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September 24, 2015

VIA HAND DELIVERY
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: ***Abrams v. City of Newberry-CON***
Appellate Case No. 2015-001663
C&L File No. 001325-00100

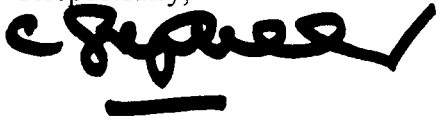
Dear Mr. Shearouse:

Please find enclosed the supplemented pages of 28.1 and 29.1 of the Appendix in connection with the above referenced matter. My courier will insert these supplemented pages into the unbound and bound copies of the Appendix in your office.

By copy of this letter, I am serving a copy of same upon counsel for Respondent.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

Respectfully,



Christian Stegmaier

CS:mmm
Enclosures

cc: David L. Morrison, Esquire
Danny and Frances Abrams

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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Appellate Case No. 2015-001663
Case No. 2011-CP-36-00588

Danny Abrams and Frances Abrams, ... Petitioner,

v.

City of Newberry, ... Respondent,

PROOF OF SERVICE

I hereby certify that I served copies of Pages 28.1 and 29.1 of the Appendix to the Petition for Writ of Certiorari upon all parties, by email and by placing a copy in the United States mail, postage prepaid, to all counsel of record on September 24, 2015, addressed to the following:

COUNSEL SERVED:
David L. Morrison, Esquire
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Columbia, SC 29212
Email: david@dmorrison-law.com

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.

By: _____

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ATTORNEYS FOR PETITIONERS

PROOF OF SERVICE – PAGE 29.1 OF THE APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Columbia, South Carolina
September 24, 2015

estimation, the size of the pipes serving his business were inadequate to manage the stormwater created by heavy rainstorms).

In the instant case, Appellants have made no averment concerning design. The size of the pipes serving their home is not an issue. Their sole basis for negligence is bottomed and premised upon the argument that Respondent failed to have any protocol in place to periodically inspect the lines servicing their home for blockages that could cause a backup. As **paying customers** of this municipality-owned utility, Appellants maintain this was a reasonable expectation of their provider.[3]

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[3] As identified in footnote 1 of this brief, Stegmaier: So they are paying for maintenance systems? Jim Liptak acknowledged that a component of their monthly fees to Respondent was for maintenance systems.

> Stegmaier: And what do the Abramses, as customers of the City of Newberry, get in return for their monthly payments for sewer and water?
>
> Liptak: What do they get in return?
>
> Stegmaier: You send them a bill, what are they paying for?
>
> Liptak: Safe drinking water, waste disposal.
>
> Stegmaier: **So they are paying for maintenance systems?**
>
> Liptak: **Yes.**

(emphasis added).

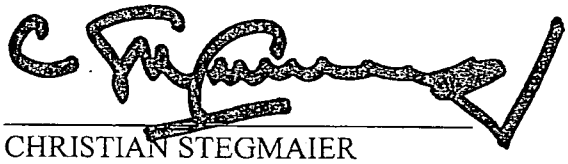
Appellants maintain this recognition by a senior-level agent of Respondent obviates any immunizing effect Respondents believe exists in Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2002), inasmuch as Respondent acknowledges that maintenance—which arguably would include the corollary function of periodic inspection—was a service that was purchased, which Respondent arguably performed negligently. At the very least, Respondent assumed a duty of care to Appellants in this regard. See Hendricks v. Clemson Univ., 353 S.C. 449, 456-57, 578 S.E.2d 711, 714 (2003) (holding that where an act is voluntarily undertaken, the actor assumes the duty to use due care.) (citing Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). See also Restatement (Second) of Torts

CONCLUSION

Appellants maintain Respondent owed them a duty to periodically inspect and clean the subject sewer system existed, which Respondent's did not fulfill. Appellants assert this duty was not discretionary, or at the very least, was one that Respondent assumed (by Respondent's own admission in discovery). Alternatively, if the Court determines that maintenance of the subject sewer system was a discretionary function, Appellants nevertheless maintain there is no proof in the case at bar that Respondent—faced with alternatives—actually weighed competing considerations and made a conscious choice using accepted professional standards. Appellants asseverate that such a demonstration of proof is required in order for a municipality to evade liability via the South Carolina Tort Claims Act

Accordingly, for the reasons stated herein, Appellants respectfully request this Court to deny Respondent's motion for summary judgment in the case sub judice.

Respectfully submitted,
COLLINS & LACY, P.C.

By: 

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ATTORNEYS FOR APPELLANTS

Columbia, South Carolina
May 1, 2014