

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM GEORGETOWN COUNCIL
COURT OF COMMON PLEAS

SC Court of Appeals

THE HONORABLE BENJAMIN H. CULBERTSON
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2016-000251
CIVIL ACTION NO. 2009-CP-22-0325

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

PLAINTIFFS

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,

DEFENDANTS

Of whom Willie Singleton is the

APPELLANT/RESPONDENT

And

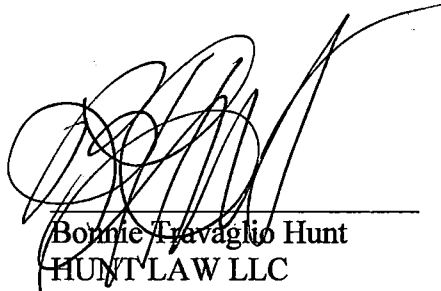
The City of Georgetown is the

RESPONDENT/APPELLANT.

AMENDED INITIAL BRIEF OF APPELLANT/RESPONDENT

Douglas Charles Baxter
Post Office Box 3646
Myrtle Beach, SC 29578

June 17, 2016

A handwritten signature in black ink, appearing to read 'Bonnie Travaglio Hunt', written over a horizontal line.

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STATEMENT OF ISSUES

- I. **DID THE TRIAL JUDGE ERROR IN FAILING TO RECUSE HIMSELF FROM THE TRIAL OF THIS MATTER?**

- II. **DID THE TRIAL JUDGE ERROR IN GRANTING DIRECTED VERDICT AS TO THE PLAINTIFF'S WILLIE SINGLETON'S RECOVERY OF DAMAGE TO THE DEMOLISHED HOUSE?**

STATEMENT OF THE CASE

On June 4, 2008, the Appellants served the City of Georgetown with a verified Complaint through is attorney Joseph Henry. (Transcript page 183, Exhibit P-16 to Transcript). The Appellants sought resolution of the matter. As a result of no resolution, the Appellants filed this action on March 6, 2009 by Summons and Complaint alleging causes of action for Improper Taking, Denial of Due Process, Waiver of Sovereign Immunity, Violation of S.C. Condemnation Statute, Violation of S.C. Code 1-23-320, Negligence/Gross Negligence, and Conversion. The Respondents were served and filed a Motion to Dismiss the Individual Respondents and a Motion to Strike Punitive Damages on April 2, 2009. On April 2, 2009 the Respondents further filed an Answer. On August 11, 2009, the Court issued a Form 4 regarding the Motion to Strike and Motion to Dismiss and took them under advisement. On August 13, 2009 the Court entered into an Order Dismissing the individual parties and striking punitive damages. The Appellants filed a Motion to reconsider which was denied on October 23, 2009. The Appellants appealed the ruling on December 1, 2009. The Appellant specifically appealed the Court's dismissal of the individual Defendants and the striking of punitive damages. The individuals were sued in their individual capacity based on allegations that each of them acted outside the scope and course of their employment because the genesis of the claims was that these persons tore down Mr. Singleton's house without adequate measures on the books, such as the adoption of the International Building Codes and/or Abatement codes in order to have a legal condemnation and demolition of the property. The Appellant, Willie Singleton appealed the claims to the Supreme Court. (Transcript page 2). The Court failed to record the hearing on the motion to dismiss the individuals and striking punitive damages. As a result of the failure, the Appellant, Willie Singleton filed grievances. (Transcript page 3). The Appellant, Willie Singleton alleged that the

Georgetown County Court of Common Pleas failed to provide him a fair opportunity to be heard.

The Respondents filed a Motion for Summary Judgment on December 9, 2009. On February 3, 2010, the Court stayed the Respondents' Motion for Summary Judgment until such time as the Court of Appeals had issued a ruling regarding the Plaintiff's appeal. On April 23, 2015, the Court denied the Defendant's Motion for Summary Judgment. The Court issued a form 4 order regarding the hearing and Motion. On January 11, 2016, the Plaintiff filed a Motion to Recuse Judge Benjamin H. Culbertson. The Plaintiff also filed a Memorandum Opposed to Admin on the Record of Simply Demolishing the House. The Defendant filed a Motion in Limine. On January 11, 2016, Judge Culbertson held hearings regarding all pending motions before the Court. The Court denied the Motion for Recusal and reheard the Motion for Summary Judgment that had already been denied by Judge Eugene Griffith on April 23, 2015. The Court also commenced the trial of this matter on January 11 which concluded on January 14, 2016 with a verdict for the Plaintiff. The Appellants hereby appeal the Order denying the Recusal and the Order granting Summary Judgment.

FACTS

The Appellant, Willie Singleton is a lifelong resident of Georgetown South Carolina. (Transcript, page 103). The Appellant began living at the 1929 Front Street address with his father and his step-mother when he was fourteen years old. (Transcript, page 104). The Appellant's father and step-mother had one child, Julia Thomas that lived in New York. (Transcript, page 104). The Appellants' father and step mother adopted another child, John Gadson. (Transcript, page 104). The Appellant handled all the businesses of his father.

Transcript, page 106). The Appellant is the only person owning an interest in the property located at 1929 Front Street. (Transcript, page 110).

On February 27, 2002 Julia Ruth Thomas issued a durable power of attorney to the Appellant, Willie Singleton. (D-53)

The Appellant, Willie Singleton paid the light bill for many years hoping his sister would not stay in the nursing home. (Transcript 124). The Appellant had a plan to renovate the home including fixing the roof, new windows and door sills. (Transcript 124). The Appellant believed that it would cost him around \$8,000.00 to fix the home with him doing all of the labor. Transcript page 124). Anyone else attempting to complete the renovation would have spent over \$24,000.00. (Transcript page 125).

The Appellant, Willie Singleton is a licensed contractor in the State of South Carolina. (Transcript page 18). The Plaintiff is limited in his license to contract on projects less than one million dollars. (Transcript page 19). The Appellant, Willie Singleton received training regarding building codes and how they applied. (Transcript page 114-115)

The Appellant, Willie Singleton is the only person with a claim to 1929 Front Street. No one else has made a claim to the property. (Transcript page 134). The Appellant is the owner of the property located at 1929 Front Street. (Transcript page 134). The Appellant's sister and brother are both deceased and neither of them left a spouse or children. (Transcript page 134). The only surviving relative of the family is the Appellant, Willie Singleton. (Transcript page 135). All contents in the home were that of the Appellant, Willie Singleton.

When the Appellant's father passed away and his will was probated the probate court specifically excluded the property located at 1929 Front Street because the property never

transferred to him from Victoria Gadson. (Transcript page 202).

The City, Respondents, made a four page list of homes that it wanted to tear down due to their dilapidated condition. (Transcript page 344). As a result of the list the City went to the City Council and obtained approval for \$1.4 million dollars of City funds to be used to tear down these eye sores. (Transcript page 344). The property that is the subject was on that list and that is when the City began to have problems with the property located at 1929 Front Street. (Transcript, page 111). On May 31, 2006, the City issued a Notice of Unsafe Structure to Victoria Gadson. (Exhibit P-2 to Transcript). The Notice of Unsafe Structure stated that Jason Goude had conducted a general inspection. (Transcript page 111, Exhibit P-2 to Transcript). At the time Goude was a Building Official for the City of Georgetown. (Transcript page 112). The Notice did not include any indication of what Mr. Goude felt was unsafe about the structure or what actions the Appellants should take to remedy the unsafe structure. (Transcript page 112). On July 7, 2006, the City issued a Second Notice of Unsafe Structure. (Exhibit P-3 Transcript). The Second Notice was also issued by Mr. Goude and did not set forth what Mr. Goude considered to be unsafe about the structure nor did it set forth what the Appellants needed to do to make the structure safe. (Transcript page 112). After the Appellant, Willie Singleton was notified of the Second Notice of Unsafe Structure by his brother John Gadson, Mr. Singleton contacted and met with Steven Stack regarding the Structure at 1929 Front Street. (Transcript page 233).

Appellants never received any documentation from Mr. Goude or the City setting forth any information as to why the Structure was unsafe or what the Appellants needed to do to make the structure safe. (Transcript page 112-113). The Notices provided by the City of Georgetown

did not set forth any date by which the Appellants were required to fix the Structure or what to fix on the structure. (Transcript page 113). At no time did the City of Georgetown provide the Appellants with notice of what their concerns were regarding the Appellants property. (Transcript page 114). The Appellant, Willie Singleton received training regarding what is deemed a safe structure. (Transcript page 115). The Respondent failed and refused to follow the proper condemnation process. (Transcript page 115). In August of 2006 the Appellant applied for his first building permit to renovate the home. (D-47) On December 8, 2006, the City issued a Final Notice of Unsafe Structure. (Transcript page 127). The Final Notice incorrectly stated that the Appellant or owner of the property had failed to contact the building office when the Appellant had actually applied for building permit which the building department failed to respond to. (Transcript pages 226-227). The Final Notice that informed the home owner that the property was being condemned was not served on the Appellant or his sister. (Transcript page 118). The City never obtained a court order condemning the property. (Transcript page 119). The City has never provided the Appellant with an inspection report that stated the home was beyond repair. (Transcript page 119). Nothing in the law allows for a building official to declare a home is beyond repair. (Transcript page 347).

The Final Notice further stated that the Building Official would provide the Appellant a list of items which was never done. (Transcript page 230). The Final Notice also stated that the property was going to be taken through the Condemnation process which was also never done. (Transcript page 230). None of the letters written set forth what the issue with the integrity of the building was. (Transcript page 241).

At the time, the City had not adopted the International Building Code into law.

(Transcript page 337). It is not enough to say that you are following the code, the municipality must also adopt the code into law. (Transcript page 337). The International Building Code is published every three years. So every three years the latest edition of the code must be adopted. State Law requires that the latest edition be adopted into law. Transcript page 337).

On January 11, 2007 the Appellant, Willie Singleton hand-delivered a letter to the City of Georgetown. The Appellant, Willie Singleton set forth his concerns and requested specific information regarding the issues with the house. (Transcript page 116, Exhibit D-49). The Appellant, Willie Singleton requested that the Defendant provide a list of issues with the home and the Appellant would hire an engineer correct the unsafe conditions. (Transcript page 116-117, Exhibit D-49). The Appellant further informed the Respondent that they had failed and refused to follow the code and fill out the proper paperwork on the home located at 1929 Front Street. (Exhibit D-49 to Transcript). On January 26, 2007, Stephen Stack responded to the Appellant's letter by stating that the City now used the International Building Code, that the City denied the permit to fix the house because the City believed that the house needed to be removed, and again stated that the City followed the International Building Code. (Transcript Exhibit D-26). The Appellant is familiar with the International Building Code as he is a licensed contractor in the State of South Carolina. (Transcript page 119). Pursuant to the International Building Code that Mr. Stack contended applied in the City the City was required to go through a six-step process to condemn the Appellant's home. (Transcript page 120). The first step requires a list of deficiencies that set forth what is wrong with the home. (Transcript page 120). After the list is presented the home owner can go before a board and question the list of deficiencies. (Transcript page 120). At no time did the City serve the Appellant or his sister

with condemnation paperwork. (Transcript page 118).

Pursuant to the International Building Code all that is required to make a structure safe it to board up the doors and windows to stop entrance. (Transcript page 230). The International Building Code deems that once the doors and windows are boarded and entrance to the property has stopped the need to tear a building down is negated. (Transcript page 230). After receiving the first notice of unsafe structure the Appellant, Willie Singleton, nailed up plywood on the structure to comply with the International Building Code. (Transcript page 248). Once the house is boarded up the City if so chose could have taken the property through the condemnation process. (Transcript page 264).

Prior to this incident these issues with the Respondent, the Appellant, Mr. Singleton went to Building Officials in the City to discuss Mr. Singleton helping another resident for free to fix their home. (Transcript page 187). As a result of that request, the Building Official informed the Appellant, Singleton, that the resident could hire an engineer to fix that resident's home. The Appellant was the only individual who was not permitted to hire an engineer and fix the home located at 1929 Front Street. (Transcript page 187).

On March 1, 2007 the Appellant, Willie Singleton applied for a second building permit with the City of Georgetown for the 1929 Front Street Home. (D-27).

On March 1, 2007 the City received 3 bids to demolish the home located at 1929 Front Street. (Transcript 121). One of the bids was from the husband of the finance director. The bid from the finance director's husband was accepted. (Transcript page 121).

On March 15, 2007, the City of Georgetown Mayor gave an interview to the local paper. In that article the City talked about the aesthetic and safety and environmental dangers in the city

due to dilapidated structures. (Exhibit P-10, Transcript page 129). The article also discussed the cost of removing structures and the fact that the city wanted to remove the structures. The article further mentions the Appellants home stating that letters had been sent to the owner in Pennsylvania and had not complied with any of the requests. (Exhibit P-10, Transcript). The purpose of the article was to show residents that the City was serious about dilapidated structures in the City. (Exhibit P-10, Transcript). The article was in direct contradiction to the truth as the Appellant had applied for two different building permits which the City had denied. (Transcript page 117.)

On March 20, 2007 the Appellant received the second denial for a building permit. No reason was given to the Appellant, Willie Singleton as to why the City denied the building permit request for the property located at 1929 Front Street. (Transcript page 117). Stack further informed the Appellant that the building was on the City's unsafe structure list. (Transcript page 240). If the house appeared on the unsafe structure list all that was required by the Appellant was to board up the home. Stephen Stack only informed the Appellant that the building was beyond repair and refused to provide a list of reasons why the structure was unsound. (Transcript page 128). The Appellant, Willie Singleton, requested that Stephen Stack allow Mr. Singleton to hire an engineer to provide him a list of deficiencies in the home in order to make it sound. (Transcript page 128.). Stephen Stack refused to allow the Appellant to obtain an engineer and instructed the Appellant that he was not going to allow him to fix the building. (Transcript page 128). After receiving the 2nd denial of a building permit, the Appellant, Willie Singleton sent a letter to Stephen Stack, Building Official with the City of Georgetown requesting information as to why a building permit was not issued for the home located at 1929

Front Street. (Exhibit P-12, Transcript).

Prior to the City tearing down the home the Appellant met with several City officials to include the building officials, City Council and the City Administrator. (Transcript page 177). The Appellant addressed his concerns regarding the City's proposal to tear down the home on the property located at 1929 Front Street. (Transcript page 177).

Prior to the demolition of the home the Appellant also contacted LLR and informed them that the City was going to demo his property without following the law. (Transcript page 122). The Appellant further informed LLR that the City was going outside the scope of their official duties. (Transcript page 122). LLR informed the Appellant that there was nothing that could be done until the City broke the law but they did not believe the City would go that far and once and if they broke the law to call back. (Transcript page 122). The LLR informed the Appellant that legally they could not get involved prior to the home being demolished. (Transcript page 122).

The Appellant, Willie Singleton also discussed with LLR the fact that Stack wanted to require the Appellant to get an engineer. The Appellant was informed that this was not legal by LLR. The Appellant requested the information regarding an engineer in writing from Stack in order to present to LLR. (Transcript page 246). The Building Code nor the State Law require an individual to hire an architect or engineer for regular construction. (Transcript page 329). Only in new construction is an engineer required for wind and seismic design. (Transcript page 330).

On April 6, 2007, R. Miller Construction, applied for a permit to demo the Appellants' home. (Transcript page 131). R. K. Miller Construction applied for a business and professional license on April 10, 2007 which was approved on April 11, 2007. (P-14). The home was demoed and buried on the property. Miller received the approval to demo the home before the

bids were even open. (Transcript page 132). The Appellant protested the fact that the bid was awarded prior to the opening of the bid with the City and the City failed and refused to respond to the Appellant's requests. (Transcript page 132).

At the time of the demolition of the property, the Appellant was using the 1929 Front Street home for storage. (Transcript page 123). The Appellant had several personal items stored in the home related to his closing and tailoring business, restaurant business, his bookstore business, and several other items including but not limited to video tapes, cassettes and antique furniture. (Transcript page 123, Verified Complaint list of items in the home, 178). The value of the Appellant's items contained in the home were over \$35,000.00 and additional \$3,500.00. (Transcript page 178, 179, 180). The home also contained several personal items that the Appellant was awarded in High School and College for football, Basketball and Track. (Transcript page 179). Many of the personal items lost due to the demolition of the home it is impossible to put a value on including but not limited to the all the films of Appellant's days of participating in football, basketball and track. (Transcript page 180). The Appellant had several films of players that went on to break many records in college and go pro in football which would be valued at over \$5,000.00. (Transcript page 181). The Appellant testified that the total of items lost was \$230,000.00. (Transcript). Despite the Appellants communications with the City prior to the demolition the City failed to notify the Appellant that he needed to remove his personal property. (Transcript page 177, 178).

The Appellant notified the City of the items destroyed in the home and their fair market value. (Transcript page 183).

The Appellant was not notified of the date and time that the City would be demolishing

the home. (Transcript page 177). The Appellant learned of the City demolishing property and went over to the property and found the City tearing down the property with the police barricading off the streets. (Transcript page 177).

On April 17, 2007, as a result of the failure of the Respondent to follow the proper process the Appellant, Mr. Singleton brought an action against the building officials through the Labor Licensing and Regulation. (Transcript page 116). The Labor Licensing and Regulation regulates building code officials. (Transcript page 90). The Appellant, Singleton filed a complaint against Mr. Stack. (Transcript page 116). The nature of the Appellant's complaint was that Stack an employee of Georgetown had failed to follow procedures and tore down a house without proper authorization. (Transcript page 91). The primary focus of the investigation of the LLR was the conduct of the licensee, Stephen Stack. (Transcript page 98). The Appellant complaint set forth that the defendant failed to provide the Appellant a list of issues with the structure that made it unsafe. (Transcript page 116). The Appellant, Singleton presenting the LLR that the Respondent, through its building officials denied his permits to fix the structure. The Appellant had applied for a permit to fix the roof and replace the windows and doors. (Transcript page 116, Exhibit P-4 Building Permit). On May 18, 2007 the Appellant, Willie Singleton sent a follow-up letter to the LLR Investigator.

The Appellants had an expert regarding building codes testify during the trial of the matter. Mr. Joe McCray testified regarding the process utilized by the Respondent. Mr. McCray had actually been on the premises of the home within a year of the home being demolished. (Transcript page 340). Mr. McCray testified that the City of Georgetown did not have a process for condemning a building in the building code of 2003. (Transcript page 324).

The State law had a procedure for condemning a building but not demolishing a building. (Transcript page 324). The State Law requires that the local municipality adopt an ordinance to actually tear down a building. (Transcript page 324). The City of Georgetown utilized the International Building Code. (Transcript page 325). McCray further testified that a vacant structure that is unoccupied and is secured from entry according to the building code is considered safe. (Transcript page 325, 340). Secured from entry is not secured from any entry but to make the building reasonably inaccessible is sufficient. (Transcript page 327). The Code further states that once the structure is deemed safe than the process stops. However, if the structure is not boarded up to prevent entry the building official must file a report on the unsafe structure that sets for the occupancy and the nature of the unsafe condition. (Transcript page 326). The report is required to set forth the issues and the person can accept or reject the building official's terms. (Transcript page 326). The Building Code permits the person to fix a building that unsafe and make it safe in compliance with the building official's list of issues. (Transcript page 326).

In accordance with the Code, once the home was boarded up the code no longer applied to the circumstances of the Appellants home. (Transcript page 328, 340). Nothing in the International Building Code allows for the City to condemn the home. (Transcript page 328). State Law Chapter 15 governs dwellings for unfit human habitation. (Transcript page 330, SC. 31-15-30, 31-15-33A). 31-15-33A states "[as read] Requiring the owner, within the time specified in the order, to repair, alter or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as, as to human habitation." (Transcript page 330-331). McCray further testified that the "state law allows for a person, a building that been

declared unsafe under the code to simply be vacated if it's occupied and it would then comply with the state law, and the state law also says that if the owner fails to comply with the order and it's under 31-15-34 [as read], 'If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling,' also it's talking about a building that's occupied, 'the public officer may cause such dwelling to be repaired, altered, improve or to be vacated and closed or the public or the public official may close—may cause it to be posted at the main entrance of the dwelling as closed and place the following wording, 'This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.' Now, nowhere in there that it says that a building is vacant and has to be torn down." The vacant building has to be secured from entry. (Transcript page 331). The process gives a way to condemn a building but not condemn it. (Transcript page 332).

Mr. Goude failed to do an inspection within the structure. (Transcript page 332). If Mr. Goude had followed the proper process once the building was declared unsafe and secured from entry the process stopped. (Transcript page 332-333). Mr. McCray specifically testified that it was impossible to tell from the pictures submitted at trial to tell if the building located at 1929 Front Street was structurally sound. (Transcript page 335). The issue with the 1929 Front Street address is that once the Appellant became aware of the leak in the roof the City refused to allow him to fix the problem so that problem progressed and became worse. (Transcript page 336).

On November 30, 2007, Stephen Stack entered into a consent agreement drafted by the attorneys for the LLR admitting to violating SC Code of Laws Section 31-15-30(1976 as amended). The Consent Agreement specifically set forth "By agreement of the South Carolina

Codes Council and the above name Respondent (Stephen Stack, City of Georgetown Building Official), the following disposition of this matter is entered pursuant to the provision of the S.C. Code of Laws. Section 1-23-320 (f) (1976, as amended) of the South Carolina Administrative Act: FINDINGS OF FACT 1. Respondent is licensed as a provisional building official (BCO. 2047) in South Carolina and was 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. 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 finding 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 Law Section 31-15-30(1976, as amended). Respondent waives any further conclusions of law with respect to this matter. 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 procedure in the demolishing of a residential structure within 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 his Consent Agreement does not satisfy, prejudice, or stay any disciplinary action currently pending before the Council or which may be filed in the future." The Consent Agreement was signed by Stephen Stack the Respondent and

the Attorney for the Council. (Transcript page 93, Exhibit P-1)

Stack agreed that he had violated the law. (Transcript page 93). Later Mr. Stack surrendered his license to the LLR because another complaint was filed against him for demolishing a home in Georgetown. (Transcript page 342).

At all times, as a licensed contractor the Appellant, Willie Singleton could have fixed the home prior to demolition. (Transcript page 239 and 240).

As a result of the Appellant's complaint with the LLR, the City was required to adopt a building code within 6 months of the violation. The City did not adopt a code until 2012. (Transcript page 341). As part of the current code, the City Council actually has the final decision as to whether a house is demolished in the City, it has been taken out of the hands of what may be considered a professional. (Transcript page 341). In 2007 when the Respondents demolished the Appellant's home there was no provision in place for demolishing a home in the City. (Transcript page 341).

The taxed value of a home is not the true value of a home. (Transcript page 344). The marketplace dictates the value of a home. (Transcript page 345). When demolishing a home, the City does not consider the value of the home nor do they have the home appraised. (Transcript page 345-346)

STANDARD OF REVIEW

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify [herself] will not be reversed on appeal." *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004).

When reviewing a motion for Directed Verdict, an appellate court must employ the same standard as the trial Court. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *Proctor v. Dep't of Health and Envtl. Control*, 368 S.C. 279, 292, 628 S.E.2d 496, 503 (Ct.App.2006) (citing *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004)); *The Huffines Co., L.L.C. v. Lockhart*, 365 S.C. 178, 187, 617 S.E.2d 125, 129 (Ct.App. 2005). *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct.App.2002); *Long*, 342 S.C. at 568, 538 S.E.2d at 9. Therefore, when ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). The Appellate Court is required to determine if a verdict for the opposing party would be reasonably possible under the facts as liberally construed in that parties' favor. *Jones v. General Electric Co.*, 331 S.C. 351, 356, 503 S.E.2d 173, 176 (Ct.App.1998). When the evidence yields more than one inference directed verdict is improper. When the inference is in doubt directed verdict is improper. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006); *Bailey v. Segars*, 346 S.C. 359, 365, 550 S.E.2d 910, 913 (Ct.App.2001); *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999).

ARGUMENTS

I. DID THE TRIAL JUDGE ERROR IN FAILING TO RECUSE HIMSELF FROM THE TRIAL OF THIS MATTER?

The purpose of recusal and the Canon's governing judicial conduct are in place to protect the interest of the public not just the individuals involved in that particular proceeding. *Canon 3(B)(1) of the Code of Judicial Conduct, Rule 501, SCACR*. The Cannons specifically state that "judge shall hear and decide matters assigned to the judge except those in which

disqualification is required.” *Canon 3(E)(1) of the Code of Judicial Conduct, Rule 501, SCACR.* “A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a person bias or prejudice against a party.” *Mortgage Electronic Systems, Inc. v. White*, 682 S.E. 2nd 492, 503, 384 S.C. 606 (Ct. App. 2009). *Koon v. Fares*, 379 S.C. 150, 156 666 S.E.2d 230, 234(2008). The Court requires that the moving party show evidence of bias or prejudice. *Id.* In *Mallet v. Mallet*, the Court determined that the mere fact that a judge ruled against the moving party is not evidence of bias or prejudice. 323 S.C. 141, 147, 473 S.E.2d 804, 808(Ct. App. 1996).

The fact is that in this case the impartiality of Judge Culbertson can be reasonably questioned because of the Appellants challenges to City Judge, O’Donnell and Judge Culbertson’s career long relationship with the City. After completing Law School, Judge Culbertson joined the law firm of Schneider and O’Donnell where he practiced for 5 years. (Motion to Recuse). The Appellant’s personal attorney was O’Donnell for a time. (Transcript page 4). The Appellant has had several dealings outside of the courtroom with Judge Culbertson not related to decisions in the Court. The Appellant currently has an action pending in Federal Court against Judge Robert O’Donnell of Schnieder and O’Donnell. Judge Culbertson previously served as a Municipal Judge for the City of Georgetown. The current action is against the City of Georgetown where Judge Culbertson has been employed and is a current resident.

On August 11, 2009, the Court issued a Form 4 regarding the Motion to Strike and Motion to Dismiss and took them under advisement. On August 13, 2009 the Court entered into an Order Dismissing the individual parties and striking punitive damages. The Appellants filed a

Motion to reconsider which was denied on October 23, 2009. The Appellants appealed the ruling on December 1, 2009. The Appellant specifically appealed the Court's dismissal of the individual Defendants and the striking of punitive damages. The individuals were sued in their individual capacity based on allegations that each of them acted outside the scope and course of their employment because the genesis of the claims was that these persons tore down Mr. Singleton's house without adequate measures on the books, such as the adoption of the International Building Codes and/or Abatement codes in order to have a legal condemnation and demolition of the property. The Appellant, Willie Singleton appealed the claims to the Supreme Court. (Transcript page 2). The Court failed to record the hearing on the motion to dismiss the individuals and striking punitive damages. As a result of the failure, the Appellant, Willie Singleton filed grievances. (Transcript page 3). The Appellant, Willie Singleton alleged that the Georgetown County Court of Common Pleas failed to provide him a fair opportunity to be heard.

The issue of actual prejudice could be the judge's revisit to an issue that had already been decided by a previous judge. In the Defendant's motion for summary judgment the Court had already denied the motion stating that the Defendant did not have standing to challenge the issue. However, the Defendant represented the argument and Judge Culbertson granted the motion that the Appellant was not entitled to damages related to the destruction of the home. The Court had already decided the in April of 2015 that the City did not have standing to challenge the ownership. (Transcript of Hearing). Here the Appellant is not basing the prejudice on the fact that the judge ruled against him but his previous dealing with Judge Culbertson.

Judge Culbertson is to avoid all appearances of impropriety. The Appellant has presented evidence that the Judge showed prejudice toward the City to protect them from a

possible extensive damages award regarding the loss of the home. *Simpson v. Simpson*, 377 S.C. 519, 523024, 660 S.E.2d 274, 276-77(Ct. App. 2008).

In *State v. Judge*, the Court determined that the bias or prejudice most stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge. 349 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003). It is clear that the record contains information to lead a court to reasonably to conclude that he Court did not exercise sound judicial discretion when dealing with the Appellant.

The matter should be remanded for a new Jury Trial with a new Trial Judge that has no prejudices in favor of the City of Georgetown.

II. DID THE TRIAL JUDGE ERROR IN GRANTING DIRECTED VERDICT AS TO THE PLAINTIFF'S WILLIE SINGLETON'S RECOVERY OF DAMAGE TO THE DEMOLISHED HOUSE?

The property was originally owned by Victoria Gadson through her family. (Transcript 108). At all times when dealing with the property located at 1929 Front Street, Georgetown, the Appellant, Willie Singleton was either acting in his own interest or under the power of attorney granted by Julia Ruth Thomas. (D-53). The property located at 1929 Front Street, Georgetown was never transferred to the name of James Gadson. (Transcript page 137 -139). Therefore Mr. Gadson did not have the power to transfer the property to his children thru his will. (Transcript 139-140). The property was owned by Julia Ruth Thomas with the Appellant, Willie Singleton was the only surviving heir. (Transcript page 108). No other persons have claimed an interest in the 1929 Front Street home. (Transcript page 110). During the time that the father's estate was probated no one came forward and claimed an interest. (Transcript page 110). Even though all

heirs were given notice of the property the Court did not probate the address at 1929 Front Street.

One interesting timing issue in this case is that the Appellant filed a complaint with the Labor Licensing and Regulation against Stephen Stack as a city of Georgetown Building Official. Stephen Stack and the City of Georgetown's attorney signed the consent order in 2007. In the fact portion of that consent agreement the agrees to the fact that Mr. Singleton, the Appellant owned the property. (Exhibit P-1). At that time, there was no challenge to the ownership of the property and the City nor Mr. Stack raised it as a defense to the allegation that Stephen Stack as a Building Official of the City of Georgetown had violated the law.

The Court further erred in Directing Verdict based on an issue that had previously been decided by the Court based on the Defendant's Motion for Summary Judgment. The Respondent specifically challenged the Appellant's ownership of the property in a Motion for Summary Judgment before the Court on April 23, 2015. The argued that Singleton had no standing and no ownership interest in the property and that the deed was void. In that matter the judge specifically stated that the City did not have standing to challenge the power of attorney and that it had to be one of the owners of an interest in the property to have standing. (Transcript page 17-18). The Court further stated that "if she owned it the work he was doing was under the authority of the power of attorney for her benefit until her death, so he has standing. Or you don't have standing to question the deed and he has standing...Either way, he can put money in the house, either under the power of attorney or under his own ownership." (Transcript page 18). The Court lacked jurisdiction to alter the previous determination of the court that the Respondent did not have standing to challenge the power of attorney. The

Respondent's again decided to challenge the Power of Attorney and have it declared void. (Transcript page 393). On April 12, 2007, the Appellant was acting as the owner of an interest in the home because the property did not pass through the will of James Gadson and as the representative under the power of attorney for Julia Ruth Thomas. John passed away with no heirs to take his portion before the action was filed. So therefore Julia Ruth Thomas and Willie Singleton as his surviving heirs would have taken his portion.

The fact is that the damages suffered by Julia Ruth Thomas did not extinguish at her death because Mr. Singleton was pursuing those matters in her name and in his own interest. (Transcript page 396). The Appellant, Willie Singleton was a properly named party to represent the interests of Ms. Thomas. "Whenever a[n] ... incompetent person has a representative, such as a general guardian, committee, conservator or other like fiduciary, the representative may sue or defend on behalf of the ... incompetent person...." Rule 17(c), SCRCP.

The damages do not extinguish as argued by the Respondents. The Respondents do not have standing to raise the validity of the deeds or the Probate Court and whose interest is in the property. The only obligation of the Respondents is to pay the damages to whomever the Probate court determines are the inheritors of the property.

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Michael P. v. Greenville County Dep't of Soc. Servs.*, 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009). "Generally, to have standing, a litigant must have a personal stake in the subject matter of the litigation." *Id.* at 415-16, 684 S.E.2d at 215. The Respondents had no personal stake in the subject matter of the Power of Attorney and therefore had no legal right to challenge the power of attorney and whether or not Mr. Singleton had an interest in the

home at the time to the demolition. The law requires that a principal to the Power of Attorney make the challenge. The purpose of the Power of Attorney is to protect the principal should he or she become incapacitated. *Gaddy v. Douglas*, 359 S.C. 329, 351, 597 S.E.2d 12 (S.C. App. 2004). A challenge to that Power of Attorney must come from a party affected by the Power of Attorney who has an interest in the actions taken. Therefore, the City has no interest in the power of attorney and cannot challenge the deed or the standing of Mr. Singleton to act in the stead of Ms. Thomas. Mr. Singleton owned an interest in the property as a child of Gadson who failed to properly transfer the property at 1929 Front Street to his name. Therefore, Thomas owned 5/8ths of the property where as Singleton owned 1/4 of 1/2. His brother John was dead at the time so his 1/4 of 1/2 passed to Singleton and Thomas equally. Maurice or Trevis has never claimed an interest in the property.

More than one inference could have been drawn from the evidence as it was presented at trial and therefore the Directed Verdict Motion should have been denied by the Court. *Jinks v. Richland County*, 345, 585 S.E.2d 281, 283 (2003); *Long*, 342 S.C. at 568, 538 S.E.2d at 9; *Adams v. G.J. Creel Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

Ultimately the Appellant had ownership of some portion of the property and what he did not he was acting in Julia Ruth Thomas stead. The Court erred in granting directed verdict to the Respondents on the matter that the Appellant was not permitted to claim any damage to the illegal demolition of the house. The Respondent committed an illegal act and was found to have committed an illegal act by the State of South Carolina and should have bene held accountable for those acts against Singleton and Thomas as owners of the property at the time of the demolition. This Court should remand the matter for a new trial permitting the Appellant to

present the value of the home and his ownership interest in the home.

CONCLUSION

Judge Culbertson erred in failing to recuse himself due to the significant prejudice involved in previous matters with the Appellant. The Court erred in granting Directed Verdict to the Respondent on the Appellant's claim for damage to the home for the Respondents illegal demolition of the house. The matter should be remanded and a new trial of the matter granted before a different judge with the Appellant being permitted to present a claim for damage for the illegal demolition of the home and his ownership interest. The Respondents should be held liable for their actions in damaging the Appellant.

June 6, 2016



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June 6, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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JUN 21 2016

SC Court of Appeals

RE: Willie Singleton, et al. Appellants v. City of Georgetown, Respondents
Case No. 2009-CP-22-0325
RPR File No: 2047-223

Dear Ms. Kitchings:

Pursuant to the Court's letter dated June 9, 2016 please find enclosed a copy of the amended documents

If you have any questions, please do not hesitate to contact me at my office. Thank you for your immediate attention to this matter.

Sincerely,



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