

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas
J. Durham Cole, Circuit Court Judge

Case No. 2017-CP-42-01468903
Appellate Case No. 2017-002585

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SC Court of Appeals

Cole Towing and Recovery, LLC, ... Appellant,

v.

City of Spartanburg and Spartanburg City Council, ... Respondents.

REPLY OF APPELLANT

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STATEMENT OF THE ISSUES

1. Did the circuit court rule on the issues sufficiently to preserve them for appeal without further post trial motion?

ARGUMENT

I. ISSUES WERE RAISED AND RULED UPON BY THE CIRCUIT COURT ARE PRESERVED FOR APPEAL AND REQUIRE NO FURTHER MOTION IN THE LOWER COURT.

Our supreme court has cautioned that issue preservation "is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants." Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). Here, it cannot be said that Cole's arguments are clearly unpreserved.: "where the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation." *Id.* at 333, 730 S.E.2d at 287 (Toal, C.J., *concurring in result in part and dissenting in part*).” Johnson v. Roberts, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018), *reh'g denied* (Apr. 18, 2018).

The Respondent mischaracterizes the Appellant's argument. Appellant argues that the City exceeded its authority to enact the Ordinance in question. Appellant did not argue, as the Respondent contends "that the circuit court should have considered and made a specific ruling on the legal sufficiency of the facts for the "predatory practices" basis for the Ordinance." The issue presented was whether the City exceeded its authority in enacting the ordinance at issue. The Appellant argues that the circuit court erred in finding that the record before it on motions for summary judgment created no genuine issue of material fact. As the issue was raised and ruled on by the circuit court, no further motion was required to preserve the issue for appeal.

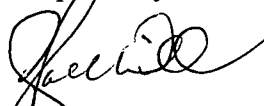
The Respondent further mischaracterizes the issue, as well as the Appellant's argument as to towing fees. The question the Appellant raised was not "on the specific issue of the sufficiency of the factual basis for the Ordinance's fee schedule" as the Respondents contend. Rather, the

Appellant raises the issue that City exceeded its authority to impose a fee schedule for nonconsensual towing. The question was not one of the sufficiency of evidence, but rather whether the circuit court record presented any genuine question of material fact pertaining to the issue. The circuit court erred in its evaluation of the record, and consequently, in its ruling on the issue of whether or not the City had the authority to impose a fee schedule for private contracts. The issue was therefore raised and ruled on. No further motion was required to preserve the issue for appeal.

CONCLUSION

Based on the foregoing the decision of the lower court granting summary judgment should be reversed.

Respectfully submitted,



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July 18, 2018.