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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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

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S.C. Sup. Ct. Case No. 2016-001300  
S.C. Ct. App. Case No. 2014-000156  
Lower Court Case No. 2012-CP-22-00558

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

v.

County of Georgetown, ..... Petitioner.

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**BRIEF OF RESPONDENT**

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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. County owes a special duty under § 3-1 to Repko, as a lot purchaser, with respect to the County's management of the financial guaranty that permitted the developer's sale of lots to him.
2. South Carolina Tort Claims Act expressly preempts the County's ordinance § 3-1 language disclaiming all liability.
3. Repko's claim is not barred by the Tort Claims Act's statute of limitations because the conflicting evidence on when he should have discovered he had a claim against the County yields more than one inference, and thus, is a question of fact for a jury.
4. The Court of Appeals correctly reversed the trial court on grounds properly before it, and not barred by the law of the case doctrine.
5. The Court of Appeals decision is not in conflict with this Court's prior decision in *Brady Dev. Co., Inc. v. Town of Hilton Head Island*, 312 S.C. 73, 439 S.E.2d 266 (1993), because *Brady* is materially distinguishable from this case and the operative ordinances differ.

## STATEMENT OF THE CASE<sup>1</sup>

Repko filed a civil action against the County in the Georgetown County Court of Common Pleas. (R. 17-24). Repko is the owner of two undeveloped lots in Phase D-1 of the West Stewart Subdivision in Harmony Township, a planned development in Georgetown County. Because of the County's negligence and gross negligence in handling a financial guarantee posted by the subdivision's developer, most of the funds that were to be used in building the subdivision's infrastructure were completely lost. Failing to complete the infrastructure, the developer went bankrupt. Yet there were insufficient funds with which to complete the infrastructure due to the County's gross negligence in repeatedly permitting reduction after reduction in the letter of credit—the existence of which was a “financial guarantee” securing completion of the infrastructure without which the developer could not have sold undeveloped lots. As the lack of infrastructure reduced his property value to “zero,” Repko sought to recover “past and future actual damages” in this action. (R. 23, ¶16).

The County's Answer denied liability and asserted affirmative defenses as applicable to the claims, including immunity provisions of the South Carolina Tort Claims Act (“SCTCA”), specifically Sections 15-78-60(1), (2), (4), (5), (12), and (13) of the South Carolina Code. (R. 28, ¶19).

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<sup>1</sup> Rule 242(i), SCACR, requires that the party's briefs comply with Rule 208(b), SCACR. Rule 208(b) mandates that a party's statement of the case “shall not contain contested matters.” Rule 208(b)(1)(C), SCACR. Yet, the County's Brief has a Statement of the Case section replete with contested matters in violation of Rule 208(b)(1)(C), SCACR.

At trial, the County moved for a directed verdict at the close of Repko's case. The trial court granted the County's motion. (R. 2-12; R. 249, ll. 9-10). Repko timely filed a Motion for Reconsideration and New Trial. After a hearing, the trial court summarily denied Repko's post-trial motion by Form 4 Order. Subsequently, Repko timely filed and served a Notice of Appeal.

On appeal, the Court of Appeals issued a unanimous opinion on January 6, 2016, reversing the trial court's decision and remanding. On February 5, 2016, the County filed a Petition for Rehearing which was denied by order of the Court of Appeals dated May 20, 2016. The County filed a Petition for a Writ of Certiorari with this Court on July 5, 2016. Repko opposed the County's Petition. On September 8, 2017, this Court issued a writ of certiorari to review the decision of the Court of Appeals.

#### STATEMENT OF THE FACTS

##### *Georgetown County Improvement Standards Ordinances*

Georgetown County regulates improvements to major subdivisions through the provisions of Article V of the Georgetown County Ordinances. (R. 281-286). Those ordinances provide that “[f]inal plans shall not be approved for recording unless the [developer] has installed the required improvements as specified and required in this Article, *or* has provided a financial guarantee as specified in Section 3 of this Article.” (R. 281, Ordinance, Art. V, § 1-5) (emphasis added). “Required improvements” include installation of: monuments at street corners; a storm water management system; specified

roadway improvements, including grading and paving; and utilities and services. Alternatively, the ordinances instruct that “financial guarantees:”

[M]ay be posted in lieu of completing improvements required by this Ordinance to allow for the recording of a final plat or to obtain building permits for properties for which ownership will be transferred . . . . Acceptance of financial guarantees is discretionary and Georgetown County reserves the right to refuse a financial guarantee for any remaining improvements and require that such improvements be completed before the recording of a final plat or issuance of building permits. 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, Ordinance, Art. V, § 3-1) (emphasis added).

If a developer seeks to post a financial guarantee, the following procedure must be followed as delineated in Section 3-2. First, the financial guarantee must be submitted to the Georgetown County Planning Department (“Planning Department”) along with an “itemized cost estimate” for the improvements that the financial guarantee will cover. The itemized cost estimate must: (1) bear the original signature and seal of a licensed professional engineer; (2) be on company letterhead; and (3) be in a form acceptable to the Planning Department. “Upon receipt of an itemized cost estimate, the Planning Department shall forward such estimate to the appropriate departments or agencies for review.” (R. 284, Ordinance, Art. V, § 3-2).

The County may accept, *inter alia*, a letter of credit as a financial guarantee. An approved letter of credit must adhere to these six specific

standards: (1) be equal to 125% of the approved cost estimate; (2) be issued for an initial coverage period not less than 12 months from the date the final plat is submitted for recording; (3) be irrevocable, unconditional and subject to presentation for drawing within the State of South Carolina; (4) be payable to Georgetown County; (5) be for no less than \$10,000 in construction; and (6) substantially conform to the format shown in Appendix B, Certificate 1. (R. 284-85, Ordinance, Art. V, § 3-3). An approved guarantee, however, “shall be independent of the development project’s construction loan” because “[p]ayment of monthly expenditures is the sole responsibility of the developer and does not affect the amount of money held by the Planning Department.” (R. 284, Ordinance, Art. V, § 3-3).

If the County accepts a financial guarantee, the County normally holds the guarantee until all covered improvements are completed unless a reduction in the guarantee has been approved pursuant to the following procedure:

A developer may reduce a financial guarantee during the initial coverage period. A request to reduce the financial guarantee shall be submitted to the Planning Department and include a revised construction cost estimate. The Planning Department will forward the revised cost estimate to the Georgetown County Department of Public Works for approval. Reductions of financial guarantees will not be allowed within 6-months of any previous reduction request and shall be no less than 125% of the revised construction cost estimate.

(R. 285, Ordinance, Art. V, § 3-5).

At trial, the Planning Department’s Chief Planner testified that the County required, in addition to the requirement of Section 3-5, “a letter from

the engineer certifying that the work had been complete and certifying the number, the dollar amounts that were left to be done.” (R. 101, ll. 16-19; R. 116, ll. 1-3). Likewise, the Planning Department’s director testified that the County should receive an estimate from an engineer with a cost to complete before approval of a reduction in the guarantee. (R. 147, l. 11; R. 162, ll. 4-12 and 18-20).

*Harmony Holdings, LLC Posts Letters of Credit in Lieu of Completing  
Required Improvements in Harmony Township*

In the early 2000’s, Harmony Holdings, LLC (“Harmony Holdings”) began developing the Harmony Township community within Georgetown County. Although roads, utilities, and other required improvements were not constructed in the community, Harmony Holdings sought permission from the Planning Department to begin selling the undeveloped lots to buyers. The County allowed Harmony Holdings to post letters of credit as a financial guarantee in lieu of completing the required improvements. (R. 104, ll. 10-13). Harmony Holdings posted a letter of credit for each phase of Harmony Township, including a letter of credit for Phase 2-D-1 of the West Stewart Subdivision. (R. 104, ll. 17-19 and 20-23).

Harmony Holdings applied to Wachovia Bank to obtain a letter of credit for Phase 2-D-1. Upon granting the application, Wachovia issued a letter of credit on May 23, 2006 entitled Clean, Irrevocable Standby Letter of Credit Number SM220037W in the amount of \$1,301,705.63 (“Wachovia letter of

credit"). (R. 294). The letter of credit designated Georgetown County as beneficiary and Harmony Holdings, LLC as applicant.

Shortly thereafter, Harmony Holdings submitted the letter of credit to the Planning Department. It also submitted an engineer's estimate of \$1,040,000.00 as the cost of completing the required improvements. Accordingly, the \$1,301,705.63 Wachovia letter of credit was 125% of the engineer's estimated amount. (R. 108, ll. 18-24).

Upon acceptance of the submissions, the Planning Department permitted Harmony Holdings to sell undeveloped lots in Phase 2-D-1. The Plat for Phase 2-D-1 was recorded on May 24, 2006. A County employee in the Planning Department certified on the Plat that the County held a letter of credit in the amount of \$1,301,705.63 to "ensure the completion of the remaining public improvements." (R. 113, ll. 8-10; R. 292-93).

County Approves the Developer's Successive Requests for Reductions in the Letter of Credit

First Request and Approval for Reduction

On July 20, 2006, Harmony Holdings submitted a request for reduction in the letter of credit to the County. (R. 295-97). The request referenced "Pay Request # 3" and included an Application and Certificate for Payment for Phase 2-D, which was signed by an Earthworks Group employee. The application described Earthworks as the architect for the project. (*Id.*).

In a letter to Wachovia dated July 26, 2006, the County advised that it approved a request to reduce the letter of credit by \$331,311.00. (R. 298; R. 114, ll. 16-20). The reduction request was approved despite noncompliance

with the Ordinances and the Planning Department's protocol. First, the County approved the request without the required letter of an engineer certifying that "the work had been complete[d]" and [the] dollar amounts that were left to be done." (R. 116, ll. 1-3). Second, the County approved the request without "forward[ing] the revised cost estimate to the Georgetown County Department of Public Works for approval." Third, the County approved the request even though it indicated that the developer sought to use the letter of credit funds to pay its contractor, contrary to Section 3-3. Fourth, an engineer's cost of completion estimate made by Earthworks on December 6, 2006, showed that the County approved the request without retaining 125% of the funds needed to complete the infrastructure—the estimate showed that virtually no work was done at that time on the infrastructure of Phase 2-D-1. (R. 306-312). Pursuant to the County's letter, Wachovia released \$331,000 thereby reducing the letter of credit to \$970,394.63. (R. 114, l. 24 – R. 115, l. 3).

#### Second Request and Approval for Reduction

On September 25, 2006, the developer submitted its second request for reduction in the letter of credit. This request sought a reduction of \$117,024.42, and like the first request for a reduction, it included an Application and Certificate for Payment that was signed by an Earthworks employee. (R. 300-01; R. 118, l. 25 – R. 119, l. 8).

In fall 2006, Repko contracted with Harmony Holdings to purchase Lots 1077 and 1076, in Phase 2-D-1. Repko, who planned to build his retirement home on these lots, paid \$78,000.00 for Lot 1077 and \$77,000.00 for Lot 1076.

(R. 186, ll. 7-22). Harmony Holdings executed the deeds on October 3, 2006, thereby transferring both lots to Repko. (R. 318-328). Repko knew that the developer had not yet installed infrastructure on the lots, but Repko was not concerned because he knew that the developer posted financial guarantees with the County. Repko testified that he would not have purchased the lots had the developer not posted financial guarantees with the County. (R. 192, ll. 7-12).

On October 9, 2006, just six days after Repko closed on the lots, the County approved the second request for reduction and, by letter, advised Wachovia to reduce the letter of credit by \$117,024.42. (R. 299; R. 117, ll. 15-23). Accordingly, the County approved the request for reduction: (1) without a letter from an engineer certifying that the work had been done and providing a cost of completion estimate; (2) without forwarding a cost of completion estimate to the Department of Public Works for completion; (3) without retaining 125% of the funds needed to complete the infrastructure, as shown in the engineer's cost of completion estimate, made by Earthworks on December 6, 2006; (4) even though the Application and Certificate for Payment indicated that the developer was seeking to use the letter of credit funds to pay his contractor; and (5) even though the reduction was requested within six months of the previous request, contrary to Section 3-5. Pursuant to the County's letter, Wachovia released \$117,024.42 thereby reducing the letter of credit to \$853,370.21. (R. 117, l. 7 – R. 118, l. 1).

### Third Request and Approval for Reduction

In a letter to the County dated November 7, 2006, Earthworks advised that it approved pay application number three for Phase 2-D, reflecting work completed as of October 25, 2006 and totaling \$300,000.00. (R. 302-04; R. 123, ll. 5-6). The letter included an Application and Certificate for Payment apparently signed by the architect. (R. 302-04).

On November 8, 2006, the County approved the third request for reduction and, by letter, advised Wachovia to reduce the letter of credit by \$300,000.00. (R. 305). At trial, the County's Chief Planner testified that the third reduction request was approved based upon Earthworks' "letter and approval of the \$300,000." (R. 124, ll. 9-13). Accordingly, the County yet again approved the request: (1) without a letter from an engineer certifying that the work had been done and providing a cost of completion estimate; (2) without having sought approval from the Department of Public Works, as required in Section 3-5; (3) without retaining 125% of the funds needed to complete the infrastructure; (4) even though the Application and Certificate for Payment indicated that the developer was using letter of credit funds to pay its contractor, contrary to Section 3-3; and (5) even though the request was made within six months of the earlier two requests, in violation of Section 3-5. (R. 123, ll. 11-13; R. 124, ll. 16-18). At the time of this approval, virtually no work was done on the infrastructure of Phase 2-D-1. (R. 306). Pursuant to the County's letter, Wachovia released \$300,000.00 thereby further reducing the letter of credit to \$553,370.21. (R. 124, ll. 23-25).

By letter dated December 6, 2006, Earthworks advised the County's Public Works Department that it "reviewed and accepted the following changes in price to Harmony 2D1 and 2D2." (R. 306). An "Opinion of Probable Cost" for Phase 2-D-1, attached to that letter, provided an estimated cost of \$1,153,205.45 to complete: (1) the sewer and water systems; and (2) the roads, site, and drainage remaining improvements. (*Id.*); (R. 126, ll. 13-15; R. 127, l. 1). Thus, the cost of completing the infrastructure for Phase 2-D-1 was \$1,153,205.45. (R. 127, ll. 10-12). Significantly, because the engineer's original estimate was \$1,040,000.00, this 2006 estimate shows that virtually no work was done on the infrastructure because the remaining estimated costs were actually *higher* than the original estimate.

#### Fourth Request and Approval for Reduction

On March 9, 2007, Harmony Holdings emailed the County a "revised pay request from February 7, 2007" covering pay application # 4 for Phase 2-D-1 and also requested reduction in the Wachovia letter of credit by an amount of \$396,666.18. (R. 313; R. 129, ll. 13-24; R. 130, ll. 24-25). Then, by letter dated April 3, 2007, Earthworks advised the County that pay application # 4 reflected work completed by February 28, 2006 and also included an Application and Certificate for Payment containing the contractor's request for payment of \$396,666.18. (R. 314-15). The pay application had an illegible signature, however, the words "for Steve Strickland" were handwritten by the signature. Also, "Engineer" was handwritten in the signature block and the printed word "ARCHITECT" was marked through with two lines. (R. 315).

On April 5, 2007, the County approved the fourth request for reduction and, by letter, advised Wachovia to yet again reduce the letter of credit by \$396,666.18. (R. 316; R. 132, ll. 16-24). Again, the County approved this request: (1) without having sought approval from the Department of Public Works, as required in Section 3-5; (2) without retaining 125% of the funds needed to complete the infrastructure, contrary to Section 3-5; (3) even though the Application and Certificate for Payment indicated that the developer was using letter of credit funds to pay its contractor, contrary to Section 3-3; and (4) even though the request was made within six months of the earlier two requests, contrary to Section 3-5. (R. 123, ll. 11-13; R. 124, ll. 16-18). Pursuant to the County's letter, Wachovia released \$396,666.18 thereby further reducing the letter of credit to a mere \$156,704.03. (R. 317; R. 133, l. 2).

In an April 7, 2007 letter, Georgetown Water and Sewer District advised the County that an inspection of the water and sewer lines in Phase 2-D-1 was completed. (R. 365; R. 141, ll. 3-8). The letter advised that water and sewer lines were completed as indicated in the Earthworks letter, however, it failed to provide a cost to complete the infrastructure. (R. 144, ll. 11-16; R. 141, ll. 14-22).

At some point before the Wachovia letter of credit expired on May 23, 2007, the developer provided the County with a \$140,000.00 check. The County placed these funds in a segregated account to be used at Harmony, but cashed

in a letter of credit covering Phase 2-D-2. (R. 135, ll. 11-13; R. 167, ll. 14-23; R. 168, ll. 1-2).

Aside from water and sewer work described in the above letters, virtually no other work on the infrastructure for Phase 2-D-1 was completed by this time. Furthermore, from May 2007 until August 2007, the developer failed to complete any meaningful progress on the infrastructure. In August 2007, the developer met with the County's planning staff and advised that "he no longer had the financial means to put any infrastructure within any phase of Harmony" and that, because the letters of credit were about to expire, "to call all the letters of credit that were still in good standing." (R. 61, ll. 1-4 and 11-13).

Harmony Holdings subsequently declared bankruptcy. At that time, the developer failed to complete basic infrastructure, such as utilities or roads, within Phase 2-D-1. Although the letter of credit was originally a sufficient amount—\$1,301,705.63—the repetitive reductions approved by the County whittled the funds to \$140,000.00, an amount wholly insufficient to enable completion of the Phase's infrastructure.

Subsequently, a new owner took over the project, hired his own contractor, and requested the County release funds for payment to the contractor after work was completed. (R. 64, ll. 14-20). The County released funds "quite a few times and maybe for a year after that," but the County ultimately deemed the new owner untrustworthy and stopped the release of

funds. (R. 64, l. 23 – R. 65, ll. 1-11). As a result, the new developer walked off the job. (R. 74, ll. 16-22).

At trial, Repko testified that there is no prospect of anybody completing the infrastructure in Phase 2-D-1. (R. 200, l. 25 – R. 201, l. 1). Essentially, his lots are “woods” accessible by a path cleared out seven years ago, but inaccessible by road. (R. 201, ll. 15 and 17-21). Because of the missing infrastructure, he believes the value of his property is “zero.” (R. 201, ll. 2-11). In fact, within the last 18 months, only one lot in the whole development sold, and it was for the sales price of \$500.00. (R. 201, ll. 6-8).

Despite Repko having paid property taxes, the County has denied him the right to build on his property due to the absence of basic utilities. (R. 331-364). On March 30, 2012, Repko received an email from a friend alerting him to the County’s mishandling of the financial guarantees. (R. 194, ll. 22-25). Promptly after being notified of the County’s mishandling of the financial guarantees, Repko filed this lawsuit.

#### STANDARD OF REVIEW

On appeal from the grant of a directed verdict, our appellate courts must reverse the judgment when there is no evidence to support the ruling or when the ruling is governed by an error of law. *See Webb v. CSX Transp., Inc.*, 364 S.C. 639, 615 S.E.2d 440 (2005). In making this determination, the appellate courts apply the same standard of review as the trial court and, thus, is required to “view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion.”

*Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). The court may not weigh the evidence, but must determine if there is *any* evidence from which a jury is warranted in making a finding. See *Washington v. Whitaker*, 317 S.C. 108, 113-14, 451 S.E.2d 894, 897-98 (1994). A directed verdict is only appropriate when the evidence yields but one inference. See *The Huffines Co. v. Lockhart*, 365 S.C. 178, 187, 617 S.E.2d 125, 129 (Ct. App. 2006). Conversely, a directed verdict is not appropriate and must be denied when either the evidence yields more than one inference or the inferences are in doubt. See *Law v. South Carolina Dep't. of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

#### ARGUMENTS

The Court of Appeals' decision was correct. This Court should affirm the Court of Appeals' decision or dismiss the writ of certiorari as improvidently granted.

**I. The Court of Appeals properly held the County owes a duty of care to Repko.**

The County contends it owes no duty and that 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 identifiable facts." (Pet. Br. 7; see Arg. I(A)).

Primarily, County contends that “§ 3-1 plainly states a controlling legislative intent to not create a private duty owed to [Repko].” (Pet. Br. 7).<sup>2</sup>

Second, County contends the Court of Appeals erred, procedurally and substantively, in myriad ways by holding § 3-1 did not preclude Repko’s claim. (Pet. Br. 9-14; *see* Arg. I(B)).

Third, County asserts the Court of Appeals allegedly erred in considering and applying this Court’s well-established six-element “special duty” test, as follows: (1) erred in failing to recognize that the meaning of § 3-1’s disclaimer language is also a question of legislative intent; (2) erred in treating “special duty” test as rule of law, not as a rule of statutory construction; (3) erred by considering this Court’s “special duty” test as that test is “irrelevant”; (4) as to substantive merits of the “special duty” test, erred in finding Repko satisfied the second element and third element of that test. (Pet. Br. 8, 14-16; *see* Arg. I(C)).

Fourth, County asserts that *Brady* is indistinguishable from and, therefore, controlling on this case. Specifically, County contends the Court of Appeals allegedly erred by: (1) recognizing *Brady* as distinguishable from this case; (2) as a result thereof, not relying on *Brady* as controlling; and (3)

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<sup>2</sup> This bald contention is the single common thread repeated throughout the County’s brief before this Court. Substantively, that bald contention is the central premise upon which virtually all of the County’s issues, arguments, and alleged errors rely.

“effectively” or “essentially” “overruled” *Brady* or “illogically limited it.” (Pet. Br. 16-18; *see* Arg. I(D)).

In granting directed verdict to the County, the trial court relied on the County’s ordinance provision, Article V, Section 3-1: “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. 4). The trial court misconstrued this sole provision in Section 3-1 to effectively provide the County with complete immunity for accepting and then subsequently mismanaging a financial guarantee.

Reversing the trial court, the Court of Appeals decision found the County owes to Repko a “special duty” and that it may not, with language in its local ordinance, disclaim its tort liability impermissibly beyond SCTCA. So, too, the trial court’s construction of Section 3-1’s disclaimer language is unenforceable, as it is preempted expressly by SCTCA. The Court of Appeals rightly applied this Court’s well-established six-element “special duty” test as an exception to the public duty rule, and correctly found that Repko satisfied all six-elements. The Court of Appeals found the County’s ordinances to be materially different from those at issue in *Brady* and, thus, found the trial court’s reliance on *Brady* in error. The decision of the Court of Appeals is correct and should be affirmed.

**A. The Court of Appeals correctly reversed the trial court’s misconstruction of Section 3-1.**

As governmental entities, counties are expressly preempted from altering their liability by ordinance because the General Assembly clearly stated its intent—in express terms—that counties be held liable “only to the extent provided” within the Tort Claims Act:

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein.

S.C. Code Ann. § 15-78-40(b) (emphases added). Our legislature reaffirmed this principle by enacting the exclusive remedy provision proclaiming the SCTCA to be the exclusive remedy for a tort of a government employee “notwithstanding any other provision of law.” S.C. Code Ann. § 15-78-200. If a county injures a person by negligently mishandling funds entrusted to it by its own ordinance, the injured person’s sole and exclusive remedy in tort is within the SCTCA.

In granting directed verdict, the trial court construed the disclaimer language to operate as an additional layer of protection—above and beyond that of the SCTCA. Under this erroneous construction, when the County would otherwise be liable through applying the SCTCA’s provisions, the County’s disclaimer phrase effectively precluded all liability of the County by disclaiming any duty from its undertaking to accept a financial guarantee. The

plain language of the SCTCA, however, expressly prohibits construction in such a manner.

The Court of Appeals correctly ruled that the trial court's construction of Section 3-1 was in error because the County, as a governmental entity, "cannot override application of the TCA through language in a local ordinance disclaiming all liability." (Appx. 9). Thus, under the express SCTCA terms, the County is liable for its torts in the same manner and to the same extent as a private individual, subject to the limitations and exemptions contained in the SCTCA. Stated differently, a private person, under like circumstances as the County, would be liable to Repko for negligently handling financial guarantees.

In direct contradiction, the County argues for a construction of Section 3-1 that the County is *not* liable to Repko, or anyone for that matter, for such tortious conduct. The County contends it can unilaterally limit its liability for its tortious conduct—effectively providing itself sovereign immunity—far beyond the limitations and exemptions contained in our State's TCA. Notably, the SCTCA does not provide counties any specific immunity or exemption for this conduct.

To the extent that the Section 3-1 disclaimer provision was construed as granting the County immunity for negligently mishandling a financial guarantee, the SCTCA preempted the ordinance provision and was therefore unenforceable. "Express preemption occurs when the General Assembly declares in express terms its intention to preclude local action in a given area."

*S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 397, 629 S.E.2d 624, 628 (2006).

At trial and at the Court of Appeals, Repko argued that the trial court's construction of Section 3-1 is erroneous because such a construction and its effect is preempted by the SCTCA and, therefore, unenforceable. As Repko argued at trial in opposing the directed verdict, the SCTCA governs the County's tort liability and the County cannot overcome application of SCTCA by enacting an ordinance that waives liability for their negligent conduct. (R. 239, ll. 21-24; R. 240, ll. 6-8); *see also* (R. 263, ll. 24-25) (“[e]ssentially what the County has sought to do is circumvent the Tort Claims Act by including that language”).

Repko also argued this before the Court of Appeals. (App. Br. 17-21; Arg. I(B)); *see also* (App. Reply Br. 2-4; Arg. I(A)). The Court of Appeals agreed as the General Assembly has declared, in express terms, the preemptive nature in SCTCA. *See* S.C. Code Ann. §§ 15-78-40(b) and 15-78-200.

Mischaracterizing the Court of Appeals' decision, the County asserts that the “Court of Appeals held that the South Carolina Tort Claims Act. . . preempted the legislative intent to not create a duty in § 3-1. (Appx. 14-15).” (Pet Br. 11-14; Arg. I(B)(2)). This is simply incorrect as the Court of Appeals plainly did not express this holding. (Appx. 8-10).

The County asserts the Court of Appeals erred by mis-reading or mis-phrasing § 3-1 in terms of “disclaiming” a duty. However, the record makes

plainly clear that the phrasing or terming of § 3-1 as a “disclaimer” of a duty—of which the County now complains is an error—was injected into this case by the County *itself*, repeatedly argued as such by the County, and thereafter so phrased by the trial court. (R. 225, ll. 8-13; R. 248, ll. 21-22; R. 249, ll. 13-15; R. 263, ll. 9-10; R. 272, ll. 15-18; R. 273, ll. 1-4; R. 274, ll. 15-16 and 22-25). It is unclear how the County complains of this phrasing when it was of the County’s creation. Nevertheless, the Court of Appeals’ analysis and reasoning was plainly correct. The Court of Appeals’ decision should be affirmed.

**B. The Court of Appeals correctly applied the six-element “special duty” test and correctly held that the County owed a “special duty” to Repko under the County’s Improvement Standards Ordinance.**

At the threshold, County argues that the Court of Appeals erred by even applying the six-element “special duty” test because the test is allegedly “irrelevant.” (Pet. Br. 15). This argument is absurd.

The public duty rule is a presumption which may be overcome when the statute creates a “special duty.” “If a special duty is found to exist after analyzing a statute under this [six-element] test, courts can be sure the Legislature intended that a plaintiff within the protected class injured by a public official’s breach of the duty have a right of action against the official.” *Trask v. Beaufort County*, 392 S.C. 560, 568, 709 S.E.2d 536, 540 (Ct. App. 2011).

This Court has long since applied the well-established “special duty” test as an exception to the public duty rule if the following six-part test is met:

(1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute imposes on a specific public officer a duty to guard against or not cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within that class; (5) the public officers know or should know of the likelihood of harm to the class if he fails in 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.

*Edwards v. Lexington County Sheriff's Dep't*, 386 S.C. 285, 291-92, 688 S.E.2d 125, 129 (2010) (reasoning “we have carved out a narrow exception to the [public duty] rule and found a statute imposes a special duty on a governmental entity if the following six-part test is met. . .”) (emphasis added).

This Court has specifically ruled and affirmed time-and-time again that “the special duty analysis is in itself an attempt to determine legislative intent.” *Jensen v. Anderson County Dept. of Social Services*, 304 S.C. 195, 201, 403 S.E.2d 615, 618 (1991) (emphasis added). Further, in so ruling, this Court previously rejected the same challenge to the “special duty” analysis which the County appears to assert. *See Jensen*, 304 S.C. at 201, 403 S.E.2d at 618 (finding “DSS challenges this special duty test on the grounds that it does not include consideration of legislative intent. . . We disagree.”).

Here, the County contends that the well-established “special duty” test is “irrelevant” to determining legislative intent. In doing so, the County states that the public duty rule is “itself a rule of statutory construction” and, similarly, that the “special duty” test “is a rule of statutory construction.” (Pet. Br. 12, 14). Despite both being rules of statutory construction, County

incongruously argues that only one rule should have been applied and that the Court of Appeals erred in considering and applying both rules.

The County then asserts the Court of Appeals erroneously treated the “special duty” test as a “rule of law.” (Pet. Br. 14). The County makes this “argument” by way of a single sentence followed a general statement of law. (*Id.*). County fails to actually explain how the Court of Appeals treated it as a “rule of law” and not a rule of statutory construction. A single sentence “argument” is too conclusory to present any issue for review. *See Bean v. South Carolina Cent. R.R. Co.*, 392 S.C. 532, 559, 709 S.E.2d 99, 113 (Ct. App. 2011).

Below, the trial court directed verdict to the County on the grounds that Repko failed to satisfy the second element and third element of the six-part “special duty” test.<sup>3</sup> On appeal, the Court of Appeals reversed because the trial court erred in finding the second element and third elements unsatisfied. The Court of Appeals’ decision finding the County owed Repko a “special duty” should be affirmed.

**1) The Court of Appeals correctly held that the trial court erred in finding the second element of the “special duty” test unsatisfied.**

The second element of the “special duty” test provides that “the statute, either directly or indirectly, imposes on a specific public officer a duty to guard

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<sup>3</sup> The trial court did not address elements one, four, five, and six of the special duty test. County never argued these elements were unsatisfied. Repko argued these elements were satisfied. The Court of Appeals ruled elements one, four, five, and six are conceded by the County and, regardless, ruled they were satisfied. (Appx. 11, n.4). County did not challenge these ruling in its Petition for Rehearing. (Appx. 29-31).

against or not cause that harm.” *Edwards*, 386 S.C. at 291-92, 688 S.E.2d at 129.

Here, the County’s decision to accept a financial guarantee is imposed on a specific public officer of the Planning Department as provided in the ordinance. (R. 243, l. 24 – R. 244, l. 8). Also, Section 3-5 of the ordinance provides that the County’s granting of reductions of a financial guarantee is imposed on the Planning Department, subsequently, to the Department of Public Works.

Contrary to the County’s argument and the trial court’s finding, South Carolina case law provides that this second element is satisfied when the statute identifies a specific agency or specific employees of that agency. *See Steinke v. S.C. Dep’t of Labor, Licensing, and Reg.*, 336 S.C. 373, 390, 520 S.E.2d 142, 151 (1999); *see also Jensen v. Anderson County Dep’t of Social Servs.*, 304 S.C. 195, 203, 403 S.E.2d 615, 619 (1991).

Here, the County’s regulations “directly” states the Planning Department and the Department of Public Works. The County’s decision to accept a financial guarantee is directly imposed on the Planning Department as provided in the ordinance. (R. 243, l. 24 – p. 244, l. 8). Additionally, as provided in Section 3-5, the County’s granting of reductions of a financial guarantee is directly imposed on the Planning Department, subsequently, to the Department of Public Works.

This satisfies clearly established case law from this Court given that the County's regulations identifies a specific agency or employees of that agency by imposing a duty in the first instance upon the Planning Department and, subsequently, the Department of Public Works. The County's single sentence contention to the contrary is without merit. First, County cites no authority supporting its contention that the direct identification of two specific agencies fails to satisfy the second element of the "special duty" test. (Pet. Br. 16). This short, conclusory contention without supporting authority is abandoned and not properly presented for review here. *See Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003); *see also* Rule 208(b)(1)(D), SCACR. Second, a single-sentence "argument" is too conclusory to present any issue for this Court's review. *See Bean*, 392 S.C. at 559, 709 S.E.2d at 113. The Court of Appeals' decision should be affirmed.

**2) The Court of Appeals correctly held that the trial court erred in finding the third element of the "special duty" test unsatisfied.**

The third element of the "special duty" test provides: "the class of persons the statute intends to protect is identifiable before the fact." *Edwards*, 386 S.C. at 291-92, 688 S.E.2d at 129.

Below, the trial court held that "the class of persons the statute intends to protect was not identifiable before the fact." (R. 8). The trial court solely relied on the disclaimer language in finding the third element unsatisfied. Because the trial court's construction of the disclaimer language was unenforceable, the trial court's reliance thereon was error.

The property owners in the development are the obvious class intended to be protected, specifically those persons who buy a lot in the development *after* the County's acceptance of financial guarantees from the development. (R. 244, ll. 9-13). Below, the County did not dispute that the essential purpose of the ordinance was to protect lot buyers. The essential purpose "was to ensure that if someone like Mr. Repko purchased raw land in a development to be built that the monies would be there to ensure that the infrastructure would be there if the developer failed to go forward." (R. 242, ll. 15-19). Testimony indicates Section 3-1 exists precisely to protect lot buyers from developers who sell lots to them, but then fail to complete basic infrastructure necessary to make the lot suitable for building. The County's own witnesses testified that is the essential purpose of the regulations. In fact, the County Attorney admitted, in a 2008 email to Harmony Holdings, that: "the whole point behind the letter of credit . . . is to protect owners who purchase property and are made promises that are not kept." (R. 76, l. 23 – R. 77, l. 1-12). Also, he testified that he advised another lot owner in 2009 that, with respect to the management of letter of credit funds, the County owed the lot owner a fiduciary duty. (R. 69-70). Similarly, County's Planning Department Director admitted the ultimate beneficiaries of the letter of credit were "the people living on the road who purchased the property." (R. 152, ll. 20-22). Finally, County does not dispute "the property owners were identifiable as a class before the County agreed to reduce the financial guarantee." (Appx. 12); *see* (Pet. Br. 16).

The County suggests the Court of Appeals erred in finding the third element satisfied. (Pet. Br. 16; Arg. I(C)). The entirety of the County's argument on this issue is as follows:

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.

(Pet. Br. 16). This contention is not properly before this Court. First, County does not appear to have argued this to the trial court. Second, County did not make this argument to the Court of Appeals in its Brief of Respondent. (Resp. Br. 10-13). Third, County appears to have first made this argument in its Petition for Rehearing to the Court of Appeals. (Pet. Rehear. 12). Certiorari is only for those issues and arguments that were first raised to the Court of Appeals. *See* Rule 242(d)(2), SCACR. The County's argument, therefore, is not properly before this Court for review. Nevertheless, the County's assertion lacks any reference to the record on appeal or anything whatsoever to support its assertion. Accordingly, the Court of Appeals decisions should be affirmed.

**C. The Court of Appeals correctly found that this case is not the same as the one this Court decided in *Brady Dev. Co., Inc. v. Town of Hilton Head Island*, 213 S.C. 73, 439 S.E.2d 266 (1993).**

The County contends the Court of Appeals' decision effectively overruled this Court's prior decision in *Brady*. (Pet. Br. 16-18; *see* Arg. I(D)). This argument is incorrect. This case is quite different from the one decided by this Court in *Brady*.

The holding in *Brady* did not “compel” the trial court’s finding of no duty. To the contrary, as the Court of Appeals correctly found, *Brady* is materially distinguishable because: (1) the essential purpose of the County’s ordinance, unlike the ordinance in *Brady*, is for the protection of lot owners—not to protect the public from the dangers of overdevelopment; (2) the County’s ordinance contain no express language declaring their purpose, unlike the ordinance in *Brady*; and (3) the public policy concerns of *Brady* are not implicated.

Here, the testimony of both the County Attorney and County’s Planning Department Director show that the essential purpose of the County’s ordinance was to protect lot buyers—not to prevent overbuilding. The record is devoid of any other purpose underlying the ordinance. Thus, the reasoning in *Brady* has no application to the evidence in this case.

In *Brady*, this Court also based its holding on public policy considerations. This Court explained that “[t]o recognize such a duty would make the Town substantially an insurer of all developments it undertook to inspect and control through its Development Standards Ordinance and would likely discourage all efforts at such control.” *Brady*, 312 S.C. at 78, 439 S.E.2d at 268-69. The policy concern in *Brady*, however, is not implicated in the present case. Imposition of a duty owed by the County to Repko, and other lot owners in Harmony Township, would not make the County an insurer of all developments it undertook to inspect and control. Instead, it would apply when

the County exercises discretion in permitting financial guarantees, in lieu of completing required infrastructure, and subsequent management and reduction thereof.

Because *Brady* is distinguishable and thereby not squarely controlling, Repko's satisfaction of all six elements of the "special duty" test establishes that the County owed to Repko a duty which was not barred by the public duty rule. Because the evidence compels the recognition of such a duty, the judgment of the trial court must be reversed and the case remanded for trial. The Court of Appeals' decision reversed and remanded the case. This is a correct application of this Court's case law and *Brady*. Therefore, this Court should affirm the Court of Appeals' decision.

**II. The Court of Appeals correctly reversed the trial court's erroneous ruling that the Tort Claims Act provided the County immunity from Repko's negligence action as a matter of law given the trial court's failure to read the gross negligence exception of subsection (12) into the other subsections.**

"When a governmental entity asserts multiple exceptions to the waiver of immunity and at least one of the exceptions contains a gross negligence standard, [our courts] must interpolate the gross negligence standard into the other exceptions." *Jones v. Lott*, 387 S.C. 339, 347, 692 S.E.2d 900, 904 (2010) (quoting *Proctor v. Dep't of Health and Envtl. Control*, 368 S.C. 279, 311, 628 S.E.2d 496, 513 (Ct. App. 2006)); *see also Jones*, 387 S.C. at 348, 692 S.E.2d at 904-05 (finding "the gross negligence standard does not apply because Respondent did not plead a section containing a gross negligence standard").

The County complains that Repko's trial counsel did not formally argue gross negligence as exceptions to subsection (4) and (5) in response to the directed verdict. It is clear from the record that Repko's trial counsel argued the County had acted in a grossly negligent manner and this argument was sufficient to apprise the trial court that the subsections (4) and (5) did not apply as a matter of law. Our courts have repeatedly held that an issue is preserved for appellate review when the nature of the issue is clear from the argument made in the record, even upon failure to use correct legal terminology. *See State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (argument in motion for directed verdict preserved even though movant omitted "corpus delicti" from argument); *State v. James*, 362 S.C. 557, 562, 608 S.E.2d 455, 458 (Ct. App. 2004) (argument in motion for directed verdict preserved even though movant argued "insufficient evidence" instead of "substantial circumstantial evidence"); *State v. Guillebeaux*, 362 S.C. 270, 274 n.1, 607 S.E.2d 99, 101 n.1 (Ct. App. 2004) (argument improperly stated as "motion for mistrial" nevertheless preserved a "motion for a new trial" for appellate review). Indeed, no specific or "magic language" is required to preserve an issue for appellate review.

Subsequently, Repko's motion for reconsideration fairly raised his SCTCA arguments and expressly gave notice that his motion "will be further supported by . . . argument, memoranda, . . . and/or other materials." (R. 381-82). His supporting memorandum also fairly raised his arguments. (R. 405-08).

Repko's trial counsel also raised his arguments during his post-trial motion hearing. (R. 266, ll. 5-13) (arguing because County raised subsection (12) as a defense, the court was required to construe the remaining immunity provisions as also containing a gross negligence exception). The trial court's failure to do so was an error of law. The Court of Appeals correctly reversed based on this error.

This Court has ruled that, when a government entity asserts various exceptions to the waiver of immunity, a gross negligence standard is read into all immunity provisions. There is no requirement that a plaintiff must *lose* on his subsection (12) argument before he gets the benefit of this rule. *See Steinke*, 336 S.C. at 395-96, 520 S.E.2d 142 (1999) ("the correct approach, when a governmental entity asserts various exceptions to the waiver of immunity, is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard").

The County unequivocally asserted this as an affirmative defense in its Answer. The County unequivocally asserted and argued this as a basis for directed verdict. (R. 233, ll. 2-8) ("[S]ubsection 12 talks about licensing powers, when the power and function is exercised in a grossly negligent manner, this is essentially a licensing function. *That's what we're doing. We're licensing or permitting the developer to move forward with his platted subdivision plat and sell lots. So we contend that subsection 12 applies as well*"). It was asserted. Failure of the trial court to read the gross negligence

exception in subsection (12) into the other subsections was an error of law warranting reversal. Additionally, as thoroughly argued below, when viewing the evidence in the light most favorable to Repko, a jury could reasonably find that the County was grossly negligent in its mismanagement of the letter of credit. (App. Br. 26-33).

The Court of Appeals correctly reversed the trial court because this error of law controlled the directed verdict in favor of the County. This Court should affirm the Court of Appeals' decision and permit a trial court, on remand, to reexamine applicability of subsections (4), (5), and (13) under the gross negligence standard.

**III. Rejecting the County's additional sustaining ground argument, the Court of Appeals correctly found the trial court's denial of the County's directed verdict motion on the statute of limitations defense was not in error because questions of fact exist.**

The Court of Appeals held that the trial court correctly denied the County's directed verdict motion on the statute of limitations grounds, finding that the evidence and inferences created questions of facts for the jury. (Appx. 16, n. 7). The County asserts, however, that the trial court's order should be affirmed on the additional sustaining ground that Repko's claim was barred as a matter of law by SCTCA's statute of limitations. (Pet. Br. 6-7, 26-28). Contrary to the County's assertion, when the evidence is viewed in the light most favorable to Repko—as it must be for purposes of a directed verdict—there clearly exists questions of fact as to when Repko should have discovered he had a claim against the County. The trial judge and a unanimous Court of

Appeals ruled that these questions of fact exist and, therefore, it is a question for the jury. (R. 11; Appx. 16, n.7).

After the trial court denied the County's motion for summary judgment on the statute of limitations ground, the County renewed the same argument as a ground in its directed verdict motion. Again, the trial court denied that the County was entitled to a directed verdict on the statute of limitations ground. From the bench, the trial judge explained that "I am not granting the directed verdict motion on the statute of limitations argument . . . I'm kind of inclined to believe that that might have been a factual issue to be determined by the . . . jury." (R. 250, ll. 17-18 and 21-23; R. 11). Viewing the evidence in the light most favorable to Repko, the Court of Appeals correctly ruled that the trial court did not err in denying the County's motion for directed verdict on statute of limitations grounds.

"[A]ny action brought pursuant to [SCTCA] is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered." S.C. Code Ann. § 15-78-110. The "discovery date" is determined as when "the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." *Hackworth v. Greenville County*, 371 S.C. 99, 103, 637 S.E.2d 320, 322 (Ct. App. 2006). This question is quintessentially one for a jury to decide where, as here, the record is replete with evidence that is conflicting as to this issue. (Appx. 16, n.7) (citing

*Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010)).

The “loss” at issue here is the County’s loss of a substantial sum from the financial guarantee for Phase 2-D-1 of the Harmony Township project, without these sums being applied to the infrastructure for this phase. Repko testified that he first determined that he potentially had a claim against the County for improperly disbursing the financial guarantee in March 2012 when a friend forwarded an email to him that alerted him to the County’s mishandling of the financial guarantees:

Q. Okay, at what point did you ever determine that you might potentially have a claim against Georgetown County?

A. It was in March of 2012.

Q. And how did that come about?

A. An email was forwarded to me.

(R. 193, l. 23 – R. 194, l. 2).

Q. Was it at that point that you were put on notice that there may have been a problem with the County’s . . . handling of these financial guarantees?

A. Yes.

Q. In March of 2012?

A. Yes.

(R. 194, l. 22 – R. 195, l. 2; R. 330).

Viewing the evidence in the light most favorable to Repko, his testimony establishes the date he discovered “the loss.” The County’s claim that he “knew of his loss no later than November 3, 2008” is meritless. (Pet. Cert. 23-24); *see*

*also* (Resp. Br. 31). The only question is whether, viewing the evidence in the light most favorable to Repko, the loss “should” have been discovered more than two years from the April 20, 2012 filing date. (Pet. Cert. 23).

Ignoring that the evidence and inferences must be viewed in the light most favorable to Repko, the County insists once more that the date is “no later than November 3, 2008” because he knew the developer was in bankruptcy, knew the infrastructure had not been installed, and believed that his property had no value because of the absence of infrastructure. (Pet. Cert. 23). This argument is absolutely meritless because these facts do not remotely permit an inference that the County lost the financial guarantee and no longer had the ability to complete the infrastructure by itself. Nothing in the letter he received about the bankruptcy filing put him on notice that the County was repeatedly, unlawfully drawing down the letters of credit. (R. 222, ll. 2-4).

Asserting this argument again, the County continues to ignore that, after the developer stopped working on the project, a new owner took over the project. The new owner hired its own contractor and requested the County release funds for payment to the contractor after work was completed. (R. 64, ll. 14-20). The County’s Attorney testified that the County released funds “quite a few times and maybe for a year after that.” (R. 64, ll. 23-25; 65, l. 1). The County determined the new owner of Harmony was not trustworthy and stopped releasing funds. (R. 65, ll. 3-11). The new developer walked off the job. (R. 74, ll. 16-22). The record does not provide full details of precisely when the

second developer walked off the job, or when, if ever, Repko discovered that the second developer also stopped working. Regardless, the evidence in the record yields no inference that a reasonable person would have known of the County's mishandling of the financial guarantee based on the second developer's withdrawal from the project.

County's argument that the bankruptcy of the first developer placed Repko on constructive knowledge of mishandling of the financial guarantee also ignores the effect of the automatic stay of the Bankruptcy Code. When a debtor files for bankruptcy, the filing operates as an automatic stay against, *inter alia*, "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 15 U.S.C. § 362(c). No evidence nor any argument has been made that the financial guarantee was *not* part of the developer's bankruptcy estate, or that the County obtained relief from the stay that enabled it to exercise control over the financial guarantee. Resultantly, a person of common knowledge and experience would not conclude from the mere bankruptcy filing and absence of infrastructure that the County had lost the financial guarantee. Rather, such person would conclude that the funds were frozen by the bankruptcy and that the County could not access the funds until the bankruptcy concluded, or the County obtained relief from the stay.

This is a question of fact for the jury to determine in any event. This was ruled a question of fact by both the trial court and a unanimous Court of

Appeals. Denial of County's directed verdict motion on the statute of limitations was required in light of conflicting evidence yielding more than one inference. This issue should be submitted to a jury

### CONCLUSION

The Court of Appeals' decision was correct and this Court should affirm. The Court of Appeals rightly found the trial court's construction of the County's Section 3-1's disclaimer language was in error as such construction is preempted by our State's TCA. Properly applying this Court's "special duty" analysis, the Court of Appeals correctly ruled that Repko satisfied the six-element "special duty" test, and the County owed Repko a "special duty." Finally, the Court of Appeals analyzed this Court's 1993 *Brady* decision, rightly recognizing that this case is materially different from *Brady*, and, thus, did not preclude a "special duty."

Applying well-established precedent, the Court of Appeals correctly ruled the County was not entitled to immunity as a matter of law by SCTCA subsections (4), (5), and (13), given the evidence from which a jury could find subsection (12) applied, and it was thereby an error of law to not read gross negligence standard into (4), (5), and (13).

Finally, the Court of Appeals correctly found that the evidence, when viewed most favorably to Repko, made manifest that questions of fact existed to appropriately preclude directed verdict on the County's statute of limitations ground.

For these reasons, and any other appropriate reasons that may be evidenced from the record before this Court, Repko respectfully submits that this Court should affirm the Court of Appeals' decision or dismiss the writ of certiorari as improvidently granted.

Respectfully submitted,



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November 9, 2017  
Murrells Inlet, South Carolina

**RECEIVED**

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The State of South Carolina  
In the Supreme Court

**S.C. SUPREME COURT**

Appeal from Georgetown County  
Benjamin H. Culbertson, Circuit Court Judge

S.C. Sup. Ct. Case No. 2016-001300  
S.C. Ct. App. Case No. 2014-000156  
Lower Court Case No. 2012-CP-22-00558

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

v.

County of Georgetown, ..... Petitioner.

**PROOF OF SERVICE**

I, the undersigned employee of Goldfinch Winslow, LLC, certify that on the date indicated below, I served counsel for Petitioner with a copy of Brief of Respondent by mailing copies by United States Mail, first class postage prepaid, addressed to:

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November 9, 2017

  
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