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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Honorable Carmen T. Mullen, Circuit Court Judge

Opinion No. 5807 (S.C. Ct. App. filed March 3, 2021)
Appellate Case No. 2021-000625

Road, LLC and Pinckney Point, LLC of whom Road, LLC is the Petitioner,

v.

Beaufort County, a political subdivision of the State of South Carolina, Respondent.

BRIEF OF PETITIONER

G. Trenholm Walker (S.C. Bar #5777)
John P. Linton, Jr. (S.C. Bar #79130)
WALKER GRESSETTE & LINTON, LLC
P.O. Box 22167
Charleston, SC 29413
(843) 727-2200
Attorneys for Petitioner, Road, LLC

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STATEMENT OF ISSUES ON APPEAL

1. Did the Court of Appeals err and fail to follow settled precedent that a verdict shall not be set aside if there is any evidence to support it, and settled precedent that the jury is the sole judge of the credibility of witnesses and the weight of the evidence, by holding there was no proof Road, LLC sustained \$5,000,000 in damages when the expert's testimony at trial, taken as a whole, supports the jury's verdict and there was other independent proof supporting the award of \$5,000,000 in damages?
2. Did the Court of Appeals err and fail to follow precedent governing the standard for a JNOV in failing to address the Road, LLC's alternative basis of liability against the County – namely, breach of the implied covenant of good faith and fair dealing – and in failing to consider the evidence supporting a finding that the County's purchase of the Point Tract, with the admitted intent to prevent it from ever being a residential development, caused the damages sustained by Road, LLC?
3. Did the Court of Appeals err and fail to follow precedent governing the standard for a JNOV in holding that Road, LLC's damages were entirely caused by Pinckney Point, LLC's inability to obtain a loan to close on its option to repurchase the Point Tract, even though Road, LLC's purchase of the Road Parcel was structured specifically to account for this contingency and establish the business opportunity for Road, LLC to sell the Road Parcel to a subsequent residential developer of the Point Tract, which the County purposely prevented?

STATEMENT OF THE CASE

This appeal arises from the Court of Appeals' affirmation of the trial court's decision to grant the motion of Respondent, Beaufort County (the "County") for judgment notwithstanding verdict, after a Beaufort County jury rendered a verdict of \$5,000,000 for Petitioner Road, LLC ("Road, LLC") on its breach of contract claim following six days of trial.

Road, LLC, along with the other named Plaintiff, Pinckney Point, LLC, commenced this civil action on May 21, 2013, generally challenging, and seeking to enjoin, the County's pending purchase of approximately 229 acres known as Pinckney Point (the "Point Tract") to prevent its development by Pinckney Point, LLC. (**Compl., App. pp. 22-32**). After the County proceeded with its purchase of the Point Tract one week later, Road, LLC and Pinckney Point, LLC amended

the Complaint to assert separate and independent claims against the County for breach of the settlement agreement (hereinafter, the “Settlement Agreement”) (**Pls. Ex. 78, App. at pp. 1745-1795**) that the parties entered in January 2011 for the purpose of ending litigation over legal access to the Point Tract and facilitating the development of the Point Tract, formerly a sod farm. (**Am. Compl. Fifth Cause of Action, App. pp. 50-52**). The Settlement Agreement also assured the necessary right of way to the Point Tract needed for the development of the low-density residential community planned there, as required by the County.

The six-day jury trial before the Honorable Carmen T. Mullen, Circuit Judge, began on April 25, 2016. During the trial, the Circuit Court twice denied motions by the County for directed verdicts – each time determining that the jury could find from the evidence presented that the County had breached the Settlement Agreement. (**App. pp. 1285:21-23 and 1418:6-7**). After extensive deliberation, the jury returned a verdict on May 2, 2016, for \$5,000,000 against the County on Road, LLC’s cause of action for breach of contract. (**Verdict Form 5/2/16, App. p. 1566**).¹ Ten days later, on May 12, 2016, the County filed a motion for judgment notwithstanding the verdict (**Mot. JNOV 5/12/16, App. pp. 282-299**), which the circuit court entertained at a hearing held on August 9, 2016. More than a year after the jury returned its verdict, the circuit court granted the County’s post-trial motion and on July 18, 2017, signed the order proposed by the County without any modification. (**Compare County’s proposed order, App. pp. 2169-2182, and Order dated 07/18/17, App. pp. 1-15**). Road, LLC timely served and filed a Notice of Appeal thereafter, on August 17, 2017.

¹ The jury returned a verdict for the County as to the breach of contract claim asserted by Pinckney Point, LLC.

After hearing oral argument on June 16, 2020, the Court of Appeals issued its opinion, affirming the lower court’s order granting the County’s Motion for JNOV. (**Opinion No. 5807, S.C. Ct. App. filed March 3, 2021**) (**App. pp. 2310-2319** (hereinafter the “Opinion”), now reported as Road, LLC v Beaufort County, 433 S.C. 164, 857 S.E.2d 371 (Ct. App. 2021) reh'g denied (May 14, 2021), cert. granted (Feb. 1, 2022). Road, LLC then filed a petition for rehearing, (**App. 2320-2345**), that the Court of Appeals denied by order dated May 14, 2021. (**App. 2373-2374**). Road, LLC served and filed its Petition for Writ of Certiorari on June 14, 2021. This Court granted the Petition on February 1, 2022.

STATEMENT OF FACTS

Introduction and Discussion of the Court of Appeals’ Opinion

In the Opinion, the Court of Appeals affirmed the lower court’s decision to grant the County’s Motion for JNOV. In so ruling, the Court of Appeals held there were two fatal deficiencies as to the damages awarded by the jury. “First, the jury was presented with no evidence Road, LLC was damaged by the County treating Colony Road as public.” (**App. at p. 2318**). “Second, the evidence presented at trial showed Road, LLC did not suffer \$5 million in damages because Road, LLC’s expert testified that the property was still worth \$5 million after the County purchased the Point Tract.... [E]ven if the jury ignored Hartnett’s testimony about the Road Parcel’s current value, there was no other evidence presented regarding the value of the Road Parcel after the County had purchased the Point Tract. Therefore, the jury would have been left to speculate as to what damages Road, LLC suffered.” (**App. at pp. 2318-2319**).

In reaching these conclusions, the Court of Appeals ignored the standard of review that must be applied when considering a motion for judgment notwithstanding verdict.

As to its first reason, the Court of Appeals, just like the lower court that granted the County's motion, completely disregarded and failed even to mention Road, LLC's alternative basis of liability premised on the County's breach of the implied covenant of good faith and fair dealing. All parties agreed that one of the primary purposes of the multiparty Settlement Agreement was to facilitate the residential development of the Point Tract that would allow Road, LLC to sell the Road Parcel to the residential developer (then expected to be Pinckney Point, LLC) for the minimum fifty-foot right of way the County required for its residential development. It is undisputed the County purchased the Point Tract as soon as Pinckney Point, LLC's option to repurchase expired with the specific intent and purpose of preventing the Point Tract from ever becoming a residential development as previously approved by the County for Pinckney Point, LLC.

As to the second reason, just as the lower court did, the Court of Appeals indulged in weighing the evidence and failed to consider other pertinent portions of the expert's testimony that put his opinions in context. In so doing, both courts violated the province of the jury and unbroken universal precedent that the weight and credibility of the proof is for the jury to determine, not the court.

The Court of Appeals made an additional error in the second reason it gave for sustaining the lower court's ruling on damages in stating "there was no other evidence presented regarding the value of the Road Parcel after the County had purchased the Point Tract." (**App. at p. 2319**). Taking the evidence in the light most favorable to Road, LLC, there was indeed other proof that the County's purchase of the Point Tract to permanently prevent it from being a residential development diminished the value of the Road Parcel as the sole access to a residential development by \$5,000,000.

The Opinion reveals the Court of Appeals reached its decision based on an erroneous assumption of certain critical facts, explained below, and in failing to consider Road, LLC's claim for breach of the implied covenant of good faith and fair dealing, as well as not considering the abundant proof supporting this breach of the implied covenant.

Throughout its Opinion, the Court of Appeals incorrectly treated Road, LLC and Pinckney Point, LLC as one development entity, even though the proof at trial demonstrated the Court of Appeals' premise to be entirely incorrect. Road, LLC and Pinckney Point, LLC are distinct entities. Pinckney Point, LLC is a single purpose limited liability company established for the development of the Point Tract, which it purchased in 2006. On the other hand, Road, LLC, is a single purpose limited liability company established in 2010 to purchase an isthmus property (the "Road Parcel") that provides the only road access to the Point Tract. The investor in Road, LLC that provided the capital to purchase the Road Parcel was entirely different from the investors in Pinckney Point, LLC. (**App. pp. 978:13-980:10**). While it was a party to the Settlement Agreement and its purchase of the Road Parcel was as critical component of the settlement, Road, LLC had nothing to do with the development of the Point Tract by Pinckney Point, LLC. (**App. at pp. 885, 888**). Yet, in conflating the two entities, even indiscriminately referring to both simply as the "Developers" through its Opinion, the Court of Appeals failed to appreciate the significance of the distinction between the entities, that being, the Settlement Agreement imposed distinct obligations on the County to act in good faith and deal fairly with Pinckney Point, LLC and – separately – Road LLC.

The Court of Appeals' mistaken impression that Pinckney Point, LLC and Road, LLC were one and the same for all intents and purposes permeates its Opinion and led the Court of Appeals

to premise its ruling on a fundamental misunderstanding.² What also permeates the Opinion is the Court of Appeals' failure to consider all the proof pertinent to Road, LLC's allegations of the County's breach of the implied covenant of good faith and fair dealing.

Overview of the Proof at Trial

The Point Tract is a 229-acre undeveloped parcel at the confluence of the Okatie and Colleton Rivers that is zoned for residential development. (**App. at pp. 430:5-7; 492:18-20; 867:21-24**). The only vehicular access to the Point Tract is over an unimproved dirt road on the .85-acre Road Parcel. (**App. at p. 1981**). As described at trial, the Point Tract is shaped like the head of a tennis racquet and the Road Parcel its throat. (**App. at pp. 429, 494, 652, 1058**).

Pinckney Point sought to develop the Point Tract into 76 high-end waterfront lots. (**App. at pp. 430:5-7**). When Pinckney Point purchased the Point Tract, the seller initially sought \$15,500,000 but ultimately reduced the purchase price by approximately \$5,000,000, due to ongoing litigation over whether future residential development on the Point Tract could be accessed via the Road Parcel. (**App. at pp. 495:9-13; 505:21-506:2; 652:12-653:7; 691:20-24; 953:19-954:8**). That litigation (hereinafter the "Road Case") was a suit brought by the County on November 22, 2005, against the then-owner of the Road Parcel, John David Pinckney. Mr. Pinckney had placed fence posts in the middle of the dirt road, claiming the last 2/10ths mile of the road to the Point Tract over his land was private. The County asserted in the action against Mr.

² Nothing could be more representative of this basic misunderstanding by the Court of Appeals than the first sentence of the Opinion: "In this breach of contract action, Road, LLC and Pinckney Point, LC (Pinckney) (collectively "Developers") appeal the trial court's order granting Beaufort County's (County's) motion for judgment notwithstanding verdict (JNOV)." **Road, LLC was not a developer, and Pinckney Point, LLC did not appeal the jury's verdict.**

Pinckney and other adjoining owners that this last segment of the road to the Point Tract was public, not private. (**App. at pp. 502:2-504:25**).

As a result of the legal uncertainty over access to the Point Tract via the Road Parcel, the seller sold the Point Tract to Pinckney Point, LLC at the reduced price of \$10,600,000 on May 29, 2006. (**App. at pp. 506:23-508:7**). Pinckney Point, LLC then became a party to the pending Road Case. (**App. at pp. 505:1-5; 508:2-7; 1883-1891**).

At the same time as it was litigating the legal status of the right of access over the Road Parcel to the Point Tract in the Road Case, Pinckney Point, LLC was proceeding to seek all permits and approvals necessary to develop the Point Tract into 76 high end lots. (**App. 211:5-6; 748:3-21**). Pinckney Point, LLC also became embroiled in another lawsuit with the County that impaired its ability to develop the Point Tract. This separate case involved an appeal by Pinckney Point, LLC to the circuit court of the denial of a variance by the Beaufort County Zoning Board of Appeals (“ZBOA”) (the “Variance Appeal”).

The Variance Appeal arose in 2007 from Pinckney Point, LLC’s plan to move the driveway on the Point Tract from its existing location where it ran parallel to the marsh through more than 3483 feet of the river buffer to an old homesite on the Point Tract to a new location that would cross the river buffer for only 130 feet. (**Pls. Ex. 78, App. at p. 1761**). Pinckney Point, LLC intended to re-vegetate the existing entrance driveway in river buffer once the newly located entrance driveway was established. (**Pls. Ex. 78, App. at p. 1759**) (“PPLLC shall restore to a natural state the approximately 3,353 linear feet of existing road in the River Buffer-River Setback in the current location of the road...”). A variance was required to allow the new location of the entrance driveway even though it would diminish the penetration of the river buffer by 95%. (**Pls.**

Exs. 9, 10, 78; App. at p. 1761). The ZBOA denied the variance request causing Pinckney Point, LLC to appeal the decision to the circuit court. (**App. at pp. 528:21-534:20**).

Even though the County's ZBOA had denied the variance request, the County insisted as a condition of Pinckney Point, LLC's proceeding with the development that it both obtain the variance for the installation of the utilities and the new driveway in the river buffer and obtain a 50-foot access easement across the Road Parcel to ensure the access to the Point Tract the County required for its development. (**App. at pp. 540:21-543:10**). After purchasing the Point Tract, Pinckney Point, LLC invested millions of dollars toward its residential development, obtaining various permits and approvals for its development, including securing conditional approval from the County of its concept plan for development of 76 residential lots on August 23, 2011. (**App. at pp. 509-510; 914:19-916:5; 1047, Pltf. Exh. 111, App. at p. 1978**).

To bring an end to the Road Case and Variance Appeal, in 2010 the parties worked out the structure for a settlement among the County, Pinckney Point, LLC, Mr. Pinckney, and the other parties to the Road Case. At the time, Pinckney Point, LLC was not current on its loan and, as a result, its lender refused to loan it another \$1,300,000, which was the amount needed to buy the Road Parcel from Mr. Pinckney as part of the settlement. (**App. at pp. 654:22-655:5**).

The purchase of the Road Parcel was a critical component of the settlement. Because Pinckney Point, LLC could not secure the additional money for the purchase, a separate ownership group, backed by Arendale Holdings, emerged to buy the Road Parcel from Mr. Pinckney for \$1,300,000. (**App. at pp. 649:12-16; 884:11-888:4**). To protect itself, and its investment, Arendale Holdings insisted on several conditions to its purchase of the Road Parcel. First, its \$1,300,000 would not be loaned or invested in Pinckney Point, LLC, since it was then in default on its bank loan; rather, Arendale Holdings' own entity, Road, LLC, would purchase the Road

Parcel from Mr. Pinckney. (**Id.**). Second, to protect the value of the Road Parcel, Road, LLC insisted that the settling parties agree the Road Parcel be forever deemed a private road, which ensured that no one developing the Point Tract in the future could assert a right to use the road for access on the basis that the road was public. (**Id.**). Third, to insure that the any future developer of the Point Tract would have to purchase the Road Parcel, Road, LLC insisted that a pre-existing unimproved twenty-foot easement across the parcel remain unchanged, because it allowed minimal legal access to the Point Tract while being entirely insufficient to support the envisioned residential development; the County’s development ordinances prohibited the development of more than five lots without an improved road in a right of way of at least 50 feet in width. (**Id.**; **App. at pp. 701:10-19; 1119:15-24**). Fourth, pursuant to the Settlement Agreement, Pinckney Point, LLC would later be required to purchase the Road Parcel from Road, LLC, to obtain the access to the Point Tract that is necessary to develop the Point Tract. See (**App. at p. 1748**) (“Road, LLC. . .has agreed to convey either the Road Parcel to PPLLC or an easement for right-of-way not less than fifty feet wide to PPLLC upon payment of certain consideration described in said Road Agreement.”). As a result, these bargained-for protections assured Road, LLC that its Road Parcel would be a necessary component of the residential development of the Point Tract, regardless of who developed the Point Tract. Satisfied with these protections, Road, LLC executed the global Settlement Agreement along with Pinckney Point, LLC, the County and others, bringing an end to over five years of litigation in the Road Case and resolving the Variance Appeal.³ (**App. at pp.**

³ In the Settlement Agreement the County agreed, among other things, to grant the requested variance and agreed that a fifty-foot right of way over the Road Parcel would satisfy the County’s requirements for access to develop the Point Tract into residential lots. (**App. at pp. 1745-1755**).

1065:12-21; 1745-1785). This multiparty Settlement Agreement was the basis for the breach of contract cause of action asserted by Road, LLC. **(Pls. Ex. 77; App. at pp. 1745-1795).**

Importantly, at trial, the County’s own witnesses agreed with the Plaintiffs’ witnesses that the purposes of the Settlement Agreement included allowing the permitting process between Pinckney Point, LLC and the County to continue for the Point Tract to be entitled as a residential development. **(App. at pp. 1369:17-1371:20)** (Josh Gruber of the County discussing that the settlement language contemplated the development of the Point as a residential development); **(App. at pp. 571:14-16; 593:18-594:1; 594:18-24; 883:14-24)** (John Kunkel explaining that the Settlement Agreement allowed the development to “get outside of the logjam of the litigation,” establish “undisputed legal access to the Pinckney Point tract,” and enable them “to proceed forward to develop it”); **(App. at pp. 1747-1748); (App. at pp. 1232:25-1234:1)** (Gary Kubic, administrator of the County, testifying that he was aware when he signed the Settlement Agreement that the goal was to develop the Point Tract and that following the settlement Pinckney Point, LLC continued to pursue approvals for the purpose of a residential development). **(App. at p. 571:14-16)** (Q: “What was the settlement to do?” A. “[Taylor Bush] It was to resolve everything necessary for us to develop the property.”).

Road, LLC bought the Road Parcel for \$1,300,000 on the same date that it executed the Settlement Agreement, and in accordance therewith. **(App. at pp. 1889-1892).** As referenced by the Settlement Agreement, Road, LLC and Pinckney Point, LLC then entered a separate road purchase agreement, pursuant to which, Pinckney Point agreed to purchase the Road Parcel for \$5,000,000 at a later date when Pinckney Point undertook the development. **(App. at pp. 887:4-889:8;1738; 1994-2000).**

The evidence at trial showed that Road, LLC made the \$1,300,000 investment in the Road Parcel because the residential development of Point Tract by *anyone* would require the owner of the Point Tract, regardless of whom that may be, to purchase the Road Parcel from Road, LLC. (App. at pp. 885:2-23; 888:21-889:1) (App. at pp. 888:21-889:1; 889:5-8) (“Literally, all roads go over Road, LLC’s, property, and any acquirer of the Pinckney tract would need to purchase or acquire the right-of-way across the Road, LLC, tract.”) (App. at pp. 951:20-952:20) (Q. “[I]t was structured such that, if you wanted to develop that property at the end of the tennis racket there, the Pinckney Point property, you would have to buy an easement or some kind of road access from Road, LLC?” A. “That’s correct.”). It was specifically structured in this manner due to Pinckney Point’s default and the possibility the bank could foreclose on the Point Tract. (App. at pp. 649:12-16; 884:11-888:4).

Because of the years of delay caused by the litigation and the financial difficulties ensuing from those delays, Pinckney Point, LLC ultimately conveyed the Point Tract, through a deed in lieu, to an entity known as Equity Resource Partners, III, LLC (“ERP”) that acquired Pinckney Point’s loan from its original lender. (App. at pp. 587:15-588:1); (App. at p. 588:13-22); (App. at pp. 588:23-590:2); (App. at p. 891:1-24); (App. at p. 891:9-24); (App. at pp. 1796-1846 & 1903-1932). Pinckney Point, LLC entered a number of agreements with ERP that included an option to repurchase the Point Tract and ongoing commitment to continue to seek approvals for the residential development that were assigned to ERP. (App. at pp 1786-1837). ERP insisted, as a condition of extending the option again, that it receive a new easement expanding the 20-foot existing easement to a “size, use, and maintenance that would allow an owner of our land to fully develop it in accordance with your current development plans.” (App. at pp 635:18-636:5). The obvious importance of these commitments that ERP extracted from Pinckney Point, LLC was to

enable ERP to sell the Point Tract to another entity for residential development in a package that included the development permits and approvals obtained by Pinckney Point, LLC and assigned to ERP. Pinckney Point, LLC paid ERP a total of \$500,000 for the original option and an extension of its term through February 28, 2013. **(App. at pp. 591:5-592:24; 624:24-625:2).**

What later came to light is the County had other plans that it did not disclose to Road, LLC. The County wanted to keep the Point Tract from ever being developed and was planning to acquire it to accomplish that goal. During the time of Pinckney Point, LLC's option, the County, through its agent, the Beaufort County Open Land Trust, began inspecting the Point Tract in November 2012 for possible purchase by the County as a park. **(App. at pp. 788:21-789:1; 790:25-791:4; 1234:13-1236:7).** Garrett Budds, the Land Trust representative who did the inspection, concluded the Point Tract was suitable for conservation; in his estimation it was "replete with natural resource value" and located in an "important watershed" "within the Okatie River." **(App. at pp. 789:2-791:17).**

Pinckney Point, LLC's option to purchase the Point Tract expired on February 28, 2013, although ERP gave it until March 11, 2013, to close. **(App. at p. 644:4-7).** The County's agent, Budds presented the proposal for the County's acquisition of the Point Tract to the County's Rural and Critical Land Board three days later, on March 14, 2013. Budds told the Board that the County's proposed purchase of Pinckney Point "removes development threat – 70+ residences," commenting that "the County has approved master plans for development of the property." **(Pls. Exs. 36 & 105; App. at pp. 1658-1663 & 1961-1966).** The "development threat" described by Budds was the threat looming if the Point Tract went on the market. Budds also noted that the County's purchase could provide for "restoring a natural resource" and "building a regional recreational amenity" or "regional park" **(Pls. Exs. 36 & 105; App. at pp. 1658-1663 & 1961-**

1966) (**App. at pp. 796:4-806:25**). The County Rural and Critical Land Board approved the County's purchase of the Point Tract for \$6,950,000. (**App. at p. 806:18-25**). The minutes of the Board's meeting did not refer to the parcel by name or location but only by alphabetical letter, in order to keep its identity a secret. (**App. at pp. 1237:5-1238:7**).

A similar presentation was made in executive session to the Natural Resources Committee of County Council on April 1, 2013. (**Pls. Ex. 107, App. at pp. 1967-1973**). After receiving information in executive session, County Council approved the purchase one week later on April 8, 2013. (**App. at pp. 1236:21-1238:19**) (**Pl. Ex. 109, App. at pp. 1974-1977**).

The County openly admitted at trial that it purchased the Point Tract *with the specific intent of preventing it from ever being a residential development* as contemplated by the Settlement Agreement. (**App. at p. 1248:3-4**) (Beaufort County Administrator Gary Kubic testifying that in acquiring the Point "the primary use we wanted was to prevent the development of the property"). The County's actions on the heels of the expiration of Pinckney Point, LLC's option ensured the Road Parcel would become valueless as a gateway to a residential development and stunned those involved in the Settlement Agreement. A reasonable inference from the proof is that the County would have had no reason to purchase the Point Tract immediately after the expiration of the option to repurchase, held by its counterparty to the Settlement Agreement, if there was not a reasonable likelihood that another developer would have purchased the Point Tract that was entitled for the development of 76 residential lots.⁴

⁴ The County granted Pinckney Point, LLC approval of its concept plan for 76 lots on August 23, 2011. (**App. at pp. 597:18-599:3; App. at p. 1978**). The County's approval of the site-specific development plan created a vested right in Pinckney Point, LLC for a two-year term, subject to five annual one-year extensions. S.C. Code Ann. §6-29-1530(A). The County purchased the Point Tract within the initial two-year term of the vested right.

Walter Nester, the lawyer for Road, LLC who was the primary drafter of the 2011 Settlement Agreement, learned of the pending sale through a newspaper article and was “flabbergasted, shocked, extremely surprised.” He even met with County representatives before the closing to explain that the County could not use the Point Tract for its intended uses given the restrictions on the access imposed by the Settlement Agreement. (**App. at pp. 1105:24-1106:24; 1106:19-1107:11**); (**App. at pp. 1108:1-1109:1**). After the meeting, he sent a letter, dated April 17, 2013, to Josh Gruber of the Beaufort County Legal Department, explaining that the County’s proposed action was in conflict with the Settlement Agreement because “. . . the parties in the 4-Party Settlement Agreement agreed that Pinckney Colony Road is private” and “[i]n reliance upon that 4-Party Settlement Agreement, and for the specific purpose of making the road private, Road, LLC acquired the Road Parcel . . . it was never contemplated that Beaufort County would be a potential purchaser of the Point Tract.” (**Pls. Ex. 32, App. at pp. 1655-1657**). Nester even specifically warned that the County’s attempt to acquire the Point Tract for conservation may have been a breach of the Settlement Agreement. (**Pls. Ex. 32, App. at pp. 1655-1657**).

The Court of Appeals failed to consider material facts about Road, LLC’s purchase of the Road Parcel, the reasons for that purchase, and the protections embedded in the Settlement Agreement. Instead, the Court of Appeals premised its decision on its incorrect suppositions that basically Pinckney Point, LLC and Road, LCC were one and the same; that Road, LLC’s investment depended entirely on whether Pinckney Point, LLC was the developer of the Point Tract (even though the proof was just the opposite – that Road, LLC bought the parcel instead of loaning money to Pinckney Point, LLC to buy it, because there was the very real potential Pinckney Point, LLC, might *not* be the ultimate developer); and that Road, LLC’s only claim of breach of

the Settlement Agreement against the County was that it failed to keep its obligation that the road was private.

In considering only Road, LLC's allegations the County breached the *express* provision in the Settlement Agreement that the road be forever private, the Court of Appeals held that "the jury was presented with no evidence Road, LLC was damaged by the County treating [the Road Parcel] as public." (**App. at p. 2318**). According to the Court of Appeals, a "potential breach of the private road clause did not render Developers unable to develop the Point Tract, which Road, LLC asserted caused the \$5 million in damages" and "there was no evidence Road, LLC suffered \$5 million in damages due to the County's breach of the private road clause." (**App. at p. 2318**). Further interpreting the evidence presented at trial, the Court of Appeals found:

the evidence presented at trial showed Road, LLC did not suffer \$5 million in damages because Road, LLC's expert testified that the property was still worth \$5 million after the County purchased the Point Tract. Thus, the evidence presented at trial indicated the value of the property did not change.

(**App. at p. 2318**). The Court of Appeals limited its holding to the proof of Road, LLC's damages and stated that it is "inconsequential" whether the Settlement Agreement was breached. (**App. at p. 2319**) ("... whether the County breached is inconsequential for the disposition of this case.").

The Court of Appeals is correct that Road, LLC asserted that the County's actions breached its *express* obligation in the Settlement Agreement that the road be forever private.⁵ Yet, Road,

⁵ Road, LLC disagrees with the Court of Appeals' assertion that the County's breach of its commitment to keep the road private did not cause it damages. Treating the road as public completely undermined Road, LLC's \$1,300,000 investment. The County's treatment of the road as public, contrary to its covenant in the Settlement Agreement that the road was private, eliminated the County's need to purchase the Road Parcel and deprived Road, LLC of the ability to sell the Road Parcel to the County as the sole gateway to its regional park.

LLC also asserted the County's conduct also violated the County's covenant of good faith and fair dealing implied into the Settlement Agreement. The Court of Appeals did not address this inherent jury issue. By its very nature, this claim based on an *implied* covenant does not depend on the contract's containing an express provision prohibiting the County from buying the Point Tract. The claim is also not defeated by the fact that ERP was not prohibited from selling the Point Tract to whomever it wanted, after Pinckney Point, LLC's option expired. The question is whether the purchase by the County, *rather than a non-party to the Settlement Agreement*, violated the implied covenant of good faith and fair dealing owed by the County, as a party to the Settlement Agreement, under the circumstances. This factual determination was for the jury to decide, based on the proof and reasonable inferences therefrom presented at trial.

The Court of Appeals also incorrectly held there was no evidence from which the jury could have concluded that Road, LLC suffered damages in the amount of \$5,000,000 from the County's conduct in purchasing the Point Parcel for a park specifically to prevent its development as a residential community by any person or entity other than Pinckney Point, LLC once its option expired. The County's purchase permanently prevented Road, LLC from selling the Road Parcel to a residential developer, as allowed and contemplated by the Settlement Agreement. In fact, there were three separate bases of proof to support the jury's \$5,000,000 verdict: (1) the 2006 reduction in the amount of the purchase price because of contested access; (2) the January 2011 purchase agreement, pursuant to which Pinckney Point, LLC agreed to buy the Road Parcel from Road, LLC for \$5,000,000; and (3) the expert testimony of Road, LLC's appraiser, Thomas F. Hartnett. The amount of the jury verdict was well grounded in the proof and not speculative.

STANDARD OF REVIEW

“When reviewing the trial court’s ruling on a motion for directed verdict or a JNOV, this Court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012). “The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt.” Id. (emphasis added). A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992). The appellate court will reverse the trial court only when there is no evidence to support the ruling below. Creech v. South Carolina Wildlife and Marine Resources Dep’t, 328 S.C. 24, 491 S.E.2d 571 (1997). “When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence.” Welch v. Epstein, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000) (citations omitted); Creech v. South Carolina Wildlife and Marine Resources Dep’t, 328 S.C. 24, 491 S.E.2d 571 (1997). When considering a Motion for JNOV, the trial court or appellate court is concerned with the existence of evidence, not its weight. Maybank v. BB&T Corp., 416 S.C. 541, 571, 787 S.E.2d 498, 513 (2016), *reh’g denied* (July 13, 2016) (finding that the trial court correctly refused to grant JNOV of an Unfair Trade Practices Cause of Action because evidence existed that could support the verdict). A jury’s verdict will not be overturned if **any evidence** exists that sustains the factual findings implicit in its decision. Id.

In the context of a breach of contract case, the order of a trial court granting JNOV must be reversed when there is **any proof** that the defendant’s actions hampered the plaintiff’s efforts to complete their purpose of entering into the contract. See Burns v. Universal Health Services, Inc.,

361 S.C. 221, 603 S.E.2d 605 (Ct. App. 2004) (reversing trial court order granting JNOV in case in a claim for breach of the implied covenant of good faith when the evidence presented a jury issue). As explained below, both the Circuit Court and Court of Appeals violated this fundamental standard established by an unbroken line of precedent.

ARGUMENT

- I. **The Court of Appeals erred and failed to follow precedent in weighing the evidence in holding there was no proof submitted at trial that Road, LLC sustained \$5,000,000 in damages – based on a select excerpt from the testimony of Road, LLC’s expert appraiser – when his testimony, taken as a whole, supported the jury’s verdict, and there was other independent proof to support the verdict.**

The Court of Appeals usurped the jury’s role in basing its holding on the Court’s interpretation of answer by Plaintiffs’ appraiser, Thomas F. Hartnett, to one question that was taken out of context. The Court of Appeals held that the *only* inference from Hartnett’s testimony that the Road Parcel was still worth \$5,000,000 is that Road, LLC suffered no damages, and, therefore, there was no proof to sustain the verdict of \$5,000,000 in its favor. In so doing, the Court failed to abide by the long-standing rule that the jury was free to consider the answer in the context of the entirety of that expert’s testimony and even to disregard that answer, if it wanted.

Hartnett, whose qualifications as a real estate appraiser were not contested by the County, testified that the “highest and best use” of the Road Parcel was as the exclusive access to “a proposed *residential development*” and that “it was worth at least \$5 million” if used in that manner. (App. at pp. 1184:3-5; 1177:11-1178:8) (double emphasis added). Significantly, in that portion of his testimony, Hartnett opined the Road Parcel *was* worth that amount – not that it still is worth that amount. Hartnett based his valuation of the Road Parcel’s highest and best use upon: (1) his own valuation that because of its unique location and essential need as access to a residential development, the Road Parcel was worth at least \$5,000,000 *to any developer of the Point Tract,*

(App. at pp. 1180:24-1182:17) (“it is the -- it is the bridge to, it is the key to the lock, it is the front door of an incredibly beautiful piece of property that, according to all preformers (sic) I had seen, was going to be worth a lot of money when it was developed.”), (App. at pp. 1184:3-1185:10); (2) Pinckney Point, LLC’s agreement with Road, LLC to pay \$5,000,000 for the purchase of the access for its development of the Point Tract, (App. at pp. 1178:9-1179:7); and (3) that, during previous contract negotiations, there had been a \$5,000,000 discount for the purchase of the Point Tract when the prospective purchaser was unable to obtain access via the Road Parcel. (App. at pp. 1183:2-1184:2). It is clear from Hartnett’s testimony that his \$5,000,000 valuation is premised upon the Road Parcel *being used as access to a residential development*, which the County agreed to facilitate in the Settlement Agreement in January 2011 and then, two years later, made sure would never happen the moment Pinckney Point LLC’s option to repurchase expired.

Even the Court of Appeals admitted this supposition as the basis for Hartnett’s opinion on value: “Thomas Hartnett, an expert in land appraisals, testified the Road Parcel was worth \$5 million at its highest and best use, which was as an access point *to a residential development*.” (App. p. 2314; 857 S.E.2d 374) (double emphasis added). It was plainly evident and reasonable for the jury to find that, if the County purchased the Point Parcel for a park to prevent it *from ever being a residential development*, then the County’s actions caused \$5,000,000 in damages to Road, LLC because the highest and best use will never be realized.

Moreover, it was the province of the jury to determine the meaning of Hartnett’s singular answer that the Road Parcel was still worth \$5,000,000 today, in light of his entire testimony. The jury could reject the interpretation reached by the Court of Appeals or even disregard the one sentence entirely. The jury could have looked to the rest of Hartnett’s testimony, which made

clear he assigned a \$5,000,000 minimum value dependent on the use of the Road Parcel as the exclusive access to a residential development. (**App. at pp. 1193:5-8; 1184:3-5**).

Instead, the Court of Appeals found that “Road, LLC did not suffer \$5 million in damages because Road, LLC’s expert testified that the property was still worth \$5 million after the County purchased the Point Tract.” (**App. at p. 2318**). The Court of Appeals elaborated on its own view of the evidence: “the evidence presented a trial indicated the value of the property did not change.” (**App. at p. 2318**). That judicial action of deciding what portions of testimony to believe, which ones to reject, how to interpret testimony, and what evidence to consider, violates the province of the jury and the parties’ right to a jury trial. The jury was entitled to accept or reject in whole or in part testimony of any witness, including an expert witness like Hartnett. Smith v. Safeco, 303 S.C. 131, 136, 399 S.E.2d 427, 429 (Ct. App. 1990) (“In weighing conflicting testimony, however, a jury may believe that part of the testimony which convinces it more heavily toward one view of the facts as opposed to another view. The jury is also free to accept a portion of a witness’s testimony and reject a portion.”).

Furthermore, the Court of Appeals’ determination that the only reasonable inference from Hartnett’s testimony is that the Road Parcel is still worth \$5,000,000 today is illogical, given the balance of Hartnett’s testimony and the other evidence presented at trial. Hartnett’s testimony that the Road Parcel is still worth \$5,000,000 clearly means, or at the very least could have been construed reasonably by the jury to mean, that the Road Parcel would still be worth \$5,000,000 had the County not breached the Settlement Agreement by purchasing the Road Parcel for a park to prevent its development. See (**App. at p. 1193:5-8**) (the value of the highest and best use can be realized only if there is “demand” for that highest and best use.).

While the Court of Appeals cited precedent in the Opinion that it is entirely up to a jury to weigh a witness's testimony, and that the jury can decide which portions to believe, (**App. at p. 2318**), the Court of Appeals ignored that precedent and decided to impose its own illogical interpretation of one answer by Hartnett. In doing so, it ignored the rest of his testimony that puts his answer in context and disregarded other testimony outside of Hartnett that supported the amount of the verdict, which the Court of Appeals does not mention, much less address.

Having improperly interpreted and rejected the expert testimony as if it were the jury, the Court of Appeals compounded its error in concluding that "even if the jury ignored Hartnett's testimony about the Road Parcel's current value, there was no other evidence presented regarding the value of the Road Parcel after the County purchased the Point tract." (**App. at p. 2319**).⁶ In making this erroneous finding, the Court of Appeals ignored the remainder of Hartnett's testimony, discussed above. It also ignored two entirely separate evidentiary bases for its verdict of \$5,000,000, as explained below.

⁶ It is worth noting that the Court of Appeals held there was no proof of *any* damages being suffered by Road, LLC, not even in the amount of the \$1,300,000 paid by Road, LLC for the Road Parcel for its use as the exclusive access to a high-end waterfront residential development that it will never recover since the Point Tract will be a park or conservation area.

- i. The evidence showed when Pinckney Point, LLC purchased the Point Tract in March of 2006, the parties to that sale valued the right of access over the Road Parcel to a waterfront development on the Point Tract at approximately \$5,000,000.

At trial, Taylor Bush, a member of Pinckney Point, LLC, testified that when Pinckney Point, LLC acquired the Point Tract, the purchase price was reduced by approximately \$5,000,000 to account for the risks associated with pending litigation over the available access to the Point Tract via the Road Parcel. See (App. at pp. 505-506:21-2); (Pls. Ex. 84, App. at pp. 1883-1891) (Q: “As a result of this controversy over that access . . . was there an adjustment to the purchase price that you all were going to pay for Pinckney Point?” A: “Yes.” Q: “And what was that adjustment?” A: “It was approximately five million dollars.”) Thus, from this testimony, the jury could have inferred and found that Road, LLC’s damages were \$5,000,000 because, in an arm’s length sale of the Point Tract, the parties valued the ability to use the Road Parcel as the sole legal access to a future waterfront residential development of the Point Tract at \$5,000,000. In ruling on the propriety of entering a judgement notwithstanding verdict, the Court of Appeals was required to determine whether “there is any evidence to sustain the factual findings implicit in the jury’s verdict” Hobgood v. Pennington, 300 S.C. 309, 313, 387 S.E.2d 690, 692 (Ct. App. 1989) (emphasis added). The reduction in purchase of \$5,000,000 constituted such evidence and was not addressed at all in the Opinion.

- ii. The purchase contract between Pinckney Point, LLC and Road, LLC, introduced by the County into evidence, called for Pinckney Point, LLC to pay \$5,000,000 to Road, LLC to purchase the Road Parcel to provide the 50-foot right of way required by the County for a residential development of 76 lots on the Point Tract.

The jury could have also determined the value of the Road Parcel as the sole access to a residential development, and thereby the damages awarded, based upon the purchase and sale

contract entered between the two separate entities, Road, LLC and Pinckney Point, LLC, on January 14, 2011. (**App. at pp. 1994-2001**). Pinckney Point, LLC agreed to pay \$5,000,000 for the Road Parcel at such time as it had all the needed approvals in hand and proceeded with the development of the 76 entitled lots on the Point Tract. (**App. at p. 887:4-22**). Testimony at trial made clear that the Road Parcel was valued at \$5,000,000 under this purchase and sale agreement if (and only if) it was used as the sole access to a residential development on the Point Tract – as the parties intended. (**App. at p. 886-887: 24-3**). The Court of Appeals completely overlooked this third piece of evidence presented to the jury that it may well have considered in calculating Road, LLC’s damages at \$5,000,000.

In sum, the jury had multiple evidentiary bases for determining that use of the Road Parcel as the sole access to a 76-lot waterfront development, purposefully thwarted by the County, was worth at least \$5,000,000. The jury also had an evidentiary basis for finding that the Road Parcel had nothing more than nominal value after the County’s purchase of the Point Tract for a park. The County put up proof and made the argument at trial that it and the public had unlimited vehicular access to the Point Tract as a park under a previously existing 20-foot easement over the unimproved dirt road as well as a prescriptive easement. (**App. at pp. 755:17-756:22; 816:25-820:5; 1146:20-1147:21; 1148:17-1151:2; 1360:15-1364:23**).

The jury was not “left to speculate as to what damages Road, LLC suffered,” as held by the Court of Appeals. (**App. at p. 2319**). To the contrary, the jury was presented with ample evidence, by way of testimony and exhibits, to determine that Road, LLC suffered \$5,000,000 in damages as a result of the County’s intentional conduct to prevent the Point Tract from ever being a residential development, the most probable use of the Point Tract if ERP had to market the Point Tract to anyone else.

II. The Court of Appeals committed error by failing to follow precedent when it ignored the principal argument of Road, LLC that the County breached the covenant of good faith and fair dealing implied in the Settlement Agreement by purchasing the Point Tract for the specific purpose of permanently preventing its residential development.

The Court of Appeals treated the express provision in the Settlement Agreement that the road be permanently private as the sole basis for Road, LLC's action for breach of contract. (**App. at p. 2318**). In so doing, the Court of Appeals failed to consider the proof before the jury that the County breached the implied covenant of good faith and fair dealing, by acquiring the Point Tract for the admitted purpose of preventing the very development that was contemplated by the Settlement Agreement with the County. Notably, without objection from the County, the Circuit Court charged the jury on this basis of liability. (**App. at p. 1540:9-20**).

In suggesting that Road, LLC's only basis of liability was the County's alleged breach of the express provision in the Settlement Agreement that the road be forever private, the Court of Appeals went so far as to selectively quote from Road, LLC's counsel's introductory remarks in his closing argument explaining one aspect of Road, LLC's claim was that the County had breached its promise that the road would be a private road by treating it like a public road:

In their closing argument, Developers asserted: "[T]he settlement agreement clearly required that the road was private. Everybody agreed it was private; no dedication; no public use. Judge Dukes entered a court order; we looked at it two times; this road is private. And the County has not treated it as private." They further argued:

As to Road, LLC, what is the breach there? Well, it's that the County is treating it like it's a public road, and the private property is public property, they're contending. They haven't gated it. Their testimony was they had not gated it. The testimony was there were no signs saying you cannot come here. The testimony was that they treat it like a public road.

(**App. at pp. 2314-2315**).

The Court of Appeals completely omitted any reference to counsel's next comment to the jury immediately after the first of the above two quotes that demonstrated that Road, LLC's claim was not limited to breach of the covenant that the road be forever private:

The second thing [as to the claims of Road, LLC] is the same thing as to Pinckney Point, and that is that the County went out and negotiated and purchased the Point parcel, thereby, *preventing this two-tenths of a mile from being an access to a residential subdivision as contemplated in the settlement agreement.*

(App. at p. 1462) (double emphasis added).

The Court of Appeals erred in failing to address not just Road, LLC's claim that the County breached the implied covenant of good faith and fair dealing but all the evidence supporting it. Consequently, the Court of Appeals violated settled principles that the proof and the reasonable inferences therefrom are to be considered in the light most favorable to the plaintiff in considering a defendant's motion for JNOV.

III. The Court of Appeals erred in displacing the jury and finding that Road, LLC's damages, if any, were the result of Pinckney Point, LLC's inability to close on the re-purchase of the Point Tract, when there was abundant evidence that Road, LLC would likely have had the opportunity to sell the Road Parcel to another residential developer for at least \$5,000,000 if the County had not intentionally purchased the Point Tract for a park to keep that from ever happening.

As discussed, the Court of Appeals conflated the claims of Pinckney Point, LLC and Road, LLC. As a result, the Court of Appeals mistakenly treated Road, LLC as the developer and the \$5,000,000 value of the Road Parcel as entirely dependent on Pinckney Point, LLC's development of the Point Tract. Neither is true.

Road, LLC's expenditure of \$1,300,000 to purchase the Road Parcel as part of the overall settlement with the County was structured to place it in the position where *any* developer of the Point Tract would need to buy the Road Parcel, not just Pinckney Point, LLC. Road, LLC did this to protect its investment, in the event Pinckney Point, LLC could not obtain the additional capital

needed to repurchase the Point Tract, which was a contingency not entirely unlikely given Pickney Point, LLC was in default on its mortgage payments to its lender at that time. **(App. at pp. 883:24-884:2; 885:2-23; 886:15-887:3; 888:21-889:1); (App. at pp. 888:21-889:1; 889:5-8).** As discussed previously, any development of the Point Tract would require a 50-foot improved right of way instead of the existing 20-foot easement over an unimproved dirt road:

Q. Would this arrangement have given Road, LLC, any leverage or bargaining strength over another owner of the Point parcel?

A. Yes, it would.

Q. Did that work to Road's benefit?

A. It should have.

Q. If there were another purchaser who desired to develop the Point parcel as a residential subdivision, what would you expect that they would do, have to do?

A. Literally, all roads go over Road, LLC's, property, and any acquirer of the Pinckney tract would need to purchase or acquire the right-of-way across the Road, LLC, tract.

(App. at pp. 888:21-889:1-8)

The evidence supports the reasonable inference that ERP similarly contemplated the Point Tract could be developed by one other than Pinckney Point, LLC, as ERP required Pinckney Point, LLC to assign to it all of the development permits, and approvals obtained from the County and provide regular updates. **(App. at pp. 1799-1800, 1817, and 1820-1826); see also (App. at pp. 1657; 694; 752:2-22; 2099).** Further, this evidence supports the reasonable inference that ERP was planning to sell the Point Tract to a residential developer, had the County not immediately intervened to buy the Point Tract for a park; otherwise, ERP would not have gone to such great lengths to make sure it held all the approvals and permits for the residential development of the Point Tract. Testimony that the development of the Point Tract would render \$55 million to \$56

million in gross sales revenues was additional proof the jury could consider in finding that it would be an attractive target for another residential developer who would have paid \$5,000,000 for the Road Parcel to obtain the needed 50-foot right of way. (**App. at p. 1183**).

Moreover, the jury was entitled to consider the County's purchase was designed to prevent a development, even after Pinckney Point, LLC no longer owned Point Tract, as further evidence of the reasonable likelihood the Point Tract would have been developed by another development entity, if not for the County's preemptive purchase. Otherwise, the County would not have decided the only way it could stop a development was to buy it immediately. The internal presentations that were made to the County showing that development entitlements had been obtained also support the finding that the Point Tract would have ultimately ended up in the hands of a residential developer, who would have had to purchase the Road Parcel to meet County development standards related to access. (**App. at pp. 1658-1663; 1967-1973**).

While Road, LLC would have been able to realize the highest and best use of the Road Tract if *anyone* developed the Point Tract, the County ensured that would never happen when it acquired the Point Tract for the purpose of completely preventing its development. There was substantial evidence in the record that supports the finding by the jury that the County's actions were a breach of the covenant of good faith and fair dealing and Road, LLC's damages were suffered as a result of that breach.

There is no dispute that the purpose of the Settlement Agreement was to facilitate the development of the Point Tract—the Settlement Agreement and its many exhibits are replete with other explicit references to the residential development of the Point and how the settlement would help accomplish this development. See (**Pls. Ex. 78, App. at pp. 1747-1748**); (**Pls. Ex. 78, at Ex. B, ¶4, App. at p. 1758**) (**Pls. Ex. 78, Ex. E, App. at pp. 1766-1771**). Further, *the County's own*

representatives agreed at trial one of the purposes of the settlement was for the County to facilitate the residential development of the Point and the County's later purchase of the Point for a park frustrated that purpose. See (App. at pp. 1369:17-1371:20); (App. at pp. 1232:25-1234:1); (App. at pp. 1371:20-1372:1). The evidence to this effect was overwhelming, as demonstrated by a note from the jury during its deliberation that "[t]he settlement agreement, Number 78, is with the County and PPLLC, and Road, LLC, et. al. [] with the purpose of developing the land." (**App. at p. 1552:2-12**); see also, (**Ct. Ex. 5, App. at pp. 1626-1627**).

The law implies and imposes obligations on the parties not to frustrate the purpose of the contract, not to impede the performance of the contract, and to do those things that according to reason and justice should be done to carry out the purpose for which a contract was made. See generally, *Boddie-Noell Properties, Inc. v. 42 Magnolia Partn.*, 344 S.C. 474, 485, 544 S.E.2d 279, 284 (Ct. App. 2000), *aff'd as modified sub nom.*, 352 S.C. 437, 574 S.E.2d 726, (2002) (quoting 17A C.J.S. Contracts § 328, pages 282-284); *Columbia East Associates v. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989); *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 147 S.E.2d 481 (1966); see also, (App. at pp. 1540:23-1541:25) (circuit court's jury charge on breach of contract); (**App. at p. 1540:9-20**) (circuit court's jury charge on implied covenant of good faith and fair dealing). Yet, the County did just that – it bought the Point Tract to keep it from ever being developed.

The Opinion never recognizes the evidence that Road, LLC's realization of the highest and best use of the Road Parcel through sale to a residential developer did not depend entirely on Pinckney Point, LLC's developing the Point Tract. (**App. at p. 2316**) (explaining that the Circuit Court, which it affirmed, "held the loss of profit was too speculative because Road, LLC's profit was dependent on Pinckney acquiring an investor to repurchase the Point Tract."). There is

abundant proof for the jury to have found that the County breached the implied covenant of good faith and fair dealing by purchasing the Point Tract to prevent it from ever being a residential development and that this action caused a \$5,000,000 financial loss to Road, LLC.

CONCLUSION

Because of these fundamental errors in the decision of the Court of Appeals, including its failure to consider all the evidence and bases of liability in the light most favorable to Road, LLC when considering the Motion for JNOV, as required by settled precedent, Road, LLC respectfully requests this Court reverse the Court of Appeals and reinstate the jury's verdict.

Respectfully submitted,

WALKER GRESSETTE & LINTON, LLC



G. Trenholm Walker (S.C. Bar #5777)

John P. Linton, Jr. (S.C. Bar #79130)

P.O. Box 22167

Charleston, SC 29413

Telephone: (843) 727-2200

walker@wglfirm.com

linton@wglfirm.com

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Charleston, South Carolina

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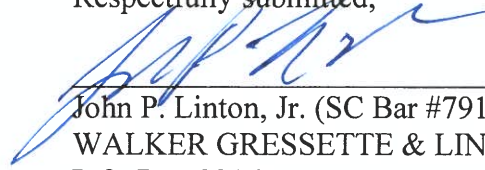
Mar 14 2022

CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that this Brief of Petitioner complies with Rule 211(b),
SCACR.

Respectfully submitted,



John P. Linton, Jr. (SC Bar #79130)
WALKER GRESSETTE & LINTON, LLC
P.O. Box 22167
Charleston, SC 29413
(843) 727-2200
Attorneys for Petitioner

March 14, 2022
Charleston, South Carolina