

**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

RECEIVED
JUL 27 2016
SC Court of Appeals

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 RESPONDENT'S BRIEF
OF RESPONDENT/APPELLANT**

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
COUNTERSTATEMENT OF ISSUES ON APPEAL.....	1
COUNTERSTATEMENT OF THE CASE.....	2
COUNTERSTATEMENT OF FACTS	7
ARGUMENT.....	12
I. The Trial Judge did not err in denying Singleton’s motion for recusal of the Trial Judge where not only did Singleton fail to present any fact showing that the Trial Judge’s impartiality might reasonably be questioned, he did not offer any evidence of actual bias or prejudice on behalf of the Trial Judge.....	12
II. Singleton failed to appeal all necessary rulings made by the Trial Court relating to the ownership of the demolished property; therefore, the Trial Court’s grant of the City’s motion for a directed verdict as to the claim for damages for the loss of the house after it was demolished should be affirmed under the two issue rule	18
III. The Trial Court correctly directed a verdict in favor of the City on the damages claim for the value of the demolished house where (1) Singleton had not established that he was the owner of the house when it was demolished or had other qualifications to offer an opinion on the value of the house; and (2) Singleton, prohibited from offering an opinion as to the value of the house himself, presented no other evidence of the value of the house when it was demolished thereby precluding his claim for such damages	21
CONCLUSION.....	35

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Anderson v. S.C. Dep't of Highways & Pub. Transp.</u> , 322 S.C. 417, 472 S.E.2d 253 (1996)	21
<u>Ballenger v. Bowen</u> , 313 S.C. 476, 443 S.E.2d 379 (1994)	17, 30
<u>Biales v. Young</u> , 315 S.C. 166, 432 S.E.2d 482 (1993)	20
<u>Buckner v. Preferred Mut. Ins. Co.</u> , 255 S.C. 159, 177 S.E.2d 544 (1970)	20
<u>Burgess v. Stern</u> , 311 S.C. 326, 428 S.E.2d 880 (1993)	17
<u>Burris v. Propst Lumber & Logging, Inc.</u> 396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011)	19
<u>Carrigg v. Cannon</u> , 347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001)	28, 29
<u>City of Spartanburg v. Laprinakos</u> , 267 S.C. 589, 230 S.E.2d 443 (1976)	23
<u>Davis v. Monteith</u> , 289 S.C. 176, 345 S.E.2d 724 (1986)	27
<u>Davis v. Parkview Apartments</u> , 409 S.C. 266, 762 S.E.2d 535 (2014)	15, 17
<u>Doe v. Howe</u> , 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005)	13
<u>Eadie v. Krause</u> , 381 S.C. 55, 671 S.E.2d 389 (Ct. App. 2008)	14
<u>Fender v. Fender</u> , 285 S.C. 260, 329 S.E.2d 430 (1985)	31
<u>Glasscock, Inc. v. U.S. Fid. And Guar. Co.</u> , 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)	27
<u>Hawkins v. Greenwood Dev. Corp.</u> , 328 S.C. 585, 493 S.E.2d 875 (Ct. App. 1997)	23

<u>Jones v. Lott,</u> 387 S.C. 339, 692 S.E.2d 900 (2010)	21
<u>Koon v. Fares,</u> 379 S.C. 150, 666 S.E.2d 230 (2008)	13, 15
<u>Lindsay v. Lindsay,</u> 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997)	20
<u>Loftis v. ECK,</u> 288 S.C. 154, 341 S.E.2d 641 (1986)	31
<u>Mfrs. & Merchants Mut. Ins. Co. v. Harvey,</u> 330 S.C. 152, 498 S.E.2d 222 (Ct. App. 1998)	28
<u>Mortg. Elec. Sys., Inc. v. White,</u> 384 S.C. 606, 682 S.E.2d 498 (Ct. App. 2009)	15, 16
<u>Patel v. Patel,</u> 359 S.C. 515, 599 S.E.2d 114 (2004)	13
<u>Reading v. Ball,</u> 291 S.C. 492, 354 S.E.2d 397 (Ct. App. 1987)	15
<u>Rogers v. Wilkins,</u> 275 S.C. 28, 267 S.E.2d 86 (1980)	15
<u>Santoro v. Schulthess,</u> 384 S.C. 250, 681 S.E.2d 897 (Ct. App. 2009)	22, 26, 34
<u>Seaboard Coast Line R.R. v. Harrelson,</u> 262 S.C. 38, 202 S.E.2d 1 (1974)	23
<u>Singleton v. City of Georgetown,</u> No. 2012-UP-061, 2012 WL 10829736 (S.C. Ct. App. Feb. 8, 2012)	3
<u>South Carolina Dep't of Transp. V. Richardson,</u> 335 S.C. 278, 516 S.E.2d 3 (Ct. App. 1999)	23
<u>State v. Dunbar,</u> 356 S.C. 138, 587 S.E.2d 691 (2003)	28
<u>State v. Howard,</u> 384 S.C. 212, 682 S.E.2d 42 (Ct. App. 2009)	13
<u>State v. Jackson,</u> 353 S.C. 625, 578 S.E.2d 744 (Ct. App. 2003)	13, 14

Vinson v. Hartley,
324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996) 22

STATUTES

S.C. CODE ANN. § 1-23-320..... 2
S.C. CODE ANN. § 15-78-60..... 2, 4
S.C. CODE ANN. § 31-15-30..... 29
S.C. CODE ANN. § 62-2-101..... 27
S.C. CODE ANN. § 62-2-102..... 8, 24

RULES

Rule 208(b)(1)(B), SCACR..... 19
Rule 25, SCRCP..... 4
Rule 501, SCACR, Canon 3(E)(1)(a) 12

COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. The Trial Judge did not err in denying Singleton's motion for recusal of the Trial Judge where not only did Singleton fail to present any fact showing that the Trial Judge's impartiality might reasonably be questioned, he did not offer any evidence of actual bias or prejudice on behalf of the Trial Judge.
- II. Singleton failed to appeal all necessary rulings made by the Trial Court relating to the ownership of the demolished property; therefore, the Trial Court's grant of the City's motion for a directed verdict as to the claim for damages for the loss of the house after it was demolished should be affirmed under the two issue rule.
- III. The Trial Court correctly directed a verdict in favor of the City on the damages claim for the value of the demolished house where (1) Singleton had not established that he was the owner of the house when it was demolished or had other qualifications to offer an opinion on the value of the house; and (2) Singleton, prohibited from offering an opinion as to the value of the house himself, presented no other evidence of the value of the house when it was demolished thereby precluding his claim for such damages.

COUNTERSTATEMENT 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. 273, 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. 74-596; 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.]

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.

COUNTERSTATEMENT 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 – 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 p. 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 this 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 a 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 Judge did not err in denying Singleton's motion for recusal of the Trial Judge where not only did Singleton fail to present any fact showing that the Trial Judge's impartiality might reasonably be questioned, he did not offer any evidence of actual bias or prejudice on behalf of the Trial Judge.

On appeal, Singleton argues that Judge Culbertson erred by failing to recuse himself as the trial judge for three primary reasons: (1) Judge Culbertson was previously employed as a municipal judge for the City of Georgetown and is a current resident of the City; (2) Judge Culbertson joined the law firm of Schneider and O'Donnell after completing law school where he practiced for five years, Singleton had used O'Donnell as his personal attorney, O'Donnell is now a municipal judge, and Singleton currently has an action pending against O'Donnell in federal court; and (3) Singleton has had several dealings outside of the courtroom with Judge Culbertson not related to decisions in his case, although Singleton does not specify in his appeal what those dealings are or may have been. See Singleton's Appellant's Brief, p. 18. Not only has Singleton failed to demonstrate how these purported reasons bear upon Judge Culbertson's impartiality, Singleton has failed to establish any evidence of actual bias or prejudice resulting from Judge Culbertson's handling of the trial.

Pursuant to Canon 3(E)(1)(a) of Rule 501, SCACR, a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be

questioned. State v. Jackson, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct. App. 2003); see also Koon v. Fares, 379 S.C. 150, 156, 666 S.E.2d 230, 234 (2008) (“A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including instances where he has a personal bias or prejudice against a party.”).

“It is not enough for a party seeking disqualification to simply allege bias or prejudice.” Jackson, 353 S.C. at 627, 578 S.E.2d at 745. The party must establish some evidence of that bias or prejudice. Id. “The alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participating in the case as a judge.” Id. The “alleged bias must be personal, as distinguished from judicial, in nature.” State v. Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (citation omitted). Where there is no evidence of judicial bias or prejudice, a judge’s failure to disqualify himself will not be reversed on appeal. Id.; see also Patel v. Patel, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004); Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005) (“Because [plaintiff] made no showing here of actual prejudice, we find no abuse of discretion in the trial judge’s refusal to disqualify himself.”); Jackson, 353 S.C. at 627, 578 S.E.2d at 745.

In Jackson, the defendant moved for recusal of the trial judge on the basis that the trial judge was the deputy solicitor of the county both when the crimes were allegedly committed by the defendant and when the defendant was arrested. Jackson, 353 S.C. at 626-27, 578 S.E.2d at 744. The solicitor was sworn in as judge two days after the defendant was arrested. Id. at 627, 578 S.E.2d at 744. While defense counsel argued that the judge should recuse himself because he had been the chief law enforcement

officer for the county during crucial points in the history of the case, the trial judge denied the motion, stating “he had no knowledge of the case and had never discussed it with anyone from the solicitor’s office” or any other law enforcement agency. Id. at 627, 578 S.E.2d at 744-45.

This Court agreed, finding the fact the trial judge was a deputy solicitor with the county at the time the defendant allegedly committed a crime and was arrested did not, without more, automatically warrant the trial judge’s recusal from the case. The trial judge was unfamiliar with the case and had not discussed it with anyone at either the solicitor’s office or any other law enforcement agency. The defendant, having offered no proof to the contrary, could not prevail on his motion to recuse the trial judge. Id. at 627-28, 578 S.E.2d at 745.

Therefore, where a trial judge’s employment as deputy solicitor with the county during the time period in which a defendant committed and was arrested for his crimes is an inadequate basis for recusal without more, Judge Culbertson’s previous employment with the City and current status as a resident of the City, without more, does not require automatic recusal. In addition, Singleton has presented no evidence that Judge Culbertson had any knowledge of the facts underlying Singleton’s case when Judge Culbertson was employed with the City or had any involvement with the condemnation of the Property.

Singleton’s allegation that he has a case pending against a former law partner of Judge Culbertson also does not require recusal. Case law is clear that Judge Culbertson’s mere professional relationship with someone who Singleton has now sued in an independent lawsuit, without more, is insufficient evidence of bias or prejudice. See Eadie v. Krause, 381 S.C. 55, 62 n.3, 671 S.E.2d 389, 392 n. 3 (Ct. App. 2008)

(observing fact that trial judge had a previous professional relationship with attorney in former client's professional malpractice suit against attorney was insufficient evidence, standing alone, of bias or prejudice to warrant reversal of trial judge's denial of appellant's motion to recuse). Furthermore, the discourse between Judge Culbertson and Singleton's counsel during the hearing on the motion to recuse demonstrates that Judge Culbertson had no knowledge of the federal suit pending against his former law partner. [R.pp. 86, l. 4 – 87, l. 4; Trial Tr., pp. 8, l. 4 – 9, l. 4.]

Singleton also argues that his previous dealings with Judge Culbertson outside of the courtroom warrant recusal, but Singleton fails to provide any detail in his brief of what these previous dealings were and how such previous dealings showed bias or prejudice on behalf of Judge Culbertson. See Koon, 379 S.C. at 157, 666 S.E.2d at 234 (finding tenants failed to point to any evidence in the record showing actual bias or prejudice on the part of the trial judge where the judge had ruled against tenants in a previous matter); Rogers v. Wilkins, 275 S.C. 28, 30-31, 267 S.E.2d 86, 87-88 (1980) (finding trial judge was not required to disqualify himself where there was an absence of independent evidence of bias or prejudice as a result of a Civil Rights Act suit which one litigant had previously brought against the judge).

Importantly, Singleton has not presented any evidence of prejudice or bias against him other than the adverse rulings of Judge Culbertson to which he takes issue. See Davis v. Parkview Apartments, 409 S.C. 266, 288, 762 S.E.2d 535, 547 (2014). However, “[t]he fact [that] a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed errors in his rulings.” Mortg. Elec. Sys., Inc. v. White, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (Ct. App. 2009)

(citation omitted); see also Reading v. Ball, 291 S.C. 492, 494, 354 S.E.2d 397, 398 (Ct. App. 1987) (“When no evidence is presented other than claimed ‘adverse’ rulings by the judge, the judge is not required to recuse himself.”). That Judge Culbertson ruled against Singleton on some issues in the case is insufficient to show actual bias or prejudice, and accordingly, there is no error in Judge Culbertson’s refusal to disqualify himself. Mortg. Elec. Sys., Inc., 384 S.C. at 616, 682 S.E.2d at 503.

Likewise, Singleton’s argument that he has shown actual prejudice because Judge Culbertson “revisited” an issue already decided by a previous judge is both factually and legally incorrect. The City had previously moved for an order granting summary judgment on the basis that Singleton did not have standing to pursue this action as he did not have valid ownership of the Property. [R.pp. 34-39; City’s Memorandum in Support of Motion for Summary Judgment.] The Honorable Eugene C. Griffith, Jr. simply denied the motion in a Form 4 order and made no factual findings concerning Singleton’s ownership of the Property. [R.pp. 7-8; Order.] Therefore Judge Culbertson did not improperly revisit any issue finally decided by a previous judge. Additionally, this State’s Supreme Court has long held that an issue denied on summary judgment is not law of the case and may be reconsidered at trial:

A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial. . . . The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict. . . .

In short, the denial of summary judgment does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings.

Ballenger v. Bowen, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994).

Moreover, as set forth below in this brief, the record in this appeal supports the rulings of Judge Culbertson of which Singleton now complains, namely those rulings that he was not an owner of the house located on the Property when it was demolished. See Davis, 409 S.C. at 288, 762 S.E.2d at 547; see also Burgess v. Stern, 311 S.C. 326, 331, 428 S.E.2d 880, 884 (1993) (finding “an objective view of the record and circumstances surrounding the convoluted proceedings in [that] case lead[] to the conclusion that [the judge’s order], and the ensuing orders [were] supported by the evidence” and concluding that no prejudice arose from the alleged impartial acts.).

Finally, Singleton also suggests in his brief that Judge Hyman’s previous grant of the City’s motion to dismiss the individual defendants and motion to strike the claim for punitive damages and failure to record the hearing on such motions also serves as a basis to recuse Judge Culbertson because such previous occurrences in the case show that he cannot obtain a fair trial in Georgetown County. However, Singleton never moved to transfer the venue from Georgetown County, waiving any argument that he cannot obtain a fair trial from any judge in Georgetown County. Furthermore, he does not provide any factual or other basis in this appeal why the alleged acts of a previous circuit court judge warrant recusal of Judge Culbertson. See Singleton’s Appellant’s Brief, pp. 18-19.

Judge Culbertson properly denied Singleton’s motion for recusal. Singleton has failed to provide any evidence of how Judge Culbertson’s former employment with the City, current status as a resident of the City, and relationship with his former law partner resulted in actual prejudice or bias in Judge Culbertson’s rulings. Aside from these facts, Singleton has offered nothing more than vague and nonspecific accusations as to why

Judge Culbertson was personally biased against Singleton. While Singleton contends that he is not basing his argument of actual prejudice on the adverse rulings of Judge Culbertson, Singleton has not pointed to anything other than these rulings which, as set forth by well-established law, do not serve as a proper basis for recusal. This Court should affirm Judge Culbertson's refusal to recuse himself where Singleton has presented no evidence of bias or prejudice.

II. Singleton failed to appeal all necessary rulings made by the Trial Court relating to the ownership of the demolished property; therefore, the Trial Court's grant of the City's motion for a directed verdict as to the claim for damages for the loss of the house after it was demolished should be affirmed under the two issue rule.

The Trial Court made three separate rulings concerning the ownership of the Property. First, the Trial Court ruled that Singleton could not give an opinion as to the value of the house located on the Property when it was demolished where Singleton had not established that he was the owner of the house when it was demolished and had not provided any other basis for rendering a valuation opinion. [R.pp. 216, l. 9 – 243, l. 16; Trial Tr., pp. 135, l. 9 – 159, l. 16.]

Second, at the close of Singleton's case, the Trial Court granted judgment 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 had not established that he owned the house when it was demolished. [R.pp. 501, l. 23 – 502, l. 11; Id. at pp. 414, l. 23 – 415, l. 11.]

Third, contrary to Singleton's assertion that the Trial Court ruled the damages claim of Julia Thomas, the owner of the house located on the Property when it was demolished, extinguished upon her death (see Singleton's Appellant's Brief, p. 22), the Trial Court had in fact allowed her claim to proceed under Singleton's Power of

Attorney. [R.pp. 243, ll. 10-11; 501, l. 5 – 502, l. 25; Id. at pp. 159, ll. 10-11; 414, l. 5 – 415, l. 25.] The Trial Court, however, granted the City’s motion for directed verdict on Plaintiffs’ claims for damages for the loss of the house located on the Property, whether on behalf of himself individually or on behalf of Julia Thomas, 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.] This ruling was based on the Trial Court’s earlier ruling prohibiting Singleton from offering an opinion as to the value of the demolished house where he had not established he was the owner of the house when it was demolished and where he had not provided any other basis for offering an opinion on value.

In his Statement of Issues on Appeal, Singleton has only challenged the Trial Court’s alleged error in granting a directed verdict to the City as to Singleton’s recovery of damage to the demolished house on the Property. See Singleton Appellant’s Brief, p. 1. In his Statement of Issues, he neither challenges the Trial Court’s exclusion of Singleton’s opinion on the value of the demolished house nor the Trial Court’s grant of a directed verdict to the City where Plaintiffs failed to present any evidence from which a jury could assess a value for the house.

Under Rule 208(b)(1)(B), SCACR, “[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal.” Therefore, Singleton has waived and failed to preserve for appellate review these two rulings of the Trial Court by not including them in his Statement of Issues on Appeal. See Burris v. Propst Lumber & Logging, Inc. 396 S.C. 85, 94, 719 S.E.2d 695, 700 (Ct. App. 2011).

In addition, Singleton does not address these rulings by the Trial Court in the argument section of his brief and rather appears to only challenge Singleton's standing to bring a claim for damages for the loss of the house when it was demolished. As such, his brief does not challenge the exclusion by the Trial Court of Singleton's opinion as to the value of the demolished house and the grant of a directed verdict to the City on the claim for damages for the loss of the house where no evidence was presented during Plaintiffs' case from which a jury could assess a value for the house.

The two latter rulings by the Trial Court concerning the failure of Singleton to present evidence of the value of the demolished house have been waived and abandoned by Singleton on appeal and are now law of the case. "It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling." Lindsay v. Lindsay, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997); see also Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). Failure to challenge the ruling "is an abandonment of the issue and precludes consideration on appeal." Biales, 315 S.C. at 168, 432 S.E.2d at 484. The unchallenged ruling, "right or wrong, is the law of [the] case and requires affirmance." Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970).

Singleton's failure to challenge these two rulings by the Trial Court requires affirmance of the Trial Court's grant of the City's motion for a directed verdict on the claim for damages for the loss of the house located on the Property under the two issue rule. The Trial Court's ruling precluding any recovery for the loss of the demolished house was based not only on Singleton's inability to recover damages in his individual capacity where he was not the owner of the house when it was demolished, but also based

upon Singleton's inability to render an opinion on the value of the house where he had not established that he was the owner when it was demolished or had other qualifications for rendering such an opinion and the consequential failure of Singleton to present any evidence of the value of the demolished house.

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). "It should be noted that although cases generally have discussed the 'two issue' rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts." Anderson v. S.C. Dep't of Highways & Pub. Transp., 322 S.C. 417, 420 n. 1, 472 S.E.2d 253, 255 n. 1 (1996).

Pursuant to the two issue rule, this Court should affirm the Trial Court's grant of a directed verdict to the City on the claim for the value of the demolished house where Singleton did not appeal all grounds supporting the Trial Court's ruling.

III. The Trial Court correctly directed a verdict in favor of the City on the damages claim for the value of the demolished house where (1) Singleton had not established that he was the owner of the house when it was demolished or had other qualifications to offer an opinion on the value of the house; and (2) Singleton, prohibited from offering an opinion as to the value of the house himself, presented no other evidence of the value of the house when it was demolished thereby precluding his claim for such damages.

Even if the two issue rule does not apply, this Court should affirm the Trial Court's grant of the City's directed verdict motion on the claim for the value of the demolished house.

During Singleton's testimony, the Trial Court precluded Singleton from giving an opinion on the value of the demolished house because he had not established that he was the owner of the house when it was demolished and had not provided any other basis for rendering a valuation opinion. [R.pp. 216, l. 9 – 243, l. 16; Trial Tr., pp. 135, l. 9 – 159, l. 16.] As previously argued herein, this ruling by the Trial Court was not challenged on appeal and is therefore not preserved for appellate review and is now law of the case.

Even if preserved for review, the Trial Court correctly determined that Singleton was not the owner of the house located on the Property when it was demolished and therefore could not render an opinion on its value at the time it was demolished. When Singleton thereafter did not offer any other evidence of the structure's value during his case, the Trial Court properly granted the City's motion for a directed verdict on the claim for the value of the house where Singleton had not satisfied his burden of proof as to establishing the amount of damage for the loss the demolished house. [R.pp. 503, l. 1 - ; Id. at pp. 416, l. 1 – 424, l. 6.]

To recover under a theory of negligence or gross negligence, a plaintiff must establish “(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty.” Vinson v. Hartley, 324 S.C. 389, 399-400, 477 S.E.2d 715, 720 (Ct. App. 1996). If the plaintiff fails to prove any one of these elements, the action will fail. Id. at 400, 477 S.E.2d at 720.

Therefore, to recover damages for the loss of the house, Singleton needed to offer proof of the value of the house when it was demolished in order to satisfy the damages element of his negligence claim. See Santoro v. Schulthess, 384 S.C. 250, 267-68, 681

S.E.2d 897, 905-06 (Ct. App. 2009) (finding insufficient evidence of damages to support tort claim).

An owner of damaged property may be competent to provide an opinion as to the value of the real property. See Seaboard Coast Line R.R. v. Harrelson, 262 S.C. 38, 42, 202 S.E.2d 1, 3 (1974); South Carolina Dep't of Transp. V. Richardson, 335 S.C. 278, 282, 516 S.E.2d 3, 5 (Ct. App. 1999); Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 594-95, 493 S.E.2d 875, 880 (Ct. App. 1997).

However, if the proposed witness to testify as to the value of the property is "one other than the owner of the property in question, it must be demonstrated that he has some source of knowledge of the value of the property in order to remove his opinion from the realm of pure conjecture. A bare declaration that he knows the value is insufficient." City of Spartanburg v. Laprinakos, 267 S.C. 589, 595, 230 S.E.2d 443, 444-445 (1976).

Singleton had the burden at trial to prove his ownership of the Property. He failed to meet that burden. Singleton did not establish at trial that he was the owner of the house located on the Property when it was demolished and as such was competent to render an opinion on its value. The evidence presented at trial showed that the Property was originally owned by Virginia Gadson. [R.pp. 309, l. 25 – 310, l. 2; 320, ll. 1-3; Trial Tr., pp. 224, l. 25 – 225, l. 2; 235, ll. 1-3.] She married James Gadson, the father of Plaintiff 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 p. 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.] Therefore, 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. See § 62-2-102 (providing the intestate share of the surviving spouse is one-half of the intestate estate if there are surviving issue). 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).]

Singleton admitted at trial that 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.] In his will, James Gadson requested that his ownership in the Property be passed 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.] Singleton acknowledged at trial that he had already received separate property from his father and that his father's desire was for the Property at issue to be transferred to Julia, John, and Trevis. [R.pp. 281, ll. 2-21; 283, ll. 8-14; Trial Tr. pp. 196, ll. 2 – 21; 198, ll. 8-14.] Singleton recognized that he was not to receive any interest in the Property from his father upon his father's death. [R.p. 293, ll. 1-5; Id. at p. 208, ll. 1 – 5.]

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 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 located on the Property was demolished. [R.p. 221, ll. 3-9; Id. at p. 140, ll. 3-9.] Singleton was accordingly not an owner of the house when it was demolished and therefore properly disqualified from rendering an opinion on the value of the demolished house.

During his proffered testimony, Singleton offered no other basis for rendering an opinion as to the value of the house when it was demolished except for his belief that he was its owner, and he has not presented any other basis in this appeal for why he should have been permitted to give an opinion on the value of the demolished house. [R.pp. 248, l. 15 – 250, l. 25; Id. at pp. 164, l. 15 – 166, l. 25.] In fact, during his proffered testimony, Singleton testified that he did not have any expertise in estimating the value of houses. [R.p. 249, ll. 9-20; Id. at p. 165, ll. 9-20.] He also testified during his proffer that he believed the value of the home and the land was about \$230,000.00. His proffered valuation actually included both the land and the house, and he offered no opinion on the value of the demolished house alone which was what was at issue. [R.pp. 248, l. 15 – 249, l. 8; Id. at pp. 164, l. 15 – 165, l. 8.] Therefore, even if his opinion had been admitted, it would not have been sufficient or competent evidence for a jury to have

determined damages resulting from the loss of the house. The value of the demolished house itself would have been left to the jury's conjecture, guess, and speculation. See Santoro, 384 S.C. at 267-68, 681 S.E.2d at 905-06 (observing amount of damages cannot be left to conjecture, guess, or speculation). The City's motion for a directed verdict for Plaintiffs' failure to have presented evidence regarding damages relating to the house would have still been required to have been granted by the Trial Court.

Singleton's testimony during later portions of the trial indicated he was likely not even familiar with the home's value. He acknowledged that prior to the tear down of the house located on the Property, he did not live there and seldom even visited the house or had much to do with it. [R.pp. 333, l. 23 – 334, l. 3; 335, l. 25 – 251, l. 25; Id. at pp. 247, l. 23 – 248, l. 3; 249, l. 25 – 251, l. 25.]

Based upon Singleton's failure to establish that he was the owner of the house when it was demolished and his failure to provide any other qualification for providing an opinion of the structure's value at the time it was demolished, the Trial Court properly excluded his opinion of value and thereafter properly directed a verdict for the City on the damage claim for the loss of the house where Singleton did not present any other evidence as to its value.

In this appeal, Singleton contends his father, James Gadson, did not have any interest in the Property because it was never transferred from Virginia's name to his name. Therefore, Singleton argues that James Gadson had no ability to deed the Property to Julia Thomas, John L. Gadson, and Trevis M. Gadson as reflected in the Deed of Distribution recorded on July 17, 1998 at Book 885, Page 84 with the Georgetown County Register of Deeds. [R.pp. 660-61; Deed.] Singleton claims that because the

transfer of the Property from his father to Julia, John, and Trevis via the Deed of Distribution was invalid, Singleton also inherited a piece of the Property from his father under the intestacy statutes. This is legally wrong because his father died with a will so the intestacy statutes would not apply. See S.C. CODE ANN. § 62-2-101. Even if the deed were invalid, which it is not as explained below, Singleton does not contest the validity of the will. Therefore, under his father's will, which remains valid, Singleton does not inherit any interest in the Property.

Despite his argument that his father's transfer of the Property to Julia, John, and Trevis was not valid, the Deed of Distribution in the record recorded on July 17, 1998 at Book 885, Page 84 with the Georgetown County Register of Deeds reflects the very transfer which Singleton contends in his appeal is invalid. [R.pp. 660-61; Deed (P. Ex. 17).] However, Singleton has not argued in his brief that this Deed of Distribution is invalid, and not having raised this issue in his appellant's brief, Singleton is precluded from arguing that the deed is invalid. See Glasscock, Inc. v. U.S. Fid. And Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (holding arguments not addressed in the initial brief cannot be made later in the appeal).

Moreover, "[w]here a deed is valid and regular on its face, it is presumed to be valid in all respects." Davis v. Monteith, 289 S.C. 176, 182, 345 S.E.2d 724, 727 (1986). Singleton's bare allegation that his father had no valid authority to transfer the Property to Julia, John, and Trevis does not rebut the presumption of validity of the Deed of Distribution. Id. In addition, Singleton has never moved to set aside the Deed of Distribution which would have been the proper way to challenge the deed. Id.

Singleton further argues in his appeal that the consent order entered into between Stephen Stack, a City of Georgetown Building Official, and the South Carolina Building Codes Council which contains a finding of fact that Singleton owned the Property bars the City from challenging Singleton's ownership of the Property in this case. First, Singleton did not raise this argument to the Trial Court and is barred from asserting this argument on appeal. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

Second, Singleton's contention that the City is collaterally estopped from challenging Singleton's claim of ownership to the house when it was demolished has no merit. The doctrine of collateral estoppel "prevents parties from relitigating an issue that has previously been conclusively determined." Mfrs. & Merchants Mut. Ins. Co. v. Harvey, 330 S.C. 152, 166, 498 S.E.2d 222, 229 (Ct. App. 1998). "Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim. . . . The party asserting collateral estoppel "must show that the issue was actually litigated and directly determined in the prior action and that the matter or fact directly in issue was necessary to support the first judgment." Carrigg v. Cannon, 347 S.C. 75, 79-80, 552 S.E.2d 767, 770 (Ct. App. 2001).

Here, there is no indication that the issue of ownership was actually litigated before the Building Codes Council or that it was necessary to support a finding that

Stephen Stack, a City Building Official, violated S.C. CODE ANN. § 31-15-30. [R.pp. 624-26; Consent Order.] Stack could have violated condemnation procedures regardless of who was the owner of the Property. Ownership was not an essential element of the reprimand and license suspension issued to Stack under the Consent Order.

In addition, the City was not a party to this Consent Order and the City's attorney did not sign it as Singleton contends. Rather, the Building Codes Council's attorney signed the order. [R.p. 626; Consent Order, p. 3.] Stack entered into this Consent Order 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.] Stack and the City were not in privity as required for collateral estoppel to apply:

Privity deals with a person's relationship to the subject matter of the previous litigation, not to the relationships between entities. To be in privity, a party's legal interests must have been litigated in the prior proceeding. Having an interest in the same question or in proving or disproving the same set of facts does not establish privity. Nor is privity found when the litigated question might affect a person's liability as a judicial precedent in a subsequent action.

Carrigg, 347 S.C. at 80-81, 552 S.E.2d at 770 (internal citations omitted).

The City had no relationship to the Consent Order proceedings and is not estopped by any findings contained in the Consent Order. See id. at 81-82, 552 S.E.2d at 771 (finding the circuit court incorrectly analyzed the question of privity by focusing on the sheriff and deputy's employment relationship with each other where for purposes of collateral estoppel, privity turns on the relationship of the party sought to be estopped to the subject matter litigated in the prior proceeding, not the relationship between the party to the prior action and the party sought to be estopped).

Singleton then argues in his appeal that the Trial Court had already decided the issue of Singleton's ownership in the Property when it denied the City's motion for summary judgment on the basis that Singleton did not have standing to pursue this action as he did not have valid ownership of the Property. [R.pp. 34-39; City's Memorandum in Support of Motion for Summary Judgment.] As previously set forth under the recusal argument, the Trial Court simply denied the motion in a Form 4 order and made no factual findings concerning Singleton's ownership of the Property. [R.pp. 7-8; Order.] Additionally, it is well-established that a denial of a motion for summary judgment does not establish the law of the case, does not decide or finally determine anything about the merits of the case, and does not preclude the issues raised in the denied motion for summary judgment to be raised again later in the proceedings. Ballenger v. Bowen, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994). At trial, the City was free to raise the issue of Singleton's ownership of the house when it was demolished as a part of its defense, and the Trial Court acted properly by ruling on the issue based upon the evidence presented at trial.

Singleton next suggests in his appeal that he had a valid ownership interest in the Property through the deed he issued on November 30, 2007 in his capacity as Power of Attorney for Julia Thomas, transferring Julia's ownership interest in the Property to himself. [R.pp. 655-57; 355, l. 10- 356, l. 5; 357, ll. 1-5-18; Thomas Deed to Singleton; Trial Tr., pp. 269, l. 10 – 270, l. 5; 271, ll. 15-18.] At trial, Singleton admitted the Power of Attorney prohibited gifts to the attorney-in-fact and that the transfer of the Property to himself was therefore not legal. [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.]

As an additional sustaining ground, this Court should find that Singleton did not acquire any ownership in the Property via this invalid deed where he transferred the Property to himself in violation of the terms of the Power of Attorney and admitted the transfer to himself was not legal. “An agent acting for a principal pursuant to a power of attorney may not make a substantially gratuitous conveyance of the property of the principal to himself unless the power to do so is expressly granted by the instrument itself.” Loftis v. ECK, 288 S.C. 154, 157, 341 S.E.2d 641, 643 (1986) (citing Fender v. Fender, 285 S.C. 260, 329 S.E.2d 430 (1985)). In Loftis, the court held that there was no express grant of power to the operative power of attorney to transfer the property, and thus, the conveyance of the property was not valid. Id.

Here, Singleton himself, as power of attorney, signed the deed transferring Julia Thomas’s ownership interest to Singleton despite the provision in the Power of Attorney granting the authority for the power of attorney to only make “[g]ifts to charities and individuals other than Attorney-in-Fact/Agent.” [R.pp. 655-57; 46-47; Thomas Deed; Power of Attorney.] Singleton admitted he did not pay any consideration for the transfer of the Property to himself. [R.pp. 40-43; Singleton Deposition Excerpt (attached as Ex. A to the City’s Memo. in Support of Mtn. for Summary Judgment).] There is no express grant of authority from Julia Thomas to Singleton authorizing the transfer of the Property to Singleton’s ownership. Under South Carolina law, this property transfer is inadequate to make the gratuitous property transfer conveyance valid. Without an express grant of power to transfer the property from Thomas to Singleton, the property conveyance is invalid and leaves Singleton with no ownership interest in the Property.

Singleton therefore failed at trial to establish that he had an ownership interest in the Property when the house was demolished and after the house was demolished either through the November 30, 2007 Thomas deed or in any other manner. At trial, he only claimed ownership of the Property through the November 30, 2007 Thomas deed. [R.pp. 248, ll. 12-14; 355, ll. 10-16; Trial Tr., pp. 164, ll. 12-14; 269, ll. 10-16.] While he now suggests in the appeal that he may have acquired an ownership interest in some other manner, Singleton acknowledged at trial that his father had other children and that Julia Thomas had other surviving heirs when she died; therefore, Singleton failed at trial to meet his burden in proving what ownership interest he may have acquired outside of the Thomas deed which, as he even admits, was an illegal transfer. [R.pp. 275, l. 1 – 278, l. 9; 279, l. 8 – 281, l. 1; Id. at 190, l. 1 – 193, l. 9; 194, l. 8 – 196, l. 1 (stating that when Julia Thomas died, at a minimum at least three other siblings were alive).] Because Singleton did not sufficiently establish at trial that he had any ownership interest in the Property either through the Thomas Deed or in some other manner, the Trial Court properly excluded his opinion on the value of the demolished house.

Despite the issues with the legality of the transfer of the Property to himself, as the Trial Court pointed out, even if Singleton acquired an ownership interest in the Property via the deed from Julia Thomas in November 2007, after the house was demolished, he still did not have an ownership interest in the house at the time it was demolished. [R.p. 227, ll. 7-8; Trial Tr. p. 146, ll. 7-8.] Singleton has not challenged the Trial Court's rulings that he needed to establish that he was the owner of the house when it was demolished in order to render an opinion on its value. [R.p. 217, ll. 21-22; Trial Tr. p. 136, ll. 21-22.] To the extent Singleton has now acquired any ownership interest in

the Property, he never was the owner of the demolished house as it was no longer in existence by the time he may have acquired the Property. He may now have an ownership interest in the land and any existing structures built on the Property, but he never had an ownership interest in the demolished house and therefore could not opine on its value.

The suggestion in his brief that he was the acting owner of the Property on April 12, 2007 when the house was demolished through the Power of Attorney granted to him by Julia Thomas was not raised to the Trial Court, and Singleton is precluded from arguing as such in this appeal. Nevertheless, the Power of Attorney does not give Singleton the right to offer his personal opinion of the value of the Property; instead, Singleton could perhaps handle litigation on behalf of Thomas but would need to offer other competent evidence of the value of the demolished house.

Finally, while Singleton argues that the City had no right in the case to challenge his ownership of the Property, the City certainly had a right to require Singleton to prove that he was competent to offer an opinion on the value of the demolished house and to require Singleton to prove in some other manner, if he could not opine on the value, the amount of damages resulting from the loss of the house. Plaintiffs have the burden to prove their negligence case, and the City defended the case by arguing that Plaintiffs had not met their burden of proof.

While Singleton characterizes the Trial Court's rulings as extinguishing the rights of a deceased person and the recovery of damages for alleged wrongs committed, that is not an accurate depiction of what occurred in this case. The Trial Court allowed the claims of Julia Thomas to proceed. However, Plaintiffs failed to present any valid

evidence as to the value of the house on the Property when it was demolished during their case. There being no evidence of the value of the demolished house, Plaintiffs could not recover such damages and the City was entitled to a directed verdict with respect to those damages. See Santoro, 384 S.C. at 267-68, 681 S.E.2d at 905-06 (observing that to be recoverable, there must be sufficient evidence to enable a jury to determine the amount of damages and that the amount of damages cannot be left to conjecture, guess, or speculation). Accordingly, the Trial Court properly granted the City's motion for a directed verdict on the claim for damages for the loss of the demolished house located on the Property.

CONCLUSION

For the reasons set forth herein, the City of Georgetown respectfully requests that this Court affirm the Trial Court's denial of Appellant Willie Singleton's motion to recuse and the grant of the City's motion for a directed verdict with respect to the claim for damages for value of the demolished house located on the Property.

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 Respondent'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 foregoing Final Respondent'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)