

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CALHOUN COUNTY

Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2019-001016

**RECEIVED**

DEC 17 2019

S.C. SUPREME COURT

South Carolina Public Interest Foundation, Amy Hill, and Rebecca Bonnette, individually,  
and on behalf of all others similarly situated, ..... Appellants,

v.

Calhoun County Council, ..... Respondents.

**APPELLANTS' REPLY BRIEF**

December 11, 2019

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Appellants South Carolina Public Interest Foundation, Amy Hill, and Rebecca Bonnette submit this Reply Brief.

**I. THE ISSUES ARE PROPERLY PRESERVED FOR APPELLATE REVIEW.**

Respondents contend that Appellants' arguments are not preserved for appellate review, mainly because Appellants did not file a Motion under Rule 59(e), SCRCP in the Circuit Court. Respondents' argument is not well founded.

A Rule 59 (e) Motion is **not required** to preserve an issue for appeal.

Post-trial motions are **not necessary** to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it. *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187 (1939). Here, the trial court ruled on Seller's objections by expressly adopting Buyer's amortization schedule in its order. Consequently, it was unnecessary for Seller to make any post-trial motions.

*Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (emphasis added).

To be preserved for appeal an issue must be presented to the trial court and ruled upon by the trial court. "The 'raised to and ruled on' rule of error preservation requires only a ruling, not necessarily a favorable one." *Eubank v. Eubank*, 347 S.C. 367, 373, n. 2, 555 S.E.2d 413, 416 (Ct. App. 2001). An objection to the introduction of evidence can preserve an issue for appeal. *Church v. McGee*, 391 S.C.334, 347, 705 S.E.2d 481, 488 (Ct. App. 2011). A ruling as part of an order or judgment preserves an issue for appeal. *Id.* The introduction of evidence and a ruling thereon preserves an issue for appeal. *Eubank v. Eubank*, 347 S.C. 367, 373, n. 2, 555 S.E.2d 413, 416 (Ct. App. 2001).

In this case, the Circuit Court ruled on cross motions for Summary Judgment after the filing of motions, oral argument, and supplemental written briefing by both sides. The Circuit Court rejected Plaintiffs/Appellants' Motion for Summary Judgment and granted the Motion of Defendants/Respondents for Summary Judgment.

Plaintiffs developed and supported the following arguments in Plaintiffs' Reply Memorandum in Support of Plaintiffs' Motion for Summary Judgment: (R. pp. 144-154).

- I. THE 30-DAY STATUTE OF LIMITATIONS DOES NOT BAR THIS ACTION.
- II. THE ORDINANCE AND THE REFERENDUM EXCEED THE SCOPE OF THE AUTHORIZING STATUTE.
  - a. The Act does not authorize the purchase of personal property.
  - b. The Act's Amendments Demonstrate that the List of Permissible Uses is Exclusive.
  - c. The Act's Wording and Structure Demonstrates that the List of Permissible Uses is Exclusive.
  - d. The County May Not Expand the Authorizing Statute.
- III. THE ORDINANCE, AS A WHOLE, SHOULD BE ENJOINED.

Appellants presented all these issues to the Circuit Court and requested Summary Judgment on their claims. *See also* the transcript of oral argument. (R. pp. 173-190; 196-197). The Circuit Court ruled on all the Plaintiffs' claims, denying them. The Circuit Court ruled:

[T]he Act's statute of limitations is applicable to the Plaintiffs' claims pursuant to a plain reading of the Act, and, accordingly, **Plaintiffs' claims and requested relief are barred.** Because **this ruling is dispositive as to the entirety of Plaintiffs' claims and requested relief,** it is unnecessary to consider the merits of Plaintiffs' claims.

(R. p. 3) (emphasis added). The Circuit Court rejected the arguments of the Plaintiffs and ruled for the Defendants.

Accordingly, Plaintiffs presented all their claims to the Circuit Court. The Court considered the Plaintiffs' claims and denied them. The Plaintiffs/Appellants properly preserved these issues for appeal. A Rule 59(e) motion was not required.

## II. DEFINITIONS IN OTHER STATUTES DO NOT APPLY TO THIS CASE.

Respondents contend that this Court should judicially incorporate the definitions from other statutes into the statute in the case at bar. Appellants suggest that the presence of explicit definitions in other statutes different from these in the statute at issue here demonstrates that the

General Assembly knows how to define a term in a statute to include equipment, personal property, and furnishings in the definition of a project. But in this case, the General Assembly specifically listed projects that constitute only improvements to real estate, and none explicitly includes any equipment, supplies, or other personal property. Courts must use the terms of this statute, and not the terms of other statutes, containing different definitions.

For example, in the definition of Industrial Development Projects, the General Assembly explicitly included “all other machinery apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor.” S.C. Code Ann. § 4-29-67(A)(1)(c). The statute in the case at bar does not.

Similarly, when addressing Special Source Revenue Bonds, the General Assembly explicitly authorized their use “for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise.” S.C. Code Ann. § 4-29-68(A)(2)(i)(b). The statute in the case at bar does not.

Likewise, the General Assembly explicitly authorized bonds, credits, and offsets against a fee in lieu of taxes “for personal property, including machinery and equipment.” S.C. Code Ann. § 4-29-68(A)(2)(ii). The statute in the case at bar does not.

The General Assembly authorized Joint Water and Sewer Authorities to acquire “any and all works, improvements, facilities, plants, equipment, transportation lines, pump stations, sewage treatment plants, apparatus, and appliances incidental, helpful, or necessary to its members.” S.C. Code Ann. § 6-25-25. Again, the General Assembly specifically authorized these items of personal property for that statute but not for the one here.

The Respondents also list other statutes that specifically authorize the acquisition or financing of personal property, including materials and equipment. The proper inference from an

analysis of these other statutes is that the General Assembly is quite able to define its terms as it chooses. In the case of this Penny Tax Act, it has defined them to include only the projects involving improvements to real estate, and not personal property. Courts are bound to follow the terms as defined by the General Assembly for this act, and not in other, unrelated acts.

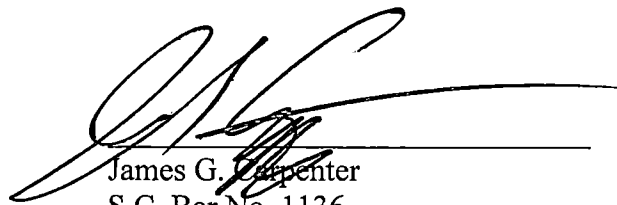
**CONCLUSION**

Appellants properly preserved all these issues for appellate review.

Courts must use the definitions in the statute at issue, and not the definitions in other statutes.

This Court should reverse the judgment of the Circuit Court and grant Summary Judgment to the Appellants.

Respectfully submitted,  
**THE CARPENTER LAW FIRM, PC**



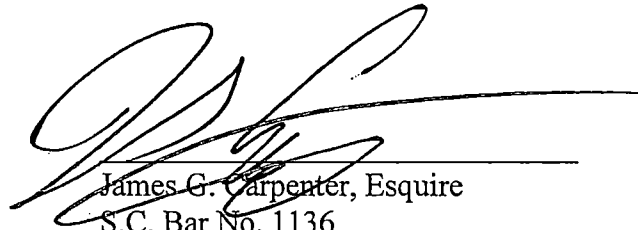
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December 11, 2019

CERTIFICATE OF COUNSEL

Pursuant to Appellate Rule 211(a), the undersigned hereby certifies that Appellants Final Brief and Appellants Reply Brief comply with Rule 211(b).

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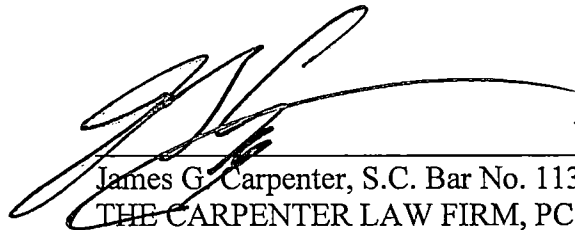
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**CERTIFICATE OF SERVICE**

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The undersigned attorney certifies that he served a copy of the foregoing Appellants' Brief  
and Appellants' Reply Brief on counsel for Respondents by US Mail, postage prepaid on the 12  
day of December, 2019 to the following:

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