THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 5374 (S.C. Ct. App. filed Jan. 6, 2016)
S.C. Sup. Ct. Appellate Case No. 2016-1300

David M. Repko,.....Respondent,

v.

County of Georgetown,.....Petitioner.

BRIEF OF PETITIONER

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QUESTIONS PRESENTED

1. Article V, § 3-1 of County's land-use regulations demonstrates that County did not create a private or special duty owed to Plaintiff.

2. The Tort Claims Act does not preempt Article V, § 3-1.

3. Plaintiff's claim is barred by the statute of limitations in the Tort Claims Act.

4. The Court of Appeals repeatedly erred in reversing the trial court on grounds never argued to the trial court and never argued to the Court of Appeals.

5. The Court of Appeals erred in ruling on grounds that were barred by the law of the case doctrine.

6. The Court of Appeals misconstrued and effectively overruled this Court's opinion in *Brady Dev. Co., Inc. v. Town of Hilton Head Island*, 439 S.E.2d 266 (S.C. 1993).

STATEMENT OF THE CASE

Respondent (Plaintiff) sued Petitioner (County). The trial court directed a verdict for County at the close of Plaintiff's case, ruling *inter alia* that: (1) County did not owe a duty to Plaintiff and, therefore, Plaintiff had no claim against County; and (2) assuming a duty and breach, County was immune from liability under the South Carolina Tort Claims Act. Plaintiff appealed – the Court of Appeals reversed – this Court granted certiorari.

County enacted a set of land use regulations that *inter alia* regulated the pre-sale of undeveloped lots by developers of residential subdivisions. (R. 281-286). Developers could not sell undeveloped lots until all infrastructure was complete unless the developer posted a "financial guarantee" as security for the completion of the infrastructure. (R. 281, § 1-5; R. 284, § 3-1). The regulations specifically provided that acceptance of a financial guarantee did not create any duty to property owners: "Acceptance of a financial guarantee by Georgetown County *shall not be construed as an obligation to any* other agency, utility, or *property owner within affected developments*." (R. 284, § 3-1) (emphasis added).

Developer posted a letter of credit with County as the required financial guarantee for selling undeveloped lots. Plaintiff purchased two undeveloped lots from the developer. County reduced the letter of credit upon applications of the developer under the regulations. The developer went bankrupt, did not complete the infrastructure, and the reduced letter of credit was insufficient to complete the infrastructure. Plaintiff sued County.

At trial, County moved for a directed verdict at the close of Plaintiff's case. (R. 224-251 *passim*), which the trial court granted on independent and alternative grounds:[1]

1. County's regulations did not create a private duty owed to Plaintiff and, therefore, Plaintiff had no tort claim against County, because "[w]here there is no duty there can be no tort." (R. 4, *citing Steinke v. S.C. Dep't of Labor, Licensing and Reg.*, 520 S.E.2d 142, 149 (S.C. 1999)).[2]

2. Under *Brady Dev. Co., Inc. v. Town of Hilton Head Island*, 439 S.E.2d 266 (S.C. 1993), County's regulations did not create a duty owed to Plaintiff. (R. 5-7).

3. If County owed and breached a duty to Plaintiff, County is immune from liability under §§ 15-78-60(4), (5), and (13) of the Tort Claims Act. (R. 8-11).

The trial court denied County's motion that Plaintiff's action was barred by the two-year statute of limitations imposed by the Tort Claims Act. (R. 11).

The trial court denied Plaintiff's motion to reconsider. (R. 15-16; 381-382). Plaintiff appealed, and the Court of Appeals reversed on the following grounds:

1. The trial court erred in finding that County did not owe a duty to Plaintiff because:

   a. County's "disclaimer" of a duty and liability in § 3-1 was pre-empted by and precluded by the South Carolina Tort Claims Act. (Appx. 8-9).

   b. The "disclaimer" in § 3-1 meant only that County was not required to pay the letter of credit funds to property owners and could complete the infrastructure without regard to the preferences of the property owners. (Appx. 9-10).[3]

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[1] Under the two-issue rule, the trial court must be affirmed if any one of these grounds is correct, regardless of any presumed error in any of the other grounds. *Dropkin v. Beachwalk Villas Condo. Ass'n, Inc.*, 644 S.E.2d 808, 811 (S.C. App. 2007); *Weeks v. McMillan*, 353 S.E.2d 289, 292 (S.C. App. 1987).

[2] The trial court also ruled that Plaintiff did not prove two elements of the "special duty test." (R. 7-8).

[3] The Court of Appeals ruled that Plaintiff proved a duty under the "special duty test." (Appx. 10-11).

2. This Court's opinion and ruling in *Brady, supra*, was distinguishable from the present case and therefore did not preclude the imposition of a duty. (Appx. 12-14).

3. The immunity granted by §§ 15-78-60(4), (5), and (13) of the Tort Claims Act was subject to a "gross negligence" exception by virtue of § 15-78-60(12) and this Court's opinion in *Steinke v. S.C. Dep't of Labor, Licensing and Reg.*, 520 S.E.2d 142 (S.C. 1999). (Appx. 14-15).

The Court of Appeals also denied County's additional sustaining ground that Plaintiff's action was barred by the two-year statute of limitations imposed by the Tort Claims Act. (Appx. 16, n.7). The Court of Appeals denied County's petition for rehearing. (Appx. 43). This Court granted County's petition for a writ of certiorari.

SUMMARY OF PRINCIPAL ARGUMENTS

There are three basic issues in this case. First, does County owe a private duty to property owners under its land use and development regulations? Second, assuming the existence of a duty and breach, is County immune from liability under the Tort Claims Act? Third, assuming County owed and breached a duty, and assuming further that County is not immune from liability under the Tort Claims Act, is Plaintiff's action barred by the two-year statute of limitations established by the Tort Claims Act? Reversing the Court of Appeals on any one of these grounds moots the remaining questions. *Futch v. McAllister Towing of Georgetown, Inc.*, 518 S.E.2d 591, 598 (S.C. 1999) (when ruling on one issue is outcome dispositive of the appeal, the appellate court need not address any other issues).

Duty: The Court of Appeals held that § 3-1 was a *disclaimer* of *liability* that was preempted by the Tort Claims Act. In so holding, the Court conflated the separate and distinct concepts of duty, liability, and immunity, as well as the separate and distinct concepts of creating, disclaiming, and waiving. The question is whether § 3-1 created a private duty owed to Plaintiff. The Tort Claims Act is irrelevant to the question of duty –

it does not and cannot create or impose any duty – it becomes relevant if, but only if, there is potential liability for breaching a duty imposed by other law. Section 3-1 plainly states a controlling legislative intent to not create a private duty and, therefore, the Court of Appeals erred in reversing the trial court.

The Court of Appeals ruled that the "disclaimer" of "obligation" in § 3-1 meant only that "the County is not required to pay to the property owners the money made available through the letter of credit . . . and the County is allowed to complete the infrastructure and ignore the preferences of the property owners in doing so." (Appx. 9-10). Plaintiff never made this argument to the trial court. (R. 224-251 *passim*). Moreover, Plaintiff never made this argument to the Court of Appeals. (App. Br. *passim*). Thus, the Court of Appeals erred in reversing the trial court on these grounds. In addition, nothing in § 3-1, or the regulations generally, supports the Court of Appeals' narrow construction of "obligation." To the contrary, the plain and ordinary meaning of "obligation" always includes the concept of "duty." Section 3-1 did not "disclaim" a duty – rather, it stated a legislative intent to not "create" a duty. Thus, the Court of Appeals erred in construing "obligation" to reverse the trial court.

The Court of Appeals misconstrued this Court's ruling in *Brady, supra*, and, as a result, erroneously distinguished it and effectively overruled it. The operative facts, regulations, claims, and questions of duty in *Brady* were virtually identical to those in the present case, except that the *Brady* regulations did not include an express statement of legislative intent like that found here in § 3-1. This Court nevertheless held that the *Brady* regulations did not create a private duty owed to the plaintiff, because the preamble to those regulations demonstrated a legislative intent that the regulations were for a public purpose,

i.e., the preamble implicitly demonstrated there was no legislative intent to create a private duty owed to the plaintiff. Here, the regulations do not include a *Brady*-type preamble that implicitly established legislative intent. Seizing upon this "distinction," the Court of Appeals limited this Court's ruling in *Brady* to situations involving a preamble of public purpose, leading to the absurd result that a legislative body can avoid creating a private duty implicitly, but it cannot do so expressly.

Tort Claims Act: The trial court held that County was immune from liability for Plaintiff's claim under subsections (4), (5), and (13) of § 15-78-60. (R. 8-11). It is undisputed that subsections (4) and (5) apply here and afford immunity – Plaintiff has abandoned any claim for conduct covered by subsection (13). The Court of Appeals nevertheless reversed the trial court, finding that the "gross negligence exception" in subsection (12) applied to subsections (4), (5), and (13) by virtue of this Court's opinion in *Steinke v. S.C. Dep't of Labor, Licensing and Reg.*, 520 S.E.2d 142 (S.C. 1999).

Plaintiff never argued to the trial court that the "gross negligence exception" in subsection (12) applied to the other subsections and therefore precluded the granting of County's directed verdict motion.[4] To the contrary, Plaintiff argued that subsection (12) did not apply at all. The trial court agreed, ruled that subsection (12) did not apply here, and neither party appealed this ruling. Accordingly, the Court of Appeals erred in reversing the trial court because: (a) the "gross negligence exception" issue was not preserved for appeal for failure to first raise it to the trial court; (b) Plaintiff could not argue at trial that subsection (12) did not apply but then make the opposite argument on appeal; and (c) the

[4] Specifically, Plaintiff never argued the "gross negligence exception" to the trial court during the directed verdict proceedings, or at any time prior to the trial court's order. Ultimately, Plaintiff attempted to raise this issue during the hearing on his motion to reconsider, but this came too late to preserve any issue for appeal. See n.9, *infra*.

issue was precluded under the law of the case doctrine, because Plaintiff did not appeal the trial court's ruling that subsection (12) did not apply here, which is not surprising since this ruling was based on the trial court accepting Plaintiff's own argument.

In any event, the Court of Appeals erred in holding that subsection (12) applied here. The Court ruled that subsection (12) applied, because it grants immunity for the renewal of a permit, and allowing a reduction in the letter of credit was a "renewal" of a "permit" to sell lots. The was error for several reasons, including: (a) Plaintiff never made this argument to the trial court; (b) Plaintiff disavowed any "permit renewal" theory by specifically and successfully arguing to the trial court that his claim was not based on conduct covered by subsection (12); (c) Plaintiff never made any "permit renewal" argument to the Court of Appeals, and never argued that subsection (12) applied to the facts of this case; and (d) nothing in County's regulations supports a conclusion that a reduction in the letter of credit was a *renewal* of any permit. Thus, the basis of the Court of Appeals' ruling was not preserved for appeal and was erroneous on the merits.

Statute of Limitations: The trial court denied Plaintiff's directed verdict motion on the statute of limitations. County argued it as an additional sustaining ground on appeal, but the Court of Appeals summarily rejected it without discussion.

The Tort Claims Act contains a two-year statute of limitations measured by "the date the loss was or should have been discovered." Plaintiff commenced this action on April 20, 2012, so the controlling inquiry is whether the particular circumstances that existed on or before April 19, 2010, would alert a reasonable person that some claim against another party might exist and he should make inquiry about the matter. As demonstrated by the undisputed facts of this case, which come solely from Plaintiff's own testimony,

Plaintiff knew or should have known of his "loss" no later than November 3, 2008. Thus, his claimed is barred by the two-year statute of limitations.

ARGUMENT

I. The Court of Appeals erred in reversing the trial court's ruling that County's land use regulations do not create a private duty owed to Plaintiff.

A. Section 3-1 of County's regulations plainly states a controlling legislative intent to not create a private duty owed to Plaintiff.

The Court of Appeals' decision on the issue of "duty" rests upon numerous procedural, analytical, and substantive errors, including an implicit overruling of or absurd limitation on this Court's opinion in *Brady* under virtually identical facts. To understand the breadth and depth of these errors, it is necessary to first analyze the issue of "duty" under the proper analytical framework as established by this Court's long-standing principles of South Carolina law on the interpretation of legislation.

The fundamental question in this case is whether County's regulations created a private duty owed to Plaintiff. This is a question of statutory construction, and the cardinal rule of statutory construction, to which all other rules are subservient, is to give effect to legislative intent. *State v. County of Florence*, 749 S.E.2d 516, 518 (S.C. 2013). When the plain and ordinary meaning of the language used in the legislation expresses legislative intent, judicial inquiry ends and the courts must enforce the statue as written, regardless of the court's sympathies or its view of the equities between the parties. *Sloan v. South Carolina Dep't of Rev.*, 762 S.E.2d 687, 688 n.3 (S.C. 2014); *Quigley v. Rider*, 593 S.E.2d 476, 479 (S.C. App. 2003); *Nemeth v. Nemeth*, 481 S.E.2d 181, 185 (S.C. App. 1997). Here, § 3-1 plainly states a controlling legislative intent to not create a private duty owed to Plaintiff. Thus, the Court of Appeals erred in reversing the trial court.

This conclusion is further supported and mandated by the "public duty rule." South Carolina adopted the "public duty rule" in 1940, and it remains the law of South Carolina today. *Edwards v. Lexington County Sheriff's Dept.*, 688 S.E.2d 125, 129 (S.C. 2010). Under this rule, statutes that create or define a public officer's duties do not create a private duty owed to individuals. *Id.* South Carolina recognizes a limited exception to this rule **if** the legislative body intended to create a private right of action for an alleged violation of the duty imposed by the statute, *i.e.*, a "special" or "private" duty. That intent is determined by applying a six-factor "special duty test" if, but only if, the statute does not express a legislative intent on the creation of a special duty:

> The public duty rule is a *rule of statutory construction* which aids the court in *determining whether the legislature intended to create a private right of action* for a statute's breach. It is a negative defense which denies the existence of a duty of care owed to the individual. The public duty rule *should not be confused with the affirmative defense of immunity.* Therefore, the *dispositive issue is not* whether [the statute] creates a duty, *but rather* whether the statute was *intended to provide an individual a private right of action* thereunder.

Vaughan v. Town of Lyman, 635 S.E.2d 631, 634 (S.C. 2006) (emphasis added), *quoted with approval and applied in Edwards v. Lexington County Sheriff's Dept.*, 688 S.E.2d 125, 129 (S.C. 2010). There can be no special or private duty if the legislative body "has spoken directly to its intent to foreclose" any special or private duty. *Edwards*, 688 S.E.2d at 129.

Here, § 3-1 specifically and plainly states that "[a]cceptance of a financial guarantee [Letter of Credit] *shall not be construed as an obligation* to *any . . . property owner* within affected developments." (R. 284, § 3.1) (emphasis added). It is thus clear that the legislative body did not intend to create any special or private duty to any property owner. Therefore, the six-factor "special duty test" is irrelevant, because the legislative intent is plainly expressed in § 3-1. *Edwards*, 688 S.E.2d at 129; *Vaughan*, 635 S.E.2d at 634.

Accordingly, the trial court correctly held that the regulations did not create any duty to Plaintiff (R. 4), and the Court of Appeals erred in reversing the trial court.

B. The Court of Appeals misapprehended the analytical role and plain meaning of § 3-1, as well as the purpose, applicability, and scope of the Tort Claims Act, to reverse the trial court on the issue of "duty," and the Court of Appeals did so by reaching and ruling upon grounds not properly before it.

In Part I(A) of its opinion, the Court of Appeals Court held that § 3-1 did not preclude Plaintiff's claim against the County for two reasons: (1) the "disclaimer of an obligation" in § 3-1 was very limited; and (2) the Tort Claims Act (TCA) preempted the "disclaimer of liability" in § 3-1. Both rulings are erroneous for several procedural and substantive reasons.

1. Section 3-1 does not create a private duty owed to Plaintiff.

The Court of Appeals narrowly interpreted the "shall not be construed as an obligation" language in § 3-1 and used this narrow interpretation to reverse the trial court:

> We find that disclaiming an "obligation" to property owners when the County accepts a financial guarantee means the County is not required to pay to property owners the money made available through the letter of credit or other financial guarantee and the County is allowed to complete the infrastructure and ignore the preference of the property owners in doing so.

(Appx. 9-10) (emphasis added). This ruling was error for several reasons.

First, it is axiomatic that appellate courts will not reverse on a ground not raised to the trial court. *McClurg v. Deaton*, 716 S.E.2d 887, 887 (S.C. 2011). This is the single-most fundamental rule of error preservation and presentation in South Carolina law. Plaintiff never made the above-quoted argument to the trial court. (R. 224-251). Thus, this issue was not preserved for appeal, and the Court of Appeals therefore erred in reversing on this ground.

Second, it is equally axiomatic that appellate courts will not reverse on a ground not argued on appeal. *McClurg*, 716 S.E.2d at 888 n.2; *Bickerstaff v. Prevost*, 670 S.E.2d 660, 662 n.2 (S.C. App. 2009). Plaintiff never made the above-quoted argument to the Court of Appeals (App. Br. *passim*) and, therefore, the Court of Appeals erred in reversing the trial court on this ground.

Third, nothing in § 3-1 or the regulations as a whole supports the Court's narrow construction of the "shall not be construed as an obligation" language in Section 3-1. This controlling legislative statement of intent certainly includes the matters found by the Court of Appeals, but nothing in the regulations limits that intent to the matters found by the Court. To the contrary, this language expresses a broad legislative intent to not create any private duty to any property owner.

Fourth, § 3-1 specifically precludes any construction creating an obligation that is owed to a property owner, but that is precisely what the Court of Appeals did by construing it as creating a private duty. When the legislative intent is clear, however, as it is here, judicial inquiry ends and the court must enforce the legislation as written. *Sloan*, 762 at 688 n.3; *Quigley,* 593 S.E.2d at 479; *Nemeth*, 481 S.E.2d at 185.

Fifth, courts will not construe legislation so as to lead to an absurd result. *State v. County of Florence*, 749 S.E.2d 516, 518 (S.C. 2013). It would be absurd for § 3-1 to mean "the County is not required to pay to property owners the money made available through the letter of credit or other financial guarantee" (Appx. 9-10 (emphasis added)), but County is nevertheless required to pay money to property owners from some other source.

Finally, the Court of Appeals' ruling hinges on an erroneously narrow interpretation of "obligation." The meaning of "obligation" is determined by the plain and ordinary

meaning of the word. *County of Florence*, 749 S.E.2d at 518. "Obligation" is a broad and expansive term that captures and always includes the concept of duty. This has been the meaning of "obligation" in South Carolina law for 150 years. *Wood v. Wood*, 19 S.C.L. (14 Rich.) 148, 153 (S.C. App. 1867) (obligation "is a word of large extent" that "sometimes means only duty, and always includes this meaning"), *quoting* Lord Coke; see also BLACK'S LAW DICTIONARY (10th Ed. 2014) at 1242 ("Obligation" has "many wide and varied meanings," including a duty "imposed by law."); *accord* AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th Ed. 2000) at 1212 ("obligation" includes "a social, legal, or moral requirement, such as a duty"). Thus, the Court of Appeals erred in narrowly construing "obligation" as not including "duty."

2. The Tort Claims Act does not preempt or preclude a legislative intent to not create a private duty when enacting legislation.

The Court of Appeals held that the South Carolina Tort Claims Act (TCA) preempted the legislative intent to not create a duty in § 3-1. (Appx. 14-15). This was error for several reasons.

First, the Court misapprehended the scope and nature of the TCA's preemptive effect. Prior to the abolition of sovereign immunity, a governmental entity was not liable to a would-be plaintiff, even if it was undisputed that the plaintiff had proven the duty-breach-causation-damages paradigm for imposing tort liability. With the abolition of sovereign immunity in *McCall v. Batson*, 329 S.E.2d 741 (S.C. 1985), governmental entities became liable under this paradigm. The TCA preempted this field of post-*McCall* liability, principally to limit governmental liability by imposing numerous immunities.

Second, the TCA is irrelevant to the existence or operation of the "duty-breach-causation-damages" paradigm for imposing liability. The TCA becomes relevant if, but

only if, liability would otherwise be imposed by the operation of this paradigm *under other law*. The TCA does not create any "duty," and nothing in the TCA purports to control how or when a "duty" exists – that question is left to the other law of South Carolina. The Court of Appeals acknowledged all of this in its discussion of the "public duty rule," stating that: "Since the public duty rule is not grounded in immunity but rather in duty, . . . it has not been affected by the enactment of the TCA, [and only] if a duty is found . . . will it ever be necessary to reach the TCA immunities issue." (Appx. 10) (citation omitted). Here, as with the "public duty rule," which itself is a rule of statutory construction directed at the controlling inquiry of legislative intent, the question is one of legislative intent to create an actionable statutory duty. The TCA is irrelevant to this question.

Third, the Court of Appeals' erroneous conclusion of TCA preemption was driven by two analytical errors. First, the Court conflated the completely different and separate concepts of "duty" and "liability." Second, the Court mis-read § 3-1 as a "disclaimer" of duty and as "disclaiming" or "waiving" liability when, to the contrary, § 3-1 expresses a controlling legislative intent to not create a private duty.

In the opening paragraph of its discussion, the Court of Appeals agreed with the following argument by Plaintiff:

> [Plaintiff] argues the trial court erred in relying on Article V, Section 3-1 to find the County did not owe him a duty because that provision is preempted by the TCA and is therefore unenforceable. Specifically, [Plaintiff] asserts the TCA governs the County's tort liability and the County cannot override application of the TCA by enacting an ordinance that waives liability for its negligent conduct. We agree.

(Appx. 8) (emphasis added). The Court then ruled and concluded as follows:

> We find the County cannot avoid application of the TCA by disclaiming a duty through Article V, Section 3-1. [T]he TCA preempts Article V, Section 3-1's disclaimer of liability. We disagree with the trial court's finding that the County could waive its tort liability by including disclaimer language in a county ordinance. Article V, Section 3-1 is a county ordinance, and it cannot dictate the application of the TCA . . .. A governmental entity cannot override application of the TCA through language in a local ordinance disclaiming all liability. Accordingly, the trial court's construction of Article V, Section 3-1 is preempted by the TCA.

(Appx. 9) (emphasis added). As shown by the emphasized language in the two quotes above, each time the Court mentioned "duty," the Court thereafter treated it in terms of "liability." As shown below, these are completely different concepts and erroneously equating them with each other inexorably leads to an erroneous conclusion. As also shown by the emphasized language in the two quotes above, the Court's analysis focused on notions of "disclaiming" a duty and "disclaiming" or "waiving" liability. As also shown below, the issue is one of "creation," not disclaimer or waiver, and the creation of a duty is controlled by legislative intent, not the TCA.

"Liability" is the result of applying the "duty-breach-causation-damages" paradigm, and it is this resulting liability, not the paradigm creating it, that is controlled by the TCA. The paradigm that creates liability, including the question of whether a duty exists and is owed to a would-be plaintiff, is controlled by other law, not the TCA. And with respect to whether a private duty and private cause of action arises under a statute, that "other law" mandates that legislative intent is the controlling inquiry. Absent a legislative intent to create a private duty, there simply is no duty, and therefore no paradigm for imposing any liability that would *thereafter* be controlled by the TCA. The "shall not be construed as an obligation" language in § 3-1 plainly demonstrates a controlling legislative intent to not create a private duty.

To "disclaim" or "waive" something, that something must first exist. By analyzing § 3-1 in terms of "disclaiming" a duty and "disclaiming" or "waiving" liability, the Court of Appeals skipped the first and most critical inquiry, to-wit: do the regulations create a private duty owed to Plaintiff? The "shall not be construed as an obligation" language in § 3-1 plainly expresses a legislative intent to not do so. Thus, there is no duty to disclaim, nor is there any liability to disclaim or waive. The TCA therefore does not apply here, because it is irrelevant to the controlling question of whether § 3-1 created a private duty.[5]

C. The Court of Appeals erred in applying the "special duty test."

In Part I(B) of its opinion (Appx. 10-12), the Court of Appeals considered the "public duty rule" and the related "special duty test." The Court correctly observed that the "public duty rule" is a rule of statutory construction on legislative intent to create an actionable statutory duty, and its "no duty" presumption was not affected by the enactment of the TCA. The Court, however, erred in failing to recognize that, like the "public duty rule," the meaning of the "shall not be construed as an obligation" language in § 3-1 is also a question of legislative intent to create an actionable statutory duty and, therefore, it also is not affected or preempted by the TCA. As to the application of the special duty test, the Court erred as set forth below.

First, the Court of Appeals treated the "special duty test" as a "rule of law" but, like the "public duty rule," it is a rule of statutory construction. Like all such rules, its sole purpose is to aid the court in determining the dispositive question of legislative intent to create an actionable statutory duty. Compare *Edwards v. Lexington County Sheriff's Dept.*, 688 S.E.2d 125, 129 (S.C. 2010) ("The *public duty rule* is a rule of statutory construction

[5] To the extent that § 3-1 might be viewed as a "disclaimer," it disclaimed any legislative intent to create a private duty owed to Plaintiff.

which *aids the court in determining whether the legislature intended* to create a private right of action for a statute's breach. [T]he *dispositive issue* is . . . *whether the statute was intended* to provide an individual a private right of action." (emphasis added)) with *Adkins v. Varn*, 439 S.E.2d 822, 825 (S.C. 1993) (there is no special duty if "there does not appear to be a *legislative intent to create such a duty*." (emphasis added)) and *Bellamy v. Brown*, 408 S.E.2d 219, 221 (S.C. 1991) ("*No legislative intent to create a duty* of confidentiality can be found in the language of the Act. We hold, *therefore*, that *no special duty* of confidentiality is established by FOIA." (emphasis added)).[6]

Second, like all rules of statutory construction, the "special duty test" is irrelevant if the legislative intent is set forth in the legislation itself. There can be no "special duty" if the legislation expresses an intent "to foreclose" a special duty. *Edwards*, 688 S.E.2d at 129. The "shall not be construed as an obligation" language in § 3-1 plainly expresses a legislative intent "to foreclose" and not create a special private duty. Thus, the "special duty test" is irrelevant and cannot override the legislative intent expressed in § 3-1. *Id.*

Third, in considering the "third element" of the "special duty test," the Court held in part that the trial court erred because the TCA preempted § 3-1. The TCA, however, is irrelevant to the creation or existence of any duty. Thus, the TCA does not and cannot preempt the "shall not be construed as an obligation" language in § 3-1.

Fourth, as to the "merits" of the "special duty test," the Court erred in finding that Plaintiff satisfied the second and third elements of that test. As noted by the Court, the

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[6] The "special duty test" has six elements: (1) essential purpose of the statute is to protect against a particular harm; (2) the statute, either directly or indirectly, imposes this duty on a *specific* public officer; (3) the class of persons the statute *intends* to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knew or had reason to know the likelihood of harm to the class if he failed to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office. *Steinke* 520 S.E.2d at 150 (S.C. 1999) (emphasis added).

second element requires a duty imposed on a "*specific* public officer." (Appx. 11) (emphasis added). The Court held that the regulations' imposition of oversight responsibilities on the Planning Department and the Department of Public Works satisfied this element. (*Id.*). By definition, the imposition of responsibility upon two separate departments cannot satisfy the requirement of a "specific" public officer.[7]

As to the third element, the Court reasoned that it was satisfied because the "property owners in the subdivision were the only group that would benefit from the requirement that infrastructure be completed or financial guarantees be in place before the Developer was allowed to sell lots in a subdivision." (Appx. 12) (emphasis added). To the contrary, however, providing for the completion of the infrastructure benefits the County (*i.e.*, the public at large) in many ways, including but not limited to increasing property tax revenues and increased spending in the local economy, which increases sales tax revenues.[8]

D. The Court of Appeals misconstrued this Court's ruling in *Brady Dev. Co. v. Town of Hilton Head Island*, 439 S.E.2d 266 (S.C. 1993) and, as a result, erroneously distinguished it and effectively overruled it.

In Part I(C) of its opinion (Appx. 12-14), the Court of Appeals held that *Brady* was distinguishable and therefore not controlling in this case. This was error.

The operative facts, regulation, and claim in *Brady* were virtually identical to the present case: (1) the developer posted a letter of credit so that it could sell lots prior to completing the infrastructure; (2) the plaintiff purchased a lot; (3) the developer went

[7] The Court also stated that the second element's language of imposing "a duty on a specific public officer 'directly or indirectly' further supports our finding that the second element is satisfied here." (Appx. 11-12). The Court never explained this "further support," so it was not possible to address it in any meaningful way on rehearing. Thus, County requested an amended opinion that provided this explanation but the Court of Appeals denied this request.

[8] Reversing the Court of Appeals under the second or third element of the "special duty test" would moot all other issues on appeal, because the Court of Appeals' reversal of the trial court hinges on reversing both of the trial court's rulings on these elements and finding that the regulations "satisfied" the special duty test.

bankrupt prior to completing the infrastructure; (4) as a result, the plaintiff could not build a home on his lot; and (5) the plaintiff sued the town for mismanaging the letter of credit. *Brady*, 439 S.E.2d at 267. The trial court in *Brady*, like the Court of Appeals here, held "that the Town owed [Brady] a special duty in the administration of its [regulations]." *Id.*

This Court reversed the trial court's "special duty" ruling on two different grounds: (1) there was no "special duty," because the preamble to the regulations demonstrated a legislative intent that the regulations were for a public purpose, *i.e.*, the preamble demonstrated there was no legislative intent to create a "special duty" to the plaintiff; and (2) imposing such a duty would make the town an insurer of regulated developments and likely discourage all regulation efforts. *Id.* at 268.

Brady did not involve an express statement of legislative intent like that found here in § 3-1, but this Court's analysis focused on legislative intent. 439 S.E.2d at 268. In reciting the elements of the "special duty test," this Court cited its prior decision in *Bellamy,* where, this Court rejected the "special duty" claim as follows: "*No legislative intent to create a duty* of confidentiality can be found in the language of the Act. We hold, *therefore*, that *no special duty* of confidentiality *is established* by FOIA." *Bellamy*, 408 S.E.2d at 221 (emphasis added). Immediately thereafter, this Court considered the "preamble" in *Brady* and found that it implicitly demonstrated there was no legislative intent to create a "special duty." 439 S.E.2d at 268 Here, there is no need to search the regulations for an implicit statement of legislative intent, because § 3-1 expressly states the legislative intent to not create a private duty owed to Plaintiff.

As to this Court's "insurer" ruling in *Brady*, which the trial court also specifically relied upon in this case, the Court of Appeals limited that ruling to situations involving a

public purpose preamble. Although the "insurer" ruling is in the same paragraph as the "preamble" ruling, there is no linkage therein between the two. Rather, the "insurer" ruling is in direct response to the same "special duty" analysis used here by the Court of Appeals. Thus, the "special duty test," standing alone, cannot make a town (or county) the insurer of regulated developments absent legislative intent to do so, because it would discourage such regulation to the detriment of the public. Here, § 3-1 shows there was no legislative intent to become an insurer of developments or to create a private duty owed to Plaintiff.

In short, the Court of Appeals misapprehended this Court's "preamble" analysis in *Brady*, which was a search for legislative intent in the absence of an expressly stated intent. Here, § 3-1 expressly states the same intent that this Court found to be stated implicitly in the *Brady* preamble By reaching a contrary result in this case, the Court of Appeals essentially overruled *Brady* or illogically limited it to hold that expressly stated intent is not controlling but it becomes controlling when stated implicitly. In like manner, the Court of Appeals limited the "insurer" ruling in *Brady* to implicit intent stated in a "preamble" but rejected it when that same intent is stated expressly. These absurd results are not and cannot be the law.

II. The Court of Appeals erred in reversing the trial court's ruling that the Tort Claims Act granted immunity to County.

In *McCall v. Batson*, 329 S.E.2d 741 (S.C. 1985), this Court abolished the common law rule of sovereign immunity but delayed the effect of this ruling so that the General Assembly could address the questions of governmental liability and immunity. In response, the General Assembly enacted the Tort Claims Act (TCA), which provides generally that government entities "are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon

liability and damages, and exemptions from liability and damages, contained herein." § 15-78-40. Section 15-78-60 of the TCA grants immunity under 40 subsections creating exceptions to this general rule. Most of these subsections contain no exception to the immunity granted therein, but some contain a "gross negligence exception," *i.e.*, the immunity granted by the subsection is overcome by a showing of gross negligence. *Compare, e.g.,* § 15-78-60 (4), (5), and (13) (no gross negligence exception) *with* § 15-78-60 (12) (containing gross negligence exception).

As noted by the trial court (R. 8-9), the General Assembly specifically declared in its legislative findings that, as a matter of public policy, the "limitations on and exemptions to the liability" set forth in the TCA "*must* be *liberally* construed in favor of *limiting* the liability" of a political subdivision like County. § 15-78-20(f) (emphasis added). As also noted by the trial court (R. 9), the General Assembly also emphasized that the TCA was the "exclusive and sole remedy" for governmental torts and that the "limitations on and exemptions to the liability of the governmental entity" established by the TCA "*must* be *liberally* construed in favor of *limiting* the liability of the governmental entity." § 15-78-200 (emphasis added). However, in *Steinke*, 520 S.E.2d 142, this Court held that when an immunity subsection of § 15-78-60 containing a "gross negligence exception" applies to a case, the gross negligence exception must be read into any other applicable subsections of § 15-78-60, even if those subsections do not contain a gross negligence exception.

Here, County pled four subsections of § 15-78-60 in defense to Plaintiff's claim: subsections (4), (5), and (13), which do not contain a gross negligence exception, as well as subsection (12), which does contain a gross negligence exception. At the close of Plaintiff's evidence, County moved for a directed verdict on all four subsections. The trial

court granted the motion with respect to subsections (4), (5), and (13), specifically finding that these subsections were applicable to the misconduct alleged by Plaintiff. (R. 243; see also R. 8-11). As to subsection (12), Plaintiff argued that it did not apply to Plaintiff's claims, because his claim had nothing to do with the type of "licensing" functions protected by subsection (12). (R. 246-247). The trial court agreed and found that subsection (12) was not applicable to this case. (R. 249; see also R. 11). Neither party appealed this ruling and, therefore, it is the law of this case that subsection (12) does not apply to this case. *First Union Nat'l Bank of S.C. v. Soden*, 511 S.E.2d 372, 378 (S.C. App. 1998).

Importantly, Plaintiff never argued to the trial court that subsection (12) contained a "gross negligence exception" and never argued that this exception therefore applied to subsections (4), (5), and (13) under this Court's ruling in *Steinke, supra*. (R. 224-251 *passim*).[9] Moreover, Plaintiff never argued on appeal that subsection (12) "applied" to this case. (App. Br. *passim*). Rather, he argued on appeal that the "gross negligence exception" applied to subsections (4), (5), and (13), because County "raised" subsection (12) in its answer, another argument that Plaintiff never made to the trial court. (App. Br. 27-29; R. 224-251 *passim*). County responded that the issue of a "gross negligence exception" to

[9] Plaintiff made a motion to reconsider in response to the trial court's order, but the motion did not raise any issue regarding a "gross negligence exception." (R. 381-382. Seventy-nine (79) days after the trial court's order, and seventy-one (71) days after Plaintiff filed his motion to reconsider, the trial court held a hearing on Plaintiff's motion. At this hearing, Plaintiff handed up a memorandum and argued for the first time that the immunity granted by subsection (4) was subject to an exception for "gross negligence." (R. 255, 265-267, 397-408). It is axiomatic that an issue cannot be raised for the first time in a motion to reconsider. *Patterson v. Reid*, 456 S.E.2d 436, 437 (S.C. App. 1995). It is therefore equally axiomatic that an issue cannot be raised for the first time at oral argument on a motion to reconsider.

The trial court summarily denied Plaintiff's motion to reconsider as follows: "Plaintiff's motion to reconsider and for new trial is denied." (R. 15-16). Since Plaintiff did not raise the "gross negligence" issue until the motions hearing, this order was the trial court's first opportunity to address the issue. This order did not mention or rule specifically on the "gross negligence" issue. Plaintiff did not file a motion to obtain a ruling. Thus, this issue is not preserved for appeal. *Johnson v. Lloyd*, 757 S.E.2d 705, 706 (S.C. 2014).

immunity was not properly before the Court of Appeals for several reasons.[10] Nevertheless, the Court of Appeals reversed the trial court's immunity rulings upon the sole ground that the "gross negligence exception" in subsection (12) applied to this case and, therefore, the trial court erred in not applying it to subsections (4), (5), and (13). (Appx. 14-15). This was error for the reasons argued to the Court of Appeals, see n.10, *supra*, and for the reasons noted below.

Plaintiff's only argument on appeal was that County "raised" subsection (12) in its answer, thereby importing the "gross negligence exception" into the other subsections. The Court of Appeals agreed with this argument in its opening paragraph on the TCA issues:

> [Plaintiff] asserts *because* the County *pled* subsection 15-78-60(12) as an affirmative defense in its answer, "South Carolina law mandates that a similar gross negligence exception be read into subsections 15-78-60(4), (5), and (13)." *We agree.*

(Appx. 14) (emphasis added). Plaintiff never made this argument to the trial court (R. 224-251) and, therefore, it was not available on appeal. *McClurg*, 716 S.E.2d at 887. In any event, merely "pleading" a subsection with a "gross negligence exception" does not make that exception applicable to other subsections.

In *Steinke, supra*, this Court held that "when an *applicable* exception contains the gross negligence standard, then any other *relevant* exception must be read in light of that standard." 520 S.E.2d at 158 (emphasis added). This Court reasoned that if the conduct

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[10] County argued that Plaintiff's "gross negligence exception" argument was not properly before the Court of Appeals for three separate reasons. First, Plaintiff never made these arguments to the trial court. See *In re Michael H.*, 602 S.E.2d 729, 732 (S.C. 2004) (issue not raised at trial cannot be raised on appeal). Second, Plaintiff successfully argued at trial that subsection (12) did not apply here, and he could not change positions on appeal. *State v. Bailey*, 377 S.E.2d 581, 584 (S.C. 1989) (cannot make one argument at trial and different argument on appeal). Third, the trial court ruled that subsection (12) did not apply to this case and neither party had appealed this ruling. *First Union Nat'l Bank of S.C. v. Soden*, 511 S.E.2d 372, 378 (S.C. App. 1998) (unappealed ruling is the law of the case). (See Resp. Br. 14-16, 17 n.7, 18).

protected by a subsection with a gross negligence exception is the same conduct protected by another subsection without a gross negligence exception, it would make no sense to allow the governmental entity to escape "gross negligence" liability for that conduct. *Id.* at 154 (gross negligence standard applies to all exceptions from liability "when it is contained in one *applicable* exception") (emphasis added).

Pleading a subsection that contains a "gross negligence exception" does not make it applicable to the facts of this case. Rather, the evidence must show that it, in fact, applies to the conduct at issue. Accordingly, the Court of Appeals erred in agreeing with Plaintiff's "pleading" argument which, in any event, was not properly before the Court because: Plaintiff never made this argument to the trial court; Plaintiff argued the exact opposite position to the trial court, and he cannot change positions on appeal; and the trial court's ruling that subsection (12) does not apply here is the law of this case.

Moreover, the Court of Appeals' ruling hinged upon its holding that subsection (12) applied to this case under the following analysis:

> Subsection 15-78-60(12) grants immunity for losses resulting from the "*renewal" of a permit*. The County approved reductions of the letter of credit and, in doing so, *allowed the renewal of the permit* to sell lots even though the letter of credit had been improperly reduced. Based on this evidence, a jury could have found subsection 15-78-60(12) applied.

(Appx. 15) (emphasis added). This was error for the same reasons noted earlier, to-wit: Plaintiff never made this argument to the trial court; Plaintiff argued the exact opposite position to the trial court, and he cannot change positions on appeal; and the trial court's ruling that subsection (12) does not apply here is the law of this case. More importantly, Plaintiff never made this "permit renewal" argument to the Court of Appeals (App. Br. *passim*), and it is axiomatic that appellate courts will not reverse on grounds not argued to

the appellate court. *McClurg v. Deaton*, 716 S.E.2d 887, 888 n.2 (S.C. 2011); *Bickerstaff v. Prevost*, 670 S.E.2d 660, 662 n.2 (S.C. App. 2009). Indeed, Plaintiff disavowed any "permit renewal" theory at trial by arguing that his claim had nothing to do with the "licensing" conduct protected by subsection (12), and the "permit renewal" theory invented by the Court of Appeals on appeal is nothing more than a statutory *example* of the "licensing" conduct disavowed by Plaintiff. In any event, the Court of Appeals' ruling is erroneous on its merits.

Section 15-78-60(12) grants immunity for "licensing functions" absent a showing of gross negligence, and it provides as follows:

> The governmental entity is not liable for a loss resulting from . . .licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner

(Emphasis added). Nothing in the County's regulations provides that a reduction in the letter of credit is a "renewal" of any permit or any other authority. (R. 285, § 3-5; see generally R. 281-286). Thus, the Court of Appeals' ruling was erroneous on its merits and, in any event, the Court of Appeals reached this issue in violation of axiomatic rules of appellate practice and procedure.

A. County is immune from liability under § 15-78-60(4).

Section 15-78-60(4) provides that a governmental entity is not liable for a loss resulting from the "adoption, enforcement, or compliance with any law or any failure to adopt or enforce any law, whether valid or invalid, including but not limited to any charter, provision, ordinance, resolution, rule, regulation, or written policies." The trial court held that § 15-78-60(4) granted immunity to County under the following analysis:

> The gravamen of the Plaintiff's Complaint *and his trial evidence* was that [County] failed to comply with or enforce its own regulation regarding the acceptance and reduction of a financial guarantee. Simply put, Plaintiff contended that [County] adopted the Development Regulation relating to financial guarantees and the *failed to enforce it against itself*. . .. Plaintiff's allegations of failure to enforce the Development Regulations fall squarely within exception § 15-78-60(4) . . ..

(R. 9-10) (emphasis added). Plaintiff never challenged this ruling on appeal. (App. Br., *passim*). Indeed, Plaintiff admitted on appeal that his "negligence claim is that his loss was caused by the County's *failure to comply* with its own ordinance, particularly Section 3-5 authorizing reductions in the letter of credit [*i.e.*, the financial guarantee]." (App. Br. 32) (emphasis added). Therefore, the trial court's ruling is the law of this case. *First Union Nat'l Bank of S.C. v. Soden*, 511 S.E.2d 372, 378 (S.C. App. 1998). Moreover, the trial court was manifestly correct – subsection (4) grants immunity from any claim based on a failure to enforce a regulation, and Plaintiff's entire claim rests upon County's alleged failure to enforce its regulations.

Plaintiff's only appellate challenge to the trial court's ruling on § 15-78-60(4) was that it was subject to a "gross negligence exception." (App. Br. 27-29). As demonstrated earlier, the Court of Appeals erred in considering this argument, because it was not properly before the Court for appellate review and, in any event, the Court of Appeals' ruling was erroneous on its merits.

B. County is immune from liability under § 15-78-60(5).

Section 15-78-60(5) provides that a governmental entity is not liable for a loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." The trial court held that

§ 15-78-60(5) granted immunity to County, because the decision to accept and reduce a financial guarantee was a discretionary act. (R. 10). On appeal, Plaintiff conceded the correctness of this ruling: "the Court *correctly* noted that the County's decisions to accept financial guarantees and *to subsequently authorize reductions* in the letter of credit *were all discretionary acts*." (App. Br. 30) (emphasis added).

Plaintiff nevertheless argued that: (1) County failed to show it had weighed competing alternatives under accepted professional standards; and (2) County did not rely on proper documentation or otherwise adhere to the regulations. (App. Br. 30-31). Plaintiff did not make these arguments to the trial court (R. 246) and, therefore, could not make them on appeal. *In re Michael H.*, 602 S.E.2d at 732. Plaintiff also argued that the "gross negligence exception" in subsection (12) applied to subsection (5). (App. Br. 31-32). As shown earlier, this argument was not preserved for appeal and has no merit. Accordingly, the Court of Appeals erred in reversing the trial court.

C. The question of immunity pursuant to § 15-78-60(13) is now moot, because Plaintiff conceded on appeal that he is not pursuing any "duty to inspect theory" or any violation of that duty.

The trial court held that § 15-78-60(13) granted immunity to County because: (1) Plaintiff elicited testimony that County had not inspected the property before reducing the letter of credit; and (2) subsection (13) granted immunity for any failure to inspect. (R. 11). On appeal, Plaintiff did not challenge this ruling on its merits. Rather, he disavowed any "failure to inspect" theory and conceded that he is not seeking recovery under any "failure to inspect" theory. (App. Br. 32). Thus, this issue is now moot. Inexplicably, the Court of Appeals nevertheless reversed the trial court under its erroneous "gross negligence exception" ruling.

III. Assuming any error in the trial court's order, the judgment for County should be affirmed on the additional sustaining ground that Plaintiff's claim is barred by the statute of limitations.

The Tort Claims Act required Plaintiff to bring this action "within two years after the date the loss was or should have been discovered." § 15-78-110. The trial court denied the County's directed verdict motion on this defense (R. 11), and the County argued it on appeal as an additional sustaining ground. (Resp. Br. 29-31). The Court of Appeals summarily rejected this argument: "Viewing the evidence in the light most favorable to [Plaintiff], a question of fact existed as to *when [Plaintiff] should have discovered he had a claim against the County.*" (Appx. 16 n.7) (emphasis added).

The controlling question is not a *subjective* inquiry into "when [Plaintiff] should have discovered he had a claim against the County." (Appx. 16 n.7) (emphasis added). Rather, it is an *objective* inquiry into whether the circumstances would alert a reasonable person that *some claim* against another party *might exist* and he should make inquiry about the matter. *Hackworth v. Greenville County*, 637 S.E.2d 320, 322 (S.C. App. 2006). Applying the correct law (objective standard) to the undisputed facts of this case, *as established by Plaintiff's own testimony*, demonstrates that Plaintiff's claim is time barred.

Plaintiff commenced this action on April 20, 2012, so the controlling inquiry is whether the particular circumstances that existed on or before April 19, 2010, would alert a reasonable person that some claim against another party might exist and he should make inquiry about the matter. Plaintiff is a financial planner with 22 years of experience, and he had past experience in purchasing real estate as an investment. (R. 182, 205-206). He learned about the property from his best friend, who had moved to Georgetown and become a salesman for the developer. (R. 183-185, 206-207). He purchased the property in October

2006, sight unseen but knowing that no infrastructure was in place – he did so on the recommendation of his real estate agent friend, who closed the sale for him under a power of attorney. (R. 186-187, 210-211).

Plaintiff was not concerned about the absence of infrastructure, because someone in the developer's sales office had told him about the financial guarantee filed with County. (R. 191-192, 207). He never contacted County to confirm the existence, amount, or validity of the financial guarantee, *i.e.*, this is not a case of the government making representations that estop it from denying the existence of a duty or right. (R. 211-212, 214-215). Despite never contacting the County about the financial guarantee to confirm its existence or scope, Plaintiff relied on its existence in buying the property. (R. 192).

By December 2007, Plaintiff believed the property had little or no value, because the infrastructure was not completed. (R. 212-213). As early as December 2007 (R. 213) but no later than September 2008, Plaintiff knew that the developer was in bankruptcy when he signed a ballot from the bankruptcy court as a creditor of the developer. (R. 215-216). He stopped paying HOA dues because of the bankruptcy (R. 196), but he did not contact County about the financial guarantee. (R. 214-215).

By November 3, 2008, nineteen months after buying the property, Plaintiff knew the infrastructure had not been put in place, knew the developer was in bankruptcy, and believed the property had no value due to the absence of infrastructure. (R. 213-216; 370-371). He therefore knew or had reason to know that County had not stepped in to remedy the infrastructure problem with the financial guarantee posted by the developer, but he still did not contact County about the financial guarantee or the absence of infrastructure.

Under the foregoing circumstances, established by Plaintiff's own testimony, Plaintiff knew or should have known of his "loss" no later than November 3, 2008. See S.C. Code Ann. § 15-78-110 (plaintiff must commence action "within two years after the date the loss was or should have been discovered"). Also under these circumstances, any reasonable person would have made inquiry about the existence, status, and continued validity of the financial guarantee no later than November 2008, particularly any person who, like Plaintiff, had relied on the existence of the financial guarantee in buying the property but had never contacted the County to confirm its existence, and who knew that no one was putting the infrastructure in place. Had Plaintiff done so, he would have discovered the matters of which he now complains. Thus, the statute of limitations began to run on or before November 3, 2008, and long before April 19, 2010. Plaintiff commenced this action on April 20, 2012 and, therefore, his claim is barred by the two-year statute of limitations in § 15-78-110.

CONCLUSION

Section 3-1 plainly expresses a legislative intent to not create any private duty to any property owner. The Court of Appeals erred procedurally and substantively in ruling to the contrary and reversing the trial court. Reversal on this ground moots all other issues before this Court.

Assuming County owed and breached a duty, it was immune from liability under the Tort Claims Act, to-wit subsections (4) and (5) of § 15-78-60. The Court of Appeals erred procedurally and substantively in ruling to the contrary and reversing the trial court. Reversal on this ground moots all other issues before this Court.

Assuming the County owed and breached a duty, and further assuming that County was not immune from liability under the Tort Claims Act, Plaintiff's action was barred by the applicable two-year statute of limitations. Reversing the Court of Appeals and reinstating the trial court's judgment under this additional sustaining ground moots all other issues before this Court.

For these reasons, and for all of the other reasons argued herein, it is respectfully submitted that this Court should reverse the Court of Appeals and reinstate the judgment of the trial court.

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October 10, 2017
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 5374
Heard September 15, 2015 – Filed January 6, 2016

David M. Repko, ...Respondent,

v.

County of Georgetown,.....Petitioner.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of McNair Law Firm, certify that I served the Brief of Petitioner on the 10th day of October, 2017, by placing a true and correct copy in the U.S. Mail, sufficient postage pre-paid to the parties listed below at the following addresses:

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