular act creating liability was within the servant's authority. If the servant was doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment although he may exceed his authority.) {RoA Page 2 line 25 and page 3 line 1 to 4}

In considering "in furtherance of the master's business," you have to consider, what master and what business. The only two masters can be the State of South Carolina and The City of Georgetown. How can illegally tearing down a building be in furtherance of the master's {State of South Carolina} business? It cannot! How can illegally tearing down a building be in furtherance of the master's {City of Georgetown} business? It cannot! What illegal act can be in furtherance on any governmental agency business? Most would conclude that building officials are given absolute power to intrepid and

enforce the building code by their master's. The building official did not perform his action in furtherance of the code, he perform his actions outside of the code. The citizens of Georgetown never directed the elected, appointed, or employees to demolish any house in Georgetown outside of the code, so how were they doing the master's business? The building official is governed by state law and regulated by a state agency. The state never directed the building official to violate any state law to demolish any building so how was he doing his master's business. There must be a second master at work here that is not seen, so who is that other master? The building official must be working for that master, the other party if you will. This third master uses his power to abuse the ones whom was given the power to protect and serve.

A city official tells a police officer that he wants to kill someone, the police officer hand the city official a gun and walks off. Under the judge's theory of law, this is an acceptable behavior because the city official is his master.

The building official, Mr. Steven Stack certainly had two masters. The complaint filed against him to the state prove that he was neglect to one master, the state, yet the other master contend that as an employee of the city he can display an employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, in a malicious way and still be in furtherance of the other masters business.

The building official, Mr. Steven Stack was a license building official, empowered by his masters with absolute power to enforce the building code, to protect the State and the citizens of the City of Georgetown from the illegal demolition of any building. Mr. Steven Stack was negligent in his duties as a state license building official by not allowing due process. This is not in furtherance of his masters business.

XI DID THE TRIAL COURT ERR IN NOT CONSIDERING "DUAL CAPACITY" AND "DUAL PERSONA".

A. The Tort Claims Act does not specifically preclude suit of elected officials {government employer} or government employee for their negligence if their actions are

not based on tort, but on the constitutional prohibition of the taking of property without compensation, and gross negligence clearly outside the scope of their official duties, and outside the scope of their employment. By law, the decision as to how to interrupt and enforce the building code, stops with the building official. There was an affirmative, positive, aggressive act on the part of the elected officials {government employer} and government employee, other than and including the building official not to allow the Appellant to renovate the building, and then take the next gross negligence step of demolishing the building in violation of state law.

B. Gross negligence has been defined as "the failure to exercise slight care"; "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do"; and "a relative term" meaning "the absence of care that is necessary under the circumstances."

C. The appellant notified the city attorney, the mayor, members of council, city administrative staff and the building official that their proposed actions were in violation of state law. It was incumbent upon each and every person named, to insure that what they were doing was in accordance with the law. Instead there was a list developed and the elected officials {government employer} mayor, members of council, and government employee, city administrative staff, other than the building official determined that the building should be demolished, and that action was clearly outside the scope of their official duties, and outside the scope of their employment. At that point you have to look at the doctrine of "dual capacity" and "dual persona":

D. Under the "dual persona" doctrine, "an employer may become a third person, vulnerable to suit, if - and only if - it possesses a second persona so completely independent from and unrelated to its status as employer that by the established standards the law recognizes that persona as a separate legal person.

E. The "dual persona" concept is applied in situations where the law clearly recognizes "the duality of legal persons, so that it may be realistically assumed that a legislature would have intended that duality to be respected. For "dual persona" doctrine

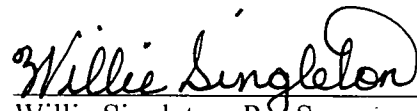
to apply, employer must have a completely unrelated and legally recognized identity other than as employer to be liable in a tort action. We must carefully distinguish the "dual persona" doctrine from the "dual capacity" doctrine. Under the "dual capacity" doctrine, an employer becomes vulnerable to suit as a third party "if he occupies, in addition to his capacity as employer, a second capacity that confers on him obligations independent to those imposed on him as employer. While the "dual persona" doctrine recognizes different identities, the "dual capacity" doctrine recognizes different activities or relationships.

CONCLUSION

For the reasons stated, it is respectfully submitted that the issues are ripe for review and asking the Court to address them, or in the alternative that the order of the lower court determining that this case falls under the provision of the South Carolina Tort's Claim's Act, and granting the Defendants motion to remove individually named Defendants and strike punitive damages should be reversed. Should this Court reverse the judgment of the circuit court, the case should be remanded to the circuit court.

Respectfully submitted,

Oct 1, 2010



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STATEMENT OF ISSUES

- I. THE TRIAL COURT PROPERLY DISMISSED THE INDIVIDUAL DEFENDANTS BECAUSE THE COMPLAINT FAILS TO ALLEGE ANY SPECIFIC FACTS INDICATING THAT THESE DEFENDANTS ACTED OUTSIDE THE SCOPE OF THEIR OFFICIAL DUTIES.
- II. THE REFERENCE IN THE TRIAL COURT'S ORDER TO S.C. CODE ANN. § 15-70-70 WAS MERELY A HARMLESS SCRIVENER'S ERROR AND HAS NO EFFECT ON THE COURT'S RULING.
- III. MUNICIPALITIES ARE AUTHORIZED BY STATUTE TO DEMOLISH UNFIT BUILDINGS.
- IV. THE TRIAL COURT PROPERLY FOUND THAT THE TORT CLAIMS ACT APPLIES TO PLAINTIFFS' LAWSUIT.
- V. THE TRIAL COURT PROPERLY RULED THAT PLAINTIFFS' CLAIM FOR PUNITIVE DAMAGES SHOULD BE STRICKEN FROM THE COMPLAINT.
- VI. THE TRIAL COURT'S ORDER UNDER APPEAL DID NOT GRANT SUMMARY JUDGMENT
- VII. THE TRIAL COURT'S ORDER IS PROPERLY SUPPORTED BY LEGAL AUTHORITY.
- VIII. PLAINTIFFS' CONTENTION THAT THE TRIAL COURT RULED THE DEMOLITION OF THE BUILDING WAS AN ACCIDENT IS INCORRECT.
- IX. PLAINTIFFS' ARGUMENT THAT THE TRIAL COURT ERRED IN NOT CONSIDERING THE DOCTRINES OF "DUAL CAPACITY" AND "DUAL PERSONA" IS NOT PRESERVED FOR APPELLATE REVIEW.

Statement of the Case

This appeal arises out of the City of Georgetown's demolition in 2007 of a dilapidated and unfit structure located at 1929 Front Street in Georgetown, South Carolina. On March 6, 2009, Willie Singleton and Julia Thomas, as "Heirs at Law of Victoria Gadson", filed suit against the City and ten individually named City employees and officials, alleging that they were denied access to their property and further alleging that the City performed the demolition without following proper statutory procedures. [R.pp.8-15.] At this time, the Plaintiffs were represented by counsel. The Plaintiffs' Complaint asserted causes of action for Improper Taking, Denial of Due Process, Waiver of Sovereign Immunity, Violation of the South Carolina Condemnation Statute, Violation of S.C. Code 1-23-320, Negligence/Gross Negligence, and Conversion. Plaintiffs named the following officials and employees of the City as individual defendants: City of Georgetown Building Official Stephen Stack; Mayor Lynn Wood Wilson; Mayor Pro Tem Brendon M. Barber, Sr.; Council Member Peggy P. Wayne; Council Member Clarence Smalls; Council Member Paige B. Sawyer, III; Council Member Rudolph A. Bradley; Council Member Jack Scoville; Director of Building Planning Sabrina Morris; and Steve Thomas, City Administrator. Plaintiffs' Complaint sought specified damages of \$1 million or more against each of the ten individual defendants and requested damages of \$3.675 million against the City. [R.p.14.] Plaintiffs' Complaint requested actual and punitive damages, as well as attorney's fees.

The Defendants filed an Answer on April 2, 2009, denying any liability and asserting as defenses the South Carolina Tort Claims Act, the exceptions to waiver of

immunity found in S.C. Code § 15-78-60, plaintiffs' lack of standing, and equitable estoppel. [R.pp.16-20.] At this time, the Defendants also filed Motions to Dismiss seeking, pursuant to the state Tort Claims Act, to have the individual defendants dismissed from the lawsuit and to have the prayer for punitive damages stricken from the Complaint. [R.pp.21-24.]

The motions to dismiss were heard by Circuit Judge Larry B. Hyman, Jr., on May 21, 2009. By Order dated August 4, 2009, Judge Hyman granted the Defendants' motions and dismissed the individually named defendants and ordered that the claim for punitive damages be stricken. [R.pp.1-3.] On August 20, 2009, Plaintiffs filed a motion to alter or amend pursuant to Rule 59(e), SCRPC. [R.pp.26-28.] A hearing on this motion was thereafter held before Judge Hyman, and by Order dated October 23, 2009, Judge Hyman denied the Plaintiff's motion to alter or amend, and the instant appeal was initiated when Plaintiffs filed a Notice of Appeal on November 23, 2009. Following the filing of a Notice of Appeal, Plaintiffs' attorney was relieved as counsel, and since that time Willie Singleton has pursued this appeal on behalf of himself.

Statement of Facts

On April 12, 2007, the City of Georgetown directed the demolition of a dilapidated and abandoned house at 1929 Front Street in Georgetown. For many months prior to the demolition of the house, the City had repeatedly served written notice on the Plaintiffs advising that the structure must be immediately repaired and warning that the structure would be removed by the City if adequate repairs were not timely made.

At the time of the demolition, Victoria Gadson was listed as the owner of record. Ms. Gadson is now deceased. Following the demolition of the house on April 12, 2007, Willie Singleton and Julia Thomas, as “Heirs at Law of Victoria Gadson”, filed suit on March 6, 2009, against the City as well as against ten individually named city employees and officials. [R.pp.8-15.] The Complaint asserts various tort claims against the individually named City employees and officials who acted on behalf of the City in having the house at 1929 Front Street removed. Plaintiffs have alleged a number of different causes of action, but all of their claims essentially involve the contention that the City and its employees and officials did not follow the proper procedures in demolishing the structure. [R.pp.8-15.] Significantly, nowhere in their Complaint do Plaintiffs assert any specific factual allegations to support their contention that the individual defendants acted outside the scope of their official duties as City employees and officials. To the contrary, all of the conduct of the City employees and officials described in the Complaint involves actions taken by these individuals in furtherance of the City’s official business.

After Plaintiffs initiated the instant lawsuit, the Defendants filed Motions To Dismiss pursuant to Rule 12(b)(6), SCRCP, arguing that since the state Tort Claims Act applies to this case, the individual defendants should be dismissed and Plaintiffs’ prayer for punitive damages should be stricken from the Complaint. [R.pp.21-24.] The trial court found that the Tort Claims Act applies and granted the motions to dismiss. [R.pp.1-3.] The instant appeal followed.

Standard of Review

Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Bergstrom v. Palmetto Health Alliance, 352 S.C. 221, 573 S.E.2d 805 (Ct.App.2002). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995); Bergstrom, 352 S.C. at 233, 573 S.E.2d at 811; see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) (trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); Williams, 347 S.C. at 233, 553 S.E.2d at 499 (trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

In deciding whether the trial court properly granted the motion to dismiss, an appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct.App.1999) (looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief

under any theory of law. Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001); see also Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct.App.1997) (motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case). Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. Id.

Argument

I. The trial court properly dismissed the individual defendants because the Complaint fails to allege any specific facts indicating that these defendants acted outside the scope of their official duties.

[Addressing Appellant's Argument Sections IV, VI, VIII, and X.]

The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem'l Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998). "The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." S.C.Code Ann. § 15-78-20(b) (Supp.2006) "[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C.Code Ann. § 15-78-70(a) (Supp.2006) According to the Act, "[n]otwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act,' is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of

the employee's official duty." S.C.Code Ann. § 15-78-200 (Supp.2006) (emphasis added).

Section 15-78-70(a) provides in part that "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." S.C.Code Ann. § 15-78-70(a) (Supp.2006). Subsection (b) declares: "Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C.Code Ann. § 15-78-70(b) (Supp.2006).

The Act's definition of an "employee" refers to "any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." S.C.Code Ann. § 15-78-30(c) (Supp.2006). "'Scope of official duty' or 'scope of state employment' means (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C.Code Ann. § 15-78-30(i) (Supp.2006).

The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct.App. 2003). "The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C.Code Ann. § 15-78-20(f); see also Wade v.

Berkeley County, 330 S.C. 311, 498 S.E.2d 684 (Ct.App.1998) (noting that § 15-78-20(f) limits coverage to employees acting within the scope of official duty).

Although the Plaintiffs contend in their brief that the individual defendants acted outside the scope of their official duties, nowhere in their Complaint are there specific factual allegations to support Plaintiffs' claim that the actions of Stack, Wilson, Barber, Wayne, Smalls, Sawyer, Bradley, Scoville, Morris, or Thomas were outside the scope of their official duties. On the contrary, the Complaint merely makes generalized declarations, unsupported by any specific factual allegations appearing in the pleadings, that these City of Georgetown officials acted outside the scope of their official duties.

The essence of Plaintiffs' Complaint is their assertion that while Singleton was in the process of attempting to obtain the necessary permits to repair the property, officials with the City demolished the premises without providing proper notice to Singleton or the opportunity for a hearing. Plaintiffs' third cause of action in the Complaint, which is entitled "Waiver of Sovereign Immunity" alleges "That the Defendants who are public officials acted outside the scope of their official positions when they failed to allow Plaintiffs to repair their property." [R.pp.11-12; Complaint ¶27.] Plaintiffs' alleged damages arise out of the demolition of an unsafe structure at 1929 Front Street. The demolition of unfit dwellings by a municipality is expressly permitted by statute. Under S.C. Code Ann. § 5-7-80 (1976), a municipality is authorized to go onto property to abate a nuisance caused by a property owner's lack of upkeep. In addition, S.C. Code Ann. § 31-15-30 (1976) allows municipal officers to remove or demolish dwellings that are unfit for human

habitation. It is undisputed in this case that the City of Georgetown has adopted and implemented a program whereby City officials are charged with the responsibility of removing dilapidated structures. Accordingly, the actions of the individual defendants related to the removal of the structure at 1929 Front Street constituted conduct within the scope of their official duties.

This conclusion is supported by the Court of Appeals' decision in Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct.App. 2003). In Flateau, the plaintiffs, who were employees of the state Commission for the Blind alleged that the Commission's governing board summoned them to the Commission's Board Room where members of the media were present and where the plaintiffs were forced to remain for hours for the purposes of awaiting an interview by the Board. Plaintiffs alleged that the Board would not allow plaintiffs to leave the room without a security escort and that they were not permitted to have unaccompanied access to their offices. After plaintiffs filed a lawsuit asserting claims against members of the Board for outrage, invasion of privacy, and civil conspiracy, the Board members filed motions to dismiss pursuant to Rule 12(b)(6), SCRPC, arguing among other things that the plaintiffs failed to assert in their pleadings that the Board's members acted outside the scope of their duties. The trial court granted the motions to dismiss and this decision was affirmed by the Court of Appeals. The Court of Appeals noted:

The pleadings clearly and unequivocally allege that the Board members were meeting and acting together as the South Carolina Commission for the Blind, discussing matters in executive session, and voting in their capacity as Commissioners to take the actions in question-all official duties and actions that are about the official business of the Commission, which is a public body established by the General Assembly. See S.C.Code Ann. § 43-25-10 (1985) (creating the South Carolina Commission for the Blind; stating that chairman of

Commission may call meeting whenever he deems it necessary); S.C.Code Ann. § 30-4-20 (1991) (defining "public body" to include state commissions). Requiring Flateau and Fielding to attend a hearing and holding them there, as Flateau and Fielding maintain in their complaints, may be argued to go beyond the *authority* of the Commission, but it does not bring the Commissioners' actions outside the scope of their official duty. See *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385 (Ct.App.1986) (distinguishing scope of servant's employment from scope of servant's authority and holding acts outside servant's authority are still within his scope of duty if done in furtherance of master's business).

Id. at 204, 584 S.E.2d at 416 (emphasis in original).

Similarly, in the present case, taking all of the Plaintiffs' allegations in the Complaint as true, even if the procedures that were used in demolishing the structure on 1929 Front Street were arguably beyond the authority of the individually named government officials, that certainly would not mean that these government officials' actions were outside the scope of their official duties since they were at all times acting in furtherance of the City's business. "If the servant is doing some act in furtherance of the master's business he will be regarded as acting within the scope of his employment, although he may exceed his authority." *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 115, 341 S.E.2d 385, 387 (Ct.App.1986). Only if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, does his conduct fall outside the scope of his employment. Id. at 116, S.E.2d at 387. Here, there were no allegations in the Plaintiffs' Complaint that the individual defendants, in removing the house, acted for any personal purposes or for any purposes that were unrelated to the City's business. Rather, Plaintiffs simply allege that the individual defendants did not follow the proper procedures for removing the structure.

Because the allegations in the Plaintiffs' Complaint against the individually named defendants involve conduct solely within the scope of their official duties, there can be no liability for these City officials. The Tort Claims Act provides that a governmental employee acting within the scope of his official duty is exempt from personal liability. Flateau, 355 S.C. at 206, 584 S.E.2d at 417. One of the purposes of the Act is to protect governmental officials acting in the scope of official duties. "The remedy mandated in the Act is legal action initiated against the governmental entity rather than the individual governmental employee." Id.

A comparison of the instant case with various reported decisions in which our state's courts have found that the actions of government employees were not within the scope of their official duties makes it readily apparent that Judge Hyman's decision in the present matter should be affirmed. The cases where our courts have determined that government employees or officials acted outside the scope of their duties have involved situations where the employee or official blatantly acted with improper personal motives. See, e.g., Loadholt v. South Carolina Budget & Control Bd., 339 S.C. 165, 528 S.E.2d 670 (Ct.App.2000) (sexual misconduct of sheriff with department employees, after summoning employees into his office under pretext of discussing jail or departmental business, outside scope of official duties and not covered by IRF policy); Doe v. South Carolina Budget & Control Bd., 329 S.C. 214, 494 S.E.2d 469 (Ct.App.1997), *aff'd* 337 S.C. 294, 523 S.E.2d 457 (1999) (police officer who stopped female motorists on suspicion of DUI and gave them the option of being arrested or providing sexual favors acted outside scope of official duties); Padgett v. South Carolina Ins. Reserve Fund, 340 S.C. 250, 253, 531 S.E.2d 305, 307

(Ct.App.2000) (a professor was not acting within the scope of his employment when he sexually harassed a student).

Nevertheless, Plaintiffs assert various misguided theories in their brief regarding why they believe the individual defendants should not have been dismissed by the trial judge. One such argument made by Plaintiffs is that if a municipal building official does not comply with the International Building Code, the official has automatically stepped outside the scope of his or her employment or official duty. [Brief of Appellants, pp.11-12.] Plaintiffs, however, have not pointed to any legal authority to support this argument, and in fact their position is simply incorrect. The appropriate inquiry in South Carolina to determine if a government official's conduct is within the scope of his employment is whether he was acting in furtherance of his master's business. Whether an official has complied with the International Building Code is not a relevant inquiry.

In addition, in their brief Plaintiffs twice cite to and quote from the portion of S.C. Code Ann. § 15-78-60(17) which states that a governmental entity is not liable for a loss resulting from employee conduct which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. However, Plaintiffs never expressly state whether or how they believe this code section could be applicable to the instant matter. In any event, there are no allegations in the Complaint that the individual defendants committed actual fraud or a crime involving moral turpitude or that they acted with malice or intent to harm.

Plaintiffs also make the argument that Judge Hyman should not have dismissed the individual defendants because they believe their Complaint adequately

alleges that these defendants acted outside the scope of their duties. In making this argument, Plaintiffs rely on the fact that the Complaint states that the defendants acted in their official capacities "except as otherwise indicated herein."¹ The problem with this argument is that there are absolutely no specific facts otherwise indicated in the Complaint which allege specific actions that would constitute conduct that is outside the scope of these defendants' official capacities.

Plaintiffs argue that the trial judge erred in dismissing the individual defendants because they assert that nothing in the Tort Claims Act prohibits a plaintiff from individually naming government officials as defendants. Yet in the course of making this argument Plaintiffs cite to, and quote from, S.C. Code Ann. § 15-78-70(c), which is the section of the Tort Claims Act which explicitly states that if a governmental employee is named individually as a party, the governmental entity for which the employee was working must be substituted as the defendant. S.C. Code Ann. § 15-78-70(c) provides in relevant part: "In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant." Based upon this language in S.C. Code Ann. § 15-78-70(c), it is clear that Plaintiffs' position lacks merit.

Plaintiffs also argue that the trial court should not have dismissed the individual defendants before the parties had an opportunity to complete and present to the court depositions, answers to interrogatories, affidavits, and admissions on file. This argument is baseless in that a motion to dismiss under Rule 12(b)(6), SCRC--

¹ In numbered paragraphs 2-11 of the Complaint, it is repeatedly stated that the individual defendants acted in their official capacities "except as otherwise indicated herein." [R.pp.8-10.]

such as the one decided by Judge Hyman in this case—is ordinarily decided by the trial court solely upon the allegations set forth on the face of the complaint. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct.App. 2003) (“Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.”)

II. The reference in the trial court’s Order to S.C. Code Ann. § 15-70-70 was merely a harmless scrivener’s error and has no effect on the court’s ruling.

[Addressing Appellant’s Argument Section I.]

Page one of Judge Hyman’s Order cites to § 15-70-70(a) in connection with the court’s decision to dismiss the individual defendants. [R.p.1.] This was a harmless typographical error. The correct citation should have been § 15-78-70(a), which provides “This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).”

Plaintiffs argue in their brief that the trial judge erred in dismissing the individual defendants “pursuant to § 15-70-70(a) Code of Laws of South Carolina when no such law exist[s].” [Brief of Appellants, p.6.] Plaintiffs maintain that “the individual Defendants cannot be dismissed from this action pursuant to a section of law that does not exist.” [Id. at p.7.] This argument should be disregarded by the Court of Appeals since this issue is not preserved for appeal. Plaintiffs never raised this issue to the trial judge by way of a Rule 59, SCRPC or Rule 60, SCRPC motion.

Further, even if the issue had been preserved, there is no merit to Plaintiffs' argument. The trial court's citation to § 15-70-70 was merely an inadvertent scrivener's error, and has no effect on the validity or efficacy of the court's ruling. The reference in the Order to § 15-70-70 was undoubtedly a simple typographical mistake, and it was harmless. An error not shown to be prejudicial does not constitute grounds for reversal. JKT Company, Inc. v. Hardwick, 274 S.C. 413, 265 S.E.2d 510 (1980). Plaintiffs have shown no harm or prejudice caused by this simple typographical mistake. In their filings, they have presented no facts showing that the typographical error affected their rights. In fact, no prejudice can be shown because it is clear from reading the Order as a whole that the judge intended to cite to § 15-78-70. Throughout the Order, various citations are made to Title 15 Chapter 78 at least five (5) times. It is therefore easily discernible that the trial court intended to cite to § 15-78-70 of the Tort Claims Act. Because the error was merely typographical and Plaintiffs have shown no prejudice, the error was harmless.

III. Municipalities are authorized by statute to demolish unfit buildings.

[Addressing Appellant's Argument Section II.]

The Plaintiffs contend that the trial judge erred in citing to S.C. Code Ann. § 5-7-80 as authority for the proposition that a municipality may demolish certain buildings. Because Plaintiffs failed to raise this issue below, this issue is not preserved. In addition, Plaintiffs have not shown that the judge's citation to this statute was prejudicial to them.

In any case, this argument is unavailing because the demolition of unfit dwellings by a municipality is expressly permitted by statute. Municipalities are

authorized by statute to enter upon privately owned land and remove public nuisances and also to demolish unfit buildings. S.C. Code Ann. § 5-7-80 establishes that municipalities may require, by ordinance, that landowners keep their property free of conditions which constitute a public nuisance and that the municipality may go upon property to correct the conditions when the owner fails to take corrective action. S.C. Code Ann. § 5-7-80 states:

(1) Any municipality is authorized to provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance.

(2) The municipality may provide by ordinance for notification to the owner of conditions needing correction, may require that the owner take such action as is necessary to correct the conditions, may provide the terms and conditions under which employees of the municipality or any person employed for that purpose may go upon the property to correct the conditions and may provide that the cost of such shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes.

Also, S.C. Code Ann. § 31-15-30 (1976) allows municipal officers to remove or demolish dwellings that are unfit for human habitation. Section 31-15-30 provides in relevant part:

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished; and

(6) That the amount of the cost of such repairs, alterations or improvements, vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as municipal taxes.

S.C. Code Ann. § 31-15-30 (5), (6).

Based upon the foregoing statutory authority, it is clear that the trial judge correctly concluded that statutory law in South Carolina enables a municipality to

demolish buildings under certain circumstances, and that the individual defendants were therefore acting in furtherance of the City's business when they had the unsafe building on Front Street removed.

IV. The trial court properly found that the Tort Claims Act applies to Plaintiffs' lawsuit.

[Addressing Appellant's Argument Section III.]

Plaintiffs argue that the trial court erred in finding that the state Tort Claims Act applies to this action. Plaintiffs' argument is baseless. Their Complaint asserts causes of action for the torts of Negligence/Gross Negligence and Conversion, and so these causes of action are clearly within the purview of the Tort Claims Act. The other causes of action asserted by Plaintiffs are styled as Improper Taking, Denial of Due Process, Waiver of Sovereign Immunity, Violation of the South Carolina Condemnation Statute, Violation of S.C. Code 1-23-320. Each of these causes of action is either not a cognizable claim (such as the purported claim for "Violation of S.C. Code 1-23-320") or is a claim which must be brought against a governmental entity and simply cannot be brought against individual government employees or officials. For instance, Plaintiffs have not pointed to any particular statutory provision that would allow them to sue an individual government employee for an alleged improper taking by a local government or for alleged violations of the condemnation laws by a local government. Such actions must be brought against the governmental entity and cannot be brought against individuals who work for the governmental entity.

Plaintiffs also argue that the Tort Claims Act does not apply to this case because they allege that the complained of conduct by the individual defendants was intentional in nature. This is a mistaken view of the Tort Claims Act. The Tort Claims Act applies to the conduct of governmental officials that is within the course and scope of their official duties, regardless of whether the conduct is intentional or not. See, e.g., Flateau v. Harrelson, 355 S.C. 197, 206, 584 S.E.2d 413, 417 (Ct.App. 2003) (State Tort Claims Act was found to apply even though complained of conduct of Commission members was obviously intentional in nature).

V. The trial court properly ruled that Plaintiffs' claim for punitive damages should be stricken from the Complaint.

[Addressing Appellant's Argument Section V.]

The Tort Claims Act includes an express prohibition against punitive damages. See S.C. Code Ann. § 15-78-120(b) ("No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment."). The South Carolina Supreme Court has noted that "No punitive damages are recoverable under the State Tort Claims Act." Charleston County Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993). Because the Tort Claims Act applies to this action, the trial court correctly concluded that Plaintiffs' request for punitive damages should be stricken.

Here, Plaintiffs appear to be making the argument that the City's employees and officials were not acting within the scope of their official duties when they had the house demolished and so therefore the Tort Claim Act's prohibition against punitive damages does not apply. This argument is meritless inasmuch as, for all of

the reasons discussed above, the alleged conduct of the individual defendants in removing the structure at 1929 Front Street was within the scope of their official duties.

VI. The trial court's Order under appeal did not grant summary judgment.

[Addressing Appellant's Argument Section VII.]

Plaintiffs also appear to argue that they believe the trial court erred in granting summary judgment to the individual defendants. They claim the trial court erred in "determining that there were no genuine issues to any material facts by entering a judgment as a matter of law." Plaintiffs have misidentified the nature of the ruling below. The Order at issue in the present appeal involves a dismissal by the trial court pursuant to Rule 12(b)(6), not a summary judgment ruling. Because the trial court has not granted summary judgment in this case, Plaintiffs' argument lacks any proper basis in law or fact.

VII. The trial court's Order is properly supported by legal authority.

[Addressing Appellant's Argument Section VIII.]

Plaintiffs next argue that the trial court erred by citing Doe v. Marion as legal authority in the Order. Plaintiffs set forth as an issue for appeal "Did the trial court err by using Doe v. Marion 605 S.E.2d 556 as a case of Authority in this case." [Brief of Appellants, p.18.] In his Order, Judge Hyman cited Doe v. Marion, 361 S.C 463, 605 S.E.2d 556 (2004), for the following legal principles: "Generally in a motion to dismiss based upon a failure to state facts sufficient to constitute a cause of action, the Court must base its ruling solely upon the allegations set forth on the face of the

Complaint ... The Court must consider whether the Complaint, viewed in the light most favorable to the Plaintiffs, states any valid claim for relief ... If the alleged facts and inferences reasonably deducible from the allegations show that the Plaintiffs cannot prevail on any theory of the case, then the motion should be granted.” [R.pp.1-2.] There is absolutely nothing erroneous about Judge Hyman’s citation to Doe v. Marion in the Order. And though Plaintiffs have challenged the judge’s citation to this case, they have offered no reason or theory as to why they believe the trial court erred in relying upon Doe v. Marion.

Instead, Plaintiffs simply reiterate their argument that the trial judge should not have dismissed the individual defendants pursuant to the Tort Claims Act because they believe the Complaint adequately alleges that the individual defendants acted outside the scope of their official capacities. Plaintiffs argue that the trial judge incorrectly stated on page two of the Order that the Complaint alleged the individual defendants were either elected officials or employees of the City of Georgetown and that they were serving in such capacity when they arranged for the demolition of the house. They claim that this statement by the trial judge is incorrect because the Complaint alleges that the individually named City employees and officials “at all times relevant to these proceedings were serving in such capacity, except as otherwise indicated herein.” Plaintiffs assert that because the Complaint includes the phrase “except as otherwise indicated herein” that the Complaint adequately alleges the individual defendants acted outside the scope of their official duties. The problem with this argument, as discussed previously, is that the Complaint does not set forth any specific factual allegations that would reasonably support Plaintiffs’

unsubstantiated and generalized claim that the individual defendants acted outside the scope of their official duties.

To survive a motion to dismiss, a plaintiff's complaint must set forth facts that support the plaintiff's purported legal claims. All of the individual defendants' conduct described in the Complaint in this case constitutes actions that were clearly in furtherance of the City's business, and therefore within the scope of their official duties. Crittenden v. Thompson-Walker Co., 288 S.C. 112, 115, 341 S.E.2d 385, 387 (Ct.App.1986) ("If the servant is doing some act in furtherance of the master's business he will be regarded as acting within the scope of his employment, although he may exceed his authority.") There are no factual allegations in the Complaint that would support the theory that the individual defendants acted for some independent purpose of his or her own, wholly disconnected with the furtherance of the City's business. Crittenden, Id. at 116, S.E.2d at 387 (only if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, does his conduct fall outside the scope of his employment). More specifically, there are no factual allegations in the Plaintiffs' Complaint to support their theory that the individual defendants had the house removed for some independent reason of their own that was unrelated to carrying out the business of the City.

VIII. Plaintiffs' contention that the trial court ruled the demolition of the building was an accident is incorrect.

[Addressing Appellant's Argument Section IX.]

Plaintiffs next argue that the trial court erred by concluding the demolition of the building was an accident. This argument is meritless inasmuch as the trial court

never concluded the demolition of the building was an accident. In addition, even if the judge had made such a finding, Plaintiffs have not shown any prejudice.

In arriving at the incorrect assumption that the trial judge found the demolition to be an accident, Plaintiffs have taken a small passage in the judge's Order out of context. The relevant part of Judge Hyman's Order states:

What is within the scope of the employment may be determined by implication from the circumstances of the case. Padget v. South Carolina Insurance Reserve Fund, 531 S.E.2d 305 (Ct.App. 2000). One factor is whether the employee was acting in furtherance of the employer's business when the accident happened. Id. See also South Carolina State Budget Control Board v. Prince, 43 S.E.2d 643 (1991) (It is not necessary to find a particular act creating liability was within the servant's authority. If the servant was doing some act in furtherance of the master's business, he will be regarded as acting within the scope of his employment, although he may exceed his authority.)

[R.pp.2-3.] As is clear from reading the quoted portion of the Order, Judge Hyman did not make a finding that the demolition of the building was an accident. Rather, he simply used the word "accident" within the context of quoting verbatim from Padget v. South Carolina Insurance Reserve Fund, 531 S.E.2d at 307. Accordingly, Plaintiffs have misapprehended the language of the Order, and their argument should be disregarded.

IX. Plaintiffs' argument that the trial court erred in not considering the doctrines of "dual capacity" and "dual persona" is not preserved for appellate review.

[Addressing Appellant's Argument Section XI.]

Plaintiffs argue that the Tort Claims Act should not apply because of the doctrines of "dual capacity" and "dual persona." Plaintiffs never presented this

argument to the trial court, so this issue is not properly preserved for review on appeal.

Conclusion

The trial court properly dismissed the individual defendants because the Complaint fails to allege any specific facts indicating that these defendants acted outside the scope of their official duties. Additionally, the trial court properly ruled that Plaintiffs' claim for punitive damages should be stricken from the Complaint since the Tort Claims Act prohibits punitive damages awards.

For the foregoing reasons, the Respondents respectfully urge the Court of Appeals to affirm the trial court's Order.

Respectfully submitted,



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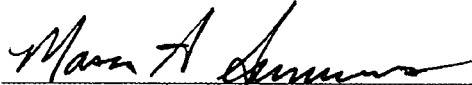
ATTORNEYS FOR RESPONDENTS

October 6, 2010
Columbia, South Carolina

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENTS

October 6, 2010
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Larry B. Hyman, Presiding Circuit Court Judge

Case No. 09-CP-22-0325

Willie Singleton and Julia Thomas, Heirs at Law of Victoria
Gadson, deceased,

Plaintiffs,

Of whom Willie Singleton, is

Appellant,

v.

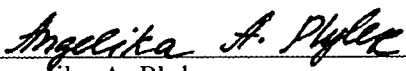
City of Georgetown Building Official Stephen Stack, Mayor Lynn
Wood Wilson, Mayor Pro Temp Brendon M. Barber, Sr., Council
Member Peggy P. Wayne, Council Member Clarence Smalls,
Council Member Paige B. Sawyer, III, Council Member Rudolph
A. Bradley, Council Member Jack Scoville, Director of Building
Planning Sabrina Morris, Steve Thomas, City Administrator,
and The City of Georgetown,

Respondents.

CERTIFICATE OF SERVICE

I, Angelika A. Plyler, the undersigned employee of Richardson, Plowden & Robinson, P.A., attorneys for the Respondents, do hereby certify that I have served the Final Brief of Respondents in the above-referenced case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the following person(s) on October 6, 2010:

Willie Singleton, Pro Se
501 North Congdon Street
Georgetown, SC 29440


Angelika A. Plyler