ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-23-2255

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of all others similarly situated. . . . . Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc., Defendants,

Of Whom City of Greenville and Mayor Knox White are the. . . . . Respondents/Appellants.

RESPONDENTS' FINAL BRIEF OF THE RESPONDENTS/APPELLANTS

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STATEMENT OF THE CASE

Respondents/Appellants ("City") object to the Statement of the Case section of the Appellants/Respondents' ("Sloan") brief and Sloan's characterization of the findings of the Court.

There was never any finding by the Court of any purpresture or trespass. Furthermore, there was no finding by the Court, based on any evidence Sloan submitted, that there was a purpresture or trespass of any specific acreage. Sloan's Statement of the Case fails to cite any such finding in the transcripts or Court Orders because such findings do not exist.

There was never any finding by the Court of any "continuing" purpresture or trespass. Further, there was no finding by the Court, based on any evidence Sloan submitted, that there was a continuing purpresture or trespass of any specific acreage. Sloan's Statement of the Case fails to cite any such findings in the transcripts or Court Orders because such findings do not exist.

There was never any finding by the Court that the City had "constructive" notice or any other notice of the purpresture or trespass for eight years. Additionally, Sloan offered no evidence that the City had "constructive" notice or any other notice of the purpresture or trespass for eight years. Sloan's Statement of the Case fails to cite any such findings in the transcripts or Court Orders because such findings and evidence does not exist.

There was never any finding by the Court that the plats or the survey report, provided by Sloan, proved that there was any purpresture or trespass of a specific size or that a specific boundary line should be used. Sloan's Statement of the Case fails to cite

any such findings in the transcripts or orders because such findings and evidence does not exist.

There was never any finding by the Court that, in response to Sloan's Motion to Amend, the City recorded a boundary line agreement to end a purpresture of 3.2 acres. Further, there was no finding by the Court, based on any evidence Sloan submitted, that that was the case. Sloan's Statement of the Case fails to cite any such findings in the transcripts Court Orders because such findings do not exist.

Therefore, the following Statement of the Case should be used:

On March 24, 2008, the South Carolina Public Interest Foundation, Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of others similarly situated (hereinafter, referred to as "Sloan") brought this action for an injunction requiring the City of Greenville (hereinafter, referred to as "City") to end an encroachment by a private entity on City owned land. In May of 2008, Sloan filed a motion for judgment on the pleadings pursuant to Rule 12(C) of the South Carolina Rules of Civil Procedure. In September of 2008, the City and the other Defendant in the case, who is not involved in this appeal, moved respectively for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. On October 2, 2008, a hearing upon these motions was held, at which time the Court granted the Defendants' motions for summary judgment and denied Sloan's motion for judgment on the pleadings. [Prior to the October 2, 2008 hearing, but after the Defendants moved for summary judgment, Sloan filed a motion to supplement the complaint pursuant to Rule 15(d). With the Defendants' consent, the complaint was

amended. Therefore, the Court's order of judgment against the Sloan was based upon the First Amended Complaint.]

On October 28, 2008 the Sloan filed motions to alter or amend the judgment and to again, supplement the complaint. The Defendants opposed these motions. A hearing on the matter was held December 17, 2008. Sloan attached a revised complaint to his motion for leave to supplement. This pleading was captioned as the Second Amended Complaint. However, immediately prior to the hearing on December 17, 2008, Sloan submitted a Third Amended Complaint for the Court's consideration. The Third Amended Complaint formed the basis of the Court's decision of December 17, 2008. After due consideration, the Court declined to alter its previous order granting summary judgment and issued an Opinion and Order on January 22, 2009. On August 11, 2011, the Parties entered into a Consent Order dismissing this action on the grounds of mootness.

Sloan moved for attorneys' fees. A hearing was held on October 26, 2011 to determine the issue of attorneys' fees. The Order granting partial attorneys' fees and costs was issued on November 23, 2011.

On March 7, 2012, Sloan filed a motion to alter or amend pursuant to Rule 56(e) to request additional attorneys' fees. On March 12, 2012, City filed a motion to alter or amend pursuant to Rule 56 (e) to deny all attorneys' fees. Orders denying these motions were made on March 14, 2012.

On May 23, 2012, Sloan served the Notice of Appeal on the City. On June 8, 2012, the City served the Notice of Appeal on Sloan.

STATEMENT OF FACTS

Respondents/Appellants ("City") object to the Statement of Facts section of the Appellants/Respondents' ("Sloan") brief and Sloan's characterization of the facts to the Court.

There was never any finding by the Court that there was a purpresture of 3.2 acres. Furthermore, there was never an agreement between the City and Cliffs that stated there was a purpresture of 3.2 acres. The 3.2 acre purpresture referred to in Sloan's Brief comes solely from Sloan, who needed to prove, but didn't, that this 3.2 acre purpresture existed, to justify pursuing litigation and asking for attorney fees.

There was never any "authorization" by the Court that the Sloan could have the property surveyed. The Transcript of the October 2, 2008 hearing states that the Court found no encroachment but that "if you [Sloan] want to go do a survey, then you are free to do that". (R. p. 281, lines 5-10).

Therefore, the following statement of the facts should be used:

This started as a lawsuit involving the location of a common boundary line between the City of Greenville (City) and the Cliffs, a private residential community located along the western boundary of the City's North Saluda water reservoir, land owned by the City but managed by the Greenville Water System (the Greenville Commission of Public Works, a governmental entity with its own elected officials). At some point in time, there was a roadway constructed by the Cliffs for the use of its residents which allegedly encroached upon City property. The surveyor for the Cliffs determined that there was an encroachment of approximately 0.29 acres onto City property. The Cliffs first approached the Water System about this encroachment. The City, according to the affidavit of the City Attorney, much later learned of this matter

when the Water System submitted a proposed settlement agreement to the City for signature. (R. p. 188, ¶ 2) At the same time, it was determined that there was an encroachment of a fire tower owned by the Greenville Water System onto the property of the Cliffs'. Sloan filed this lawsuit on April 24, 2008 based on purpresture. Sloan demanded that the Cliffs remove their road encroachment from City property.

However, after long negotiations and at about the same time that this action was commenced, the City and the Cliffs (as well as the other parties involved) came to the following agreement: (1) that the Corbin Mountain Line would serve as the boundary line to determine that there was indeed encroachments and the extent of said encroachments; (2) that the 0.29 acres which encroached upon City property would be quitclaimed to the Cliffs; (3) that the 0.04 acres which encroached upon the Cliffs' property would be quitclaimed to the City; (4) that the Cliffs would reconstruct a fire tower on City property; (5) that the Cliffs would pay the City (and the Greenville Water System and the Nature Conservancy, who held a conservation easement on the water reservoir) a certain amount in cash; the value of the consideration paid by the Cliffs to the City and related parties totaled $210,166.44; (6) that the City and the Cliffs would enter into a boundary line agreement to resolve this issue and would to act in good faith in the future; and (7) to use the settlement money for the sole purpose of protecting the reservoir property.

On April 14, 2008, approximately two weeks after Sloan filed his complaint, Greenville City Council (City Council) had first reading on an ordinance that settled the issues with the Cliffs. On April 28, 2008, approximately thirty (30) days after Sloan filed his complaint, City Council had second and final reading on this ordinance that authorized the above referenced agreement. (R. pp. 92-94) Through this ordinance, the

City was to "convey its interest in fee simple to approximately 0.29 acre[s] of real property on Mountain Summit Road, a private road, to the Cliffs at Glassy, Inc." (*Id.* § 2.) "The title conveyance by The City to the Cliffs at Glassy, Inc., [was to] be in consideration of a payment from [T]he Cliff's at Glassy, Inc. . . ." (*Id.* § 3.) The City and the Cliffs were to "execute mutual releases of claims against one another and mutual acknowledgement of the boundary separating the properties respectively titled in their names." (*Id.* § 5.) "The identification of the locations of these property transfers and recognition of the mutual boundary [were to] be based upon the same plats and legal descriptions as have been agreed to . . ." (*Id.* § 7.) Finally, "[t]he City Manager [was] authorized to approve and execute such deeds, acceptances, and agreements as are herein provided for . . . upon receipt of the payment described in Section 3." (*Id.* § 7.) The ordinance set no time lines for the completion of these items nor was there any statutory obligation to do so. On June 19, 2008, the City executed a deed for 0.29 acres in favor of the Cliffs and on June 24, 2008 the deed was duly recorded. On February 13, 2009, the City and the Cliffs executed a boundary line agreement and on February 16, 2009, the agreement was duly recorded. Both of these documents were provided for in the above referenced settlement ordinance. All parties to the settlement agreement were satisfied with the settlement and this time frame and no evidence was submitted by Sloan to show otherwise. The roadway remained on the property, now owned by the Cliffs.

The Agreement between the Cliffs and the City that was embodied in the above referenced ordinance was a complex agreement which was negotiated over an extended amount of time (R. p. 188, ¶¶ 3, 4), said period of time started well before the filing of the lawsuit. Further, there was evidence that the process to bring this matter to City

Council for resolution was initiated prior to the filing of the lawsuit by Sloan (R. p. 189, ¶ 7).

Sloan, however, proceeded with his litigation against the City. At the October 2, 2008 hearing, Sloan argued that there was a purpresture but admitted that since the property was transferred, there is no longer a trespass. (R. p. 256, lines 18-22) Sloan then argued that the conveyance was unconstitutional and/or there was a technical violation (R. p. 264, lines 7-8) and that therefore, there was still a trespass. After the trial, the Judge ruled that the purpresture issue was moot. (R. p. 274, lines 3-4) Sloan then argued that due to an analysis of old surveys, there may be a continuing purpresture. He argued that he had asked for a survey and a fence so that the City could establish where the [property] line was (R. p. 276, lines 15-21). The Court ruled against Sloan saying that he "could not require the City to go out and spend public funds to do a survey when they [the City] claim that there's no encroachment." (R. p. 279, lines 19-22) The Court further stated that if Sloan wanted to do a survey to show some encroachment, then he was free to do so at his [Sloan's] expense. (R. p. 281, lines 9-14)

On December 17, 2008, Sloan again proceeded with further litigation against the City with a 59(e) motion. At that hearing, Sloan stated that the only additional cause of action against the City was that the City has failed to protect the City's property against encroachment and purpresture both by road, by lots and by paved spur off of the other road. The City's position was that the ordinance (R. pp. 92-94) resolved the [property] dispute with finality when the ordinance was passed on April 28, 2008 within weeks of the initial filing of the original Sloan complaint. The Court found that there was a dispute about the location of the property line, that the dispute had been resolved and that the

ordinance set forth the agreement between the parties concerning the property line location. Sloan went on to argue that he, representing the interests of the taxpayers and residents of the City of Greenville, believed that the purpresture is bigger than that [.29 acres] and that "[you can't] shove this thing under the rug by conveying .29 acres when the real encroachment is three acres." (R. p. 326, lines 14-20) However, no sealed surveys were placed into evidence to support that claim. The Court stated that Mr. Sloan did in fact purport to represent the interest of city taxpayers. The Court went on to state, "But Mr. Sloan is not the only person who represents the interest of the city taxpayers. In the first place, it is the City Council that represents those interests." (R. p. 328, lines 4-8) The Court went on to state that the City Council did exactly what [Sloan] said they did not do, that is, they addressed the encroachment. (R. p. 328, lines 13-29) City Council did that on April 28, 2008. The Court further stated, "Now you [Sloan] say the City did not do that the way I wanted them to do it. They did not do it correctly. They did not do it the way I would have done it. This is a good example of where courts have to draw the line between their roles as courts and the role of executive and legislative entities such as city council." (R. p. 328, lines 20-25 and R. p. 329, line 1) Finally the Court stated, "Getting $100,000 for this piece of property seems to me to be an unquestionably reasonable action taken by an executive and legislative entity." (R. p. 329, lines 17-21) Again, let it be noted that this was done by the Ordinance that was passed just weeks after the filing of the complaint and was based on negotiations that started long before the filing of the complaint. (R. p. 188-189).

At the third hearing (October 26, 2011) that Sloan initiated against the City, Sloan requested attorney's fees. At that hearing, Sloan said that he filed in March and that the

City "cut a deal" with the Cliffs to convey the property in April. (R. p. 340, lines 9-10). He nevertheless asked for attorney fees for fees and expenses that he incurred after the City passed the ordinance on April 28, 2008 settling the matter. The Court awarded fees through June 24, 2008, the date of filing the deed and the payment for the transfer of .29 acres.

ARGUMENTS

I. THE APPELLANTS/RESPONDENTS' BRIEF FAILS TO DEMONSTRATE THAT APPELLANTS/RESPONDENTS ARE ENTITLED TO ATTORNEY FEES.

Sloan's rationale for prevailing relies on the unproven assertion that his lawsuit dated March 24, 2008 "pushed the City to divest its land and end the Cliffs' encroachment and purpresture" (Appellants' Final Brief of Appellants/Respondents, p. 10). Mr. McKinney, City Attorney, stated that the settlement with the Cliffs started long prior to the filing of the lawsuit (R. p. 189, ¶ 7). Sloan's financial expenditures focused on establishing the existence of the "real' boundary line between the City and the Cliffs. The City's settlement with the Cliffs was far more complicated than anything that Sloan was focusing on. It was passed by City Council by second and final reading of the ordinance authorizing a settlement with the Cliffs about thirty days after the filing of the lawsuit by Sloan. Ordinances take two readings to pass. The first reading was on April 14, 2008, approximately two weeks after the lawsuit was filed by Sloan. The City's settlement came only after the City investigated the claim of an encroachment. (R. p. 188, ¶ 3, 4). It is important to note that there were many parties involved in the settlement and before anything could go to City Council for a public vote, all of the following parties needed to be in agreement: the Greenville Water System with its three

elected members, Nature Conservancy with its Board of Directors and its fiduciary duties under a conservation easement, Jim Anthony and the Cliffs, and the seven members of City Council. In addition, the concerned citizens and environmentalists who had been working with the City needed to be satisfied. (R. p. 188, ¶ 4) What did all these parties need to be in agreement about? Sloan's sole focus was on proving the existence of a specific property boundary line to show an encroachment of a specific size. The parties listed above concentrated their efforts in determining the best solution to deal with a road encroachment. The final settlement was based on the following issues and negotiations: confusing and old boundary lines in very steep terrain, the environmental impact of removing the road in an area covered by a conservation easement, a monetary settlement if the road was to remain and the determination of that value. It is important to note that Sloan never once participated in these discussions by coming to Council (as did other citizens) nor did he ever suggest a settlement. It is entirely reasonable for this Court to find that Sloan's lawsuit did not result in this settlement. Rather, due to the number of parties and the complexity of the settlement, it would be reasonable to find that the settlement was already agreed to and just undergoing the formality of finalization at the time Sloan chose to file a lawsuit. Further, it would be reasonable to conclude that all the parties involved, including the citizens of Greenville, were pleased with the settlement as enacted by the ordinance and saw no need for any further discussion.

The settlement in all its complexity as passed by ordinance was not changed in any way by any of Sloan's subsequent litigation or his expenditures of funds for attorney fees and the cost of examining old surveys. Certain documents were filed later in accordance with the settlement ordinance but everything was provided for in that

ordinance, including the transfer of property and a boundary line agreement. The ordinance set no time lines for the completion of these items nor was there any statutory obligation to do so. On June 19, 2008, the City executed a deed for 0.29 acres in favor of the Cliffs and on June 24, 2008 the deed was duly recorded. On February 13, 2009, the City and the Cliffs executed a boundary line agreement and on February 16, 2009, the agreement was duly recorded. Both of these documents were provided for in the above referenced settlement ordinance. All parties to the settlement agreement were satisfied with this time frame and no evidence was submitted to show otherwise. Sloan never raised the issue in any of the three hearings that any of the parties involved in this settlement, including any citizen, was unhappy with the settlement or the time it was taking to finalize the documents. Indeed, it appears he was the only one unhappy. It would be reasonable for this Court to find that the City (and the other parties) would have done those things as outlined in the Ordinance without the necessity of Sloan pursuing litigation and expending money.

The cases Sloan cites deal with very different situations than we have here. First, *Havre* (*Harve Daily News, LLC v. City of Havre*, 333 Mont. 331,351,142P.3d 878 (2006)) and *Hunley* (*Sloan v. Friends of the Hunley*, 369 S.C. 20, 29, 630 S.E.2d 474, 479 (2005)) are FOIA cases where the governmental entities resisted their duty to provide information as required under those laws and only when a trial date was set, did they changed their position, that is, the position not to give the information requested. In those cases, the governmental entities clearly did not want to go into court and made the decision to release the requested information literally at the courthouse steps to intentionally moot out the issue. Here, Sloan filed suit with what at best was a just

another way for the City to deal with an alleged encroachment. Sloan never argues that the City had a duty to establish a boundary line or even a duty to rid itself of an encroachment within a set period of time because no duty exists. The City completed its settlement of the matter which it had been working on long before Sloan brought the lawsuit. Sloan made no effort to bring this matter to the City's attention at any time prior to the filing of a lawsuit. The ordinance containing the settlement had first reading a mere two weeks after Sloan filed his lawsuit. The settlement was not what Sloan wanted and he persisted with the lawsuit and litigation. However, the City did not change its settlement agreement and none of the parties involved requested the City change the settlement. Eventually all the papers and documents were signed and certain documents– the deed and the boundary line agreement-were recorded as required by the settlement agreement ordinance. There was no time requirement or deadline for wrapping up the settlement either by statue or by the terms of the ordinance. Sloan has not proved that the City did anything it would not have done but for the Sloan lawsuit.

Sloan has failed to prove any of the three elements for attorney fees and costs as required by S.C. Code Ann. Section 15-77-300.

Sloan was not the prevailing party. Our Supreme Court has defined a "prevailing party" as "one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered. *Crenshaw's TV & Radio Service, Inc., v. Jocassee Partners Holdings, LLC*, 111412 SCCA, 2012-UP-610, *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 618, 635 S.E.2d 922, 925 (Ct. App. 2006) (quoting *Heath v. County of Aiken,* 302

S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990). This definition was modified by *Sloan v. Friends of the Hunley*, 393 S.C 152, 711 S.E.2d 895 (S.C. 2011).

In order to prevail, Sloan must prove that his actions propelled the City into the action that he wanted. He has failed to do so on two accounts. First, Sloan must prove that his actions were the reason that the City took action. He has failed to do that. The affidavit from the City Attorney, Ron McKinney, clearly states that the City was well on its way to resolving the issue by the time that Sloan filed his lawsuit. It clearly states that the negotiations were difficult and long (R. pp. 188-189). It was argued at trial that at the same time that these negotiations for a settlement between the City and the Cliffs were coming to a head, at the same time that City Council was being briefed, and at the same time that the items [ordinance] was being prepared for the agenda, Sloan filed his lawsuit. (R. p. 354, lines 12-16) Sloan presented no evidence to the contrary. At best, he had coincidental timing, but coincidence is not the same as proving that his actions caused City Council action. It is far more likely that this matter would have been resolved without the need of a lawsuit by Sloan and he has failed to prove otherwise. Secondly, Sloan should not be allowed to say that he prevailed when he failed to prove that City Council did what he wanted City Council to do and when the record clearly states that City Council did not. The Trial Court stated the following: "Now you [Sloan] say the City did not do that the way I [Sloan] wanted them to do it. They did not do it correctly. They did not do it the way I would have done it." (R. p. 328, lines 20-22) Sloan did not get the result he wanted and he did not get that result from City Council on April 14, 2008, from City Council on April 28, 2008, from the Court at the October 2, 2008 hearing, or from the Court at the December 17, 2008 hearing. Independently from Sloan's

lawsuit, the City was involved in a complex negotiation involving four entities (Greenville City Council, the Greenville Water System, the Cliffs and the Nature Conservancy) and concerned citizens who chose to work with the City instead of suing the City. The negotiations focused on a monetary settlement and transfer of property because information received from the Nature Conservancy indicated that "taking up" the road as constructed would be a far more adverse environmental impact than allowing it to remain. (R. pp. 188-189, ¶ 6) His lawsuit and subsequent litigation had no impact on the action of City Council as outlined in the ordinance that was passed.

Recently, this Court in *Crenshaw's, supra* reviewed a situation where a party refused to accept the tendered full amount of a mechanic's lien and then asked for attorney fees for the ensuing litigation in which the party received that same tendered amount. The Court found that the party was not entitled to attorney fees. The City settled the property dispute with the Cliffs on April 28, 2008. Sloan refused to recognize that settlement. At the end of all the litigation pursued by Sloan, the existing settlement with the Cliffs is the exact same as the settlement on April 28, 2008. All of Sloan's persistence in litigating was for naught. Sloan lost the case for any modification of the settlement ordinance and failed to prove that the City needed to comply with some time frame for the filing of settlement documents. Clearly under the reasoning of *Crenshaw's*, Sloan has not prevailed. In fact, under *Crenshaw's*, the City is the prevailing party.

Sloan has also failed to prove the second element of the three elements to claim attorney's fees, that is, that the government entity must have acted without substantial justification. Sloan cites *Video Gamimg Consultants, Inc. v. South Carolina Dept. of Revenue*, 358 S. C. 647, 595 S.E. 2d 890 (Ct. App. 2004). That case involved the issue of

whether the Department of Revenue was justified in continuing its prosecution of a video poker company in light of a ruling by an administrative law judge. The question this case raises is not whether the City was justified, as there were no rulings against it, but whether Sloan was justified to continue to litigate and expend money when there was in place a settlement agreement approved by multiple parties and the Court ruled against him.

The City was justified in defending its own remedy for the encroachment, especially since it involved the consent of all the other parties, including the concerned citizens who worked with the City on this matter. This complex remedy involved: 1) Due diligence to determine the impact of the encroachment on land covered by a conservation easement (R. p. 188-189, ¶ 6); 2) Research to determine the property line, the location of which was on a mountain side and depended on outdated descriptions (R. p. 188, ¶¶ 2, 3); 3) Negotiation with both developer and Council to determine a value for that encroachment (R. p. 189, ¶ 7); and 4) Time to carefully craft the ordinance to present for public vote by City Council so that the document summarizes the settlement and gives finality to that property line (R. p. 92). Ultimately, it is the responsibility of City Council to determine what is in the best interest of the citizens of Greenville. The Trial Court agreed that the City Council did exactly that. There is no legal requirement that City Council do so within a set period of time, or that the ordinance needed time deadlines for filing referred documents or that Sloan must personally be satisfied with the settlement.

It is also important to note that in this matter, it was not the City that prolonged the dispute after the filing of the lawsuit, and it was not the City that persisted in

litigation. First, the City had to defend itself against the charge that the ordinance and land transfer were illegal (City prevailed). Then Sloan amended his complaint and tried a different tactic. The City found itself in court again, defending its settlement of the boundary line agreement because Sloan felt, but could not prove, that the parties were wrong in their settlement of a certain boundary line between them. In the end, the settlement agreement as originally passed, stands. The City intended and the Court concurred, that the matter was settled on April 28, 2008. It was Sloan who persisted in litigation to achieve a different result. If anyone acted without substantial justification, it was Sloan. If this Court believes that the March 2008 filing of a lawsuit propelled the City into action, then the ordinance enacted a few weeks later clearly was a rapid response to the request of a citizen to stop an encroachment. But it was Sloan who persisted with litigation: not because the City Council did not act but because the City Council did not do what Sloan wanted it to do (R. p. 328, lines 20-22).

Finally, Sloan has failed to prove the third element of the three elements to claim attorney's fees; that is, there are no special circumstances that would have made the award of attorney's fees unjust. The cases Sloan cites are not applicable to this situation. *Shillito v. City of Spartanburg*, 214 S.C. 11, 26, 51 S.E. 2nd 95 (1948), quoting *Fox v. Lantrip*, 169 Ky. 759, 185 S.W. 136, 139. In those cases, the lawsuits from individuals resulted in protecting the taxpayers from unauthorized and unlawful appropriations of public funds. Sloan did not prove one benefit to the taxpayers with his lawsuit. Indeed, it could be argued that Sloan's two year fight against a $100,000 settlement for land that was all but worthless was detrimental to the public welfare and the public purse.

There are many circumstances and facts that make the awarding of attorney's fees unjust. There was the statement from the Court at the October 2, 2008 hearing after Sloan asked the Court to make the City survey the property. The Court told Sloan that if he wanted the property surveyed, it would be Sloan who would bear the costs for the survey. (R. p. 280, lines 3-6) Sloan went ahead and paid for a survey. The survey was never submitted as evidence and had no impact on the final decision of the Court or any settlement with the Cliffs. The City should not be responsible for that expense. Sloan contends that the settlement for $100,000 for the encroachment (presumably Sloan's attorney fees would come from those funds) was somehow due to his lawsuit. Yet he persisted in litigation to overturn the conveyance and the compensation (R. p. 263, lines 1-14). It would be unjust to award Sloan fees and expenses from money Sloan litigated against. Further, Sloan purports to act in the public interest to protect the boundaries of the watershed and yet seeks to deplete the fund designated to be spent for the sole purpose of protecting the watershed property. (R. p. 93, Section 4) Finally, there is no evidence in the record that Sloan made any effort to determine what if anything the City was doing in regard to this matter before he filed his lawsuit (R. p. 189, ¶ 8). It is somewhat ironic that he did not even file an FOIA.

II. THE APPELLANTS/RESPONDENTS' BRIEF FAILS TO DEMONSTRATE THAT THE JUNE 24, 2008 CUTOFF FOR PAYMENT OF APPELLANTS/RESPONDENTS' ATTORNEYS' FEES WAS AN ABUSE OF DISCRETION.

Without conceding that there is no justification for the award of any attorney fees or costs in this matter, the City would argue that it would be within the discretion of the Court to determine the point of time in which Sloan met the three criteria for attorney fees and to use that time to calculate his expenditures. The trial judge found that Sloan did not prevail in his insistence on overturning the transfer of property and in his insistence on determining what the boundary line was between the City and the Cliffs. The Judge who heard the motion for attorney fees found that Sloan only prevailed to the point of the recording of the deed, a deed he argued against in the first hearing. The City would argue that the recording of the deed and the boundary line were provided for in the Ordinance which had first reading two weeks after the Sloan lawsuit was filed and was provided for in the settlement agreement with was arguably reached prior to the lawsuit.) Indeed the case that Sloan cites, *Layman v. State*, 376 S.C. 434, 445, 658 S.E. 2d 320, 326 (2008) would better stand for the denial of any attorney fees due to the fact that it relies on the substance and outcome of the matter litigated as relevant to the justification in pressing a claim. In this case, the final result was the Sloan lawsuit had no effect on the terms of the settlement and imposed no duty or timeframe for City Council action.

III. THE APPELLANTS/RESPONDENTS' BRIEF FAILS TO DEMONSTRATE THAT APPELLANTS/RESPONDENTS' ATTORNEYS' FEES WERE REASONABLE.

Sloan argues that he was required to expend to engage a land surveyor because the City failed to commission a survey and one was necessary. This argument fails for three reasons. First, the surveyor who was hired did not submit a sealed plat. It was the surveyor's opinion that there is a real dispute as to what was or what is the line. Sloan's surveyor proved the City's point: There is no way to determine what the boundary line is and that the best way to resolve the issue is by a boundary line agreement. Second, the City's settlement did not require a survey and in fact the settlement agreement in place was done without one. Third, the Court even warned Sloan that if he persisted with surveys, there were to be done at his expense. (R. p. 281, lines 9-14)

Sloan contends that the settlement for $100,000 for the encroachment was the result of his lawsuit. Yet he persisted in litigation to overturn the conveyance and the compensation. (R. p. 263, lines, 1-13) It would be unjust and unreasonable to award Sloan fees and expenses from money Sloan litigated against. It clearly was unreasonable for him to spend the funds he did.

Sloan contends that the he alone achieved satisfactory results for the City. This is disingenuous as he fought against this settlement for two years. He never proposed any monetary settlement and never raised as an issue whether the monetary settlement was sufficient. And yet now he claims his percentage of it. (Appellants' Final Brief of Appellants/Respondents, p. 14.)

CONCLUSION

The Appellants/Respondents' Brief fails to demonstrate that Appellants/ Respondents are entitled to attorney fees under the criteria set forth in S.C. Code Ann. Section 15-77-300. The Appellants/Respondents' Brief fails to demonstrate that the June 24, 2008 cutoff for payment of Appellants/Respondents' attorneys' fees was an abuse of discretion and further fails to demonstrate that any fees were due. Finally, the Appellants/Respondents' brief fails to demonstrate that Appellants/Respondents' attorneys' fees were reasonable.

Therefore, for reasons stated, this Court should reverse the decision of the Circuit Court and determine that attorneys' fees and costs are not available to Sloan in this matter.

Respectfully submitted,

September 26, 2013

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2008-CP-23-2255

The South Carolina Public Interest Foundation, and Edward D. Sloan, Jr., and Robert M. Lloyd, individually and as taxpayers of the City of Greenville, South Carolina, and on behalf of all others similarly situated. . . . . Appellants/Respondents,

v.

City of Greenville, Mayor Knox H. White, and The Cliffs at Glassy, Inc., Defendants,

Of Whom City of Greenville and Mayor Knox White are the. . . . . Respondents/Appellants.

CERTIFICATE OF COUNSEL

Respondents/Appellants certify that as required by SCACR 211(b), Respondents' Final Brief of the Respondents/Appellants is identical to the Respondents' Initial Brief of the Respondents/Appellants previously served under Rule 208, except for references to the Record on Appeal and the correction of typographical errors and misspellings.

September 26 2013

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PROOF OF SERVICE

I certify that I have served the **Appellants' Final Brief of the Respondents/Appellants, Respondents' Final Brief of the Respondents/Appellants, and Appellants' Final Reply Brief of the Respondents/Appellants** on the South Carolina Public Interest Foundation, Edward D. Sloan, Jr., Robert M. Lloyd, individually and as taxpayers of the City of Greenville, SC, and on behalf of others similarly situated by depositing a copy of it in the United States Mail, postage prepaid, on September 30 2013, addressed to their attorney of record, James G. Carpenter, The Carpenter Law Firm, P.C., 819 East North Street, Greenville, SC 29601.

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