THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2007-CP-38-938

Ajoy Chakrabarti and Sukla Chakrabarti . . . . Respondents

v.

City of Orangeburg . . . . Appellant,

FINAL BRIEF OF RESPONDENTS

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October 12, 2012

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STATEMENT OF THE CASE

This case was commenced by the service of Respondent's Summons and Complaint alleging negligence and inverse condemnation and seeking actual damages for the Appellant City's negligence in condemning and demolishing the Respondent's house which was purchased in 2003 following a house fire. The property is located at 2243 Middleton Drive in Orangeburg, South Carolina. The Summons and Complaint were filed by Respondents on July 26, 2007. Appellant City of Orangeburg answered on September 25, 2007. Following a hearing in which Appellant's Motion for Summary Judgment was denied, Respondents amended their Complaint to assert additional causes of action for inverse condemnation, wrongful condemnation and trespass. Appellant City answered the Amended Complaint on October 10, 2011.

The case was tried in the First Judicial Circuit on October 5-7, 2011. At the close of presentation of evidence by both parties, Respondents moved to amend their pleadings to conform to the gross negligence standard and withdrew its cause of action for negligence without objection from Appellant's Counsel. (R. p. 422C). The question of inverse condemnation was tried by the bench, and all other causes of action, as well as the amount of just compensation for inverse condemnation were decided by the jury.

The jury rendered a verdict on the gross negligence cause of action in favor of Respondents and awarded the Respondents $165,000. The jury also awarded the Respondents $85,000 on the inverse condemnation cause of action. The Appellant City moved under Rules 50(b), 52(b) and 59(a) SCRCP for Judgment

Notwithstanding the Verdict, and in the alternative, for a New Trial or New Trial Nisi remittitur, and for an Order requiring Plaintiff Respondents to elect a remedy. Respondents moved post-trial, to elect the gross negligence verdict of $165,000.00 and to preserve their right under the inverse condemnation award, in the event the negligence award is reduced or set aside. All of Appellant City's motions were denied and Appellant timely filed its Notice of Appeal on February 1, 2012, which was served on Respondents' Counsel on January 31, 2012.

ARGUMENT

I. The Trial Court erred in concluding that Appellant's actions leading to demolition of Respondents' house amounted to inverse condemnation, requiring payment of just compensation.

Through this appeal, Appellant, City of Orangeburg, ("City") seeks, *inter alia*, reversal of the trial court's decision that City's acts and actions in condemning and demolishing a house at 2243 Middleton Drive in Orangeburg, purchased by Respondents in 2003, amounted to inverse condemnation entitling respondents to "just compensation." Following presentation of both parties' cases on all issues but damages, the Trial Court determined that there had been a compensable taking, and following damages evidence, submitted the inverse condemnation case to the jury.

In light of the May, 2012 decision in Carolina Convenience Stores, Inc. v. City of Spartanburg, 398 S.C. 27, 727 S.E.2d 028, (Ct. App. 2012), it appears that Respondents would not be able to establish a "public use" as required according to the recent case law. Accordingly, Respondents hereby abandon the judgment on the inverse condemnation cause of action in the amount of $85,000.

II. The Trial Court appropriately denied City's Motions for Directed Verdict and for JNOV on the Gross Negligence cause of action because:

- **a. Respondents presented ample evidence of a grossly negligent breach of duty owed by Appellant.**
- **b. Respondents presented ample evidence to refute City's claim of defenses of waiver and estoppel.**

On its motions for Directed Verdict and JNOV, City contends that Respondents were not entitled to recovery on their negligence count because Respondents presented no evidence of a breach by the City of any duty owed to Respondents in connection with the City's decision to condemn and demolish the house owned by Respondents.

South Carolina courts have recognized that "gross negligence" is a relative term, generally meaning the "absence of care that is necessary under the circumstances." Hicks v. McCandlish, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952). Gross negligence essentially involves an "intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Richardson v. Hambright, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988). This degree of negligence connotes the failure to exercise even a slight degree of care. Wilson v. Etheredge, 214 S.C. 396, 400, 52 S.E.2d 812, 814 (1949); Anderson v. Ballenger, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932).

At trial, Respondents claimed the City was grossly negligent in failing to renew the Respondents' building permit and referenced Section 15-78-60 of the Tort Claims Act establishing that a governmental entity may be liable under

Section 12 in cases of gross negligence for failing to renew permits. The pertinent section of the Tort Claims Act states:

> The governmental entity is not liable for a loss resulting from:
>
> (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or a failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration or, or similar authority except when the power or function is exercised in a grossly negligent manner.

Section 15-78-60, S.C. Code Ann. (1986).

Section (12) is co-equal to Sections (2), (4) and (23), which the City claim as the basis of its argument, and Section (12) is clearly applicable in this situation; applying the City's logic to the situation in this case would render Section (12) futile.

Respondents also presented evidence of City's absence of care demonstrated when City failed to follow its own International Property Maintenance Code (and the Ordinance by which it was adopted). City's brief additionally references this Code as "the controlling guidance document under which the City addresses and decides these matters." (Brief of Appellant, p. 15).

Specifically, in 2001, Appellant enacted the International Property Maintenance Code (2000) [hereinafter "IPMC"] to govern condemnation and demolition proceedings for unsafe buildings in the City of Orangeburg. In the relevant part, the code reads:

> The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where

there has been cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

IPMC 110.1 (2000).

This enactment authorized City to undertake one of three actions:

1) If in the City's judgment it was unreasonable to repair the building, the City could order the owner to demolish and remove the structure; or
2) If the building was capable of being made safe by repairs, the City could offer the owner the option of repairing the building or demolishing and removing the building; or
3) In the event repairs were undertaken and there had been cessation of work for period of more than two years, the City could demolish and remove the building.

The first course of action gives the City the complete authority to use its judgment to determine that the building could not be rebuilt. Had the City chosen this option, Respondents would have known that his only option was to remove the remains of the house and apply for a permit to allow new construction on the property. This course of action was not initially pursued by the City. Respondents' position is that once this option was not exercised, it was abandoned.

The second course of action is predicated on a determination by the City that the building can be made safe by repair. In pursuing this course of action, the City acknowledges that the building is able to be repaired. The City gives the option to the owner to do so, or in the alternative, the owner is to demolish and

remove the building. Once this option is extended to the owner, the recourse for the future of the property is given to the owner.

Finally, the Code contemplates the exact scenario that occurred in this case. In this instance, where the owner is given the option to repair the building, there has to be cessation of work for more than two years before demolition can be pursued. In this case, the City failed to follow its own Code by demolishing the building without waiting the requisite time.

Following a fire in 2003 that substantially damaged his home, the owner of the house located at 2243 Middleton Street in Orangeburg, collected his insurance money, decided not to rebuild, and sold the home to the Respondents. In March, 2003, Respondents received a letter from City notifying Respondents that the Middleton house was being declared unsafe, unfit for public use and a nuisance. At this time, City had the options available under the IPMC.

The City chose not to exercise the first option in which the City could have condemned the property, decide it was not capable of repair, and order the demolition of the structure. Once the City failed to exercise this option, it was abandoned. Respondents' Counsel questioned Mr. James Meggs, the City's expert and former City of Columbia Attorney of 17 years, in reference to the City's failure to exercise this first option:

> Q. If they [City of Orangeburg] wanted to determine, we've looked at this house and we don't believe it is capable of being made safe with repairs, they could have said, no go, we just don't believe it can be done, I don't care how much money you put in it, I don't care how much time you take, it just can't be done, and we refuse to issue you a building permit. They could have done that?
>
> A. Mr. Hutto, that might have been the, ultimately, the mistake the City made, was not doing that from the get go, sure.

(R. p. 368, lines 8 - 17).

Instead the City chose to pursue the option that extended to the owner the choice of demolishing the structure or making repairs. The City's March 6, 2003 letter advised the Respondents of alternative actions that could be taken: (1) Secure a permit within 60 days to repair the house, or (2) Secure a permit within 60 days to demolish the house, if the house is not to be repaired. (R. p. 527). Respondents subsequently developed plans to refurbish the home and within a month applied for a Building Permit that outlined a schedule for repairs to be completed by August, 2003. Restoration work did not go as planned. Although progress was made to the exterior and the roof, the work was not finished by the end date of the permit. Work continued on the home as evidenced by checks written by the Respondents to the contractors.

On May 19, 2004, City gave Respondents an extension to July, 2004 to complete the exterior repairs. (R. p. 531). In the July 1, 2004 letter, the City acknowledges the Respondents continued work by writing, "The City of Orangeburg appreciates your clean up efforts at 2243 Middleton Street..." (R. p. 532). On August 5, 2004, City sent yet another letter establishing another deadline, "This means that you have one hundred and twenty (120) days from August 4, 2004 to have the house <u>totally</u> complete." (R. p. 533). In September, 2004, the parties met at the Middleton address to discuss the situation. At that time, City notified Respondents that the original Building Permit was being voided. Respondents were asked to obtain an architectural evaluation to apply for a new Building Permit.

On December 7, 2004, City renewed its first determination that the owner should be given the option of making repairs, and thus a new Building permit was issued with completion now due by June 1, 2005. (R. pp. 538 - 539). Work on the home continued and more checks were written by Respondents to contractors. Work was not finished by June, 2005.

On June 13, 2005, City attempted to abandon its earlier determination that repairing the home was a viable option to make it safe and instead made a declaration that it was unsafe and now incapable of repair. (R. pp. 543-544). In this letter, the City cites the very portion of the IPMC which Respondents cite requiring, "cessation of normal construction of any structure for a period of more than two years..." IPMC 110.1 (2000). City's letter to Respondents incorrectly applies the Code when City states in its June 13, 2005 letter, "Since it has been over two years that you have been working on this property, and it is still not completed, no more time can be allowed." (R. pp. 543-544). This erroneous misstatement of the provisions of the ordinance is evidence of gross negligence.

Respondents' Counsel specifically asked City's Expert about his understanding of this section of the Code:

> Q. Right. What does the word, cessation, mean?
> A. Stoppage.
> Q. Right. So, not that it's taken longer than two years, but it has been stopped for more than two years.
> A. Alright.

(R. p. 359 lines 16 - 20).

Going beyond any lay interpretation of the meaning of the ordinance's use of the phrase "cessation of normal construction", City's expert agreed that the

standard was two years after stoppage not two years after the initial issuance of the building permit.

Furthermore, in its June 13, 2005 letter to Respondents entitled "Notice of Condemnation" (R. pp. 543-544), City failed to adhere to Section 107.2 of the IMPC. City states in the letter, "no more time can be allowed". This statement is incorrect because Section 107.2 of the IPMC, provides:

> Such notice prescribed in Section 107.1 shall be in accordance with all of the following:
>
> 4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.

IPMC 107.2 (2000).

The failure to give the requisite notice is additional evidence of gross negligence.

On August 1, 2005, Respondents were issued a citation for an unsafe structure and were given a Court date of September 13, 2005. (R. p. 549). That same day, Respondents also received two conflicting letters from the City. The first stated that Respondents had failed to comply and the structure would be demolished on August 5, 2005. The second letter stated Respondents failed to comply, a Court date had been set for September 13, 2005, and demolition would take place on August 4, 2005. (R. pp. 545 & 547). These notices were particularly confusing because of conflicting dates cited, the prior relationship between the parties, and the earlier notices that had been issued. Specifically, the Respondents were told at various times City would condemn the structure <u>or</u> issue them a citation. The first of these notices came on May 19, 2004. (R. p.

531). In its letter of August 5, 2004, the City refers to enforcement action being taken. (R. pp. 533 - 534). A Summons for violations was issued on August 10, 2004. (R. p. 535). These conflicting and confusing notices, citations, and threats prevented Respondents from ascertaining the City's position regarding demolition. The Respondents were clearly confused by the mixed messages issued by City. The confusion was further compounded by the verbal statements made to Respondents by various persons employed by City.

To further complicate matters, the City did not pursue demolition on either of the dates noted in the two August 1, 2005 letters. The Respondents continued to work on the house and issued checks to its contractor for work including a check on June 30, 2005 in the amount of $3,885, a check on July 15, 2005 in the amount of $4,157.00, a check on August 1, 2005 in the amount of $5,000, and a check on August 19, 2005 in the amount of $5,000. (R. pp. 506, 507, 508 and 510). These checks total over $18,000. Respondents believed that the August 1, 2005 letters (R. pp. 545 - 546) were more of the many letters that they received from the City to speed along the completion of the work.

Furthermore, Respondents were awaiting their day in Court on the citation which was scheduled September 13, 2005 to determine the matters at hand. The City had, on the same day it had issued letters about the demolition, given Respondents a court date in September. The passing of August 4, 2005 and August 5, 2005 without any demolition occurring only confirmed to Respondents that the August 1, 2005 letters were just more threatening letters. The citation clearly notified Respondents that they could present their argument in Court on September 13, 2005. However, the demolition occurred before the court date

given by City. On August 25, 2005, a date not noted in any correspondences by the City, the City demolished the structure.

After numerous threats with no action on the part of the City, the Respondents were so confused that there was no possible way to determine how to react to City's inconsistent letters. Because work had not ceased for a period greater than two years, the City lacked the authority to demolish the structure.

City's improper and erroneous August 1, 2005 letter to Respondents failed to adhere to provisions of the IPMC. City's attempt to contort the language of the ordinance to change the standard to two years of the date of onset of construction amounts to gross negligence. City's failure to use due care necessary under the circumstances when applying the clear language of its Code was submitted to the jury as evidence of gross negligence, which the jury properly used as the basis of its verdict.

In his instructions to the jury, the Court charged gross negligence as follows:

> Gross negligence is a relative term meaning the absence of care that is necessary under the circumstances. Gross negligence essentially involves an intentional conscious failure to do something which it is incumbent upon one to do, or the doing of a thing intentionally that one ought not to do. This degree of negligence denotes the failure to exercise even a slight degree of care. Conversely, there is no gross negligence where slight care is exercised. Gross negligence is the failure to exercise a slight degree of care. A person who is so indifferent to the consequences of his conduct as not to give a slight care as to what he is doing acts with gross negligence.

(R. p. 453 line 19 -p 454 line 5)

City's Counsel did not object to this charge and the question of gross negligence was appropriately submitted to the jury. Because there had not been a

cessation of normal construction for a period of more than two years after repair work was undertaken as required by Section 110.1 of the IPMC, and the City intentionally demolished the structure when it clearly ought not have done so under its own guidelines, the City acted with gross negligence as charged by the Court, and the verdict should be upheld.

b. Respondents presented ample evidence to refute City's claim of defenses of waiver and estoppel.

The City claims that the Respondents waived the right to appeal the City's decision and were thereby estopped from pursuing a remedy in this Court. However, the Respondents did not appeal the decision because they chose to take the option initially offered by the City. In the March 6, 2003 letter to the Respondents, the City indicated that if the house was to be repaired, a building permit must be secured within 60 days, or in the alternative if the house was not to be repaired, that a demolition permit must be secured within 60 days. (R. pp. 526 - 527). This letter further notes at the bottom,

> "Any person having any legal interest in the property may appeal the notice by the Building Official to the Construction Board of Appeals. Such appeal shall be in writing in the form specified in Section 11 of the International Property Maintenance Code and shall be filed with the Building Official within 20 days from the date of the notice."
> (R. pp. 526 - 527).

In 2004, the Respondents did not appeal the Building Official's decision because they accepted the option to repair the structure. The Respondents, complying with the mandates of the letter from the Building Official, secured a building permit within a month. The obtaining of the building permit manifested Respondents' decision to exercise their option to repair the structure. The

Respondents then began repair work on the structure. It is Respondents' position that had they not agreed in 2004 with the decision of the City to allow repairs, then Respondents would be required to appeal within the time allotted. For instance, had the City from the start condemned the building and indicated that no repairs could be made to bring the building up to Code and not given the owners the option to repair, then the owners could have appealed asserting that the building could be repaired to the requirements of the Code. In the case at hand, the Respondents agreed with the Official's decision, relied on it, and undertook the work to repair the structure to comply with the Code.

In its brief, City argues that the subsequent June 13, 2005 letter including the same clause referenced above (and included at the bottom of the March 6, 2003 letter) requiring an appeal within 20 days amounts to waiver and estoppel on the part of the Respondents for failing to appeal that decision. Respondents disagree. Because the June 13, 2005 letter incorrectly states the law as it applies to the IPMC when it states, "Since it has been over two years that you have been working on this property, and it is still not completed, no more time can be allowed." (R. pp. 543 - 544), City had no authority to attempt to go back and revoke the option earlier extended to Respondents. Respondents had accepted and relied on the initial decision of the City.

Because the City lacked the authority to order demolition of the structure at the time of the June, 2005 letter, the City had no authority to ignore the provisions of Sections 110.1 and 107.2 of the IPMC. Because of the City's mistaken interpretation and attempt to avoid the notice provisions of the IPMC, the notice of appeal is inapplicable and waiver and estoppel do not apply.

As indicated in City's brief, "Waiver is a voluntary and intentional abandonment or relinquishment of a known right." Stated differently, waiver requires a party to have known of a right and know he was abandoning that right. Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do." Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009); (Appellant Brief, p. 17). For the Respondents to have voluntarily waived a right, they must have known that a right existed. When the opposing party does not have the authority to assert a right, as is the case here, the Respondents could not have possibly had a duty to appeal. Guided by the IPMC, the controlling document asserted by the City, the Respondents believed that normal construction must cease for a period of more than two years for the City to have a right to demolish. Because the Respondents had not ceased construction for more than two years, the City had no right to now demolish the structure. Therefore, the Respondents could not be aware of any right existing, which they could have waived. In summation, how could the Respondents assert a right when the City had no right to demolish at this time?

In his instructions to the jury, the Court charged waiver and estoppels as follows:

> Waiver is a voluntary and intentional abandonment or relinquishment of a known right. Stated differently, waiver requires a party to have known of a right and known he was abandoning that right.
> Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do.

(R. p. 453 lines 8 - 14).

City's Counsel did not take exception to these instructions to the jury, and the Court appropriately submitted the question to the jury. The jury found that no evidence exists by which the Respondents waived a known right and should have been estopped from pleading to this Court. Because there was ample evidence presented at trial that the Respondents did not waive a known right and that Respondents should not be estopped from pleading their case, the trial court correctly submitted the question to the jury, which found that there had been no waiver and thus estoppel should not apply.

III. The Trial Court appropriately denied City's Motions for directed verdict/JNOV because Section 12 of the South Carolina Tort Claims Act, 15-78-60, is co-equal to Sections 2, 4 and 23 of the same, and thus Section 12 should be applied to avoid futility.

South Carolina Courts have consistently held that, "Court must presume that legislature intended by its action to accomplish something and not to do a futile thing." State ex rel. Mcleod v. Montgomery, 244 S.C. 308, 308, 136 S.E.2d 778, 778 (1964). "When construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 36, 659 S.E.2d 125, 125, (2008).

Respondents assert that the City's wrongful attempt to revoke the building permit was not allowed by its own ordinance, and the City should be held liable for gross negligence under the South Carolina Tort Claims Act. Subsection 12 of Section 15-78-60 of the Tort Claims Act is applicable in this case, and reads as follows:

> The governmental entity is not liable for a loss resulting from:
>
> (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or a failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration or, or similar authority except when the power or function is exercised in a grossly negligent manner.

Section 15-78-60, S.C. Code Ann. (1986).

Conversely, the governmental entity may be liable for the revocation or failure to renew a permit if done so in a grossly negligent manner. That was the issue properly submitted to the jury in this case.

The City attempts to invoke the exceptions enumerated in subsections 2, 4, and 23, but invoking these exceptions would render subsection 12 futile. City asserts that it should be immune to liability for the loss resulting from enforcement of an administrative action, loss resulting from failure to enforce an ordinance, or the loss resulting from institution or prosecution of any judicial or administrative proceeding under subsections 2, 4, and 23 of Section 15-78-60 of the Tort Claims Act, respectively; these were not theories pursued by Respondents at trial. However, the clarity of the statutory language in subsection 12, applied to the City's attempt to revoke and/or renew the Respondents' building permit when reasonable under the circumstances as enumerated in Section 107.2 of the IPMC, subjects the City to damages for gross negligence if the same is proven to the satisfaction of the jury.

Where a statute contains terms which are clear and unambiguous, "there is no room for construction and courts are required to apply them according to their literal meaning." Citizens for Lee County, Inc. v. Lee County, 308 S.C. 23, 28, 416 S.E.2d 641, 644 (1992).

Because the City's action in either wrongfully revoking or failing to renew the Respondents' building permit clearly falls within the plain language of subsection 12 of the Tort Claims Act, the City should be subject to liability for gross negligence.

IV. The Trial Court erred in issuing two distinct damages rewards.

In light of the recent May, 2012 Court of Appeals decision in Carolina Convenience Stores, Inc. v. City of Spartanburg, 398 S.C. 27, 727 S.E.2d 028, (Ct. App. 2012), it appears that Respondents would not be able to establish a "public use" as required according to the recent case law. Accordingly, Respondents hereby abandon judgment on the inverse condemnation cause of action in the amount of $85,000.

As to the damages for the negligence cause of action, the jury appropriately found for the Respondents in the amount of $165,000.00.

The jury was instructed on actual damages as follows:

> Actual damages are to compensate the plaintiff for the plaintiff's injuries or loss, and to put the plaintiff as near as possible in the same position that the plaintiff was in before the incident occurred. In other words, actual damages would be the actual losses and expenses which the plaintiff has suffered because of the defendant's negligence.

(R . p. 454 lines 8 - 14).

Counsel was notified of the intended charge as to actual damages and no exception was taken by City's Counsel, so the Court charged expenses. To put the Respondents as near as possible in the same position before the incident occurred would require the Respondents be reimbursed for amounts spent trying to bring the structure into compliance with the Code. This amount would properly include all expenses associated with the same.

CONCLUSION

The Trial Court properly submitted the question of gross negligence to the jury, and Respondents ask this Court to affirm the jury's verdict of $165,000.00 based on the jury's finding that Respondents proved gross negligence as allowed by the Tort Claims act. The City's failure to renew the building permit as required by Section 107.2 of the IPMC subjected the City to liability for gross negligence. City failed to follow its own Code, the IPMC, specifically Section 110.1, which required a cessation of normal construction for period greater than two years in order to demolish a structure once the option to repair has been given to the property owners. City's actions amount to gross negligence for intentionally demolishing a structure which it ought not to have demolished. Additionally, the City's attempt to revoke or failure to renew the building permit was grossly negligent in that it was incumbent upon the City adhere to its own duly enacted ordinances.

With respect to the City's alleged defenses of waiver and estoppel, the Respondents did not waive its right to appeal the Building Official's decision because they accepted the decision that the house could be repaired and accepted the option to do so. Pursuant to the Building Official's March, 2003 decision, Respondents obtained a building permit within one month. Because of Respondents' acceptance of the option to repair the structure, the City lacked the authority under the IPMC to retroactively declare that the house was unable to be repaired after it previously determined that the house was repairable. Normal construction for repairs had not ceased for a period greater than two years. The

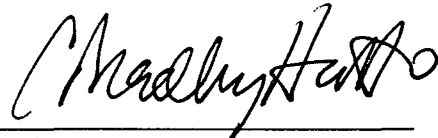
Respondents could not have waived a known right when the City lacked the right to issue the June 13, 2005 decision in the first place.

The Trial Court properly denied City immunity under exception 2, 4, and 23 of the Section 15-78-60 of the Tort Claims Act because it is clear that City's failure to renew the Respondents' building permit falls squarely within the plain language of S. C. Code 15-78-60-(12) of the Tort Claims Act which provides liability for gross negligence for governmental entities failing to issue or renew permits or licenses and its wrongful attempt to revoke the existing building permit.

In light of the May, 2012 Court of Appeals decision in Carolina Convenience Stores, Inc. v. City of Spartanburg, 398 S.C. 27, 727 S.E.2d 208 (Ct. App. 2012), Respondents concede that they would not be able to establish a "public use" as required under recent case law. Accordingly, Respondents hereby abandon the judgment on the inverse condemnation cause of action in the amount of $65,000.

The actual damages for gross negligence are to put the Respondents as near as possible in the same position that they were in before the incident occurred. Actual damages would properly include the actual losses and expenses which the Respondents suffered because of the City's negligence as charged by the Trial Court without exception by the Appellant's Counsel. To put the Respondents as near as possible in the same position they were in before the incident occurred would require the Respondents be reimbursed for all amounts spent trying to bring the structure into compliance with the Code, and this amount would properly include all expenses associated with the same.

Respondents respectfully ask this Court to uphold the denial of City's motions for directed verdict and to affirm the jury verdict of $165.000 based on jury's finding that Respondents proved gross negligence by the City under the Tort Claims Act.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2007-CP-38-938

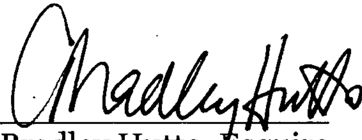
Ajoy Chakrabarti and Sukla Chakrabarti, ... Respondents

v.

City of Orangeburg, ... Appellant,

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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