

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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**APPEAL FROM GEORGETOWN COUNTY  
COURT OF COMMON PLEAS**

**THE HONORABLE BENJAMIN H. CULBERTSON  
CIRCUIT COURT JUDGE**

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

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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.**

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**INITIAL RESPONDENT'S BRIEF OF APPELLANT/RESPONDENT**

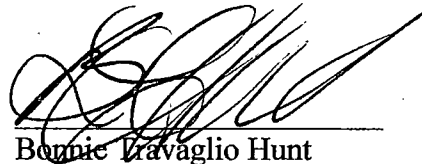
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SC Court of Appeals

November 7, 2016



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## COUNTERSTATEMENT OF ISSUES

- I. The Trial Court did not err in denying the City's motion for directed verdict for failure to mitigate damages on Singleton's claims for damages relating to the loss of his personal property stored in the house at the time of the illegal demolition.
- II. The City is not entitled to a new trial on the issue of Singleton's personal property loss as a result of passion caprice, prejudice or some other influence outside the evidence.
- III. The Trial Court did not err in failing to reduce the jury verdict for the value of Singleton's personal property.
- IV. The Trial Court did not err in admitting the consent order entered into by the City of Georgetown building Official because the Consent Order was relevant to the illegal demolition of the house.

## COUNTERSTATEMENT 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. During the Trial of the matter the Defendant filed motions in limine and a motion for directed verdict. The Court determined during testimony that the Plaintiff could maintain the action but testify as to the value of the structure did not own at that time. (Transcript, page 143). During the Directed Verdict, the Court determined the following: "The Defendant's motion for a directed verdict as to Willie Singleton, since he was not the owner of the structure at the time of its demolition, I'm going to grant your motion for a directed verdict as to Willie Singleton's entitlement to recover for damages to the house. Now, since Julia Thomas is still in there if there is a recovery and he is the heir, then it would have the same effect. You can't have it both ways. You can't say, "I'm an heir, but

we're going to leave Julia Thomas in there even though she's deceased." It's either the estate of Julia Thomas or it's Julia Thomas. So, since Willie Singleton did not acquire ownership in the property until after the demolition, I'm going to grant the motion for a directed verdict as to Willie Singleton's recovery for the house. Now, I deny the motion for summary judgment as to the property located in the house. He was the owner of the property in the house at the time, so he can proceed and seek damages on that ground. I Deny the motion for a directed verdict under the South Carolina Tort Claims Act for enactment, a failure to enact legislation. I understand your argument, but I don't think that's applicable in this case. I understand that the consent order said they didn't have the proper legislation enacted, but I don't think that that's applicable. So, I'm denying your motion on that ground. I'm denying your motion for a directed verdict for failure to mitigate damages. I think that's a jury question. You'll certainly get the jury charge. You can argue that to the jury, but whether or not he mitigated or failed to mitigate his damages I think is up for the jury to decide." (Transcript page 414 to 416.)

The Appellants hereby appeal the Order denying the Recusal and the Order Granting Summary Judgment.

### **COUNTERSTATEMENT 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).

In 1981, the property located at 1929 Front Street was lost in a tax sale. (Transcript page 108) At that time, the Appellant, Willie Singleton paid \$5,000.00 to acquire the property from the tax sale along with another club. (Transcript page 108)

On February 27, 2002 Julia Ruth Thomas issued a durable power of attorney to the Appellant, Willie Singleton. (D-53, Transcript page 107) (During the trial of the matter the Court did not wish to see the Power of Attorney.)

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. (Transcript page 107-108). No one else has made a claim to the property. (Transcript page 134, 106, 108, 110). 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 Appellant's brother had no wife, nor any children. (Transcript page 110). 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 the father from Victoria Gadson. (Transcript page 202). During the probate of Singleton's father's will there was no person that claimed an interest in the property. (Transcript page 110)

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).

In December of 2006, the City sent letters to Victoria Gadson as the owner of record. (Transcript page 235).

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 2<sup>nd</sup> 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 as a City of Georgetown Building Official 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 Order specifically stated that Mr. Stack was a City of Georgetown Building Official and served the City at its post office box. 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).

### ARGUMENTS

- I. **The Trial Court did not err in denying the City's motion for directed verdict for failure to mitigate damages on Singleton's claims for damages relating to the loss of his personal property stored in the house at the time of the illegal demolition.**

The Trial Court did not err in failing to grant the City's Motion for Directed verdict on Damages for failure to mitigate. In *Genovese*, the court determined that "in deciding whether to grant a directed verdict motion, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Genovese v. Bergeron*, 327 S.C. 567, 571, 490 S.E.2d 608, 610 (Ct. App. 1997). The Court is only concerned with the existence or non-existence of evidence and does not have the authority to decide credibility issues not to resolve conflicts in testimony. *Id.* The trial Court should deny a directed verdict motion if the evidence presents more than one reasonable inference or if its inferences are in doubt. *Id. Smith v. Walmart Stores, Inc.*, 314 S.C. 248, 442 S.E. 2d 606 (1994). The City has failed to present evidence that Mr. Singleton could have reasonably avoided or reduced his damages. *Genovese v.*

*Bergeron*, 327 S.C. 567, 571, 490 S.E. 2d 608, 611 (Ct. App. 1997). See *Brendle's Stores, Inc. v. OTR*, 978 F.2d 150, 158 (4<sup>th</sup> Cir. 1992). Mr. Singleton was aware that the City was going to illegally demolish the home and attempted to stop them by legal means. Mr. Singleton met with City Officials, Building Officials, City Administrator regarding the City's proposed illegal demolition of the home. (Transcript, page 177). Mr. Singleton testimony that he never received notice that the City was going to tear down the home. (Transcript, page 177).

“A party injured by the acts of another is required to do all those things a person of ordinary prudence would do under the circumstances to mitigate damages; however, the law does not require unreasonable exertion or substantial expense for this to be accomplished.” *Bob Brandi Stations, Inc. v. Q.L. Evans Construction Co.*, No. 2008-UP-027 (S.C. App. 1/10/2008) (S.C. App., 2008). *Genovese v. Bergeron*, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997). Furthermore, “the law does not require him to unreasonably exert himself or to incur substantial expense to avoid damages.” *Id. Tri-Continental Leasing Corp. v. Stevens, Stevens & Thomas, P.A.*, 287 S.C. 338, 342, 338 S.E.2d 343, 346 (Ct. App. 1985). “The party who claims damages should have been minimized has the burden of proving they could reasonably have been avoided or reduced.” *Id.*

Mr. Singleton would have had to expend a considerable amount of money in order to move all of the items he stored in the home, which included buffers, restaurant equipment to include ovens, deep fryers, antique furniture, items from his tailor shop and his bookstore. (Transcripts, page 123, 177). The City has failed to present evidence that the damages could have been reasonably avoided considering all the actions taken by Mr. Singleton to stop the illegal demolition of the home.

The reasonableness of actions to mitigate damages is ordinarily a question for the finder of fact. *McClary v. Massey Ferguson, Inc.*, 291 S.C. 506, 511, 354 S.E.2d 405, 408, (Ct. App. 1987). The jury was instructed on the duty to mitigate and made a determination that Mr. Singleton was entitled to the value of some of the property despite the instruction and both attorneys presenting argument regarding the matter. (Transcript, pages 479, 486, and 498)

The Court properly denied the directed verdict on mitigation of damages as evidence was presented to support the award determined by the jury. Mr. Singleton was not required to make an unreasonable exertion or substantial expense in order to lessen the damages perpetrated by the City.

**II. The City is not entitled to a new trial on the issue of Singleton's personal property loss as a result of passion caprice, prejudice or some other influence outside the evidence.**

The jury verdict for Mr. Singleton's losses is not the result of passion caprice, prejudice or any other influence than the actual evidence presented at trial. Specifically, Mr. Singleton testified that there were several items stored in the home that could not be assigned a value because of their sentimental value. (Transcript page 179-180)

The only case cited to by the City in support of this contention is *Vinson v. Harley*. In *Vinson*, the substance of the case was a regarding a car wreck where the Defendant admitted negligence but disputed the damages as having not being caused by the accident. *Vinson v. Hartley*, 477 S.E.2d 715, 719, 324 S.C. 389(Ct. App. 1996). In *Vinson*, the Plaintiff failed to produce any evidence that the damages suffered were the actual cause of the accident and therefore the jury returned a defense verdict after charges regarding the credibility of the witnesses. *Id.* at 720. The City contends that Mr. Singleton is not entitled to the damages of

\$45,000.00 because it is excess of his testimony. However, Mr. Singleton actually testified to the following: 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). Therefore, the City's contention that the \$45,000.00 verdict is excessive and ruled by passion is unwarranted.

The Trial Court properly denied the City a new trial based on the evidenced presented to the jury as the award was supported by actual testimony.

**III. The Trial Court did not err in failing to reduce the jury verdict for the value of Singleton's personal property.**

The City sites to the record contending that Mr. Singleton testified that his damages were only \$42,500.00. However, there is other testimony and evidence in the record that the jury could have awarded Mr. Singleton a significant amount of damages more than the City's interpretation. The award was not excessive and it was in the discretionary power of the trial judge to reduce the amount of the verdict if he found it to be excessive. *Daniel v. Sharpe Construction Company, Inc.* 244 S.E.2d 312, 314, 270 S.C. 687 (S.C. 1978). As set forth in *Daniel*, great deference is given to the trial judge in the area of damages because the trial judge observes the witnesses and testimony and is better equipped to judge the case than the appeals

court. *Id. See Also Rush v. Blanchard*, 310 S.C. 375, 806, 426 S.E.2d 802, 806(S.C. 1992), *Becker v. Wal-mart Stores, Inc.*, 339 S.C. 629, 639, 529, S.E. 2d 758, (S.C. App. 2000).

The City challenged the reasonableness of the jury verdict and the trial judge denied the motions contending that \$45,000.00 verdict was not excessive considering Mr. Singleton's testimony. The Trial Judge Ruled correctly and did not abuse his discretion when it refused to remit the damages to \$42,500.00

**IV. The Trial Court did not abuse its discretion when in admitting the consent order entered into by the City of Georgetown building Official because the Consent Order was relevant to the illegal demolition of the house.**

The Court is clear as to what the Standard of Review when a party to protesting the admission or exclusion of evidence: the admission or exclusion of evidence is within the sound discretion of the trial court and the trial court's decision will not be disturbed on appeal absent an abuse of discretion. *Conner v. City of Forest Acres*, 611 S.E. 2d 905, 908, 363 S.E. 460(S.C. 2005), citing *Pike v. S.C. Dept. of Transp.*, 343 S.C. 224, 234, 540 S.E. 2d 87, 92(2000); *Gooding v. St. Francis Xavier Hosp.*, 326 S.C 248, 252, 487 S.E.2d 596, 598 (1997). An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support. *Conner v. City of Forest Acres*, 611 S.E. 2d 905, 908, 363 S.E. 460(S.C. 2005), citing *Carlyle v. Toumey Hosp.*, S.C. 187, 193, 407 S.E.2d 630, 633 (1991); *Fontaine v. Peltz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, there is a reasonable probability the jury's verdict was influenced by the wrongfully admitted or excluded evidence. *Conner v. City of Forest Acres*, 611 S.E. 2d 905, 908, 363 S.E. 460(S.C. 2005), citing *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903,

911 (1997); *Timmons v. S.C. Tricentennial Commn.*, 254 S.C. 378, 405, 175 S.E.2d 805, 819, (1970); *Powers v. Temple*, 250 S.C. 149, 160, 156 S.E. 2d 759, 764(1967).

The City contends that there was reversible error by the admission of the consent order because the City was not a party to the consent order, did not sign the agreement and the evidence was not admissible. Each of these three contentions is in error.

Pursuant to an abuse of discretion standard conduct at trial including the admission or rejection of evidence, is the trial judge's discretion and the exercise of that judgment will not be disturbed on appeal unless the City can show commission of a legal error in its exercise resulting in clear prejudice to the City's rights. *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903, 912(1997) citing, *American Federal Bank v. No. 1 Main Joint Venture*, 321 S.C. 169, 467 S.E. 439 (1996). No abuse of discretion occurred the Court committed no error of law by admitting the Consent Order.

It is clear from the evidence, that at all times Stephen Stack was operating as an agent of the City. Therefore, the City is liable for the actions of its agent a City Building Official. The order has the City of Georgetown's post office box not Mr. Stack's personal address. It is clear that Stephen Stack was an employee of the City and worked with Building department as a building official. (Transcript, page 435). The question at this step is did Mr. Stack have the authority to enter into the Consent order as an employee of the City for acts that he committed as a Building Official employed by the City. As an agent Mr. Stack had a fiduciary relationship with the City and acted for his principal at all times. *Restatement (Third) of Agency Section 1.01 (2006)*. Respondeat Superior makes a master liable to a third party for injuries caused by the actions of the servant. *S.C. Ins. Co. v. James C. Greene & Co.* 290 S.C. 171, 179, 348 S.E.2d

617, 621 (Ct. App. 1986). The City was liable for the actions of its employees and therefore the admission of the consent order did not prejudice the jury.

Evidence is relevant and admissible if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *Pike v. S.C. Dept. of Transp.*, 343 S.C. 224, 234, 540 S.E. 2d 87, 92(2000). Rules 401, 402, SCRE. Relevant evidence may be excluded, however, if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE. The admission of the consent order her did was relevant to the case at hand and the failure of the City's employees to follow the State Law because the City failed to pass a proper ordinance.

The Consent order was not an order of an administrative body but an admission by the City Employee that he had violated the law that led to him surrendering his license as a building official. The admission was not an unwarranted intrusion into the jury as a fact finder as the testimony in the record already set forth those facts.

If the Court determined that the trial court has erred in the admission of the Consent Order the error in admitting the evidence was harmless. The City has failed to establish a claim that the Consent Order was even considered by the jury. *Conner v. City of Forest Acres*, 611 S.E. 2d 905, 913, 363 S.E. 460(S.C. 2005). *See Triple "F," Inc. v. Gerrard*, 298 S.C. 44, 378 S.E.2d 67 (Ct. App. 1989) (event if the trial court wrongfully excluded extension agent's testimony university had not endorsed feed program for area dairy farmers, the error was harmless because only testimony on the record did not establish feed suppliers claim that feed program marketer had committed fraud.) Ricky Martin, the building and zoning administrator for the City of Georgetown testified that the City violated the State Law when it demolished the

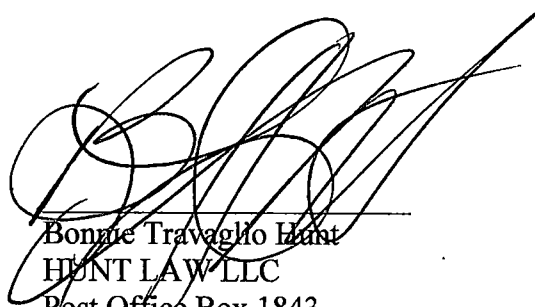
home. (Transcript page 436). The City clearly admitted that it had violated State Law because it did not have an ordinance on the books to demolish the home. (Transcript, page 437) The testimony of Mr. Martin established an admission by the City that they had committed a violation of the law therefore the Consent Order did not prejudice the City in any way.

The Trial Court did not error in admitting the Consent Order because the City has failed to establish that it prejudiced the jury with the testimony and admission by the City that it had failed to demolish the home properly. The City is not entitled to a new trial on the basis of the admission of the Consent Order.

### CONCLUSION

For the reasons set forth above, Mr. Singleton respectfully requests that the Court affirm the Trial Court's rulings regarding directed verdict, denial of a new trial absolute, denial of the motion to reduce the jury verdict to \$42,500.00, and affirm the denial of the exclusion of the Consent Order.

November 7, 2016



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Attorney for Appellant

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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**SC Court of Appeals**

**APPEAL FROM GEORGETOWN COUNTY  
COURT OF COMMON PLEAS**

**THE HONORABLE BENJAMIN H. CULBERTSON  
CIRCUIT COURT JUDGE**

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

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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.**

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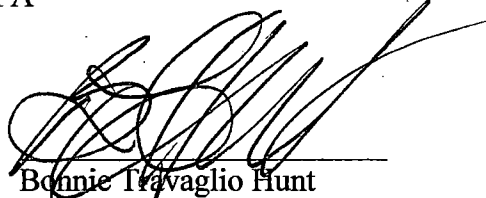
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FOR RESPONDENT'S BRIEF OF APPELLANT/RESPONDENT.**

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I certify that I have served the Respondent's Brief of Appellant/Respondent on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 7, 2016, addressed to their attorney of record, at:

Douglas Charles Baxter  
Carmen V. Ganjehsani  
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November 7, 2016



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**HUNT LAW LLC**

Bonnie Travaglio Hunt attorney at law

November 7, 2016

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

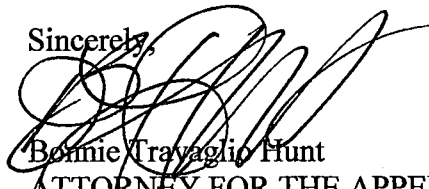
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RE: Willie Singleton, et al. Appellants v. City of Georgetown, Respondents  
Appellate Case. No. 2016-000251  
Case No. 2009-CP-220325

Dear Ms. Kitchings:


Please find enclosed Mr. Singleton's Responsive Brief. 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,

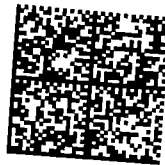


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