

**APPENDIX IN PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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**RECEIVED**

FEB 25 2015

**S.C. Supreme Court**

Case No. 2013-001064 (S.C. Ct. App. Filed Feb. 10, 2002)

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Patrick Bowie,

Respondent,

v.

Woodbine Estates,

Petitioner.

---

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

Patrick Bowie, Respondent,

v.

Woodbine Estates, LLC, Appellant.

Appellate Case No. 2013-001064

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Appeal From Abbeville County  
Eugene C. Griffith, Jr., Circuit Court Judge

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Unpublished Opinion No. 2014-UP-393  
Submitted September 1, 2014 – Filed November 12, 2014

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**AFFIRMED**

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Fletcher N. Smith, Jr., of Law Firm of Fletcher N. Smith,  
Jr., LLC, of Greenville, for Appellant.

Robert Jamison Tinsley, Jr., of Greenwood, for  
Respondent.

---

**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following  
authorities: *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant*, 379 S.C. 645,  
658, 667 S.E.2d 7, 14 (Ct. App. 2008) ("It is well settled that an issue must have  
been raised to and ruled upon by the trial court to be preserved for appellate

review."); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("The losing party must first try to convince the [trial] court it . . . has ruled wrongly and then, if that effort fails, convince the appellate court that the [trial] court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the [trial] court and obtain a ruling before an appellate court will review those issues and arguments.").

**AFFIRMED.**<sup>1</sup>

**FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

74320

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY  
COMMON PLEAS COURT

The Honorable Eugene C. Griffith

Case No.: 2011-CP-01-112

RECEIVED  
DEC 01 2014  
SC Court of Appeals

Woodbine Estates, LLC,

Appellants,

Versus

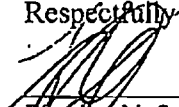
Patrick Bowie,

Appellee.

PETITION FOR REHEARING WITH A SUGGESTION FOR THE DESIRABILITY OF AN EN BANC  
HEARING

Comes now the Appellants, Woodbine Estates, LLC., by and through their undersigned attorney and hereby Rehearing with a Suggestion of the Desirability of En Banc Hearing of the decision and judgment rendered by the Honorable Court submitted on September 1, 2014 and Filed on November 12, 2014 and filed with the Clerk of Court Of Appeals of The State of South Carolina on the basis that the Appellant's legal counsel at the time appeared to have raised the issue set forth in that the Respondent abandoned the property left in the residence that was sold to Woodbine Estates and further that Appellant's legal counsel essentially argued this position in his directed verdict motions and judgment notwithstanding the verdict. See 18 Am. Jur. 2d Conversion Section 102 (2004).

Respectfully Submitted



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Greenville, South Carolina  
November 26, 2014

---

I, Fletcher Smith, hereby certify that I have this 26<sup>th</sup> day of November 2014, served a copy of the herein below listed documents to the addressees listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

**PLEADING(S):** PETITION FOR REHEARING WITH SUGGESTION FOR THE  
DESIRABILITY OF AN EN BANC HEARING

**PARTY SERVED:** Billy J. Garrett, Jr., Esq.  
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Greenville, South Carolina  
Dated: November 26, 2014

# The South Carolina Court of Appeals

Patrick Bowie, Respondent,

v.

Woodbine Estates, LLC, Appellant.


Appellate Case No. 2013-001064


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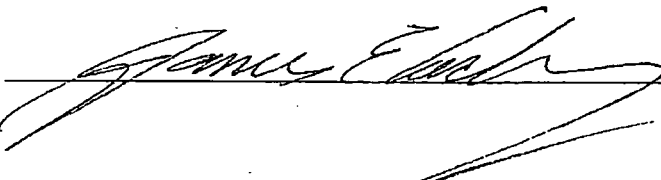
## ORDER

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After 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. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_  
C.J.

  
\_\_\_\_\_  
J.

  
\_\_\_\_\_  
J.

Columbia, South Carolina

cc: Fletcher N. Smith, Jr., Esquire  
Robert Jamison Tinsley, Jr., Esquire

**FILED**

January 23, 2015

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

FEB 25 2015

APPEAL FROM ABBEVILLE COUNTY  
Court Of Common Pleas

**S.C. Supreme Court**

Eugene C. Griffith, Jr., Circuit Judge

Case No.: 2013-001064 (S.C. Ct. App. Filed Feb. 10, 2002)

PATRICK BOWIE,

Respondent

Certificate of Service

v.

WOODBINE ESTATES,

Petitioner.

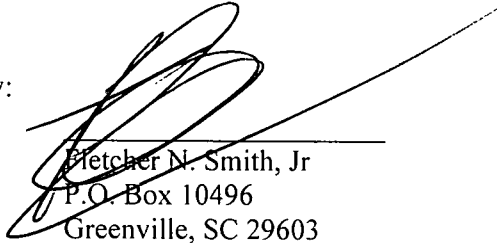
I, Fletcher N. Smiht, Jr., hereby certify that I have this 24 day of February, 2015, served a copy of the herein below listed documents to the addressees listed below by depositing a copy of the same in the United States Postal System postage prepaid, and mailing same to:

PLEADING(S): Appendix

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By:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, positioned over a horizontal line.

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Case No.: 2013-001064

---

Patrick Bowie,

Respondent,

v.

Woodbine Estates, LLC

Appellant.

---

BRIEF ON APPEAL

---

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NOV 12 2013  
**SC Court of Appeals**

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QUESTON PRESENTED

WHEHTER UNDER SOUTH CAROLINA LAW WHERE PRINCIPAL AND AGENT OR MASTER AND SERVANT ARE SUED TOGETHER FOR THE SAME ACTS OF NEGLIGENCE OR WILLFUL TORT AND THE PRINCIPALS OR MASTERS LIABILITY RESTS SOLELY UPON SUCH AGENTS CONDUCT OR SERVANTS CONDUCT, CAN A VERDICT STAND AGAINST THE PRINCIPAL OR MASTER ALONE WHERE THE AGENT OR SERVANT HAS BEEN HELD TO BE BLAMELESS BY THE COURT ON DIRECTED VERDICT.

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## STATEMENT OF THE CASE

### 1. Procedural history

The Appellant, Woodbine Estates and Bobby Crosby, Woodbine's agent, servant and/or employee were sued jointly in an amended Complaint of the Appellee Patrick Bowie. In his Amended Complaint, Patrick Bowie alleged that Woodbine Estates LLC and Bobby Crosby converted personal property owned by Patrick Bowie to its own personal use. Bobby Crosby was the principal shareholder of Woodbine Estates L.L.C. R. pg 5 & pg. 87..\_\_\_

The Woodbine Estates, LLC and Bobby Crosby entered a general denial in their answer and proceeded to trial. R. pg. 25.

At the close of the Plaintiff Patrick Bowie's case counsel for both Woodbine Estates LLC and Bobby Crosby moved for a directed verdict. R. pg. 71. (See also pg.

The trial judge granted the directed verdict for Bobby Crosby but denied it for Woodbine Estates LLC. R. pgs. 78-79.

At the conclusion of all the testimony and evidence and before instructing the jury, defendant Woodbine Estates LLC counsel again moved for a directed verdict. This motion at the conclusion of all the testimony was denied by the trial judge. R. 178

The jury returned a verdict of \$15,000.00 against Woodbine Estates LLC and counsel for Woodbine Estates LLC moved for judgment notwithstanding the verdict. The court denied that motion and Woodbine appeals. R. pg. 22.

## 2. EVIDENCE AT TRIAL

Woodbine Estates LLC purchased a real estate home and lodge at an auction when the taxpayer Ray Bowie failed to timely pay his taxes. R pgs. 87,88,89.

Without Woodbine's knowledge, sometime in 2008 or 2009 Ray Bowie allowed his cousin Patrick Bowie the appellee to store certain items of personal property at 101 Mill Street, Abbeville, South Carolina. R. pgs. 30-45.

The property was condemned by the City of Abbeville and was deemed unfit for human habitation. R. 88.

The county in compliance with state law sent notices of delinquent taxes to Ray Bowie informing him that he needed to pay his property taxes on 101 Mill Street. R. 87, 88, 89. Ray Bowie ignored the tax notices and failed to pay his taxes whereupon the county tax agent forwarded correspondence to Ray Bowie informing him that the property would be sold at a tax sale. R pgs. 87-88. Ray Bowie did not respond to those tax notices in the mail and the property was posted for delinquent taxes by the tax collector. R. pgs. 87-89.

Ray Bowie then for over a year failed to pay or redeem his property by payment of the taxes. The property was then sold at a tax sale auction wherein Woodbine Estates LLC was the high bidder and purchased the property. R pgs. 87-89. However before a deed was issued to Woodbine Estates LLC transferring title the prior owner Ray Bowie still had a year in order to redeem the property. R. pgs. 88,98. During the period of time wherein Ray Bowie had the opportunity to redeem the property his cousin Patrick Bowie the appellee in this case still stored his personal items on the property that had previously been condemned by the city. R. pgs. 88,

After a year the property was not redeemed and a deed of title was issued to Woodbine Estates LLC transferring ownership to Woodbine Estates LLC.R. pg. 88

After the transfer of the property by deed to Woodbine Estates, Woodbine Estates changed the locks on the house at 101 Mill Street so as to prevent access to the plaintiff or any other members of the public from entering the property that had been condemned and was a liability problem. R. pgs. 88,89.

According to the testimony at trial Patrick Bowie had mutual friends who contacted the defendant to allow plaintiff to pick up certain items of personal property and defendant refused to do so. R pgs. 29-30.

Plaintiff also personally called defendant and requested defendant to allow him to retrieve his personal property which defendant refused. R pgs. 90.

In June or July 2010 Woodbine Estates discarded several items of the appellee's personal property out into the street without notifying the appellee that he could retrieve his items. R. pg. 98. The appellee did procure some of his items but alleges that he did not procure all of them. R. pg. 97.

The testimony shows that the removal of the personal property from Woodbine Estates LLC's property at 101 Mill Street was at the direction of Bobby Crosby who decided upon a course of procedure which resulted in the alleged loss or damage to Bowie's personal property. R. pgs. 97..

Testimony was elicited that Bobby Crosby changed the locks on the property once a deed of title was issued to him transferring title from Raymond Bowie, cousin of Appellee Patrick Bowie from Raymond Bowie's failure to redeem the property during the statutory period of redemption. R. pgs. 88, 98.

The Appellee did not sue any other persons who participated in the removal of the personal property from the condemned residence. R. pg. 5.

The appellant testified that he did not know whose property it was and anybody could have claimed what was inside the building but it appeared to him that the items had been either abandoned or transferred to Woodbine Estates because of the defendant's failure to pick them up in a timely manner before the items had been transferred to him as a result of the purchase of the property and the transfer of the property to him and/or Woodbine Estates by deed. R. pg. 86.

The appellant is the owner or agent of Woodbine Estates LLC and after a period of time during the trial the jury returned a verdict of \$15,000.00 against the appellant and appellant appeals. R. pgs. 20-22.

## ARGUMENT I

UNDER SOUTH CAROLINA LAW WHERE PRINCIPAL AND AGENT OR MASTER AND SERVANT ARE SUED TOGETHER FOR THE SAME ACTS OF NEGLIGENCE OR WILLFUL TORT AND THE PRINCIPALS OR MASTERS LIABILITY RESTS SOLELY UPON SUCH AGENTS CONDUCT OR SERVANTS CONDUCT, CAN A VERDICT STAND AGAINST THE PRINCIPAL OR MASTER ALONE WHERE THE AGENT OR SERVANT HAS BEEN HELD TO BE BLAMELESS BY THE COURT ON DIRECTED VERDICT.

In ruling on the denial of motions for directed verdict and Judgment Notwithstanding the verdict, the evidence and all reasonable inferences from the evidence must be considered in the light most favorable to the non-moving party...If the evidence as a whole is susceptible of more than one reasonable inference a jury issue is created and the motions for directed verdict and JNOV are properly denied. However, if only one reasonable inference can be drawn from the evidence, the motion must be granted. **Hainer v. American Medical International, Inc. 320 S.C. 316, 465 S.E.2d 112 (Ct. App. 1995), affirmed in result, 328 S.C. 128, 492 S.E.2d 103 (1997).**

A trial court commits reversible error if it fails to grant a directed verdict and or Judgment Notwithstanding the verdict where the a Plaintiff has not established in a joint suit against a principal and agent and/or master or servant that the agent has committed a negligent act or engaged in intentional act that results in injury to the plaintiff.

Plaintiff did not establish that the agent of Woodbine Estates LLC committed the intentional tort of conversion where the trial court judge rules on directed verdict to dismiss the conversion claim against the agent.

Conversion is a cause of action that arises (1) when a person has an interest in the thing being converted; (2) the defendant converted the property to his own use and (3) the use was without Plaintiff's permission. **Chapman-Storm Lumber Corp. v. Minnesota-South Carolina Land and Timber Co. Et Al. 183 S.C. 31, 190 S.E. 117 (1937)**. But See **Moseley v. Oswald 376 S.C. 251, 656 S.E. 2d 380 (2008)** ( summary judgment not appropriate where a genuine issue exist as to exercise unauthorized control over a plaintiff's personal property).

In this present action Woodbine Estates LLC and Bobby Crosby were sued jointly by the plaintiff Patrick Bowie R.\_\_\_\_.

The trial judge directed a verdict in favor of the defendant agent Bobby Crosby who was an agent of Woodbine Estates LLC. R.\_\_\_\_

Consequently, the directed verdict and/or judgment NOV should have been granted in favor of appellant Woodbine Estates LLC. R.\_\_\_\_

The trial judge's failure to grant a directed verdict or judgment notwithstanding the verdict is error that should be reserved.

It has long been settled that, where principal and agent or master and servant are sued together for the same act of negligence or willful tort, and the principal's or master's liability rests solely upon such agent's or servant's conduct, a verdict against the master alone is illogical, and cannot stand. The reason for the rule is perfectly apparent, for, if the agent or servant is without blame in his conduct, the principal or master cannot be held blamable because of that same conduct. **Chapman-Storm Lumber Corp. v. Minnesota-South Carolina Land and Timber Co. Et Al. 183 S.C. 31, 190 S.E. 117 (1937)** *Johnson v. A. C. L. R. R. Co. et al., 142 S.C. 125, 140 S.E. 443; Jones v. Southern Ry. Co., 106 S.C. 20, 90 S.E. 183; Sparks v. A. C. L. R. R. Co.,*

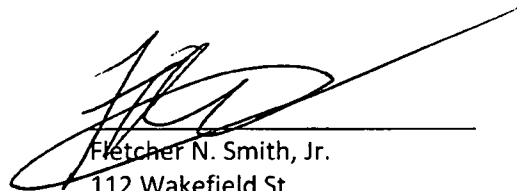
*104 S.C. 266, 88 S.E. 739; Greer v. State Highway Department, 160 S.C. 510, 159 S.E. 35; Cherry v. Singer Sewing Machine Co., 165 S.C. 451.*

In this case, the trial judge dismissed the case against the Agent, Dr. Crosby at the conclusion of the Plaintiff's case on directed verdict. Since the trial court judge exonerated Dr. Crosby the agent, it is illogical for the verdict to stand against the principal.

Consequently, where the trial judge in this present action dismissed and held blameless the agent Dr. Bobby Crosby for any conversion of the appellee's personal property, the trial judge was duty bound then at that point to direct a verdict in favor of Woodbine Estates LLC.

#### CONCLUSION

For the foregoing it is clear that the trial court judge admitted error and that the verdict of the jury and judgment of the court must be reversed.

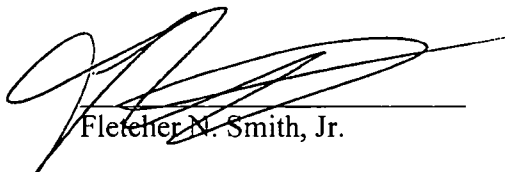


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Attorney For the Appellant

November 7, 2013

**CERTIFICATE OF COUNSEL FOR BRIEF**

**Counsel for the Appellant hereby certifies to the best of his knowledge that this Brief complies with Rule 211(b).**



Fletcher M. Smith, Jr.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM ABBEVILLE COUNTY  
COMMON PLEAS COURT

The Honorable Eugene C. Griffith

Case No. : 2013-001064

PATRICK BOWIE

Appellant

Certificate of Service

vs.

WOODBINE ESTATES, LLC

Respondent.

I, Fletcher N. Smith, Jr., hereby certify that I have this 8th day of November 2013 served a copy of the herein below listed documents to the addressees listed below by depositing a copy of same in the United States Postal System postage prepaid, and mailing same to:

**PLEADING(S):** Original and 14 copies of the Record on Appeal and Brief On Court of Appeals and 3 copies of the Record and Brief to Respondent's Counsel

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ATTORNEYS FOR THE APPELLANT

Greenville, South Carolina  
Dated: November 8, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Case No.: 2013-001064

---

Patrick Bowie,

Respondent,

v.

Woodbine Estates, LLC,

Appellant.

---

FINAL BRIEF OF RESPONDENT

---

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**SC Court of Appeals**

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## STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE APPELLANT CAN ARGUE THE TRIAL COURT ERRED BY GRANTING ITS AGENT A DIRECTED VERDICT BUT NOT THE APPELLANT WHERE THE APPELLANT DID NOT RAISE THAT ISSUE TO THE TRIAL COURT.
2. WHETHER THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR DIRECTED VERDICT WHERE AN AGENT OF THE APPELLANT WAS GRANTED A DIRECTED VERDICT ON THE SAME CLAIM BY THE TRIAL COURT.

## STATEMENT OF THE CASE

The Respondent ("Bowie") served a Summons and Amended Complaint against the Appellant ("Woodbine Estates") and Dr. Bobby Crosby on July 5, 2011. Bowie's cause of action against Woodbine Estates was for conversion, which was denied by Woodbine Estates. (R. pp. 25-28.)

The case proceeded to trial on April 16, 2013. At the close of Bowie's case, Dr. Crosby and Woodbine Estates made a motion for a directed verdict. (R. p. 71, lines 14-25.) The Court granted Dr. Crosby's motion for directed verdict on the ground that there was insufficient evidence proving that Dr. Crosby personally converted Bowie's personal property. (R. p. 79, lines 3-5.) The Court, however, denied Woodbine Estates' motion for a directed verdict because a question of fact existed as to whether Woodbine Estates had converted Bowie's personal property. (R. p. 82, lines 6-20.) Woodbine Estates renewed its motion for a directed verdict at the close of its case, and the Court again denied the motion. (R. p. 115, line 24 – p. 116, line 17.)

The jury found Woodbine Estates had converted Bowie's personal property and returned a verdict of \$15,000.00 in favor of Bowie. At the conclusion of the case, Woodbine Estates made motions for a judgment notwithstanding the verdict and a new

trial absolute, which renewed its directed verdict motion that the lawsuit should be dismissed for failure to prove the elements of conversion. The motions were denied and the judgment in favor of Bowie was entered on April 22, 2013. (R. pp. 20-21.) Woodbine Estates filed a notice of intent to appeal on May 3, 2013.

#### FACTS

In 2009, Bowie stored all of his personal property in his cousin Ray Bowie's ("Ray") house at 101 Mill St. (R. pp. 29-30.) Bowie's personal property that he could not recover included a 1984 Harley Davidson, motorcycle accessory items, model trains, train memorabilia, magazines, books, furniture, photographs, tools, and clothing. (R. pp. 30-45; 9-13.) Bowie valued his personal property at \$29,556.28. (R. p. 45, line 22.) Ray and a man named Darryl Kuenzer placed Bowie's items in the house, which was locked and secured. (R. pp. 91-92.)

Ray lost the house at a tax sale, where it was purchased by Woodbine Estates. Dr. Crosby and his wife are fifty percent (50%) partners in Woodbine Estates. In January 2010, Woodbine Estates had the locks changed. (R. p. 61, lines 23-25.) When Bowie learned that Ray had lost title and possession of the house, he called Dr. Crosby to ask whether he could retrieve his items from the house. (R. p. 46, lines 1-4.) Dr. Crosby would not allow Bowie to retrieve his items, saying his insurance company would not allow it, that he could not differentiate between Bowie's and Ray's items, and that he owned all of the items in the house. (R. p. 38, lines 1-15.) Bowie then had Ray and mutual friends James Jackson and Jon Porter contact Dr. Crosby to see whether he would allow Bowie to retrieve his items. These efforts did not succeed in Bowie getting his items back. (R. p. 46, line 18 – p. 47, line 10; pp. 50-51; pp. 69-70.)

Woodbine Estates hired Greg Gray to clean out the house and remove its contents to the street. (R. p. 89, lines 3-8.) In June, Greg Gray and some unidentified people cleaned out the house for Woodbine Estates and removed its contents. (R. p. 49, lines 11-15; p. 52, line 7 – p. 53, line 15.) Bowie spent four days on Mill Street recovering what personal items he could after some items were placed on the street. (R. p. 47, lines 11-20; pp. 54-57; p. 58, lines 10-21; p. 63, lines 4-13.) Bowie could not find any of the items above that he listed and submitted into evidence. (R. p. 48, lines 7-15.)

## ARGUMENTS

- I. BECAUSE THE APPELLANT DID NOT RAISE THE ARGUMENT BELOW, IT IS BARRED FROM ARGUING THE VERDICT AGAINST IT SHOULD BE VACATED ON THE GROUNDS THAT THE CLAIM AGAINST ITS AGENT WAS DISMISSED

The state's issue preservation rules require that an issue be raised and ruled upon by the trial court before it can be heard by the appellate courts. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing Wilder Corp. v. Wilkie, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). "It is axiomatic that an issue cannot be raised for the first time on appeal." Id.

Woodbine Estates argues that the verdict against it should be dismissed because its agent Dr. Crosby was granted a directed verdict at the close of Bowie's case. The trial record, however, shows no mention of this argument by Woodbine Estates. (R. pp. 71-83.) Instead, Woodbine Estates' argued conversion had not been proved because no evidence showed it received a benefit and that it had no contractual duty to preserve Bowie's items. (R. pp. 72-74.) At the conclusion of its case, Woodbine Estates renewed its motion for a directed verdict and again only argued that it should be granted because

no benefit to Woodbine Estates had been established. (R. pp. 115-19.) After the jury returned a \$15,000.00 verdict in favor of Bowie, Woodbine Estates made motions to reconsider its directed verdict motion, for a JNOV, and for a new trial absolute. Once again, Woodbine Estates did not argue that it should be dismissed because Dr. Crosby had been dismissed from the lawsuit. (R. pp. 120-21.)

II. THE COURT SHOULD NOT VACATE THE JUDGMENT AGAINST WOODBINE ESTATES MERELY BECAUSE ONE OF ITS AGENTS WAS GRANTED A DIRECTED VERDICT FOR THE SAME CLAIM.

If the evidence presented creates a genuine issue of material fact, then the case is not proper for summary judgment, directed verdict, or judgment notwithstanding the verdict and should be submitted to the jury. See, e.g. Moseley v. Oswald, 376 S.C. 251, 254, 656 S.E.2d 380, 381 (2008).

The doctrine of respondeat superior holds a master vicariously liable for the tort of his servant if the tort is committed within the scope of employment. Austin v. Specialty Transp. Serv., Inc., 358 S.C. 298, \_\_\_, 594 S.E.2d 867, 877 (Ct. App. 2004) (citing South Carolina Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct.App.1986)). A plaintiff has the option of suing the agent, the principal, or joining them both. Id. at \_\_\_, 594 S.E.2d at 878.

In Austin, the Plaintiffs obtained a default judgment against a truck driver and his employer. Id. at \_\_\_, 594 S.E.2d at 870. The plaintiffs later dismissed their claims against the truck driver. Id. The Court of Appeals held that the dismissal of the servant did not prevent the plaintiffs from recovering damages from the master based on its servant's actions. Id. at \_\_\_, 594 S.E.2d at 878.

Woodbine Estates relies upon Chapman-Storm Lumber Corp. v. Minnesota-South Carolina Land and Timber Co., 183 S.C. 31, 190 S.E. 117 (1937), for the proposition that where the principal and agent are sued together for the same act so that the principal's liability rests solely upon the agent's conduct, a verdict against solely the principal will not stand. The present case is actually controlled by Weeks v. Carolina Power & Light Co., 156 S.C. 158, 153 S.E. 119 (1930).

In Weeks, the plaintiff sued a power company and its district manager in tort. Id. at \_\_\_, 153 S.E. at 120. The jury returned a verdict in favor of the plaintiff against the power company but found no liability on the part of the district manager. Id. Evidence presented at the trial showed that the plaintiff's injuries occurred because of the negligent acts of other agents of the power company. Id. at \_\_\_, 153 S.E. at 121. The Supreme Court thus upheld the judgment:

If a delict be charged against both the master and the servant, or against the master and the servant and other agents of the master, and it is shown by the evidence that the delict was committed by the master through some other servant than the servant sued with the master, a verdict against the master alone may be rendered.

Id.

In the present case, Dr. Crosby testified that he and his wife were 50% partners in Woodbine Estates. (R. p. 87, lines 4-8.) The Court granted a directed verdict in favor of Dr. Crosby at the end of Bowie's case because Woodbine Estates, rather than Dr. Crosby, was the owner of the real property where Bowie's items were taken from. (R. p. 78, line 25 – p. 79, lines 1-6.)

Evidence at trial showed that agents of Woodbine Estates other than just Dr. Crosby committed the actions that constituted conversion. Dr. Crosby testified that

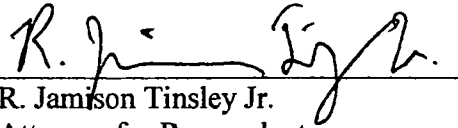
Woodbine Estates hired Greg Gray to “clean out the house, to remove the items from the house.” (R. p. 89, lines 4-5.) Bowie testified that Gray and some other people cleaned out the house. (R. p. 49, lines 7-18.) Jeff Bragg testified he had to pick up the items left on the street. (R. p. 52, lines 7-24.) Bragg testified he saw some people including Greg Gray throwing items from the house onto the street. (R. p. 52, line 25 – p. 53, line 5.) He testified he saw Gray “pull up and go into the house and get something and put it on his truck.” (R. p. 53, lines 8-10.) Bragg described the item Gray loaded onto his truck as being in a pretty big box. (R. p. 53, lines 11-15.)

This evidence proves that agents of Woodbine Estates other than Dr. Crosby participated in removing Bowie’s items from the house. The trial judge, therefore, properly submitted the conversion claim against Woodbine Estates to the jury because the jury could reasonably find that agents of Woodbine Estates other than Dr. Crosby converted Bowie’s personal property while in the scope and course of employment for Woodbine Estates. As in Weeks, it was proper for the Court to dismiss the tort claim against Dr. Crosby, an agent of Woodbine Estates, but submit the claim against Woodbine Estates, the principal, to the jury.

#### CONCLUSION

Based upon the arguments stated above, this Court should affirm the judgment from the trial court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Jamison Tinsley Jr.", written over a horizontal line.

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November 27, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Case No.: 2013-001064

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Patrick Bowie,

Respondent,

v.

Woodbine Estates, LLC

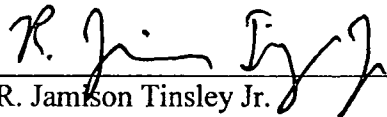
Appellant.

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CERTIFICATE OF COUNSEL

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Counsel for the Respondent hereby certifies that the Final Brief for Respondent complies with Rule 211(b).



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