

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

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,

versus

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.

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

RECEIVED

FEB 27 2017

SC Court of Appeals

Douglas C. Baxter
RICHARDSON, PLOWDEN & ROBINSON, PA
2103 Farlow Street (29577)
Post Office Drawer 3646
Myrtle Beach, South Carolina 29578
(843) 448-1008

Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

**ATTORNEYS FOR
RESPONDENT/APPELLANT
THE CITY OF GEORGETOWN**

Douglas C. Baxter
RICHARDSON, PLOWDEN & ROBINSON, PA
2103 Farlow Street (29577)
Post Office Drawer 3646
Myrtle Beach, South Carolina 29578
(843) 448-1008

Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400

**ATTORNEYS FOR
RESPONDENT/APPELLANT
THE CITY OF GEORGETOWN**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	7
ARGUMENT.....	12
I. The Trial Court erred in failing to grant the City’s motion for a directed verdict on Singleton’s claims for damages relating to the loss of his personal property where he failed to mitigate his damages as a matter of law by not removing his personal property from the house when he knew it was going to be demolished by the City.....	12
II. In the alternative, the City is entitled to a new trial absolute where the jury’s verdict for the loss of Singleton’s personal property was in excess of the amount testified to by Singleton and is the result of passion, caprice, prejudice or some other influence outside the evidence	13
III. In the alternative, the Trial Court erred in failing to reduce the jury’s verdict of \$45,000.00 in damages to Singleton for the value of his personal property where Singleton testified that the value of the personal property he lost was only worth \$42,500.00	15
IV. In the alternative, the City is entitled to a new trial on the claim for personal property damages where the Trial Court erred in admitting into evidence a consent order entered into by a city building official and the South Carolina Building Codes Council which was irrelevant and only served to improperly influence the jury’s verdict	16
CONCLUSION.....	20

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Carlyle v. Tuomey Hosp.</u> , 305 S.C. 187, 407 S.E.2d 630 (1991).....	17
<u>Conner v. City of Forest Acres</u> , 363 S.C. 460, 611 S.E.2d 905 (2005).....	18
<u>Daniel v. Sharpe Const. Co.</u> , 270 S.C. 687, 244 S.E.2d 312 (1978).....	15, 16
<u>Genovese v. Bergeron</u> , 327 S.C. 567, 490 S.E.2d 608 (Ct. App. 1997).....	13
<u>Hanahan v. Simpson</u> , 326 S.C. 140, 485 S.E.2d 903 (1997).....	17
<u>Hunter v. Southern Ry. Co.</u> , 90 S.C. 507, 73 S.E. 1017 (1912).....	13
<u>Nohrden v. Northeastern R.R. Co.</u> , 59 S.C. 87, 37 S.E. 228 (1900).....	18
<u>Pike v. S.C. Dept. of Transp.</u> , 343 S.C. 224, 540 S.E.2d 87 (2000).....	17
<u>Shelton v. Oscar Mayer Foods Corp.</u> , 325 S.C. 248, 481 S.E.2d 706 (1997).....	18
<u>Singleton v. City of Georgetown</u> , No. 2012-UP-061, 2012 WL 10829736 (S.C. Ct. App. Feb. 8, 2012).....	3
<u>Vinson v. Harley</u> , 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).....	14
 <u>STATUTES</u>	
S.C. CODE ANN. § 1-23-320.....	2
S.C. CODE ANN. § 15-78-60.....	2, 4
S.C. CODE ANN. § 62-2-102.....	8
 <u>RULES</u>	
Rule 25, SCRPC	4

Rule 402, SCRE.....	17
Rule 403, SCRE.....	17

STATEMENT OF ISSUES ON APPEAL

- I. The Trial Court erred in failing to grant the City's motion for a directed verdict on Singleton's claims for damages relating to the loss of his personal property where he failed to mitigate his damages as a matter of law by not removing his personal property from the house when he knew it was going to be demolished by the City.
- II. In the alternative, the City is entitled to a new trial absolute where the jury's verdict for the loss of Singleton's personal property was in excess of the amount testified to by Singleton and is the result of passion, caprice, prejudice or some other influence outside the evidence.
- III. In the alternative, the Trial Court erred in failing to reduce the jury's verdict of \$45,000.00 in damages to Singleton for the value of his personal property where Singleton testified that the value of the personal property he lost was only worth \$42,500.00.
- IV. In the alternative, the City is entitled to a new trial on the claim for personal property damages where the Trial Court erred in admitting into evidence a consent order entered into by a city building official and the South Carolina Building Codes Council which was irrelevant and only served to improperly influence the jury's verdict.

STATEMENT OF THE CASE

This appeal arises out of the City of Georgetown's demolition in 2007 of a dilapidated and unfit structure located at 1929 Front Street in Georgetown, South Carolina (the "Property"). On March 6, 2009, Willie Singleton and Julia Thomas, as "Heirs at law of Victoria Gadson, deceased," (collectively referred to as "Plaintiffs") filed suit against the City and ten individually named City employees and officials, alleging that they were denied access to the Property and further alleging that the City performed the demolition without following proper statutory procedures. [R.pp. 12-19; Compl.] The Complaint asserted causes of action for (1) improper taking; (2) denial of due process; (3) waiver of sovereign immunity; (4) violation of South Carolina's condemnation statute; (5) violation of S.C. CODE ANN. § 1-23-320; (6) negligence/gross negligence; and (7) conversion. [Id.] Plaintiffs Singleton and Thomas sought actual, consequential, and punitive damages against all defendants, including an award of attorney's fees. [R.p. 18; Id. at p. 7.] Plaintiffs specifically sought \$3.675 million in damages against the City. [Id.] On May 5, 2009, after the filing of the lawsuit, Julia Thomas died. [R.p. 188, ll. 14-22; Trial Tr., p. 188, ll. 14-22.]

The City and the individual defendants filed an answer on April 2, 2009, denying the material allegations of the Complaint and asserting as defenses the South Carolina Tort Claims Act, the exceptions to waiver of immunity as set forth in S.C. CODE ANN. § 15-78-60, lack of standing, and equitable estoppel. [R.pp. 20-24; Answer.]

Simultaneously, the City and the individual defendants filed motions to dismiss seeking, pursuant to the South Carolina Tort Claims Act, to (1) dismiss the individual

defendants from the suit; and (2) strike the claim for punitive damages. [R.pp. 26-29; Mtns.]

The Honorable Larry B. Hyman, Jr. heard the motions to dismiss and strike on May 21, 2009 and by order dated August 4, 2009 granted the motions and dismissed the individually named defendants and ordered that the claim for punitive damages be stricken. [R.pp. 9-11; Order Granting Mtns. to Dismiss.] Willie Singleton appealed the dismissal of the individual defendants and his claim for punitive damages to this Court, which affirmed in an unpublished decision issued on February 8, 2012. See Singleton v. City of Georgetown, No. 2012-UP-061, 2012 WL 10829736 (S.C. Ct. App. Feb. 8, 2012).

The case thereafter continued against the remaining defendant, the City of Georgetown, and proceeded to trial before the Honorable Benjamin H. Culbertson on January 11-14, 2016. [R.pp. 67-596; Trial Tr.] The Trial Court heard several motions from both parties prior to the start of trial, including a motion to recuse Judge Culbertson filed by Singleton which the Trial Court denied. [R.pp. 52-53; 74, l. 14 – 93, l. 15; Mtn to Recuse; Trial Tr., pp. 1, l. 14 – 15, l. 15.]

The City filed a motion *in limine* prior to trial seeking to exclude the introduction of any evidence or argument to the jury regarding (1) a consent order entered into between Stephen Stack, a City of Georgetown Building Official, and the South Carolina Building Codes Council under which Stack had agreed to a public reprimand and license suspension in connection with the tear down of the house located on the Property and had further agreed to adopt an ordinance covering procedures for demolishing a residential structure; (2) testimony by Singleton which would be premised upon his being the owner

of the house located on the Property; and (3) damages allegedly suffered by Julia Thomas, now deceased, and whose estate, to the extent there was an estate opened, had not been substituted as a party under Rule 25, SCRPC. [R.p. 57; Mtn.]

After hearing arguments on the motion *in limine*, the Trial Court denied each ground for the motion but noted further objections to the evidence could be raised during the trial. The Trial Court also observed that before Singleton could testify as to the value of the house located on the Property when it was demolished, he would have to establish that he was qualified to render an opinion either by virtue of his status as the owner of the house when it was demolished or that he met other qualifications or had requisite knowledge to render an opinion on the value of the demolished house. [R.pp. 97, l. 3 – 114, l. 25; Trial Tr., pp. 19, l. 3 – 36, l. 25.]

During Singleton's testimony, the Trial Court ruled that because Singleton had not established that he was the owner of the house located on the Property when it was demolished and had not provided any other basis for rendering a valuation opinion, he could not give an opinion as to the value of the house when it was demolished. [R.pp. 216, l. 9 – 243, l. 16; *Id.* at pp. 135, l. 9 – 159, l. 16.]

After the conclusion of Singleton's case, the City moved for a directed verdict on five separate grounds: (1) Julia Thomas, a deceased party, should be dismissed from the action where her estate was not substituted as party within a reasonable period of time under Rule 25, SCRPC; (2) where Singleton had no ownership in the house located on the Property at the time it was demolished, he had no right, in his individual capacity, to recover damages for the loss of the house; (3) the City was immune from liability pursuant to the South Carolina Tort Claims Act, specifically S.C. CODE ANN. § 15-78-60;

(4) Singleton failed to mitigate his damages as a matter of law with respect to the loss of his personal contents stored in the house located on the Property by failing to remove such contents after receiving notice that the house would be demolished; and (5) Plaintiffs failed to meet their burden in presenting evidence from which a jury could determine damages for the loss of the house on the Property where no evidence was presented as to the value of the house at the time it was demolished. [R.pp. 473, ll. 22-23; 474, l. 16 – 497, l. 3; Id. at pp. 386, ll. 22-23; 387, l. 16 – 410, l. 3.]

After taking the City's motion for directed verdict under advisement, the Trial Court denied the motion to dismiss Julia Thomas as a plaintiff where she had died and there had been no substitution of her estate as a party, the motion for immunity under the South Carolina Tort Claims Act, and the motion for judgment as a matter of law where Singleton failed to mitigate his damages. [R.pp. 501, l. 5 – 502, l. 25; Id. at pp. 414, l. 5 – 415, l. 25.]

The Trial Court granted the City's motion for directed verdict on two separate grounds. First, the Trial Court directed a verdict in the City's favor as to Singleton's damages claim in his individual capacity for the loss of the house located on the Property where he did not own the house when it was demolished. [R.pp. 501, l. 23 – 502, l. 11; Id. at pp. 414, l. 23 – 415, l. 11.] Second, the Trial Court directed a verdict for the City on the Plaintiffs' claim for damages for the loss of the house located on the Property where no evidence was presented during Plaintiffs' case from which a jury could assess a value for the house. [R.pp. 503, l. 1 – 511, l. 6; Id. at pp. 416, l. 1 – 424, l. 6.] The Trial Court allowed Singleton's claim for damages resulting from the loss of his personal property to proceed. [R.pp. 502, ll. 11-14; 511, ll. 2-6; Id. at pp. 415, ll. 11-14; 424, ll.

2-6.] At the close of the City's case, the City renewed its previously denied motions for directed verdict. [R.p. 536, ll. 16-17; Id. at 449, ll. 16-17.]

Therefore, Singleton's claim for the loss of his personal property was the only claim remaining in the case. This claim was sent to the jury under a gross negligence cause of action. [R.pp. 499, l. 24 – 500, l. 6; 501, ll. 5-8; 512, ll. 18-22; 581, l. 2 – 584, l. 19; Id. at pp. 412, l. 24 – 413, l. 6; 414, ll. 5 – 8; 425, ll. 18-22; 494, l. 2 – 497, l. 19.]

On January 14, 2016, the jury issued a verdict in favor of Singleton in the amount of \$45,000.00 for the loss of his personal property. [R.pp. 589, ll. 12-21; 3-6; Id. at pp. 502, ll. 12-21; Verdict; Order filed January 19, 2016.]

Following the verdict, the City filed post-trial motions for (1) judgment notwithstanding the verdict where Singleton failed to present sufficient evidence upon which the jury could make a determination of the actual value of the personal property alleged to have been destroyed; (2) for a new trial absolute as to Singleton's cause of action for the loss of personal property where the verdict amount was in excess of the total amount testified to by Singleton and the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in evidence; and (3) a remittitur of the judgment where Singleton testified that the total value of the personal property was \$42,500.00 and the judgment should be reduced to that amount. [R.pp. 59-60; Post-Trial Mtn.] The Trial Court denied the City's post-trial motions by order filed February 26, 2016. [R.pp. 1-2; Order.]

Singleton filed his Notice of Appeal on February 8, 2016. The City timely filed and served its Notice of a Cross-Appeal on March 21, 2016.

STATEMENT OF FACTS

On April 12, 2007, the City of Georgetown directed the demolition of a dilapidated and unfit house located at 1929 Front Street in Georgetown (the "Property"). [R.pp. 338, 24 – 339, l. 1; 364, ll. 6-10; 662-691; Trial Tr., pp. 252, l. 24 – 253, l. 1; 278, ll. 6-10; Photos of House (D. Exs. 1-40).] Before the house located on the Property was demolished, the City served multiple written notices advising that the structure on the Property was in immediate need of repair and would be removed by the City if adequate repairs were not timely made. On May 31, 2006, July 7, 2006, and December 8, 2006, first and second notices and ultimately a final notice of an unsafe structure were sent to the owner of record of the Property, Virginia Gadson, advising that the structure had been declared unsafe due to inadequate maintenance and was in desperate need of repair. [R.pp. 628-29; 631; 320, ll. 1-3; First and Second Notices (P. Exs. 2-3); Final Notice (P. Ex. 5); Trial Tr., p. 235, ll. 1-3.] The City requested that the owner of the structure located on the Property immediately contact the City's Building Department regarding these notices or the structure would be condemned. [R.pp. 628-29, 631; First, Second, and Final Notices.]

On March 20, 2007, the City, which had since been in contact with Willie Singleton regarding the repairs necessary to bring the house within compliance, advised Singleton via letter that his requests for a building permit with respect to the roof, windows, and doorsill replacements were not repairs that would sustain the integrity of the structure. The City therefore informed Singleton that it was denying his permit application and that the "structure [was] under contract for removal and [would] be under demolition activities within the next ten working days." [R.p. 642; March 20, 2007

Letter from City (P. Ex. 11.) The house was demolished on April 12, 2007. [R.pp. 338, l. 24 – 339, l. 1; 364, ll. 6-10; Trial Tr., pp. 252, l. 24 – 253, l. 1; 278, ll. 6-10.]

The Property, including the house located on it, was originally owned by Virginia Gadson. [R.pp. 309, l. 25 – 310, l. 2; 320, ll. 1-2; Id. at pp. 224, l. 25 – 225, l. 2; 235, ll. 1-3.] She married James Gadson, the father of Willie Singleton. Virginia and James had a natural daughter, Julia Thomas, and also adopted a son, Trevis M. Gadson. [R.pp. 185, l. 2 – 186, l. 6; 218, ll. 22-23; 272, l. 17 – 273, l. 2; Id. at pp. 104, l. 2 – 105, l. 6; 137, ll. 22-23; 187, l. 17 – 188, l. 2 (noting that Trevis is also sometimes known as Maurice).] James also had children through previous relationships. These children included, among other possible children, Singleton and John Gadson. [R.pp. 275, l. 1 – 278, l. 9; 279, ll. 8-13; Id. at pp. 190, l. 1 – 193, l. 9; 194, ll. 8 – 13.] Singleton was not the biological child of Virginia, only of James. Virginia was Singleton's stepmother. [R.pp. 184, l. 24 – 185, l. 19; Id. at pp. 103, l. 24 – 104, l. 19.]

Virginia Gadson died intestate. [R.pp. 186, ll. 9-10; 218, ll. 22-24; Id. at pp. 105, ll. 9-10; 137, ll. 22-24.] Under the rules of intestate succession, S.C. CODE ANN. § 62-2-102, James Gadson, as her spouse, inherited half the Property and the remaining half was inherited by Virginia's surviving children. James Gadson subsequently died on October 9, 1996. [R.pp. 692; 660; Petition for Probate of Will (D. Ex. 41); Deed of Distribution (P. Ex. 17).]

As admitted by Singleton, his father, James Gadson, had a will which was probated. [R.pp. 281, ll. 2-4; 282, l. 20 – 283, l. 7; Trial Tr., p. 196, ll. 2-4; 197, l. 20 – 198, l. 7.] Under his will, James Gadson passed his ownership interest in the Property to three of his children: Julia Thomas, John L. Gadson, and Trevis M. Gadson. [R.pp. 692;

218, l. 24 – 219, l. 1; 283, ll. 8-14; Petition for Probate of Will; Trial Tr., pp. 137, l. 24 – 138, l. 2; 198, ll. 8 – 14.] The transfer of James Gadson's ownership interest in the Property to Julia Thomas, John L. Gadson, and Trevis M. Gadson was reflected in a Deed of Distribution recorded on July 17, 1998 at Book 885, Page 84 with the Georgetown County Register of Deeds. [R.pp. 660-61; 283, l. 15 – 284, l. 4; Deed of Distribution; Trial Tr., pp. 198, l. 15 – 199, l. 4.]

Therefore, when the house located on the Property was demolished on April 12, 2007, the owners of the Property were Julia Thomas, Trevis M. Gadson, and John Gadson. [R.p. 221, ll. 7-9; Trial Tr., p. 140, ll. 7-9.] Each of these individuals was alive when the house was demolished. [R.p. 221, ll. 3-9; Id. at p. 140, ll. 3-9.]

On February 22, 2002, approximately five years before the house located on the Property was demolished, Julia Thomas made and granted a general power of attorney to Singleton after she became ill and had a stroke. [R.pp. 46-47; 356, ll. 6-10; Power of Attorney; Trial Tr., p. 270, ll. 6 – 10.] The Power of Attorney granted Singleton the authority to make gifts to charities and individuals other than the attorney-in-fact. [R.p. 46; Power of Attorney, p. 1.]

On November 30, 2007, after the house was demolished, Singleton, acting under the Power of Attorney, transferred Julia Thomas' ownership interest in the Property to himself. [R.pp. 633-34; 355, l. 10 – 356, l. 5; 357, ll. 15-18; Thomas Deed to Singleton; Trial Tr., pp. 269, l. 10 – 270, l. 5; 271, ll. 15-18.] Singleton transferred the Property to himself despite the prohibition in the Power of Attorney on gifts to the attorney-in-fact. [R.pp. 357, l. 19 – 360, l. 4; 361, ll. 2-4; Trial Tr., pp. 271, l. 19 – 274, l. 4; 275, ll. 2 – 4.]

Thereafter, disputing whether the City followed proper procedures to demolish the house located on the Property, Singleton and Julia Thomas filed this lawsuit on March 6, 2009 as Heirs at Law of Virginia Gadson, deceased. [R.pp. 12-19; Compl.] Julia Thomas died on May 5, 2009 after the filing of the lawsuit. [R.p. 273, ll. 14-22; Trial Tr., p. 188, ll. 14 – 22.] Her estate was never substituted as a party to the lawsuit. [R.pp. 474, l. 18 – 476, l. 13; Id. at 387, l. 18 – 389, l. 13.]

During the trial, the Trial Court concluded that Singleton failed to establish that he was an owner of the house located on the Property when it was demolished or had other requisite qualifications to opine on the value of the house and thus could not render an opinion as to its value. [R.p. 243, ll. 12-15; Id. at 159, ll. 12-15.] Having failed to present any other evidence as to the value of the house, the Trial Court granted the City's motion for a directed verdict on Plaintiffs' claim for damages for the loss of the house where no evidence was presented during their case from which a jury could assess a value for the house. [R.pp. 503, l. 1 – 511, l. 6; Id. at pp. 416, l. 1 – 424, l. 6.]

The case proceeded to the jury on Singleton's claim for damages resulting from the loss of his personal property. [R.pp. 502, ll. 11-14; 424, ll. 2-6; Id. at 415, ll. 11-14; 424, ll. 2-6.] Singleton testified that he had stored some of his personal property in the house that was lost when the house was demolished, including business items used for his bookstore, restaurant, and tailor shop. He asserted these items were worth \$35,000.00. [R.p. 262, ll. 2-22; Id. at p. 178, ll. 2 – 22.] He also testified that he had purchased some furniture that he stored in the house that was worth \$1,500.00. [R.pp. 262, l. 24 – 263, l. 10; Id. at pp. 178, l. 24 – 179, l. 10.] Finally, Singleton testified that he had stored some sentimental items, such as school sports trophies and films from athletic events he had

participated in during his school years. He testified these items were worth \$1,000.00. [R.pp. 263, l. 15 – 264, l. 11; Id. at pp. 179, l. 15 – 180, l. 11.] He further claimed that he lost original films of certain professional football players that he could not replace which he valued at \$5,000.00. [R.pp. 264, l. 22 – 266, l. 12; Id. at pp. 180, l. 22 – 182, l. 12.] Therefore, the total sum of personal property Singleton contended at trial that he lost was \$42,500.00.

Singleton conceded he had notice that the house was going to be torn down within ten days of March 20, 2007 and that he even saw an article in the newspaper that the house was going to be torn down. [R.pp. 338, l. 16 – 339, l. 6; Id. at pp. 252, l. 16 – 253, l. 6.] He also acknowledged that he had access to the house and could have removed his personal property at any time before the house was demolished but that he did not do so. [R.p. 339, ll. 7-11; Id. at p. 253, ll. 7-11.]

Following the conclusion of the trial and the jury's award of \$45,000.00 in damages to Singleton for the loss of his personal property, Singleton filed an appeal challenging Judge Culbertson's denial of Singleton's motion to recuse himself as the trial judge and the Trial Court's grant of the City's motion for a directed verdict as to Singleton's recovery of damages for the value of the demolished house.

The City has also filed this cross-appeal challenging (1) the failure of the Trial Court to grant the City's motion for a directed verdict where Singleton failed to mitigate his damages relating to the loss of his personal property; (2) the failure of the Trial Court to grant the City's post-trial motion for a new trial absolute as to Singleton's cause of action for the loss of personal property where the verdict amount was in excess of the total amount testified to by Singleton and the jury was moved or actuated by passion,

caprice, prejudice, or other considerations not found in evidence; (3) the failure of the Trial Court to remit the jury's award of \$45,000.00 in damages for the loss of Singleton's personal property where Singleton testified that his personal property was only worth \$42,500.00; and (4) the admission of the consent order entered into between Stephen Stack and the South Carolina Building Codes Council.

ARGUMENT

I. The Trial Court erred in failing to grant the City's motion for a directed verdict on Singleton's claims for damages relating to the loss of his personal property where he failed to mitigate his damages as a matter of law by not removing his personal property from the house when he knew it was going to be demolished by the City.

The Trial Court erred in failing to grant the City's motion for a directed verdict on Singleton's claims for damages relating to the loss of his personal property where he failed to mitigate his damages as a matter of law. [R.pp. 488, l. 11 – 495, l. 11; 502, ll. 21-25; Trial Tr., pp. 401, l. 11 – 408, l. 11; 415, ll. 21-25.] During the trial, Singleton conceded he had notice that the house was going to be torn down within ten days of March 20, 2007 and that he even saw an article in the newspaper that the house was going to be torn down. [R.pp. 338, l. 16 – 339, l. 6; Trial Tr., pp. 252, l. 16 – 253, l. 6.] He also acknowledged that he had access to the house and could have removed his personal property at any time before the house was demolished but that he did not do so. [R.p. 339, ll. 7-11; Id. at p. 253, ll. 7-11.] Instead, Singleton left his personal contents in a structure which he knew was going to be demolished by the City.

“A party injured by the acts of another is required to do those things a person of ordinary prudence would do under the circumstances to mitigate damages,” although “the law does not require unreasonable exertion or substantial expense for this to be

accomplished.” Genovese v. Bergeron, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997).

This State’s Supreme Court in Hunter v. Southern Ry. Co., 90 S.C. 507, 73 S.E. 1017 (1912) expounded on a plaintiff’s duty to mitigate damages:

The rule is well settled, and it is supported by reason and the great weight of authority, that the duty rests upon one who is injured by the breach of contract or the mere negligence of another to reasonably exert himself to avoid and to lessen the damages resulting therefrom; and such damages as may be avoided by the exercise of reasonable efforts, care, and prudence on his part cannot be said to be the proximate result of the other’s delict. Therefore there can be no recovery of damages which might have been so avoided. The efforts required of the injured party must be determined by the rules of common sense and fair dealing, and they include a reasonable expenditure of money.

Id. at 1019.

Common sense, as a matter of law, in this case dictates that Singleton could have used reasonable efforts and care to remove his personal contents from a structure which he knew was about to be demolished by the City.

The Trial Court therefore erred in failing to grant the City’s motion for a directed verdict where the evidence presented at trial established that Singleton failed to take reasonable measures to avoid his damages resulting from the loss of his personal property. The Trial Court’s order denying the City’s motion for a directed verdict where Singleton failed matter of law to mitigate his damages should be reversed.

II. In the alternative, the City is entitled to a new trial absolute where the jury’s verdict for the loss of Singleton’s personal property was in excess of the amount testified to by Singleton and is the result of passion, caprice, prejudice or some other influence outside the evidence.

The jury’s verdict of \$45,000.00 in damages to Singleton for the loss of his personal property was in excess of the amount testified to by Singleton. Following the

verdict, the City moved for a new trial absolute as to Singleton's cause of action for the loss of personal property where the verdict amount was in excess of the total amount testified to by Singleton and the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in evidence which the Trial Court denied. [R.pp. 59-60; 1-2; Post-Trial Mtns.; Order.]

During his trial testimony, Singleton testified that he had stored some of his personal property in the house that was lost when the house was demolished, including business items used for his bookstore, restaurant, and tailor shop. He asserted these items were worth \$35,000.00. [R.p. 262, ll. 2-22; Trial Tr., pp. 178, ll. 2 – 22.] He also testified that he had purchased some furniture that he stored in the house that was worth \$1,500.00. [R.pp. 262, l. 24 – 263, l. 10; Id. at p. 178, l. 24 – 179, l. 10.] Finally, Singleton testified that he had stored some sentimental items, such as school sports trophies and films from athletic events he had participated in during his school years. He testified these items were worth \$1,000.00. [R.pp. 263, l. 15 – 264, l. 11; Id. at pp. 179, l. 15 – 180, l. 11.] He further claimed that he lost original films of certain professional football players that he could not replace which he valued at \$5,000.00. [R.pp. 264, l. 22 – 266, l. 12; Id. at pp. 180, l. 22 – 182, l. 12.] Therefore, the total sum of personal property Singleton contended at trial that he lost was \$42,500.00.

“A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. . . . The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive . . . and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. . . . The failure of the trial judge to grant a new trial absolute in this

situation amounts to an abuse of discretion and on appeal this Court will grant a new trial absolute.” Vinson v. Harley, 324 S.C. 389, 404-05, 477 S.E.2d 715, 723 (Ct. App. 1996) (internal citations omitted).

Here, Singleton testified his personal property was only worth \$42,500.00, and therefore, clearly the amount of the jury’s verdict of \$45,000.00 is in excess of this amount and not supported by the evidence. Having awarded more in damages for the personal property than Singleton testified to as to their value, the jury’s verdict was no doubt rendered on some other basis than the evidence presented at trial. Accordingly, the Trial Court erred in denying the City’s motion for a new trial absolute on Singleton’s personal property damages claim.

III. In the alternative, the Trial Court erred in failing to reduce the jury’s verdict of \$45,000.00 in damages to Singleton for the value of his personal property where Singleton testified that the value of the personal property he lost was only worth \$42,500.00.

The jury awarded \$45,000.00 in damages to Singleton for the value of his personal property even though he testified that the value of the personal property lost was only worth \$42,500.00. [R.pp. 589, ll. 12-21; 3-6; Id. at 502, ll. 12-21; Verdict; Order filed January for 19, 2016.]

Despite Singleton’s own valuation of his personal property at \$42,500.00 (see supra, p. 14), the jury awarded damages of \$45,000.00. Thereafter, the City moved for a remittitur of the verdict to \$42,500.00 on the basis that Singleton testified the total value of the personal property equaled that amount. [R.p. 59; Post-Trial Mtn.] The Trial Court denied this post-trial motion in an order filed February 26, 2016. [R.pp. 1-2; Order.]

The trial court has discretionary power to reduce the amount of a verdict which in his or her judgment is excessive. Daniel v. Sharpe Const. Co., 270 S.C. 687, 244 S.E.2d

312 (1978). The decision of the trial judge to reduce the verdict will not be disturbed unless it clearly appears that the exercise of discretion was controlled by a manifest error of law. Id.

The evidence does not support the Trial Court's denial of the City's motion to remit the jury's damages award to \$42,500.00. The \$45,000.00 in damages awarded by the jury was not within the range of evidence presented by Singleton at trial as to the amount of the personal property he lost. Even though some items were of sentimental value to Singleton, he testified as to his belief of their value and the jury should not award Singleton above and beyond his own testimony as to the value of the items he lost. As such, the Trial Court abused its discretion in failing to remit the damages to \$42,500.00.

IV. In the alternative, the City is entitled to a new trial on the claim for personal property damages where the Trial Court erred in admitting into evidence a consent order entered into by a city building official and the South Carolina Building Codes Council which was irrelevant and only served to improperly influence the jury's verdict.

Prior to trial, the City filed a motion *in limine* prior to trial seeking to exclude the introduction of any evidence or argument to the jury regarding a consent order entered into between Stephen Stack, a City of Georgetown Building Official, and the South Carolina Building Codes Council under which Stack had agreed to a public reprimand and license suspension in connection with the tear down of the house located on the Property and had further agreed to adopt an ordinance covering procedures for demolishing a residential structure. [R.pp. 57; 624-626; Mtn.; Consent Order.] Stack entered into this consent agreement with the Building Codes Council, not on behalf of the City, but in his own behalf as a licensed building official under South Carolina law.

[R.pp. 624-26; Consent Order.] The City was not a party to this agreement, nor did it sign the agreement. [R.pp. 624-26; Id.]

The Trial Court heard arguments on the motion where the City argued that the Consent Order entered into between Stack on his own behalf and the Building Codes Council would not be relevant to whether the City was negligent in demolishing the house located on the Property, including Singleton's personal property contained in the house. [R.pp. 104, l. 20 – 106, l. 16; Trial Tr., pp. 26, l. 20 – 28, l. 16.] The Trial Court denied the City's motion to exclude the Consent Order as evidence. [R.p. 108, ll. 13-20; Id. at p. 30, ll. 13-20.] The Consent Order was entered into as evidence over the City's renewed objection. [R.pp. 172, l. 14 – 173, l. 2; Id. at pp. 92, l. 14 – 93, l. 2.]

The admission or exclusion of evidence is within the sound discretion of the trial court and ordinarily the trial court's decision will not be disturbed on appeal absent an abuse of discretion. Pike v. S.C. Dept. of Transp., 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000). An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support. Carlyle v. Tuomey Hosp., 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991). 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 wrongly admitted or excluded evidence. Hanahan v. Simpson, 326 S.C. 140, 156, 485 S.E.2d 903, 911 (1997).

Rule 402, SCRE provides that evidence which is not relevant is not admissible. Furthermore, Rule 403, SCRE provides that "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the

issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

This State’s Supreme Court has held that prior findings made by administrative bodies are usually not admissible at trial. Conner v. City of Forest Acres, 363 S.C. 460, 475, 611 S.E.2d 905, 913 (2005) (citing Nohrden v. Northeastern R.R. Co., 59 S.C. 87, 101, 37 S.E. 228, 237 (1900) (“[I]t would be improper to allow any reference to the action of the former jury calculated to influence the jury then trying the case. Each jury must act upon [its] own responsibility, and according to [its] own view of the testimony submitted to [it], entirely uninfluenced by the action of any other jury.”); Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 252, 481 S.E.2d 706, 708 (1997) (public policy dictates that findings made by Employment Security Commission on narrow issue of unemployment benefits will not be given collateral estoppel effect in subsequent wrongful termination lawsuit)).

Moreover, admission into evidence of an administrative body’s recommendations or findings would likely cause unfair prejudice and confusion, and constitute an unwarranted intrusion into the jury’s role as a factfinder. See Conner, 363 S.C. at 475, 611 S.E.2d at 913.

Here, the admission into evidence of a Consent Order between a city building official in his capacity as a licensed building official under State law and the Building Codes Council was not relevant in the gross negligence action against the City. The City was not a party to this Consent Order and not bound by its provisions. The jury was to determine whether the City was negligent or not in demolishing the house containing Singleton’s personal property based upon the evidence presented to it at trial, not upon

the previous findings of an administrative body (findings which were not even made against the City), and the admission of the Consent Order which was not relevant to that issue only served to improperly influence the jury's decision. Hearing that a city building official consented to a reprimand and license suspension arising out of the tear down of the house no doubt would have improperly influenced the jury's verdict. Therefore, the City requests a new trial on the personal property damages claim of Singleton where the Trial Court erred in admitting this Consent Order into evidence.

CONCLUSION

For the reasons set forth herein, the City of Georgetown respectfully requests this Court to (1) reverse the Trial Court's denial of the City's motion for a directed verdict on Willie Singleton's claim for personal property damages where he failed to mitigate his damages as a matter of law; (2) alternatively, grant a new trial absolute where the jury's verdict for the loss of Singleton's personal property was in excess of the amount testified to by Singleton and is the result of passion, caprice, prejudice or some other influence outside the evidence; (3) alternatively, reduce the jury's award of \$45,000.00 in damages for the loss of Singleton's personal property to \$42,500.00 in damages; or (4) in the alternative, grant a new trial on the personal property damages claim where the Trial Court erred in admitting the consent order entered into between Stephen Stack and the South Carolina Building Codes Council.

Respectfully submitted,



Douglas C. Baxter
RICHARDSON, PLOWDEN & ROBINSON, PA
2103 Farlow Street (29577)
Post Office Drawer 3646
Myrtle Beach, South Carolina 29578
(843) 448-1008

Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
**ATTORNEYS FOR
RESPONDENT/APPELLANT
THE CITY OF GEORGETOWN**

February 27, 2017.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Appellant's Brief of Respondent/Appellant complies with Rule 211(b), SCACR.

Respectfully submitted,



Douglas C. Baxter
RICHARDSON, PLOWDEN & ROBINSON, PA
2103 Farlow Street (29577)
Post Office Drawer 3646
Myrtle Beach, South Carolina 29578
(843) 448-1008

Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
**ATTORNEYS FOR
RESPONDENT/APPELLANT
THE CITY OF GEORGETOWN**

February 27, 2017.

RECEIVED

FEB 27 2017

SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondent/Appellant, The City of Georgetown, do hereby certify that I have this date served two copies of the foregoing Final Appellant's Brief of Respondent/Appellant, dated February 27, 2017, by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to counsel of record as indicated below:

Bonnie Travaglio Hunt
Hunt Law, LLC
PO Box 1845
Goose Creek, SC 29445
ATTORNEY FOR APPELLANT/RESPONDENT



Carmen V. Ganjehsani
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
**ATTORNEYS FOR
RESPONDENT/APPELLANT
THE CITY OF GEORGETOWN**

Dated: February 27, 2017.

RECEIVED

FEB 27 2017

SC Court of Appeals

Reply to: **Carmen V. Ganjehsani**
Direct Dial: 803-253-8692
cganjehsani@richardsonplowden.com

February 27, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Willie Singleton v. The City of Georgetown*
Appellate Case No. 2016-000251
Case No.: 2009-CP-220325
RPR File No.: 2047-223

RECEIVED
FEB 27 2017
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing are the original and fourteen (14) copies of both the Final Appellant's Brief and Final Respondent's Brief of Respondent/Appellant The City of Georgetown in the above-referenced matter, along with our original Certificates of Compliance and Certificates of Service. The Briefs that are unbound contain the original Certificates of Compliance and Certificates of Service.

By copy of this letter, we are this day serving a copy of our Final Briefs on counsel for Appellant/Respondent.

Sincerely,



Carmen V. Ganjehsani

CVG
Encs.

cc: Bonnie Travaglio Hunt, Esquire
Douglas C. Baxter (via e-mail)