IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2019-002031

Richard Ralph and Eugenia Ralph. ..... Respondents,

v.

Paul Dennis McLaughlin and Susan Rode McLaughlin. ..... Petitioners.

BRIEF OF RESPONDENTS RICHARD RALPH AND EUGENIA RALPH

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STATEMENT OF THE CASE

This is an appeal from various erroneous decisions made by the trial court in the course of a jury trial over an easement. The Court of Appeals properly reversed those errors and remanded the case for a new trial on compensatory and punitive damages.

On September 30, 2011, Richard and Eugenia Ralph, who are the Respondents before this Court, filed a Complaint against their neighbors, the Petitioners Paul and Susan McLaughlin. In the Complaint, the Ralphs alleged that the McLaughlins destroyed a drainage easement, which caused flooding and poor drainage on the Ralphs' adjacent property.[1] (A. p. 97). The Ralphs sought consequential and punitive damages.

The McLaughlins answered the Complaint, denying its allegations and raising affirmative defenses. For their Twelfth Affirmative Defense to the Complaint, the McLaughlins brought a third-party complaint (against the Seabrook Island Property Owners Association ("SIPOA" or "the POA")), in which they alleged numerous facts and claimed liability on the part of SIPOA "for all or part of the [Ralphs'] claims." (R. pp. 114-121). SIPOA denied the claims against it and raised affirmative defenses in its Answer. (R. p. 145).

On June 24, 2014, the Court entered an Order striking the case from the docket pursuant to Rule 40(j), SCRCP. The case was restored to the docket on June 23, 2015, and a new case number was assigned. (R. p. 3).

[1] On July 17, 2013, the Ralphs filed an Amended Complaint against the McLaughlins, specifying their cause of action as one of trespass and praying for actual and punitive damages against the McLaughlins.

Shortly after the case was restored to the docket, each party filed a motion for summary judgement. (R. pp. 197-240). The McLaughlins and SIPOA sought summary judgment as to the Ralphs' claims based on the statute of limitations. Significantly, SIPOA also requested summary judgment as to the McLaughlins' claims for reliance.

In an Order filed June 7, 2016, the Honorable G. Thomas Cooper, Jr. denied the McLaughlins' and SIPOA's motions as to their statute of limitations argument; he also granted SIPOA's Motion for Summary Judgment, dismissing the McLaughlins' claims against SIPOA "because [the McLaughlins] cannot show any evidence of 'reasonable reliance' on a SIPOA representation."[2] (R. pp. 5-12).

The remaining claims were tried before a jury, in a trial presided over by the Honorable Roger M. Young, Sr., beginning on January 23, 2017. In the course of the trial, the parties made several motions for directed verdict; Judge Young's erroneous rulings on those motions are the subject of this appeal. Judge Young wrongly granted the McLaughlins' motion for a directed verdict as to the issue of punitive damages. Judge Young improperly denied the Ralphs' request that Judge Cooper's previous order be recognized as the law of the case; Judge Young also erroneously denied the Ralphs' motion for a directed verdict as to the question of the McLaughlins' liability for trespass and as to SIPOA's legal inability to abandon the easements. On January 26, 2017, after hearing closing arguments and instructions, the jury deliberated for five and half hours

[2] Judge Cooper filed three orders on that same day in this case; in the first order, discussed above, he granted SIPOA's Motion for Summary Judgement and made rulings applicable to all parties as to the running of the statute of limitations; in the second, he denied the Ralphs' Motion for Partial Summary Judgment; and, in the third, he denied the McLaughlins' Motion for Summary Judgment. (A. pp. 5-16).

before announcing that it was deadlocked. After being given an *Allen* charge, the jury returned to deliberations. An hour later, at approximately 5:22 pm, the jury rendered its verdict in favor of the Ralphs on their cause of action for trespass and awarded "actual nominal" damages in the amount of $1,000. (R. pp. 19-21).

On February 2, 2017, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, the Ralphs filed a Motion for a New Trial *Nisi Additur*, or, alternatively, a New Trial as to Damages, or, alternatively, a New Trial Absolute. (R. p 343). Judge Young erroneously denied the Ralphs' motions in an Order filed on March 2, 2017. (R. p. 22).

The Ralphs filed and served their Notice of Appeal on March 31, 2017.

After briefing and oral argument, the Court of Appeals issued its Opinion, in which it reversed the trial court on all four issues before it on appeal. Because the Court of Appeals found that liability was established as a matter of law, it remanded the case for a new trial on compensatory and punitive damages. *Ralph v. McLaughlin*, 428 S.C. 320, 834 S.E.2d 213 (Ct. App. 2019).

The McLaughlins petitioned for certiorari, raising two issues for review by this Court. This Court granted a writ of certiorari on April 24, 2020.

STATEMENT OF FACTS[3]

This trespass case involves an easement containing a large drainage pipe and a "No Build Area," which extends across lots 21 through 28 of Baywood Drive on Seabrook Island, as illustrated on plats prepared by E.M. Seabrook, Jr. ("Seabrook Plats," A. pp. 380, 387). The easement was designed when the area was developed, to alleviate drainage issues; the pipe extended across lot 22 and on downstream through lot 28, where it emptied into a water hazard on the neighborhood golf course. (*Id.*; *see also Ralph v. McLaughlin* at 330, 834 S.E.2d at 218; *see also* A. p. 720-721).

The Ralphs own Lot 23, which they purchased and have lived on since 1997. (A. p. 375). The McLaughlins own Lot 22, which is upstream of the Ralphs' lot. The McLaughlins purchased their lot in 2002, and they constructed a home on the lot several years later, in 2008-2009. (A. p. 381). During their construction, the McLaughlins improperly dug up the portion of the drainage pipe that burdened their lot and then improperly built their home in the No Build Area. The McLaughlins argued at trial that the drainage easement and No Build Area had been abandoned by SIPOA, as illustrated by a plat found only in the McLaughlins' chain of title. ("Forsberg Plat," A. p. 388).

At trial, the Ralphs presented evidence, including the above-referenced deeds and plats, demonstrating that the Ralphs had a special property interest in the drainage pipe easement and No Build Area that ran under and through lots 21 through 28 of Baywood

[3] In addition to the Statement of Facts, below, the Ralphs incorporate herein by reference the Court of Appeals' section on Facts, *Ralph v. McLaughlin*, 428 S.C. at 330-338, 834 S.E.2d at 218-223 (Ct. App. 2019).

Drive ("the Easements").[4] Howard Yates, qualified as an expert in the law of real property, testified that he personally examined the chains of title on the properties belonging to the Ralphs and the McLaughlins, and that he found that all conveyances in both of their chains of title had been made subject to the Easements. (A. pp. 551-559, 561-563; *see also* A. pp. 43-44). Mr. Yates testified that SIPOA could not have unilaterally extinguished the Easements, although it had attempted to do so around the time the McLaughlins purchased their lot. Rather, successful abandonment of the Easements would have required at least the agreement of all the owners of properties depicted on the Seabrook Plats, including the Ralphs. (A. p. 555).

Additionally, Mr. Yates testified that the recording of the Forsberg Plat, which indicated the Easements as "to be abandoned," did not result in the abandonment of the easements. (A. p. 556, lines 6-24; p. 563; p. 564, line 18-p.565, line 10). Finally, Mr. Yates testified that twenty minutes to half an hour spent in reviewing the deeds and plats by a real estate attorney would reveal that the McLaughlins' lot was still subject to the drainage Easements. (A. pp. 555-556).

There was no dispute at trial that the McLaughlins purchased Lot 22 (upstream of the Ralphs' house on lot 23) and ultimately dug up the portion of the drainage pipe

[4] The original developer of the lots on Baywood Drive conveyed the lots subject to the Plat of E.M. Seabrook dated September 6, 1984 and recorded in the Charleston County RMC/ROD Office in Plat Book BD, page 23 and the revised plat dated May 8, 1987 and recorded in the Charleston County RMC/ROD Office in Plat Book BN, page 49 (A. pp. 380, 387, 388). Those plats established a plan for a 20' drainage easement and No Build Area. The plats are referenced in the subsequent deeds in the Ralphs' and the McLaughlins' chains of title (A. p. 375; 381) (Their complete chains of title are charted in Exhibits A and B to the Plaintiffs' Complaint). The drainage easements are an appurtenant easement benefitting the Ralphs as of the date on which they acquired ownership of Lot 23.

located on that lot and constructed part of their home in the No Build Area. The Ralphs presented evidence that damage was caused to their property by the McLaughlins' destruction of the pipe and No Build Area (in the form of flooding and drainage problems). The testimony demonstrated that the obliteration of the Easements increased the volume of surface water on the Ralphs' property after rainfall and also increased the length of time required for that surface water to dissipate.

Foremost was the testimony of storm-water drainage engineer Robert George, P.L.S., P.E., who was qualified as an expert in civil engineering, registered land surveying, and storm-water drainage. He stated, in accordance with his scientific analysis and to a reasonable degree of engineering certainty, that poor drainage and flooding on the Ralphs' property was a direct result of the McLaughlins' acts of digging up the drainage pipe and building their house on the No Build Area. (A. pp. 657-663; 683-694; pp. 718-721). Further, the Ralphs themselves testified that there was a marked and noticeable difference in the drainage of storm water from their property before, as opposed to after, the McLaughlins' construction. (A. pp. 592-594; pp. 638-639).

Mr. George's analysis that the McLaughlins' trespass caused the flooding and poor drainage on the Ralphs' property was largely unrefuted by the McLaughlins.[5] Instead, the McLaughlins primarily focused their defense on whether or not they had permission to build from SIPOA, and on whether SIPOA had previously abandoned the Easements.

[5] The McLaughlins did claim that they had seen water on the Ralphs' property after heavy rains, before the construction of their home. (A. p. 887). However, this assertion was undermined by their own admission that they lived in Winston-Salem prior to their construction on lot 22, and so were only on Seabrook Island for brief weekend visits. Respondent Mrs. McLaughlin admitted that they did not have the opportunity to witness whether and how quickly the water that they saw on the Ralphs' lot drained. (A. p. 888).

The Ralphs also offered the testimony of Nick Thompson, who was qualified as an expert in residential real property appraisal; Mr. Thompson testified that the Ralphs' property could be diminished in value by between 40 and 60 percent (40-60%) because of the surface water problem. (A. pp. 226-230). Additionally, the Ralphs themselves testified that they believed that their property was worth $775,000 without the drainage problem. They further testified that they thought their property value had been diminished by $200,000 because of the McLaughlins' act of destroying the Easements, which caused the poor drainage and flooding on their lot. (A. pp. 596-599; p. 639). Finally, the Ralphs testified that they had paid $17,000 to Mr. George in a fruitless attempt to mitigate the drainage problems caused by the McLaughlins' destruction of the easements. (A. p. 600).

The Ralphs and the McLaughlins both testified that, prior to the McLaughlins' construction of their home, SIPOA had held several meetings of the owners of lots 21 through 28, and—importantly—that the purpose of those meetings was to discuss the impact that the McLaughlins' desired construction would have on their neighbors' drainage. Petitioner Paul McLaughlin testified that he attended those meetings. (A p. 752). SIPOA had hired Mr. George (the storm water drainage expert), who presented at one of those meetings a study he had conducted on the functionality of the drainage pipe. Both at the meeting, and in a study sent to the McLaughlins by SIPOA, Mr. George specifically warned that the McLaughlins' proposed construction plans would cause surface water drainage problems on the neighboring downstream lots (including that belonging to the Ralphs). (A. pp. 660-667; 718-725). Mr. McLaughlin testified that he was

aware of the study and that he had heard Mr. George's warnings. (A. p. 752). The Ralphs introduced into evidence emails from neighboring lot owners, including the Ralphs, asking the McLaughlins not to construct their home as planned, unless a solution[6] could be found for the drainage issues that would be caused. (A. pp. 389-395; 466-467). The Ralphs and Mr. McLaughlin testified that SIPOA was attempting to work with the McLaughlins to find a resolution for the potential drainage problem. (A. pp. 755-757; p. 400).

Both parties testified at trial that the dialogue between the McLaughlins, the Ralphs, and SIPOA escalated in the autumn of 2008. On October 7, 2008, a SIPOA agent who was working to try to mediate the issues between the McLaughlins and the Ralphs told the McLaughlins that he was no longer mediating the issue because it was "an impossible situation." (A. p. 5). On October 22, 2008, SIPOA sent a letter to the affected property owners, including the Ralphs and the McLaughlins, indicating that it had rescinded the May 2002 resolution in which it purported to abandon the Easement. (A. p. 395).

The McLaughlins grew impatient with the time it was taking to come up with a solution, and so they announced their intention to proceed with their construction as planned, regardless of the effect on the easement and on their neighbors. (A. pp. 397-399; p. 756). On December 9, 2008, SIPOA filed a lawsuit against the McLaughlins, seeking an

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[6] Indeed, no viable solution was ever found, because (1) the golf course would not permit the McLaughlins to tie-in to its drainage system, and (2) due to the construction of the McLaughlins' house in the No Build Area, the SIPOA could not bring in equipment to maintain drainage. (*See e.g.,* A. pp. 8-10; *see also* pp. 395-399, A. pp. 594-596, A. pp. 631-633, A. pp. 647-649, A. pp. 689-693, A. p. 852).

injunction to halt their construction and alleging that the McLaughlins' "unilateral action will result in irreparable damage by diminishing the drainage capacity of the drainage easement as it affects the downstream lots." (A. p. 749-750; A. p. 457). On the same day that SIPOA filed the lawsuit, the McLaughlins ordered their construction crew to destroy the easement. (A. pp. 634-635; p. 748). A backhoe dug up the drainage pipe and began construction, even though neither SIPOA nor the Ralphs had authorized the McLaughlins' actions (and, in fact, actively opposed it). (*See, e.g.,* A. pp. 587-588). A portion of the McLaughlins' residence now sits in the No Build Area. (A. p. 747).

The Court of Appeals properly reversed the trial court's errors, found that liability had been established as a matter of law, and remanded the case for a new trial on compensatory and punitive damages.

ARGUMENT

The Court of Appeals correctly remanded this case to the trial court for a new trial on compensatory and punitive damages. This disposition was based on the Court of Appeals' determination that, properly, no question of fact existed for the jury as to liability, nor as to the question of easement abandonment—holdings for which the McLaughlins do not seek certiorari review. Further, the Court of Appeals correctly found that the trial court failed to properly apply the legal standard in directing a verdict to the McLaughlins on punitive damages. Finally, the Court of Appeals did not err as to its application of the law of the case doctrine to bar the McLaughlins from making arguments to the trial court that were directly contrary to the findings of law and fact in a previous order in the same case.

I. The portions of the Court of Appeals' Opinion that the McLaughlins have not appealed constitute independent grounds to sustain its decision.

As an initial matter, the Court of Appeals' lengthy, thorough, and unanimous Opinion renders its decision on four issues that were appealed by the Ralphs, each as grounds for reversal of the trial court. The McLaughlins have now asked this Court to review two of those issues. However, the remaining un-appealed decisions by the Court of Appeals are independent grounds for reversal of the trial court—which makes review by this Court unnecessary. The Ralphs respectfully request that this Court would find that it has improvidently granted the writ of certiorari in this case, or that it would affirm the Court of Appeals pursuant to the "two issue rule" and Rule 220(c). *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant

appeals all grounds . . . "), *abrogated on other grounds by Repko v. Cty of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018); *see also Biales v. Young*, 315 S.C. 166, 432 S.E.2d 482 (S.C. 1993) (failure to argue an issue is deemed to be an abandonment of the issue); *see also Anderson v. Short*, 323 S.C. 522, 476 S.E.2d 475 (1996) (stating that where a decision is based on more than one ground the appellate court will affirm unless the appellant appeals all grounds).

The McLaughlins have not asked this Court to review the Court of Appeals' holding that the trial court erred when it failed to grant a directed verdict as to liability, in favor of the Ralphs. On the question of liability, the Court of Appeals reversed the trial court's error in submitting the issues of abandonment and trespass to the jury, finding: (1) that the question of whether SIPOA's purported unilateral abandonment was effective was a question of law; and (2) that no question of fact existed as to whether the McLaughlins' destruction of the Easements constituted trespass as a matter of law.[7] These un-appealed decisions alone warrant a new trial.

In so deciding, the Court of Appeals applied this Court's long-standing precedent to find that the Ralphs have a vested property interest in the Easements on the Seabrook Plats, because an owner who takes title to property with reference to a plat acquires an interest in the easements that appear on that plat. *Ralph v. McLaughlin* at 352-353, 834 S.E.2d at 230-231, *citing, inter alia, Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965) ("[W]here a deed describes land as is shown on a certain plat, such plat

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[7] The elements of a cause of action for trespass are (1) that the plaintiff was in legal possession of the property; (2) that the defendant or his agent voluntarily entered upon the plaintiff's property; and (3) that such entry was made without the plaintiff's permission. *Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991); *see also Ralph v. McLaughlin* at 350, 834 S.E.2d at 229 ("Accordingly the owner of a servient estate commits trespass by intentionally destroying an easement without consent of the easement holder.") (additional citations omitted).

becomes a part of the deed"), *Carolina Land Co., Inc. v. Bland*, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975) ("[T]he purchaser of lots with reference to the plat of the subdivision acquire[s] every easement, privilege, and advantage shown upon said plat . . . ."). Thus, the Court of Appeals properly held that the Ralphs had an ownership interest in the drainage easement and no-build area that appeared on the plats by which both the Ralphs and the McLaughlins took title. The McLaughlins do not challenge this ruling.

The Court of Appeals then found (and the McLaughlins have not appealed) that "SIPOA's purported abandonment of the drainage easement could not affect the Ralphs' interest as a matter of law." *Id*. at 353, 834 S.E.2d at 231, *citing, inter alia, Bland*, 265 S.C. at 106, 217 S.E.2d at 20 ("Such an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law;") ("The fact that a new plat of the property in question was made did not destroy the easement created on the [original] plat."). In other words, under South Carolina law, SIPOA was powerless to unilaterally abandon the Ralphs' interest in the Easements, which both benefitted and burdened theirs and the McLaughlins' property. *Id*.; *also citing Corbin*, 229 S.C. at 24, 91 S.E.2d at 546 ("The Florenza Company could not without the consent of [the owner] change the location or width of [the easement].").

Additionally, the Court of Appeals correctly found that the Forsberg Plat—which appeared only in the McLaughlins' chain of title, and not in the Ralphs' chain of title—did not in any way affect the Ralphs' ownership interest in the Easement. *Id*., *citing Carolina Land v. Bland*, 265 S.C. at 107, 217 S.E.2d at 20 ("The fact that a new plat of the property in question was made did not destroy the easement created on the [original]

plat."). It is unclear whether the McLaughlins have appealed this holding by the Court of Appeals,[8] but they have not cited any cases that contradict this basic principle of property law.

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[8] The McLaughlins' argument on their Issue I (which mistakenly, and somewhat confusingly, refers to the Petitioners as the Respondents), mentions, in passing, "the Respondents' [that is, the McLaughlins'] decision to build their house on what they fully believed was an abandoned easement as shown on the plat from Forsberg Engineering and Surveying, Inc., and with which the jury agreed and for which there was evidence for them to determine the Respondents [that is, the McLaughlins] justifiably relied and which the jury believed in as demonstrated by the verdict rendered at trial." (*Brief of Appellants*, p. 3).

The Ralphs interpret Petitioners' Issue I to be an argument about punitive damages. Significantly, this section of the McLaughlins' brief makes no argument and cites no caselaw as to the legal effect of the subsequent recording of the Forsberg Plat which purported to unilaterally cancel out the Seabrook Plat. That is because there is no real dispute under the law that the Forsberg Plat was invalid to extinguish the Ralphs' easement. The Ralphs would be glad to brief this issue if this Court finds that it has been preserved for its review.

Importantly, on this topic, the McLaughlins distort the testimony of the Ralphs' expert, Howard Yates. They wrongly state in their Brief: "The Ralphs' own expert witness as to title and easement, Howard Yates, testified and confirmed at trial that the Forsberg Plat also became part of the McLaughlins' deed showing the abandonment of the easement. Mr. Yates further testified that the easement was originally in favor of SIPOA." (*Brief*, p. 5). Later, they wrongly claim: "Even their [the Ralphs'] own experts conceded that the SIPOA had abandoned the easement and the new plat from Forsberg was part of their deed." (*Brief*, p.10). The circuit court based its decision to deny the Ralphs' motion for a new trial on the same misapprehension of the record (A. p. 23; *see also* the Ralphs' *Final Reply Brief*, pp. 7-9, filed with the Court of Appeals on May 4, 2018) (the Ralphs' *Final Reply Brief* was omitted from the Appendix). For the purpose of "setting the Record straight" (as it were), Howard Yates' testimony was actually as follows:

MR. O'KELLEY:	And my clients took title subject to the Forsberg Engineering plat, correct?
MR. YATES:	Well, they took title subject to the earlier ones.
MR. O'KELLEY:	But this plat, the Forsberg Engineering plat, is specifically referenced in the deed, correct?
MR. YATES:	Yes, but so were the others by implication. They're all included in the derivation clause. You can't escape and willy-nilly decide, 'I don't want to take this; I don't want to take that.' They took it subject to the other plats as well.

Finally, as to the last two elements of trespass, the Court of Appeals found that the McLaughlins' admissions at trial that they had dug up the drainage pipe, destroyed the Easements, and built their home in the restricted no-build area, without permission or

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MR. O'KELLEY:	And the easement that you've described on the prior plat, the drainage easement; that was in favor of Seabrook Island Property Owners Association, correct?
MR. YATES:	It was dedicated by whoever it was that drew the—developed the tract—but under multiple real estate cases, as you mentioned *Blue Ridge Realty vs. Williamson*, and I'll mention *Carolina Land vs. Bland*, those interests are 'special property interests,' and those exact words are used in those decisions that say that anyone that buys according to a plat that has roads, alleys, avenues, areas, particularly no-build areas, on them, then they have a 'special property interest' in those, and one person cannot unilaterally say, 'I don't want to be subject to that.'
MR. O'KELLEY:	**I'll ask the question again: Was the easement in favor of the Seabrook Island Property Owners Association to your understanding?**
MR. YATES:	**No. It was to the interest of everybody that purchased on that plat.**

(A. pp. 562-563) (emphasis added).

license from the Ralphs,[9] left no other inference but that the McLaughlins had trespassed as a matter of law. *Ralph* at 351, 834 S.E.2d at 229; *see also* A. p. 747, line 18-p. 748, line 10; A. p. 868, lines 20-24.

Because there was no question of fact as to trespass and abandonment, the Court of Appeals properly found that the trial court's decisions on the Ralphs' motion for directed verdict and motion for a new trial were erroneous and controlled by error of law; therefore, reversal and remand were appropriate. *Ralph* at 354-357, 834 S.E.2d at 231-233 (finding, *inter alia*, that "because trespass was established as a matter of law, the jury should have only been responsible for determining damages and punitive damages . . . as such, the jury's role expanded from simply determining damages to ruling on complex questions of law."). The McLaughlins have not challenged these determinations by the Court of Appeals, and they are independent grounds for reversal of the trial court. This

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[9] Mr. McLaughlin testified:

QUESTION:	Is your house currently situated in what was once the no-build zone, or no-build area on your property?
MCLAUGHLIN:	A portion of it is, yes.
QUESTION:	And did you authorize your construction company to dig up the pipe that was once running through the drainage easement in your back yard?
MCLAUGHLIN:	Yes.

(A. pp. 747-752). And again:

QUESTION:	The neighbors, on the day that you authorized your construction crew to dig up the pipe, had they changed their mind and given you permission?
MCLAUGHLIN:	I didn't ask for permission. (A. pp. 868; 752-755).

Court should therefore affirm the Court of Appeals, pursuant to the "two issue rule" and Rule 220(c) of the South Carolina Appellate Court Rules, and remand this case for trial.

II. The Court of Appeals properly reversed the trial court, which failed to correctly apply the legal standard in evaluating the McLaughlins' Motion for Directed Verdict on the issue of punitive damages.

The McLaughlins' first issue for certiorari review by this Court contains an argument that is all about the facts. However, the issue—correctly decided by the Court of Appeals—is not one of fact. Rather, it is a question of whether the trial court correctly applied the ***legal standard*** to the disputed facts when it evaluated and granted the McLaughlins' motion for directed verdict on punitive damages. The Court of Appeals properly found that it did not. This Court should affirm that holding, for each or any one of the reasons set forth below.

A. The Court of Appeals correctly applied the standard.

The McLaughlins argue that, when it reversed the trial court's grant to them of a directed verdict on punitive damages, the "Court of Appeals erred in focusing on limited facts in the Record." *Brief of Appellants*, p. 3. This argument concedes that—indeed—there <u>are</u> facts from which willfulness could be inferred, although the McLaughlins contend those facts are "limited." When it rules "on a directed verdict motion as to punitive damages, 'the circuit court must view the evidence and the inferences that can reasonably be drawn therefrom **in the light most favorable to the nonmoving party**.'" *Hollis v. Stonington Dev. LLC*, 394 S.C. 383, 393-394, 714 S.E.2d 904, 909-910 (Ct. App. 2011) (emphasis added), *quoting Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 621 S.E.2d 363

(Ct. App. 2005); *see also Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 99, 727 S.E.2d 407, 411 (2012) ("In reviewing a ruling on a motion for a directed verdict, this Court must view the evidence and all reasonable inferences from the evidence in the light most favorable to the party opposing the motion. . . . A case should be submitted to the jury when the evidence is susceptible of more than one reasonable inference.") (internal citations omitted). In this instance, the non-moving party was the Ralphs. The Court of Appeals correctly applied this standard in reviewing the trial court's grant of directed verdict. *Ralph* at 339, 834 S.E.2d at 223.

Punitive damages may be awarded in a trespass case when a defendant's acts have been willful, wanton, or in reckless disregard of the property rights of another. *Wimberly v. Barr*, 359 S.C. 414, 423, 597 S.E.2d 853, 858 (Ct. App. 2004); *see also Hinson v. A.T. Sistare Constr. Co.*, 236 S.C. 125, 131, 113 S.E.2d 341, 344 (1960) ("Trespass through mere negligence affords no ground for punitive damages; but such damages may be awarded when the trespass is wil[l]fil and deliberate."). The Court of Appeals found there **was evidence** in the Record showing that, when they destroyed the drainage pipe and built their house in the restricted No Build Area, the McLaughlins were acting willfully, and with reckless disregard for the property rights of the Ralphs. This evidence, when viewed—as it should have been—in the light most favorable to the Ralphs, required the trial court to submit the question of punitive damages to the jury.

In particular, Mr. McLaughlin's testimony demonstrates that he was aware that the Ralphs and other lot owners (who each owned a property interest in the Easements) objected to and were worried about the detrimental effects of his construction plans on

their property. (*See, e.g.*, A. p. 760-761; A. p. 393-399). Additionally, Mr. McLaughlin testified that he attended a meeting organized by SIPOA, at which storm-water drainage expert Robert George presented his study which warned of the anticipated adverse impact on the McLaughlins' downstream neighbors of their plan to destroy the drainage easements:

QUESTION: Were you at the September 2008 meeting held by the Seabrook Island Property Owner's Association at which Mr. George, Mr. Bob George, gave a presentation?

MCLAUGHLIN: Yes, ma'am.

QUESTION: And what do you remember Mr. George saying about the effect your construction would have on downstream lots?

MCLAUGHLIN: I heard much of what he said yesterday.[10]

QUESTION: So, was it your understanding at the meeting that if you were to dig up the drainage pipe and construct your house in the no-build area it would have a negative effect on your neighbors downstream?

MCLAUGHLIN: That's what [Mr. George] said, yes.

QUESTION: All right. Did any of your neighbors voice concerns to you about your construction?

MCLAUGHLIN: Yes, at that meeting they did.

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[10] Mr. McLaughlin is referring here to Mr. George's trial testimony, which had occurred at trial the day before. During Mr. George's testimony (as McLaughlin indicates in the excerpt above), George testified about the study he presented and the warnings that he gave at the September 2008 meeting, which stressed the adverse impact that the McLaughlins' destruction of the drainage pipe and no build easement would have on downstream lots, including the Ralphs'. (*See, e.g.* A. p. 664, line 8-p. 666, line 7; p. 693, line 17-p. 694, line 3).

(A. p. 752, lines 6-22; *see also* A. p. 400).

The law is clear that a factfinder could infer willfulness from the McLaughlins' decision to destroy the Easements in of the face of George's study and their neighbors' objections. "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says that person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care." *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011).

Further, Mr. McLaughlin testified that before destroying the easement, he was served with a lawsuit, filed by SIPOA, the sole purpose of which was to stop the McLaughlins' destruction of the Easement. (A. p. 767; A. p. 457). The McLaughlins' own testimony on the matter may be found in the Appendix on pages 747-771. In the course of that testimony, the Mr. McLaughlin admitted that he dug up the drainage pipe even after SIPOA filed a lawsuit seeking an injunction to halt his construction; the lawsuit alleged that "the [McLaughlins'] unilateral action [of digging up the drainage pipe and constructing in the No Build Area] will result in irreparable damage by diminishing the drainage capacity of the Drainage Easement as it affects 'downstream' lots [i.e., that of the Ralphs]." (A. p. 463, ¶ 26). SIPOA's lawsuit to halt construction additionally asserted: "[The McLaughlins'] continued actions and destruction of the subject drainage pipe without some alternative plan will seriously and adversely and irreparably impact the . . . drainage system for lots 21, 23 [belonging to the Ralphs], 25, 26, 27, and 28." (A. p. 463, ¶ 25). The lawsuit's allegations set forth information that the McLaughlins, the Ralphs, and SIPOA had been discussing for months. (*see, e.g.,* A. pp. 397-398). It is apparent from

the complaint that the McLaughlins were fully cognizant of the risk of injury to their neighbors—including the Ralphs—that would result if they were to destroy the Easements. But the McLaughlins proceeded to do just that.

In sum, the evidence—including the lawsuit against the McLaughlins by SIPOA, the history of opposition from neighboring lot owners, and the many meetings called and attempts made to ascertain and resolve the drainage problems that would be caused by their construction—raises the reasonable inference that the McLaughlins foresaw the possibility of harm to their neighbors, but nonetheless consciously undertook that risk when they destroyed the drainage Easements.[11] The trial court should have construed that evidence in the light most favorable to the Ralphs, the nonmoving party. The Court of Appeals correctly held that because "a reasonable juror could have found the McLaughlins acted recklessly . . ., the circuit court erred by not submitting punitive damages to the jury." *Ralph v. McLaughlin* at 349, 834 S.E.2d at 229.

This Court should affirm the Court of Appeals and remand for jury determination of the question of whether the evidence warrants punitive damages.

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[11] Indeed, the trial judge's own divergent words in ruling on the McLaughlins' motion indicate that more than one reasonable inference could have been drawn from the evidence as to whether the McLaughlins acted willfully:

> And, you know, that's where I come in with the problem of whether or not this is a punitive damages case. Again, [McLaughlin] was acting on—clearly he was acting willfully. I don't think he was acting recklessly, but he was obviously acting—he knew what he was doing . . . but I don't think he was acting malevolently, certainly not to the level of clear and convincing, so I'll grant their motion for punitive damages.

(A. pp. 798-799).

B. The trial court improperly weighed the evidence when it directed its verdict.

The Court of Appeals also recognized that, in ruling on the McLaughlins' motion for a directed verdict as to punitive damages, the trial court erroneously weighed the evidence and disregarded the reasonable inference of willfulness that could be drawn from it. This mistake is readily apparent in the block quote that the McLaughlins cite on page 5 of their *Brief of Appellants*, where the trial judge stated:

> And punitive damages are out. I, again, don't think this is a case in which there has been a **rise to clear and convincing evidence** that he [Mr. McLaughlin] acted intentionally, knowing that he did not have the right to do that . . . I don't think that rises to the level of punitive damages, so you won't be able to argue punitive damages.

(A. p. 805, line 23 - p. 806). The trial judge made this point twice, stressing that he did not "think [the McLaughlins were] acting malevolently, **certainly not to the level of clear and convincing** . . . ." (A p. 799, lines 4-6) (emphasis added). The Court of Appeals correctly found that, "[i]n so ruling . . . the circuit court invaded the jury's province by improperly weighing the evidence." *Ralph v. McLaughlin* at 349, 834 S.E.2d at 229, *citing Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 99, 727 S.E.2d 407, 411 (2012) ("It is not the duty of the [circuit] court to weigh the testimony in ruling on a motion for a directed verdict."); *see also Graham v. Whitaker*, 282 S.C. 393, 398, 321 S.E.2d 40, 43 (1984) (discussing the court's inability to weigh evidence and the necessity of submitting all questions of fact to the jury—including punitive damages).

The proper standard, applied correctly by the Court of Appeals, is that when it rules "on a directed verdict motion as to punitive damages, 'the circuit court must view the evidence and the inferences that can reasonably be drawn therefrom in the light most

favorable to the nonmoving party.'" *Hollis*, 394 S.C. 383, 393-394, 714 S.E.2d 904, 909-910 (Ct. App. 2011), *quoting Mishoe*, 366 S.C. 195, 621 S.E.2d 363 (Ct. App. 2005). "The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton." *Id*. (emphasis added) (finding that the issue of punitive damages was properly submitted to the jury in a trespass case where Plaintiff submitted "ample evidence from which to find [defendant] acted in reckless disregard of the rights of others.").

In a ruling controlled by error of law, the trial court failed to apply this standard, and it invaded the province of the jury by weighing the evidence. This Court should affirm the Court of Appeals and remand so that a jury can decide whether the evidence of the McLaughlins' willfulness rose to the level of clear and convincing.

C. The McLaughlins' argument about SIPOA is gratuitous and unfounded.

In their brief to this Court—as they did before the trial court—the McLaughlins continue to argue that the requisite willfulness was lacking when they destroyed the Easements, due to their purported reliance on alleged promises made by SIPOA. *Brief of Appellants*, pp. 4-5, 9 ("there was no consciousness of wrongdoing demonstrated by the Defendants at any time where the McLaughlins testified consistently that they relied on SIPOA . . .") ("SIPOA approved their house plans."); (*see also, inter alia*, A. p. 777, line 23-778, "Your Honor, we also don't think the standard for punitive damages has been reached. You heard Mr. McLaughlin testify that he was relying on the POA when they built their house.").

i. This argument by the McLaughlins has no bearing on the correct application of the directed verdict standard.

First, this argument is a red herring in light of the standard on directed verdict, which compels submission to the jury to resolve questions of fact. As set forth, above, evidence exists from which the reasonable inference of willfulness can be drawn. The evidence shows that the McLaughlins acted intentionally, in deliberate contravention of the Ralphs' and SIPOA's attempts to halt their construction, and with knowledge that their acts would cause harm to the Ralphs' property. It was for a jury to weigh the evidence and decide whether punitive damages were warranted.

Furthermore, the McLaughlins admitted that they knew their construction plans would harm their downstream neighbors. It does not matter whether the McLaughlins subjectively believed that they had permission from SIPOA to destroy the Easement.[12] "An act may be willful when the wrongdoer does not actually realize that he is invading the rights of another, provided the act is committed in such a manner that a person of ordinary reason and prudence would say it was in reckless disregard of another's rights." *Leppard v. Southern Ry. Co.*, 174 S.C. 237, 177 S.E. 129, 133 (1934); *see also Joyner v. St.*

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[12] The McLaughlins argue (on page 9 of their *Brief*) that they have no duty of inquiry as to easement rights, since they purportedly "believed" there was no easement. Tellingly, no law is cited for that argument, and it is simply incorrect. As discussed above, there was voluminous evidence that the easement was still in place – among other things, the SIPOA and the McLaughlins' neighbors were telling them it was in place and telling them that destruction of the pipe would harm the Ralphs' property. In fact, SIPOA sent the McLaughlins a letter in which it *rescinded* its resolution as to the easements, prior to the McLaughlins' construction. (A. p. 395). In any event, as this Court knows, subjective belief (good faith or not) is not the basis for real property rights; such a holding would turn American property law on its head. Instead, the recorded documents are the basis for those rights. Here, the recorded documents showed that the McLaughlins' property was conveyed subject to the drainage easements, which could not be abolished based on a "belief" by the McLaughlins, particularly in the teeth of voluminous evidence to the contrary.

Matthew's Builders, 263 S.C. 136, 139-140, 208 S.E.2d 48, 49 (1974) (holding that the issue of punitive damages was properly submitted to the jury, despite confusing and conflicting testimony, where, when viewed in the light most favorable to plaintiff, the evidence was susceptible to the reasonable inference that defendant acted with reckless disregard for plaintiff's property rights.); *see also Berberich*, 392 S.C. at 287, 709 S.E.2d at 612 (reasonable person standard is used to evaluate question of willfulness); *see also, e.g.*, A. pp. 389-396, 457-467.

The Court of Appeals, examining the Record and the trial transcript, properly found that a jury question existed on punitive damages, because more than one reasonable inference could be drawn as to whether the McLaughlins acted recklessly in destroying the drainage pipe and no-build area easements. *Ralph* at 344-350; 834 S.E.2d 226-229; *see also, e.g., Rhodes v. Lawrence*, 279 S.C. 96, 97-98, 302 S.E.2d 343, 344 (1983) (remanding for a new trial after determining the circuit court erred in granting a directed verdict on punitive damages).

ii. Judge Cooper's Order forecloses this argument.

Moreover, this argument by the McLaughlins is now (and was, before the trial court,) entirely untenable in light of the findings of fact and law made by Judge Cooper in his previous Order in this same case. As part of their Answer to the Ralphs' Complaint, and as an affirmative defense, the McLaughlins asserted a third-party claim against SIPOA, in which they alleged that they had acted in reliance on representations from SIPOA when they destroyed the pipe and constructed their home in the No Build Area. Several months before the case went to trial, the parties (i.e., the McLaughlins, SIPOA,

and the Ralphs) each filed motions for summary judgment. The parties were heard on the issues by the Honorable G. Thomas Cooper, Jr. When he issued his Order dismissing the McLaughlins' reliance claims against SIPOA, Judge Cooper made the following findings that are **directly contrary** to the arguments that the McLaughlins made at trial and now make to this Court:

- "SIPOA expressly put the McLaughlins on notice that they bore all responsibility for their actions related to the pipe" (A. p. 7);
- "Between the meetings in early October 2008 and the date that the McLaughlins removed the pipe—December 9, 2008—SIPOA never indicated to the McLaughlins that a resolution to the issue had been reached." (A. p. 9);
- "The McLaughlins removed the pipe on or about December 9, 2008, although SIPOA, the McLaughlins, and their neighbors had not come to an agreement on whether or not the McLaughlins could remove the pipe, or the consequences they would bear for doing so." (A. p. 10);
- "Because the McLaughlins removed the pipe over the objections of SIPOA, there is no evidence in the record to support this theory of recovery [i.e., indemnification]" (A. p. 11, footnote 1);

Judge Cooper went on to hold:

> As a practical matter, there is no evidence to show that SIPOA has ever made any promises to the McLaughlins. Accordingly, as a matter of law, there is simply no genuine issue of material fact that the McLaughlins reasonably relied on the unambiguous acts, representations, and writings of SIPOA or otherwise reasonably based their decision to remove the pipe in 2008, which is what prompted the lawsuit brought by the [Ralphs].
>
> In fact, the record is completely clear that there was absolutely no "unambiguous representation" from SIPOA that the McLaughlins' only responsibility regarding the pipe was that it had to pay to remove the pipe.

> **Rather, the entire history of the interactions between SIPOA indicate the opposite**—that the McLaughlins had to assume all responsibility for the disposition of the pipe. **Indeed, by their own admission, (1) the McLaughlins blamed SIPOA for leaving them in "limbo" in 2008 prior to their removal of the pipe, (2) rejected SIPOA's proposals to resolve the matter prior to the McLaughlins unilateral decision to remove the pipe, and (3) were defendants in a lawsuit filed by the SIPOA to stop them from removing the pipe.**

(Order of Judge Cooper, May 26, 2016) (emphasis added) (A. p. 12).

It is clear from Judge Cooper's Order, and it is in fact the law of the case (*see Section III, infra*), that the McLaughlins were not acting on mistake or misunderstanding when they dug up the drainage pipe. Judge Cooper's findings alone were sufficient to raise the inference that the McLaughlins were acting recklessly, and they should have compelled the trial court to submit the issue of punitive damages to the jury.

Taken as a whole, the McLaughlins' testimony at trial, their confessed knowledge of the results of the study by Mr. George, the many concerned emails that the McLaughlins admitted to receiving from neighboring lot owners (including the Ralphs), the lawsuit filed by SIPOA to stop their construction, ***and*** the findings of fact and law contained in Judge Cooper's Order, ***all*** give rise to the reasonable inference that the McLaughlins acted recklessly. It should have been for the jury to weigh that evidence and to assess whether punitive damages were warranted. *See Fairchild*, 398 S.C. 90, 797 S.E.2d 407, 413 (2012) (finding that the trial court erred in granting a directed verdict on the issue of punitive damages because the evidence and reasonable inferences, viewed in the light most favorable to the plaintiff, created a jury question as to whether defendant was reckless; and further holding "[i]t is not the duty of a trial court to weigh the

evidence"); *see also, Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (S.C. 1983) (holding that allegations of recklessness should have been submitted to the jury).

D. The Court of Appeals did not invade the province of the jury, because the question of punitive damages was not submitted to the jury.

Finally, the Court of Appeals' determination on the issue of punitive damages did not in any way invade the jury's purview—as the McLaughlins strangely contend at the top of page 6 of their *Brief of Appellants*—because the question of punitive damages **was not ever *given* to the jury by the trial court.** The circuit court's legal error was in its refusal to allow the jury even to consider a proper remedy (i.e., punitive damages), when the evidence could support such damages. The Court of Appeals was correct that the jury should have been permitted to consider those damages, and it properly remanded to allow a jury to decide the question, **for the first time**.

For each of the above reasons, this Court should affirm the Court of Appeals' decision on the issue of punitive damages and remand this case to the circuit court for a new trial on damages.

III. The Court of Appeals correctly found that the McLaughlins' inability to rely on any representation by SIPOA was the law of the case.

The McLaughlins' characterization of the Court of Appeals' decision on the issue of the Law of the Case Doctrine is misleading. The Court of Appeals did not—as the

McLaughlins argue—find that Judge Cooper's ruling "establish[ed] liability."[13] (McLaughlins' Brief, p. 6). Instead, the Court of Appeals correctly found that Judge Cooper's ruling finally resolved—as the facts and law of the case—that the McLaughlins had no right to rely on SIPOA when they made their decision to destroy the Easements at issue.

From the very inception of the trial, the McLaughlins employed as their theory of the case the argument that they were acting in justified reliance on representations by the SIPOA when they dug up the pipe and built their house in the No Build Area.[14] In their arguments before the trial court, the McLaughlins persistently contended that their liability to the Ralphs **should be discounted** because they had relied on SIPOA when they built their house and destroyed the easements.[15] Essentially, the grounds for this

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[13] Entirely apart from Judge Cooper's order, the Court of Appeals found that liability was established as a matter of law, as further set forth in Section I, above. The McLaughlins have not asked this Court to review the Court of Appeals' independent basis for finding that SIPOA could not have abandoned the Easements on behalf of the Ralphs, as a matter of law, nor that every element of the Ralphs cause of action for trespass was established, as a matter of law. *See Ralph* at 350-354, 834 S.E.2d at 229-232 (in which the Court does not mention Judge Cooper's Order as any part of its analysis in finding that the McLaughlins' liability for trespass was established, as a matter of law).

[14] *See*, *e.g.*, the McLaughlins' opening argument: "nothing gets built on Seabrook Island or Kiawah Island and certain places like that unless you have the approval of your property owner's association . . . and eventually . . . their plans were approved to build their home where it's currently situated in the former no-build area . . . and I think that's important for the testimony to bear out, that [the McLaughlins] went through a lot of time and effort with the property owners association to build in this no-build area with the abandoned easement." (A. p. 544, line 22-p.545, line 11).

[15] The McLaughlins continue to make the same argument to this Court, arguing that Judge Cooper's Order "has no bearing on . . .the McLaughlins' firmly held belief that . . . they had a right to move forward based on representations to them." (McLaughlins' Brief, p. 7).

defense by the McLaughlins were the same as those that they raised as their Twelfth Affirmative Defense, in their Answer to the Complaint.[16] (A. pp. 114-121).

According to the McLaughlins at trial, their justified reliance on SIPOA negated any financial responsibility to the Ralphs, and it invalidated any argument by the Ralphs as to punitive damages. Importantly, Judge Cooper explicitly decided this precise issue, describing the McLaughlins' assertions (on which his Order was based) in this way:

> To the extent the McLaughlins are found liable to the Ralphs, they claim that SIPOA should bear the cost of such finding, because the McLaughlins claim they "reasonably relied" on purported representations of SIPOA in 2002 and 2008.

(A. p. 6).

Judge Cooper disagreed with the McLaughlins' arguments. When he issued his Order granting summary judgment as to the McLaughlins' reliance claims against SIPOA, Judge Cooper made detailed findings of disputed fact and law, which were applicable to and binding on both the Ralphs and the McLaughlins,[17] including that:

> As a practical matter, there is no evidence to show that SIPOA has ever made any promises to the McLaughlins. Accordingly, as a matter of law, **there is simply no genuine issue of material fact that the McLaughlins reasonably relied on the unambiguous acts, representations, and writings of SIPOA or otherwise reasonably based their decision to remove the pipe in 2008, which is what prompted the lawsuit brought by Plaintiffs**.
>
> In fact, the record is completely clear that there was absolutely no "unambiguous representation" from SIPOA that the McLaughlins' only responsibility regarding the pipe was that it had to pay to remove the pipe.

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[16] The McLaughlins' twelfth affirmative defense was also their third-party claim against SIPOA.

[17] Within the same Order, Judge Cooper ruled on the McLaughlins' and SIPOA's statute of limitations argument against the Ralphs. The Order identifies "THE PARTIES" to whom it applies. It makes findings of facts applicable to all the parties. (Appendix pp. 5-11).

> **Rather, the entire history of the interactions between SIPOA indicate the opposite**—that the McLaughlins had to assume all responsibility for the disposition of the pipe. **Indeed, by their own admission, (1) the McLaughlins blamed SIPOA for leaving them in "limbo" in 2008 prior to their removal of the pipe, (2) rejected SIPOA's proposals to resolve the matter prior to the McLaughlins unilateral decision to remove the pipe, and (3) were defendants in a lawsuit filed by the SIPOA to stop them from removing the pipe.**

(A. pp. 5-12) (emphasis added).

These findings of fact and law by Judge Cooper were final, granting summary judgment to SIPOA, and they could have been—but they were not—appealed by the McLaughlins. As such, those findings should have barred the McLaughlins from reviving the claims as their primary defense at trial.

The Ralphs read Judge Cooper's Order aloud to the trial judge, on several occasions, and they argued that the trial court should be bound by the Order's holding that the McLaughlins could not have reasonably relied on SIPOA when they destroyed the Easements. (A. pp. 772-773; 798-806). Judge Cooper's Order went directly to the heart of the question of whether the McLaughlins acted willfully, as well as to the question of the extent to which they were responsible for their act of digging up the Easements.

Nonetheless, the trial court improperly allowed the McLaughlins to successfully defend at trial based on **the very opposite** of Judge Cooper's rulings, in both their

directed verdict motions to the judge,[18] as well as in their arguments to the jury.[19] The Court of Appeals correctly reversed, holding:

> The issue of whether the McLaughlins could rely on SIPOA is the exact issue the Ralphs raised to the circuit court in arguing that Judge Cooper's order constituted the law of the case. Accordingly, we find the circuit court erred in ruling that Judge Cooper's findings were not binding on the court and the jury. We note the McLaughlins' defense was significantly based on the theory that they were acting in reliance on SIPOA. Moreover, the circuit court's decision to grant the directed verdict on punitive damages was based largely on its determination that the McLaughlins believed they had the right to remove the pipe based on SIPOA's representations.

Ralph at 342, 834 S.E.2d 225. This Court should affirm the Court of Appeals.

It is a fundamental rule of law that an un-appealed order is the law of the case. *Charleston Lumber Co. v. Miller Hous. Corp.*, 338 S.C. 171, 525 S.E.2d 869 (2000), *citing ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 489 S.E.2d 470, 327 S.C. 238 (1997) ("[An]

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[18] In arguing for a directed verdict as to the issue of punitive damages, the McLaughlins contended:

> Your Honor, we also don't think the standard for punitive damages has been reached. You heard Mr. McLaughlin testify that he was relying on the POA when they built their house. There was no wrongdoing of which he was conscious that has been proven by clear and convincing evidence as required for punitive damages, so we would ask Your Honor to strike the punitive damages for the lack of proof and the lack of ability to comply with the case law regarding punitive damages.

(A. p. 777, line 23-p. 778, line 6).

[19] *See, e.g.*, the McLaughlins' closing argument, which reiterated their defense: "The McLaughlins, of course, relied on the representation of their sellers and the representation of the Seabrook Island Property Owners Association that they could build." (A. p. 904, lines 21-24); "those letters confirm what the McLaughlins relied on, that the easement had been abandoned, they could remove the pipe, they could build in the no-build area." (*Id.* at p. 906, line 5); "[The McLaughlins] relied exclusively on the POA to get their house built." (*Id.* at 909, lines 12-14); "[the McLaughlins] have done everything they were supposed to do, according to the POA and the ARB." (A. p. 914, lines 5-6).

unappealed ruling is the law of the case."), *citing In re: Morrison,* 468 S.E.2d 651, 321 S.C. 370 (1996). This is because the failure to challenge a ruling is considered an abandonment of the issue, which precludes subsequent reconsideration of settled matters. *Biales*, 315 S.C. 166, 432 S.E.2d 482 (1993); *see also Anderson*, 323 S.C. 522, 476 S.E.2d 475 (1996) (stating that where a decision is based on more than one ground the appellate court will affirm unless the appellant appeals all grounds, because the unappealed ground will become the law of the case).

The law of the case doctrine is succinctly explained in *Black's Law Dictionary*:

> The doctrine that when a point or question arising in the course of a lawsuit has been finally decided, the legal rule or principle announced as applicable to the facts governs the lawsuit in all its later stages and developments.

Black's Law Dictionary, *Law of the Case* (11th ed. 2019). The citation in *Black's* expands that:

> Once a court finally decides a contested point, that decision governs later stages of the dispute. That is, courts should treat the same litigants in the same case the same way throughout the same dispute. They have created a law of the case.

Black's Law Dictionary, *citing* Bryan A. Garner *et al.*, *The Law of Judicial Precedent* 441 (2016).

The doctrine is based on sound public policy, which is to "promote[] the finality and efficiency of the judicial process by protecting against the agitation of settled issues." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988); *see also United States v. U.S. Smelting Ref. & Mining Co.*, 339 U.S. 186, 198, 70 S.Ct. 537, 94 L.Ed. 750 (1950) ("The rule of the law of the case is a rule of practice, based upon sound policy that when an issue is once litigated and decided, that should be the

end of the matter."). Professors Wright and Miller's treatise on Federal Practice and Procedure emphasizes that it is improper to allow a different judge in the same court to rule differently on the same issue, because (*inter alia*) that practice "might tempt litigants to 'shop' rulings from one judge to another, and could encourage the view that the quality of justice depends on the identity of the judge." 18B Fed. Prac. & Proc. Juris., *Law of the Case—Trial Courts* § 4478.1 (2d ed., April 2020 Update). The treatise observes that the correct method of dealing with an unfavorable ruling is to move for reconsideration (or, if applicable, seek an interlocutory appeal)—neither of which was done by the McLaughlins after Judge Cooper issued his Order.

Because the McLaughlins never appealed Judge Cooper's findings of fact and determinations of law, the Court of Appeals properly held that his order became the law of the case and should have been binding in the subsequent trial of the same case. *ML-Lee Acquisition Fund, L.P.*, 327 S.C. at 241, 489 S.E.2d at 472 (noting that where accountant did not appeal trial court finding that investor was accountant's client, that finding became the law of the case during the appeal); *see also Ashy v. WeCare Distributors, Inc.*, 289 S.C. 526, 528, 347 S.E.2d 123, 125 (Ct. App. 1986) ("Where no exception is taken to findings of fact or conclusions of law, they become the law of the case.")*.*

The law of the case doctrine makes sense. A legal action simply cannot have one legal finding early in the case (with the predicate factual findings) and then permit a contradictory finding later in the case. With each final circuit court ruling, the parties are given direction by the court and must proceed accordingly. If a party believes the court

is in error, then that party has the responsibility of preserving and pursing the issue by appealing the decision.

The law of the case applies both to those issues explicitly decided, as well as to those issues which were necessarily decided in the prior ruling. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 492 S.E.2d 62 (1997), *citing Nelson v. Charleston & Western Carolina Railway Co.*, 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957) (noting that "where Court granted a new trial in first appeal for errors in the charge, it logically determined trial court had not erred in refusing defendant's motion for a directed verdict 'for if there had been error in this respect it would have been unnecessary to consider any other questions'"); *also citing Warren v. Raymond*, 17 S.C. 163 (1882) (noting "all points decided by the Court on appeal, or necessarily involved in what was decided, are res judicata and cannot be considered again in the cause."). The *Ross* case involved proceedings in the circuit court after an appeal of a discovery order ("*Ross I*"). During the *Ross I* appeal, the Supreme Court applied to the Administrative Procedures Act ("APA") to the discovery dispute, although the question of whether the APA applied was not before the Court. On remand, the circuit court proceeded to find that the APA did not apply to the grievance proceedings that were at issue. The *Ross II* Court reversed, holding that the circuit court was bound by the law of the case to apply the APA to the facts, because the issue had necessarily (though not explicitly) been decided in *Ross I*. In other words, as judges make final legal and factual rulings in a lawsuit, those rulings bind the parties going forward—unless they are appealed at the time of the ruling.

In this instance, Judge Cooper's order necessarily and finally resolved the question of whether the McLaughlins could employ reliance on SIPOA as their defense to liability in the subsequent trial of the same case. This question was inextricably bound to the precise question that was before Judge Cooper, which was the viability of the McLaughlins' third-party claim against SIPOA. When Judge Cooper Order explicitly decided that "as a matter of law, there is simply no genuine issue of material fact that the McLaughlins reasonably relied on the unambiguous acts, representations, and writings of SIPOA or otherwise reasonably based their decision to remove the pipe in 2008, which is what prompted the lawsuit brought by Plaintiffs," he necessarily decided that their associated affirmative defense to liability was groundless. Therefore, the Court of Appeals properly found that the trial court erred when it allowed the McLaughlins to base their defense on purported facts the were **directly contradictory to those that had already been established** as the law of the case.

The facts and law established in Judge Cooper's Order should have steered the trial court's and the jury's consideration of the McLaughlins' defense that they were relying on SIPOA when they destroyed the Easements. The McLaughlins should have been prevented from re-litigating Judge Cooper's ruling before Judge Young and the jury. Instead, the trial court's improper disregard of Judge Cooper's Order tainted its own analysis on the question of punitive damages, as set forth in Section II, above. Furthermore, the trial court's decision to discount Judge Cooper's Order imparted credence to the McLaughlins' repeated testimony to the jury that they were relying on

SIPOA when they destroyed the drainage pipe and built their house in the No Build Area.[20]

The Court of Appeals correctly found that the circuit court erred in failing to apply Judge Cooper's findings of fact and conclusions of law as the law of the case. Further, it rightly concluded that "on remand, Judge Cooper's determination that the McLaughlins could not reasonably rely on SIPOA's representations shall be applied as the law of the case." *Ralph* at 357, 834 S.E.2d at 233. This Court should affirm the Court of Appeals.

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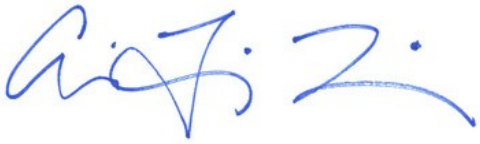
[20] As the Court of Appeals points out in its decision, this error was two-fold: not only should Judge Cooper's Order have ruled out this argument to the jury, but also, as a matter of law, SIPOA could not have abandoned the easement. *Ralph v. McLaughlin* at 356, 834 S.E.2d at 232. As set forth in Section I, above, the McLaughlins have not challenged both prongs of the Court of Appeals' holding.

CONCLUSION

For the reasons set forth above, and because independent grounds exist on which the Court of Appeals' decision should be sustained, the Ralphs respectfully request that this Court would affirm the Court of Appeals and remand the case for a new trial on compensatory and punitive damages.

Respectfully submitted,

FORD WALLACE THOMSON LLC



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