

STATE OF SOUTH CAROLINA

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In the Supreme Court

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Deadra Jefferson
Circuit Court Judge

APPELLATE CASE NO. 2015-002533
TRIAL CASE NO. 2012-CP-26-4852

Jacklyn J. Donevant Respondent

v.

Town of Surfside Beach..... Petitioner

RESPONDENT'S BRIEF
TO THE SUPREME COURT

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STATEMENT OF ISSUES ON APPEAL

- I. As set forth in Culler v. Blue Ridge Elec. Coop., 309 S.C. 243, 422 S.E.2d 91 (1992) and Barron v. Labor Finders of South Carolina, 393 S.C. 609, 713 S.E.2d 634 (2011), the wrongful termination doctrine is not limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law.
- II. As set forth in Culler and Barron, the wrongful termination doctrine does not require the plaintiff to show he would be subject to "some penalty for violation of the law" to state a claim for relief.
- III. The decision in Antley v. Sheperd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), *affirmed as modified*, 349 S.C. 600, 564 S.E.2d 116 (2002) does not control this case, as Jacklyn J. Donevant, the building official for the Town of Surfside Beach, unlike the tax assessor in Antley, possessed the sole, absolute, and unfettered authority to issue stop work orders and was required to do so to stop unpermitted construction.
- IV. The Court of Appeals correctly interpreted the building code in determining Donevant was required to issue the stop work order for unpermitted construction at the Pier Restaurant.
- V. The Court of Appeals correctly distinguished this case from Antley.
- VI. The Court of Appeals' decision to affirm this case has not and will not result in economic chaos in South Carolina.
- VII. Donevant presented evidence showing she was terminated in violation of a clear mandate of public policy, as the General Assembly has declared that the public policy of the State of South Carolina is to maintain reasonable construction standards for the protection of the health, safety, and welfare of its citizens, and to that end, the General Assembly has enacted legislation requiring all municipalities and counties to enforce the building code of the State of South Carolina.
- VIII. The Town mischaracterizes the trial judge's understanding of the facts and the law of this case in its brief.

STATEMENT OF CASE

This case arises out of the Town of Surfside Beach's (hereafter "the Town") employment termination of Jacklyn J. Donevant ("Donevant"). (R. pp. 1-5). At the time of her termination, Donevant held the positions of Director of Planning, Building, and Zoning and building official for the Town. (R. pp. 25-26; R. p. 301; R. pp. 292-93).

As building official, Donevant was required by law to enforce the building code of the State of South Carolina, including issuing stop work orders¹ for unpermitted construction. (R. pp. 131-32; R. pp. 144-45; R. p. 295). On March 20, 2012, Donevant observed unpermitted construction at the Surfside Pier Restaurant (hereafter "Pier Restaurant"), which was owned by the Town. (R. p. 49; R. pp. 51-53; R. p. 276; R. p. 279). Donevant issued a stop work order to stop the unpermitted construction. (R. p. 401). Upon learning of the issuance of the stop work order, the Town Administrator, James Duckett, Jr. (hereafter "Duckett"), suspended Donevant for three (3) days, beginning on March 21, 2012. (R. p. 405). Donevant returned to work on March 25, 2012, and on that date, Donevant informed Duckett in writing that she must follow the law even if it meant not following his instructions. (R. p. 410). On April 4, 2012, Duckett terminated Donevant. (R. p. 412). Duckett provided Donevant with no reason for her termination, and subsequently, Duckett informed the South Carolina Department of Employment and Workforce, that Donevant's termination was due to "operational changes." (R. p. 66; R. p. 68; R. p. 413; R. p. 332).

Donevant filed suit against the Town in the Horry County Court of Common Pleas on June 19, 2012, asserting a single cause of action for wrongful termination. (R. pp. 1-5). In the

¹ "A stop work order is an order given by the building official to stop work, just completely shut the work down." (R. p. 143).

Complaint, Donevant alleged the Town terminated her employment in violation of a clear mandate of public policy. (**R. pp. 1-5**). This case was tried before a jury on February 10, 11, 13, and 14, 2014.² The Honorable Deadra Jefferson presided over the trial.

At the conclusion of Donevant's case, the Town moved for directed verdict, arguing the Town's termination of Donevant did not constitute a violation of a clear mandate of public policy. The trial court denied the Town's motion and, after the Town presented its case, the trial court submitted the case to the jury, which returned a verdict in favor of Donevant in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars. The verdict was reduced to Three Hundred Thousand and 00/100 (\$300,000.00) Dollars pursuant to the relevant provisions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* (2005 & Supp. 2014). Following the jury's verdict, the Town moved for a judgment notwithstanding the verdict (hereafter "JNOV") on the same grounds as argued in its motion for directed verdict. The trial court denied the Town's JNOV motion, and the Town then filed a notice of appeal on March 10, 2014.

On August 26, 2015, the Court of Appeals issued an opinion, affirming the trial court's ruling. (**R. pp. 494-509**). The Town then filed a Petition for Rehearing and Suggestion for Rehearing *En Banc* on September 9, 2015. The Court of Appeals issued an Order on November 19, 2015, denying the Town's Petition for Rehearing and Suggestion for Rehearing *En Banc*. (**R. p. 532**). On December 10, 2015, the Town filed a Petition for Writ of Certiorari to this Court. (**R. pp. 510-530**). This Court granted the Town's Petition for Writ of Certiorari on April 13, 2017.

STATEMENT OF FACTS

² By order of Chief Justice Toal, all courts in South Carolina were closed on February 12, 2014 due to inclement weather.

In 2005, the Town hired Donevant for the positions of Director of Planning, Building, and Zoning and building official.³ (R. pp. 25-26; R. p. 301; R. pp. 292-93; R. p. 387). As building official, Donevant was required by law to enforce the building code of the State of South Carolina, including issuing stop work orders for unpermitted construction. (R. pp. 131-32; R. pp. 144-45). Also, as building official, Donevant made all “final decisions on ... code interpretations” and was the only person authorized to approve the issuance of building permits and to issue stop work orders within the Town’s jurisdiction. (R. p. 26; R. p. 28; R. p. 387; R. p. 177; R. pp. 245-46; R. p. 145; R. p. 295).

In December 2010, the Town hired Duckett as Town Administrator. (R. p. 30). Duckett had no experience in the construction industry. (R. p. 30). During Duckett’s tenure as Town Administrator, there was an ongoing controversy with the vacancy of the Pier Restaurant, which was owned by the Town. (R. p. 49; R. pp. 95-96). The Town acquired the Pier and the Pier Restaurant in 2008. (R. p. 276). Shortly after the Town acquired the Pier, a long-time tenant of the Pier Restaurant vacated the premises, leaving the space vacant and depriving the Town of expected revenue. (R. p. 49; R. p. 279). The Town experienced difficulty finding a new tenant for the Pier Restaurant. (R. p. 49; R. p. 94; R. p. 276; R. p. 279). The vacancy of the Pier Restaurant was a prominent, public issue in the Town, with stories appearing in a number of newspaper articles. (R. pp. 95-96). As Town Administrator, Duckett worked to find a new tenant for the Pier Restaurant. (R. p. 49).

³ Previously, Donevant worked for the Town as the deputy building official and then as the building official. (R. pp. 24-25). Donevant left her employment with the Town in 2002 to work in the private sector. (R. p. 67). In total, Donevant worked for the Town for almost fifteen (15) years. (R. pp. 67-68).

Donevant was diagnosed with breast cancer on October 17, 2011. **(R. p. 40; R. p. 88)**. Upon receiving this diagnosis, Donevant applied for and received twelve (12) weeks of leave from work pursuant to the mandates of the Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (LexisNexis 2014). **(R. p. 43)**. During her absence, the Town was forced to contract with the City of Myrtle Beach to perform Donevant's duties of building official, because no other Town employee was qualified to perform these duties. **(R. pp. 47-48)**. Thus, while Donevant was on sick leave, the City of Myrtle Beach assumed the responsibility of reviewing plans, issuing permits, conducting inspections, and issuing stop work orders within the Town's jurisdiction. **(R. pp. 47-48)**.

While Donevant was on sick leave, Duckett found a new tenant to occupy the vacant Pier Restaurant space. **(R. p. 49)**. The new tenant wished to remodel the interior of the space. **(R. p. 49)**. Because Donevant was on sick leave, the City of Myrtle Beach initiated the plan review for the Pier Restaurant and issued a demolition permit for the requested demolition work. **(R. p. 90; R. p. 96; R. p. 394)**. The demolition permit allowed for "demo interior of building only." **(R. p. 90; R. p. 96; R. p. 394)**. This demolition permit was the only permit issued to the Pier Restaurant during Donevant's absence. **(R. pp. 49-50; R. p. 394)**. While Donevant was on sick leave, Duckett visited the Pier Restaurant frequently and remained in direct communications with the City of Myrtle Beach about the construction plans. **(R. pp. 200-01; R. p. 316)**.

Donevant returned from sick leave on March 13, 2012. **(R. p. 400)**. Before allowing her to resume her duties, Duckett required Donevant to meet with him on the morning of March 13, 2012. **(R. pp. 44-45; R. pp. 313-14)**. Duckett requested that Debera E. Herman, Town clerk, witness the meeting. **(R. p. 233; R. pp. 44-45)**. During the meeting, Duckett informed Donevant that she would resume all of her job duties, but he warned her if she reversed anything that was

done in her absence, he would “fire” her. (R. pp. 44-45). Duckett testified the reason for this instruction was to prevent Donevant from revisiting any decisions made by the City of Myrtle Beach in her absence. (R. p. 313). Herman prepared a memorandum from the meeting, that read:

Mr. Duckett explained that Jackie was now officially returned to work; however, he gave her a direct order that she could not and would not change, ameliorate, or in any other manner amend any action that was taken during her absence. That if she did so, she would be fired.

(R. p. 400; R. p. 234).

After the meeting, Donevant spoke with Herman, expressing concern over the instruction given to her by Duckett. (R. p. 240). Donevant informed Herman that “if she did not do [her] job, she would lose her license.” (R. p. 240). Herman responded, “well, your boss is giving you an order, you need to do what your boss tells you.” (R. p. 240).

On March 20, 2012, shortly after Donevant returned to work, she discovered, by reading a local newspaper article, that new construction had commenced at the Pier Restaurant. (R. p. 51). At this point in time, there was no construction permit issued for the Pier Restaurant. (R. p. 50). The only permit issued for the Pier Restaurant was a demolition permit, which allowed for “demo interior of building only.” (R. pp. 49-51; R. p. 394). Upon reading the newspaper article, Donevant contacted John Harrah⁴ with the City of Myrtle Beach to ensure that no construction permit was issued in her absence. (R. p. 90; R. p. 102). Donevant was informed that no construction permit had been issued. (R. p. 102).

Thereafter, Donevant drove to the Pier Restaurant to inspect the premises. (R. pp. 52-53). Upon arrival, she saw that new construction had begun at the Pier Restaurant. (R. pp. 52-53). Specifically, Donevant observed that the contractors at the Pier Restaurant had cut openings for

⁴ John Harrah’s name is mistakenly transcribed as “John Harold” on page 144.

doors and windows, studded a new wall, installed plumbing, installed electrical, and installed subflooring. (R. p. 53). This work constituted “construction,” which required the issuance of a construction permit before such work could be lawfully performed. (R. p. 53; R. p. 401). In Donevant’s view, allowing unpermitted construction to continue within the Town’s jurisdiction posed a significant safety risk to the public. (R. pp. 54-55; R. pp. 58-59). Donevant testified, “Well, it was unsafe and it was dangerous. They had openings that anybody could step in and fall. There was loose wires and plumbing. There was stuff that hadn’t been inspected, how do you know whether it’s safe or not. We have to protect the public. The pier is a busy place. A lot of kids go [out] there.” (R. pp. 58-59). Therefore, Donevant issued a stop work order to halt construction at the Pier Restaurant and taped the stop work order to the door. (R. p. 53).

Donevant, as the building official, was obligated to issue a stop work order to halt the unpermitted construction at the Pier Restaurant. (R. p. 145; R. pp. 152-53). If Donevant refused or neglected to do so, she would be disciplined by the South Carolina Building Codes Council, with such discipline ranging from a letter of caution to a full revocation of her license as a building official. (R. pp. 155-56; R. pp. 161-63; R. pp. 169-72). Gary Wiggins, the former Director of the Building Codes Council and an expert in the field of building code enforcement, testified, “any time that there is a potential of life safety or fire safety or if there’s a direct violation of the law, the building official is obligated to issue a stop work order.” (R. p. 144). The following colloquy occurred at trial between counsel for Donevant and Wiggins:

- Q. What if with respect to there’s no construction permit?
- A. That’s a violation of the law. And anytime there’s a violation of the law, a stop work order must be issued.

(R. p. 145).

When Duckett learned Donevant issued the stop work order, he became angry. (R. p. 319). Duckett immediately drove to the Pier Restaurant, and in his words, “[i]n a fit of anger, I tore [the stop work order] off the door.” (R. p. 319). Duckett continued, “I do get angry, and I was angry.” (R. p. 319). Duckett also cursed at the stop work order, saying aloud “all this ... for putting some damn boards down.” (R. p. 349). Thereafter, Duckett called Donevant that evening and directed her to be in his office at eight o’clock in the morning. (R. pp. 60-61). Duckett added, “I can’t believe you been to that pier.”⁵ (R. p. 61).

On March 21, 2012, the morning following Donevant’s issuance of the stop work order, she reported to Duckett’s office as he instructed. (R. p. 62). During the meeting, Duckett told Donevant he could not believe she stopped work at the Pier Restaurant after all the work he had done on the project. (R. p. 114; R. p. 120). With this statement, Duckett turned his attention to three (3) pieces of paper lying face down on his desk. (R. p. 62). Then, Duckett commenced a child’s game, turning over the first piece of paper on his desk, which was a written reprimand, and presenting it to Donevant. (R. p. 63; R. p. 406). When Donevant refused to sign the written reprimand because it was not true, Duckett reached for the second piece of paper lying face down on his desk. (R. p. 63; R. p. 405). Duckett turned over the second piece of paper, which was an order of suspension, and presented it to Donevant. (R. p. 63; R. p. 405). Donevant disagreed with the suspension and the insinuation of wrongdoing in the suspension notice. (R. p. 63; R. p. 116). However, Donevant correctly suspected that the third and final document lying facing down on Duckett’s desk was a termination notice. (R. p. 63; R. p. 116; R. p. 407). Even though she disagreed with the suspension, Donevant signed the document and served a three-day suspension,

⁵ Donevant did not report that she issued a stop work order to Duckett, because as Kevin Otte, current building official for the Town, testified and Donevant confirmed, the fact that the building official issued a stop work order is not a reportable matter. (R. p. 64; R. pp. 299-300; R. p. 246).

because she “needed to work.” (R. p. 63; R. p. 116). Donevant testified, “I got suspended for putting a permit on the pier.” (R. p. 118).

Donevant returned to work on March 25, 2012, and on that date, Donevant informed Duckett in writing that she must follow the law even if it meant not following his instructions. (R. p. 410). The letter Donevant delivered to Duckett stated:

My suspension was not right. All I did was follow the law, which you didn't want me to follow. Like I told you the other day, I will follow the law even if that means not following your instructions. You have been picking on me and treating me badly, for a long time, even though I do my work by the book and I am dedicated to the Town.

(R. p. 410).

On April 4, 2012, Duckett terminated Donevant. (R. p. 412). Duckett provided Donevant with no reason for her termination, and subsequently, Duckett informed the South Carolina Department of Employment and Workforce, that Donevant's termination was due to “operational changes.” (R. p. 66; R. p. 68; R. p. 332; R. p. 413; R. p. 350). Donevant maintained that Duckett fired her for issuing a stop work order for unpermitted construction at the Pier Restaurant. (R. p. 120). Therefore, Donevant brought this suit against the Town, asserting a single cause of action for wrongful termination. (R. pp. 1-5).

This case was tried before a jury for four (4) days in Conway, South Carolina. At trial, the Town denied wrongdoing and claimed it terminated Donevant for attendance issues, punctuality issues, and insubordination. The Town made these assertions, even though Duckett specifically testified that Donevant was not fired for these reasons. (R. p. 350). Ultimately, the jury returned a verdict in favor of Donevant in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars. The verdict was reduced to Three Hundred Thousand and 00/100 (\$300,000.00) Dollars

pursuant to the relevant portions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.* This appeal followed.

STANDARD OF REVIEW

In reviewing a directed verdict, this Court must view the evidence and all reasonable inferences therefrom in the light most favorable to the party opposing the motion. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). The trial court is required to deny motions for directed verdict and JNOV where either the evidence yields more than one inference or its inference is in doubt. Strange v. S.C. Dep't of Hwys. & Pub. Transp., 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). “In essence, this Court must determine whether a verdict for a party opposing the motion would be reasonably possible under facts as liberally construed in his favor.” Bultman v. Barber, 277 S.C. 5, 7, 281 S.E.2d 791, 792 (1981). The trial court can only be reversed where there is no evidence to support the rulings or where the rulings are controlled by an error of law. Hinkle v. Nat'l Cas. Ins. Co., 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003).

I. NO EXPANSION OF THE WRONGFUL TERMINATION DOCTRINE

The Town contends the Court of Appeals “greatly expanded” the wrongful termination doctrine by affirming this case. However, the Town’s argument disregards this Court’s decision in Barron v. Labor Finders of South Carolina, 393 S.C. 609, 615-16, 713 S.E.2d 634, 637 (2011), which made clear that the wrongful termination doctrine is not limited to situations where the employer requires the employee to violate the law or the reason for the employee’s termination itself is a violation of the law.

Under the “public policy exception” to the at-will employment doctrine, an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy. Ludwick v.

This Minute of Carolina, Inc., 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985). The public policy exception clearly applies in cases where either: (1) the employer requires the employee to violate the law, or (2) the reason for the employee's termination itself is a violation of criminal law. Barron, 393 S.C. at 614, 713 S.E.2d at 637. In Barron, this Court expressly held that the public policy exception is not limited to situations where the employer asks the employee to violate the law or the reason for the termination itself is a violation of criminal law. 393 S.C. at 615-16, 713 S.E.2d at 637. In Barron, this Court stated:

Here, the Court of Appeals correctly recognizes that the public policy exception applies to situations where an employer requires an employee to violate the law, or the reason for the termination itself is a violation of criminal law. **We find the court erred, however, in holding the exception is limited to these situations Accordingly, we overrule the Court of Appeals' opinion to the extent it holds the public policy exception applies only in situations where the employer asks the employee to violate the law or the reason for the termination itself is a violation of criminal law.**

Id. at (emphasis added).

Barron continues, “[A]n at-will employee may have a cause of action for wrongful termination even if the discharge did not violate criminal law or the employer did not require the employee to violate the law.” Id. at 615, 713 S.E.2d at 637.

The Town argues the wrongful termination doctrine is limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law. The Town does not correctly articulate the state of the wrongful termination doctrine following the Supreme Court's decision in Barron. Barron clearly holds that the wrongful termination doctrine is not limited to situations where the employer requires the employee to violate the law or the reason for the employee's termination itself is a violation of the law. Id. at 615, 713 S.E.2d at 637. However, even if the wrongful termination doctrine were so

limited (which it is not), the Court of Appeals specifically found the Town terminated Donevant for refusing to violate the law, which places this case in line with clear precedent. See Barron, 393 S.C. at 614, 713 S.E.2d at 637 (noting that the wrongful termination doctrine clearly applies in situations where the employer requires the employee to violate the law). The Court of Appeals held:

By suspending Donevant and ultimately terminating her for issuing the stop-work order at the Pier Restaurant, Duckett effectively discharged Donevant for refusing to violate the law. Accordingly, Donevant's claim for retaliatory discharge falls within a recognized exception to the doctrine of at-will employment in this state because she was required by her employer, 'as a condition of continued employment, to break the law.'

Donevant v. Town of Surfside Beach, 414 S.C. 396, 413-14, 778 S.E.2d 320, 330 (Ct. App. 2015) (citing Taghivand v. Rite Aid Corp., 411 S.C. 240, 242, 768 S.E.2d 385, 386 (2015); Barron, 393 S.C. at 614, 713 S.E.2d at 637).

Furthermore, the Town also argues that in order to state a wrongful termination cause of action, Donevant must show she would have been subject either to a criminal penalty or civil sanction for failing to issue the stop work order.⁶ (**Town's Brief, p. 17**). The Town's argument again reflects a complete disregard for this Court's holdings in Barron and in Culler v. Blue Ridge Elec. Coop., 309 S.C. 243, 422 S.E.2d 91 (1992). The focus of a wrongful termination cause of action is whether a plaintiff can demonstrate a violation of a clear mandate of public policy. This is the only legal showing required to submit a claim for wrongful termination to the jury. See Barron, 393 S.C. at 617, 713 S.E.2d at 638 (a plaintiff in a wrongful termination cause of action must establish a public policy; then, "the jury would determine the factual question of whether the

⁶ The Town makes this argument in both Roman Numeral I and II of its brief. In an effort to avoid repetition, Donevant dedicates the bulk of the analysis on this issue to Roman Numeral II.

employee's termination was in violation of that public policy.”). One of the ways a plaintiff can make this showing is by demonstrating he would have been subject to a criminal penalty if he followed his employer's directives. This is precisely what happened in Ludwick, where the plaintiff-employee was forced to choose between disobeying a subpoena, which provided a criminal penalty for failing to obey, or losing his job. 287 S.C. at 225, 337 S.E.2d at 216. However, as Barron and Culler make clear, this is not the only way a plaintiff can show a violation of a clear mandate of public policy, and it is certainly not a separate element for a wrongful termination cause of action.

Accordingly, for the foregoing reasons, this Court should find that the Court of Appeals did not “greatly expand” the wrongful termination doctrine by affirming this case. On the contrary, this Court should find that this case fits squarely within the rubric of the current state of the wrongful termination doctrine.

II. THE WRONGFUL TERMINATION DOCTRINE DOES NOT REQUIRE PLAINTIFFS TO SHOW THEY WOULD BE SUBJECT TO SOME TYPE OF PENALTY

The Town argues that a plaintiff in a wrongful termination cause of action must demonstrate he would be subject to “some penalty for violation of the law” in order to state a claim for relief. (**Town's Brief, pp. 18-19**). The Town's argument ignores this Court's opinions in Culler and Barron, where this Court clearly held that the wrongful termination doctrine does not require such a showing. Instead, this Court observed in Culler and Barron that the sole focus of a wrongful termination claim is whether there has been a violation of public policy.

South Carolina recognizes the doctrine of at-will employment. Culler, 309 S.C. at 245, 422 S.E.2d at 92 (1992). The doctrine of at-will employment allows an employer to discharge an employee for any reason or no reason, with or without notice, without incurring liability. Mathis

v. Brown & Brown of S.C. Inc., 389 S.C. 299, 310, 698 S.E.2d 773, 778 (2010). In Ludwick, this Court joined a growing majority of states that recognize the “public policy” exception to the doctrine of at-will employment. Culler, 309 S.C. at 245, 422 S.E.2d at 92. Under the public policy exception (which is also referred to as the wrongful termination doctrine), an employee has a cause of action in tort for wrongful discharge where there is a “retaliatory discharge of the at-will employee in violation of a clear mandate of public policy.” Id. (quoting Ludwick, 287 S.C. at 219, 337 S.E.2d at 216).

In Ludwick, the plaintiff-employee was forced to choose between disobeying a subpoena or losing her job. Id. at 225, 337 S.E.2d at 216. This Court held it was a violation of a clear mandate of public policy for an employee to be “confronted with the dilemma of choosing between her livelihood, on the one hand, and obedience to the law of the state, on the other.” Id. Following Ludwick, the Court of Appeals, in Miller v. Fairfield Communities, Inc., 299 S.C. 23, 382 S.E.2d 16 (Ct. App. 1989), “interpreted Ludwick to apply **only** to those situations where the employee must choose between a possible jail sentence or being fired.” Culler, 309 S.C. at 245-46, 422 S.E.2d at 92 (emphasis added). Miller is one of the cases cited by the Town in support of its argument that a plaintiff must show he would be subject to “some penalty for violation of the law” in order to state a claim for relief under the wrongful termination doctrine. (**Town’s Brief, p. 18**). In Culler, this Court specifically found that the Court of Appeals’ interpretation of the wrongful termination doctrine in Miller was incorrect. Culler, 309 S.C. at 246, 422 S.E.2d at 92. This Court held the wrongful termination doctrine “is not so limited” to the situations set forth by the Court of Appeals in Miller. Id. Instead, in Culler, this Court analyzed the employee’s wrongful termination claim solely on the basis of whether he demonstrated a “violation of a clear mandate of public policy.” Id.

The employee in Culler refused to contribute to a political action fund. Id. at 245, 422 S.E.2d at 92. Thereafter, the employee was fired, and he alleged he was fired for refusing to contribute to the political action fund. Id. The employee pointed to section 16-17-560 of the South Carolina Code of Laws in support of his argument, which makes it a “crime against public policy” to fire any person because of their political beliefs. Id. at 246, 422 S.E.2d at 93. This Court held that “if [the employee] was discharged because he refused to contribute to a political action fund, he would have a cause of action for wrongful discharge under Ludwick.” Id. Therefore, in direct contradiction to the Town’s argument, this Court in Culler found an employee would have a cause of action for wrongful termination despite the fact that he was not subject to any sort of “penalty for violation of the law.” Id. The sole focus in a wrongful termination claim is whether the employee can show his termination was in violation of a clear mandate of public policy. Id. 309 S.C. at 246, 422 S.E.2d at 92. No other showing is necessary. Id.

In Barron, this Court again returned the focus of wrongful termination claims to whether the employee’s termination constituted a violation of a clear mandate of public policy. Initially, this Court observed, “[t]he public policy exception clearly applies in cases where either: (1) the employer requires the employee to violate the law, or (2) the reason for the employee’s termination itself is a violation of criminal law.” Barron, 393 S.C. at 614, 713 S.E.2d at 637. However, this Court expressly stated, “the public policy exception **is not limited to these situations**.” Id. (emphasis added). In Barron, this Court made this observation on at least three (3) occasions, and as in Culler, the Barron Court returned the focus of this cause of action to whether the plaintiff could establish a public policy violation. Id. at 617, 713 S.E.2d at 638.

The Town’s argument that a plaintiff must show he would be subject to “some penalty” as an element of a wrongful termination claim disregards this Court’s holdings in Culler and Barron.

In Barron, this Court expressly noted that a plaintiff in a wrongful termination cause of action must establish a public policy; then, “the jury would determine the factual question of whether the employee’s termination was in violation of that public policy.” Barron, 393 S.C. at 617, 713 S.E.2d at 638. There are no other requirements. Therefore, this Court should refuse the Town’s invitation to rewrite the long-standing principles of the wrongful termination doctrine.

Even if this Court were to create such a requirement, Donevant made such a showing here, through her own testimony and the testimony of Gary Wiggins, the former Director of the Building Codes Council and an expert in the field of building code enforcement. (**R. p. 124**). Donevant clearly testified that she could lose her license if she did not issue the stop work order for unpermitted construction at the Pier Restaurant. (**R. p. 55**). Mr. Wiggins testified if Donevant refused or neglected to issue the stop work order, she would be disciplined by the South Carolina Building Codes Council, with such discipline ranging from a letter of caution to a full revocation of her license as a building official. (**R. pp. 155-56; R. pp. 161-63; R. pp. 169-72**). Mr. Wiggins continued, “any time that there is a potential of life safety or fire safety or if there’s a direct violation of the law, the building official is obligated to issue a stop work order.” (**R. p. 144**). The following colloquy occurred at trial between counsel for Donevant and Wiggins:

Q. What if with respect to there’s no construction permit?

A. That’s a violation of the law. And anytime there’s a violation of the law, a stop work order must be issued.

(**R. p. 145**).

Thus, Donevant clearly presented evidence that she would be subject to discipline, including potential loss of her job, if she did not issue the stop work order. Additionally, if Donevant followed Duckett’s directive and did not take action in response to the unlawful

construction at the Pier Restaurant, she could have been charged with misconduct in office for failing to discharge her legal duty. Donevant, 414 S.C. at 413, 778 S.E.2d at 330; see State v. Hess, 279 S.C. 14, 20, 301 S.E.2d 547, 550 (1983). Therefore, Donevant would have been subject to sanction and discipline had she not issued the stop work order.

In addition, to the extent the Town argues in its brief that the Court of Appeals improperly relied on the testimony of Mr. Wiggins, it must be noted that the Town did not appeal from any alleged error as it relates to the testimony of Mr. Wiggins. Therefore, any alleged defects with respect to Mr. Wiggins' testimony is unappealed, and therefore, it is the law of the case. See ML- Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (unappealed ruling is the law of the case); see also Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal."). Additionally, the Town did not raise this issue in the "Questions Presented" section of either its brief to the Court of Appeals or this brief. (**R. p. 428-447**); see Rule 242(d)(2), SCACR.

Accordingly, for the foregoing reasons, this Court should find that Donevant was not required to show that she would be subject to "some penalty for violation of the law" as an element of her wrongful termination cause of action. Even if this Court were to require such a showing, this Court should find that Donevant presented ample evidence to satisfy it.

III. THE ANTLEY DECISION IS INAPPLICABLE TO THIS CASE

The decision in Antley v. Sheperd, 340 S.C. 541, 532 S.E.2d 294 (Ct. App. 2000), *affirmed as modified*, 349 S.C. 600, 564 S.E.2d 116 (2002) does not control this case, as Donevant, unlike the tax assessor in Antley, possessed the sole, absolute, and unfettered authority to issue stop work orders and was required to do so for unpermitted construction.

In Antley, a county tax assessor refused to comply with the county administrator's directive not to initiate an appeal from a decision by the board of assessment appeals. 340 S.C. at 546, 532 S.E.2d at 296. When the tax assessor refused to dismiss a pending appeal, the county administrator fired the tax assessor for refusing to follow his directives. Id. Following her termination, the tax assessor filed a claim for wrongful termination against the County, alleging she, as tax assessor, maintained the statutory right to file appeals from decisions by the board of assessment appeals. The tax assessor relied on the sections 12-37-90 and 12-60-2540 of the South Carolina Code of Laws in support of her argument. 340 S.C. at 549, 532 S.E.2d at 298.

Section 12-37-90(f) of the South Carolina Code of Laws provides that the tax assessor has “the **right** of appeal from a disapproval of or modification of an appraisal made by him.” S.C. Code Ann. § 12-37-90(f) (2014) (emphasis added). Section 12-60-2540(A) provides that within thirty (30) days of a decision by the board of assessment appeals, “**a property taxpayer or county assessor may** appeal a property tax assessment.” S.C. Code Ann. § 12-60-2540(A) (2014) (emphasis added).

The trial court granted the County's motion for summary judgment, finding that because the statutes permitted, rather than required, Antley to file appeals, the administrator's directive did not require her to violate the law. Antley, 340 S.C. at 546, 532 S.E.2d at 296. The Court of Appeals affirmed the trial court's ruling, finding:

[S]ections 12-37-90 and 12-60-2540 gave Antley, as county tax assessor, the *right* to file appeals to the ALJD and established her status as a real party in interest in such appeals. These sections thus permitted, but did not require, Antley to appeal adverse board decisions. Moreover, nothing in sections 12-37-90 or 12-60-2540 gave [the tax assessor] **the sole discretion** in determining which cases to appeal. If the General Assembly had intended the assessor's right of appeal to be **unfettered** by the county administrator or county council, it certainly could have provided that the decision of

whether or not to appeal a board's determination is solely that of the assessor.

Id. at 549, 532 S.E.2d at 298 (emphasis added).

The Town interprets the holding in Antley broadly; however, the plain language of Antley announces a much narrower holding than the one advocated for by the Town. The statutes at issue in Antley did not grant any real authority to the tax assessor. The Court of Appeals made three (3) observations about the statutes to determine they granted no real authority to the tax assessor: (1) Antley had the statutory right to file appeals, but was not required to do so; (2) the statutes she relied on for her authority did not give her the sole discretion to determine which cases to appeal; and (3) the General Assembly had not provided that the assessor's right of appeal was unfettered; therefore, nothing prevented the County from adopting a policy that defined the cases to appealed.

Unlike the tax assessor in Antley, Donevant, as building official, had sole, absolute, and unfettered authority to decide whether to issue a stop work order for violations of the building code. In Antley, the tax assessor did not have the sole authority to appeal property tax assessments, as the statute allowed either the tax assessor or "a property taxpayer" to appeal property tax assessments. See S.C. Code Ann. § 12-60-2540(A) (2014) ("[A] property taxpayer or county assessor may appeal a property tax assessment."). Donevant, as building official, was the only person authorized to issue a stop work order for building code violations. See Int'l Bld. Code § 114.1 ("Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the building official is authorized to issue a stop work order."). The building code does not authorize any other person to issue stop-work orders. Every individual who testified about the matter agreed Donevant, and Donevant alone as building official, was empowered with absolute, sole, and unfettered authority

to issue a stop work order. (R. p. 28; R. p. 177; R. pp. 245-46; R. p. 145-46; R. p. 295). As Mr. Wiggins testified, “As a matter of fact . . . , the building official is charged with [the] responsibility [of issuing stop work orders] specifically and no other person either the city manager, the mayor, chief of police, fire chief any other person can perform is authorize[d] or can perform that function or task.” (R. p. 145). Thus, unlike the tax assessor in Antley, Donevant possessed the sole, absolute, and unfettered authority to make a determination of whether to issue a stop work order.

Also, unlike the tax assessor in Antley, Donevant was required by law to enforce compliance with the building code when she saw unpermitted construction at the Pier Restaurant. Section 6-9-10(A) of the South Carolina Code of Laws requires all municipalities and counties to enforce the building code. The exact statutory language provides:

All municipalities . . . and counties in this State **shall enforce** . . . building codes in this chapter, relating to the construction, livability, sanitation, erection, energy efficiency, installation of equipment, alteration, repair, occupancy, classification, or removal of structures located within their jurisdictions and **promulgate regulations to implement their enforcement**.

S.C. Code Ann. § 6-9-10(A) (Supp. 2014) (emphasis added).

Section 6-9-30 of the South Carolina Code of Laws requires all municipalities and counties to appoint a building official or contract for a building official within the municipal limits. S.C. Code Ann. § 6-9-30 (Supp. 2014). The statute uses the mandatory “shall” language. S.C. Code Ann. § 6-9-30. Pursuant to section 6-9-50(A), the International Building Code, with the exception of Chapter 1, is adopted in every municipality or county in the State. S.C. Code Ann. § 6-9-50(A). The Town specifically adopted Chapter 1 of the International Building Code by passing section 13-21 of the Town of Surfside Beach’s Code of Ordinances. (R. pp. 424-25). Thus, Chapter 1 of the International Building Code, which provides for certain duties and responsibilities for the building official, applies within the Town’s jurisdiction. S.C. Code Ann. § 6-9-50(A).

Under Chapter 1 of the International Building Code, “The building official is hereby authorized **and directed to enforce the provisions of this code.**”⁷ Int’l Bldg. Code § 104.1 (2006) (emphasis added). “**The building official shall** ... issue permits for the erection, and alteration, demolition and moving of buildings and structures, inspect the premises for which such permits have been issued and **enforce compliance with the provisions of the code.**” Int’l Bldg. Code § 104.2 (2006) (emphasis added). “The building official shall issue all necessary notices or orders to ensure compliance with this code.” Int’l Bldg. Code § 104.3 (2006).

Section 105.1 of the International Building Code provides:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, **shall first make application to the building official and obtain the required permit.**

Int’l Bldg. Code § 105.1 (2006) (emphasis added).

“It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, **in conflict with or in violation of any of the provisions of this code.**” Int’l Bldg. Code § 113.1 (2006) (emphasis added).

⁷ In the Town’s brief, it incorrectly cites to the 2012 International Building Code and includes a copy of Chapter 1 of the 2012 International Building Code at the end of its brief. The 2012 International Building Code does not apply to this case. Donevant issued the stop work order on March 20, 2012. (R. p. 401). The 2006 International Building Code was in effect at this time. The Town did not adopt the 2012 International Building Code until July 9, 2013. (R. p. 426). All citations in Donevant’s brief, as well as the Court of Appeals’ opinion, are to the 2006 International Building Code. For the Court’s convenience, Donevant has included a copy of Chapter 1 of the 2006 Internal Building Code at the end of her brief.

Thus, pursuant to Chapter 1 of the International Building Code, the building official shall enforce compliance with the provisions of the building code. Int'l Bldg. Code § 104.2. The building official is, in fact, "directed" by the code to do so. Int'l Bldg. Code § 104.1. The code requires any owner or authorized agent, before engaging in any construction on the premises, to "first make application to the building official and obtain the required permit." Int'l Bldg. Code § 105.1. Chapter 1 declares it unlawful for any person to erect, construct, or alter any building or structure "in violation of any provisions of this code." Int'l Bldg. Code § 113.1.

Here, the contractors at the Pier Restaurant had not obtained a construction permit when Donevant issued the stop work order. The contractors only had a demolition permit that allowed for "demo interior of building only." (R. p. 394). Thus, before the contractors could perform construction at the Pier Restaurant, they were required to obtain a proper construction permit. See Int'l Bld. Code § 105.1 ("Any owner or authorized agent who intends to construct ... shall first make application to the building official and obtain the required permit."). Donevant testified the contractors started construction at the Pier Restaurant by cutting openings for doors and windows, studding a new wall, and installing plumbing, electrical, and subflooring. (R. p. 53). Because the contractors started construction at the Pier Restaurant without the required permit, the construction was unlawful under the building code. See Int'l Bld. Code § 113.1 (declaring it unlawful for any person to erect, construct, or alter any building or structure "in violation of any provisions of this code.").

Because the unpermitted construction at the Pier Restaurant violated the building code, the law required Donevant, as building official, to enforce compliance with the code. See Int'l Bld. Code § 104.2 (stating "the **building official shall** ... issue permits for the erection, and alteration, demolition and moving of buildings and structures, inspect the premises for which such permits

have been issued and **enforce compliance with the provisions of the code.**”). (emphasis added). In order to carry out her legal duty to “enforce compliance” with the building code, Donevant issued a stop work order as she was required to do so by law. See Int’l Bld. Code § 104.3 (“The building official shall issue all necessary notices or orders to ensure compliance with this code.”). Therefore, unlike Antley, where the statutes “permitted but did not require” the tax assessor to take action, the statutory and building code provisions at issue here required Donevant’s actions of enforcing compliance with the building code.

Accordingly, this Court should find that Antley does not control the result in this case, because unlike the tax assessor in Antley, Donevant possessed the sole, absolute, and unfettered authority to issue stop work orders and was required to do so for unpermitted construction.

IV. THE COURT OF APPEALS CORRECTLY INTERPRETED THE BUILDING CODE IN DETERMINING DONEVANT WAS REQUIRED TO ISSUE THE STOP WORK ORDER FOR UNPERMITTED CONSTRUCTION

The Town argues the plain language of Section 114.1⁸ of the International Building Code did not require Donevant to issue the stop work order for unpermitted construction at the Pier Restaurant.

Section 114.1 of the International Building Code provides, “Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the building official **is authorized** to issue a stop work order.” (emphasis added).

⁸ As set forth in footnote 8, the Town mistakenly cites to the 2012 International Building Code in its brief. The Town did not adopt the 2012 International Building Code until July 9, 2013, which was more than a year after Donevant issued the stop work order. (R. p. 401, p. 426). Section 114.1 of the 2006 International Building Code is the same as section 115.1 of the 2012 International Building Code.

The plain language of Section 114.1 does not comport with the Town's argument. Section 114.1 merely states that the building official is authorized to issue stop work orders. The Court of Appeals understood Section 114.1 in this light and found the building code solely authorized Donevant to issue stop work orders. Donevant, 414 S.C. at 411, 778 S.E.2d at 328. The Court of Appeals found, "Based on our review of the building code, the building official is the only party authorized to issue a stop-work order for code violations. Thus, Donevant had sole discretion to determine whether to issue a stop-work order." Id.

Section 114.1 does not deal with whether Donevant was required to issue the stop work order for unpermitted construction. This analysis is determined by reference to other provisions of the building code. See Int'l Bld. Code § 105.1 ("Any owner or authorized agent who intends to construct ... shall first make application to the building official and obtain the required permit."); Int'l Bld. Code § 113.1 (declaring it unlawful for any person to erect, construct, or alter any building or structure "in violation of any provisions of this code."); Int'l Bld. Code § 104.2 (stating "the **building official shall** ... issue permits for the erection, and alteration, demolition and moving of buildings and structures, inspect the premises for which such permits have been issued and **enforce compliance with the provisions of the code.**") (emphasis added); Int'l Bld. Code § 104.3 ("The building official shall issue all necessary notices or orders to ensure compliance with this code."). The Court of Appeals correctly considered these other provisions of the building code and found they required Donevant to issue a stop work order to halt the unpermitted construction at the Pier Restaurant.

Additionally, the Town argues, "Donevant herself admitted she did not always issue stop work orders for violations." (**Town's Brief pp. 22-23**). The Town has not presented Donevant's testimony accurately. In full context, Donevant testified that she always issued stop work orders

when there was no permit, as was the case with the Pier Restaurant, where unpermitted construction was taking place. (R. pp. 121-22). However, Donevant testified if there was a code violation and there was a permit issued, she did not always issue a stop work order. (R. 122).

Donevant testified as follows:

Q. So if there was a code in violation that did not involve a permit problem, you wouldn't always give the builder a stop-work order?

A. Well, a permit will be issued. They call for an inspection. We go out and do the inspection. If there was something wrong, we would write it up and leave it there for them to correct. But they had a permit.

...

Q So yes or no would you always issue a stop-work order for code violations?

A For code violations of no permit, yes, sir.

Q For other code violations not involving a permit?

A No, sir.

(R. pp. 121-22).

Accordingly, the Court of Appeals correctly interpreted the building code in determining Donevant was required to issue the stop work order for unpermitted construction at the Pier Restaurant.

V. **THE COURT OF APPEALS CORRECTLY DISTINGUISHED THIS CASE FROM ANTLEY**

Next, the Town argues the Court of Appeals erred in distinguishing this case from Antley. These arguments were fully addressed in Roman Numeral III, *supra*, of Donevant's brief. To avoid needless repetition, Donevant will not recite them again and craves reference to those arguments.

VI. THE COURT OF APPEALS' DECISION TO AFFIRM THIS CASE HAS NOT AND WILL NOT RESULT IN ECONOMIC CHAOS IN SOUTH CAROLINA

Lastly, the Town makes a slippery slope argument, positing that if this Court were to allow the Court of Appeals' decision to stand it would result in "economic chaos" in South Carolina. (Town's Brief, pp. 24-25).

Respectfully, the Court of Appeals issued the Donevant decision on August 26, 2015, which is almost two (2) years ago from the date of this brief. In this two-years' time, the Town's prophecy of impending doom and "economic chaos" from the Court of Appeals' opinion has not come true. Furthermore, contrary to the Town's argument, the decision by the Court of Appeals articulates nothing new from either a policy or legal standpoint. As the Court of Appeals stated, "Donevant's claim comes clearly within what our courts have already articulated what the law is—that she was required by her employer to violate the law." Donevant, 414 S.C. at 413, 778 S.E.2d at 329-30.

Accordingly, if this Court were to affirm the Court of Appeals' ruling, it would not result in economic chaos in South Carolina.

VII. DONEVANT PRESENTED EVIDENCE SHOWING SHE WAS TERMINATED IN VIOLATION OF A CLEAR MANDATE OF PUBLIC POLICY

The Court of Appeals also affirmed the trial court's denial of the Town's motion for directed verdict on the ground that Donevant "presented a cognizable claim that she was terminated in violation of a clear mandate of public policy." Donevant, 414 S.C. at 414, 778 S.E.2d at 330. The Town does not appeal from this finding; therefore, it is the law of the case. See First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (holding an "unchallenged ruling, right or wrong, is the law of the case and requires affirmance").

“The primary source of the declaration of public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.” Barron, 393 S.C. at 618, 713 S.E.2d at 639 (citing Citizens’ Bank v. Heyward, 135 S.C. 190, 133 S.E. 709, 713 (1925)). “[O]nce a public policy is established, the jury would determine the factual question whether the employee’s termination was in violation of that public policy.” Barron, 393 S.C. at 618, 713 S.E.2d at 639.

Title 6 of the South Carolina Code of Laws is the title that deals with the building code. See S.C. Code Ann. § 6-9-5 *et seq.* (1977 & Supp. 2014). Section 6-9-5(A) of the South Carolina Code of Laws provides:

The public policy of South Carolina is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens. To secure these purposes, a person performing building codes enforcement must be certified by the South Carolina Building Codes Council, and this act is necessary to provide for certification.

S.C. Code Ann. § 6-9-5(A) (Supp. 2014) (emphasis added).

To achieve the stated public policy of South Carolina, to maintain reasonable construction standards in building to protect the health, safety, and welfare of its citizens, the General Assembly adopted the remaining statutory provisions in Title 6 of the South Carolina Code of Laws, including section 6-9-10(A) of the South Carolina Code of Laws which requires “[a]ll municipalities ... and counties” to enforce the building code “within their jurisdiction and promulgate regulations to implement their enforcement.” S.C. Code Ann. § 6-9-10(A). It is within this public policy context that the General Assembly allows municipalities and counties to either

adopt Chapter 1 of the International Building Code,⁹ or to promulgate and adopt its own regulations to enforce the building code. S.C. Code Ann. § 6-9-50(A); S.C. Code Ann. § 6-9-10(A).

The Town adopted Chapter 1 of the International Building Code. Town of Surfside Beach, South Carolina, Code of Ordinances § 13-21. (**R. p. 426**). The building code requires any owner or authorized agent, before engaging in any construction on the premises, to “first make application to the building official and obtain the required permit.” Int’l Bld. Code § 105.1. Chapter 1 declares it unlawful for any person to erect, construct, or alter any building or structure “in violation of any provisions of this code.” Int’l Bld. Code § 113.1. The building code requires the building official to enforce compliance with its provisions. Int’l Bld. Code §§ 104.1-104.3.

It is a rare event for the General Assembly to use the magic words “the public policy of South Carolina.” It is additionally an unusual step for the General Assembly to implement the public policy of the State by requiring counties and municipalities to enforce the building code. S.C. Code Ann. § 6-9-50(A); S.C. Code Ann. § 6-9-10(A). This legislative intent, design, and policy of this statutory framework cannot be ignored. See State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002) (“The statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.”).

Here, Donevant presented a cognizable theory for wrongful termination, which was correctly sent to the jury. See Barron, 393 S.C. 609, 615-16, 713 S.E.2d 634, 637 (holding a wrongful termination claim is not limited to situations where the employer requires the employee to violate the law or the reason for the employee’s termination itself is a violation of the law). The

⁹ Chapter 1 of the International Building Code provides a mechanism upon which the building code can be enforced. The General Assembly gives municipalities or counties the option to either adopt Chapter 1 or to promulgate and adopt their own enforcement regulations. See S.C. Code Ann. § 6-9-10(A).

public policy of the State of South Carolina is to maintain reasonable construction standards in building to protect the health, safety, and welfare of its citizens. S.C. Code Ann. § 6-9-5(A). To achieve these purposes, the General Assembly requires the building code to be adhered to and requires them to be enforced. S.C. Code Ann. § 6-9-10(A); Int'l Bld. Code §§ 104.1-104.3, 105.1, 113.1, 114.1. Donevant was enforcing the building code on March 20, 2014, when she issued a stop work order for unpermitted construction at the Pier Restaurant. Donevant presented evidence that after issuing the stop work order, Duckett initially suspended her and ultimately terminated her. Thus, Donevant testified and presented evidence to support a theory for wrongful termination that was proper to submit to the jury.

From there, it was an issue of fact as to whether the jury believed the Town terminated Donevant for issuing a stop work order or for other reasons not related to Donevant's issuance of the stop work order. Donevant clearly presented evidence to support her theory that "[Duckett] fired [her] for putting a stop-work order, for doing my job."¹⁰ (R. p. 120). Ultimately, the jury believed the version of facts as presented by Donevant.

Accordingly, this Court should not disturb the jury's verdict as there was an issue of fact as to whether the Town terminated Donevant in violation of a clear mandate of public policy. See Barron, 393 S.C. at 617, 713 S.E.2d at 638 (a plaintiff in a wrongful termination cause of action must establish a public policy; then, "the jury would determine the factual question of whether the employee's termination was in violation of that public policy.").

VIII. THE TOWN MISCHARACTERIZES THE TRIAL JUDGE'S UNDERSTANDING OF THE FACTS AND THE LAW IN ITS BRIEF

¹⁰ On appeal, the Town does not allege that Donevant failed to present sufficient evidence in support of her wrongful termination claim. Therefore, this issue is not preserved for appellate review.

On page 21 of its' brief, the Town mischaracterizes the trial judge's view of whether Donevant was required to issue the stop work order for unpermitted construction at the Pier Restaurant. On page 21, the Town states, "Even Judge Jefferson agreed that the stop work order was discretionary and Donevant 'wasn't mandated to do it.'" (**Town's Brief, p. 21**).

Respectfully, the Town has not presented the trial judge's statements in an accurate light. The Town has taken the judge's comments out of context and in doing so, has changed the meaning of her statement. The full statement made by the trial judge reads as follows, "Whether [Donevant] was mandated to take the action that she took on that day, which initially, I have to admit, my first reaction to it, pursuant to the statute, was that she wasn't mandated to do it." (**R. p. 366**) (emphasis added). It is this last phrase, "she wasn't mandated to do it," that the Town seizes upon and presents as though the trial judge believed Donevant was not required to issue the stop work order. However, as this Court can plainly see, in making this statement, the trial judge did not, as argued by the Town, "agree[] that the stop work order was discretionary," and the trial judge did not state that Donevant was not required to issue the stop work order. Quite plainly, the trial judge stated that initially, she thought Donevant was not required to issue the stop work order. (**R. p. 366**). This is a far cry from the statement attributed to the judge by the Town.

On pages 367 and 368 of the Record, the trial judge continued to explain why she thought the issue presented in this case was one of fact, for the jury to decide. The judge noted the existence of a public policy, stating, "I think it is clear that we do have building codes in South Carolina and they are for the protection of the public, and that is a public policy issue." (**R. pp. 367-68**). Thus, there being no matter of law, the trial judge stated, "[t]he issue in this case is a factual one, and it comes down to whose version of events the jury believed." (**R. p. 381**).

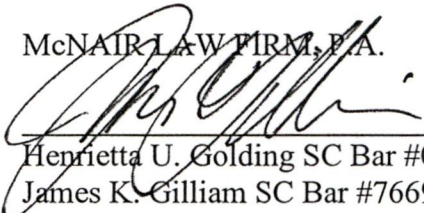
The trial judge's comments speak for themselves, but the Town has presented her comments in a light to appear as though she thought the stop work order was discretionary and that Donevant was not required to issue the stop work order, which is not accurate. This Court should know that the trial judge fully understood this case and the law encompassing the wrongful termination doctrine. The trial judge would not have sent this case to the jury had she believed as the Town has represented to this Court.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's denial of the Town's motion for directed verdict and uphold the jury's verdict of Three Hundred Thousand and 00/100 (\$300,000.00) Dollars.

Respectfully submitted,

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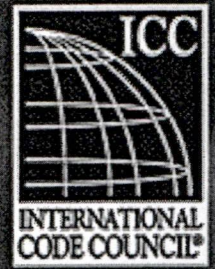
Attorneys for Respondent

Jacklyn J. Donevant

Myrtle Beach, South Carolina

June 13, 2017

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INTERNATIONAL BUILDING CODE®

2006

CHAPTER 1

ADMINISTRATION

SECTION 101 GENERAL

101.1 Title. These regulations shall be known as the *Building Code* of [NAME OF JURISDICTION], hereinafter referred to as “this code.”

101.2 Scope. The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the *International Residential Code*.

101.2.1 Appendices. Provisions in the appendices shall not apply unless specifically adopted.

101.3 Intent. The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.

101.4 Referenced codes. The other codes listed in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

101.4.1 Electrical. The provisions of the *ICC Electrical Code* shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

101.4.2 Gas. The provisions of the *International Fuel Gas Code* shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

101.4.3 Mechanical. The provisions of the *International Mechanical Code* shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

101.4.4 Plumbing. The provisions of the *International Plumbing Code* shall apply to the installation, alteration,

repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the *International Private Sewage Disposal Code* shall apply to private sewage disposal systems.

101.4.5 Property maintenance. The provisions of the *International Property Maintenance Code* shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

101.4.6 Fire prevention. The provisions of the *International Fire Code* shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

101.4.7 Energy. The provisions of the *International Energy Conservation Code* shall apply to all matters governing the design and construction of buildings for energy efficiency.

SECTION 102 APPLICABILITY

102.1 General. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

102.2 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

102.3 Application of references. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

102.4 Referenced codes and standards. The codes and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

102.5 Partial invalidity. In the event that any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions.

102.6 Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the *International Property Maintenance Code* or the *International Fire Code*, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

**SECTION 103
DEPARTMENT OF BUILDING SAFETY**

103.1 Creation of enforcement agency. The Department of Building Safety is hereby created and the official in charge thereof shall be known as the building official.

103.2 Appointment. The building official shall be appointed by the chief appointing authority of the jurisdiction.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the building official shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official. For the maintenance of existing properties, see the *International Property Maintenance Code*.

**SECTION 104
DUTIES AND POWERS OF BUILDING OFFICIAL**

104.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

104.2 Applications and permits. The building official shall receive applications, review construction documents and issue permits for the erection, and alteration, demolition and moving of buildings and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

104.3 Notices and orders. The building official shall issue all necessary notices or orders to ensure compliance with this code.

104.4 Inspections. The building official shall make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

104.5 Identification. The building official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

104.6 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

104.7 Department records. The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

104.8 Liability. The building official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

104.9 Approved materials and equipment. Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

104.9.1 Used materials and equipment. The use of used materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

104.11.1 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

104.11.2 Tests. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

SECTION 105 PERMITS

105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

105.1.1 Annual permit. In lieu of an individual permit for each alteration to an already approved electrical, gas, mechanical or plumbing installation, the building official is authorized to issue an annual permit upon application therefor to any person, firm or corporation regularly employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the permit.

105.1.2 Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such records at all times or such records shall be filed with the building official as designated.

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the

provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18 925 L) and the ratio of height to diameter or width does not exceed 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18 925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment accessory to detached one- and two-family dwellings.
12. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A permit shall not be required for the installation of any temporary system

ADMINISTRATION

required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any part that does not alter its approval or make it unsafe.
6. Portable evaporative cooler.
7. Self-contained refrigeration system containing 10 pounds (5 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

105.2.1 Emergency repairs. Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

105.2.2 Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

105.2.3 Public service agencies. A permit shall not be required for the installation, alteration or repair of generation, transmission, distribution or metering or other related

equipment that is under the ownership and control of public service agencies by established right.

105.3 Application for permit. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 106.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

105.3.1 Action on application. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject such application in writing, stating the reasons therefor. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefor as soon as practicable.

105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.4 Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The

building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.6 Suspension or revocation. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

105.7 Placement of permit. The building permit or copy shall be kept on the site of the work until the completion of the project.

SECTION 106 CONSTRUCTION DOCUMENTS

106.1 Submittal documents. Construction documents, statement of special inspections and other data shall be submitted in one or more sets with each permit application. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

106.1.1 Information on construction documents. Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official.

106.1.1.1 Fire protection system shop drawings. Shop drawings for the fire protection system(s) shall be submitted to indicate conformance with this code and the construction documents and shall be approved prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9.

106.1.2 Means of egress. The construction documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress in compliance with the provisions of this code. In other than occupancies in Groups R-2, R-3, and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces.

106.1.3 Exterior wall envelope. Construction documents for all buildings shall describe the exterior wall envelope in

sufficient detail to determine compliance with this code. The construction documents shall provide details of the exterior wall envelope as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roof, eaves or parapets, means of drainage, water-resistive membrane and details around openings.

The construction documents shall include manufacturer's installation instructions that provide supporting documentation that the proposed penetration and opening details described in the construction documents maintain the weather resistance of the exterior wall envelope. The supporting documentation shall fully describe the exterior wall system which was tested, where applicable, as well as the test procedure used.

106.2 Site plan. The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades and, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

106.3 Examination of documents. The building official shall examine or cause to be examined the accompanying construction documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

106.3.1 Approval of construction documents. When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, as "Reviewed for Code Compliance." One set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.

106.3.2 Previous approvals. This code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

106.3.3 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure

shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted.

106.3.4 Design professional in responsible charge.

106.3.4.1 General. When it is required that documents be prepared by a registered design professional, the building official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The building official shall be notified in writing by the owner if the registered design professional in responsible charge is changed or is unable to continue to perform the duties.

The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

Where structural observation is required by Section 1709, the statement of special inspections shall name the individual or firms who are to perform structural observation and describe the stages of construction at which structural observation is to occur (see also duties specified in Section 1704).

106.3.4.2 Deferred submittals. For the purposes of this section, deferred submittals are defined as those portions of the design that are not submitted at the time of the application and that are to be submitted to the building official within a specified period.

Deferral of any submittal items shall have the prior approval of the building official. The registered design professional in responsible charge shall list the deferred submittals on the construction documents for review by the building official.

Documents for deferred submittal items shall be submitted to the registered design professional in responsible charge who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and been found to be in general conformance to the design of the building. The deferred submittal items shall not be installed until the design and submittal documents have been approved by the building official.

106.4 Amended construction documents. Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

106.5 Retention of construction documents. One set of approved construction documents shall be retained by the building official for a period of not less than 180 days from date

of completion of the permitted work, or as required by state or local laws.

SECTION 107 TEMPORARY STRUCTURES AND USES

107.1 General. The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.

107.2 Conformance. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure public health, safety and general welfare.

107.3 Temporary power. The building official is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in the ICC *Electrical Code*.

107.4 Termination of approval. The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

SECTION 108 FEES

108.1 Payment of fees. A permit shall not be valid until the fees prescribed by law have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

108.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

108.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official.

108.4 Work commencing before permit issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a fee established by the building official that shall be in addition to the required permit fees.

108.5 Related fees. The payment of the fee for the construction, alteration, removal or demolition for work done in

connection to or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

108.6 Refunds. The building official is authorized to establish a refund policy.

SECTION 109 INSPECTIONS

109.1 General. Construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

109.2 Preliminary inspection. Before issuing a permit, the building official is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

109.3 Required inspections. The building official, upon notification, shall make the inspections set forth in Sections 109.3.1 through 109.3.10.

109.3.1 Footing and foundation inspection. Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job.

109.3.2 Concrete slab and under-floor inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

109.3.3 Lowest floor elevation. In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 shall be submitted to the building official.

109.3.4 Frame inspection. Framing inspections shall be made after the roof deck or sheathing, all framing, fireblocking and bracing are in place and pipes, chimneys and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

109.3.5 Lath and gypsum board inspection. Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or gypsum board joints and fasteners are taped and finished.

Exception: Gypsum board that is not part of a fire-resistance-rated assembly or a shear assembly.

109.3.6 Fire-resistant penetrations. Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved.

109.3.7 Energy efficiency inspections. Inspections shall be made to determine compliance with Chapter 13 and shall include, but not be limited to, inspections for: envelope insulation R and U values, fenestration U value, duct system R value, and HVAC and water-heating equipment efficiency.

109.3.8 Other inspections. In addition to the inspections specified above, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the department of building safety.

109.3.9 Special inspections. For special inspections, see Section 1704.

109.3.10 Final inspection. The final inspection shall be made after all work required by the building permit is completed.

109.4 Inspection agencies. The building official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

109.5 Inspection requests. It shall be the duty of the holder of the building permit or their duly authorized agent to notify the building official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

109.6 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

SECTION 110 CERTIFICATE OF OCCUPANCY

110.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a viola-

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tion of the provisions of this code or of other ordinances of the jurisdiction.

110.2 Certificate issued. After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy that contains the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official.
7. The edition of the code under which the permit was issued.
8. The use and occupancy, in accordance with the provisions of Chapter 3.
9. The type of construction as defined in Chapter 6.
10. The design occupant load.
11. If an automatic sprinkler system is provided, whether the sprinkler system is required.
12. Any special stipulations and conditions of the building permit.

110.3 Temporary occupancy. The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

110.4 Revocation. The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

SECTION 111 SERVICE UTILITIES

111.1 Connection of service utilities. No person shall make connections from a utility, source of energy, fuel or power to any building or system that is regulated by this code for which a permit is required, until released by the building official.

111.2 Temporary connection. The building official shall have the authority to authorize the temporary connection of the building or system to the utility source of energy, fuel or power.

111.3 Authority to disconnect service utilities. The building official shall have the authority to authorize disconnection of

utility service to the building, structure or system regulated by this code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

SECTION 112 BOARD OF APPEALS

112.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

112.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

112.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.

SECTION 113 VIOLATIONS

113.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

113.2 Notice of violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

113.3 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

113.4 Violation penalties. Any person who violates a provision of this code or fails to comply with any of the requirements

thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

SECTION 114 STOP WORK ORDER

114.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the building official is authorized to issue a stop work order.

114.2 Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

114.3 Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

SECTION 115 UNSAFE STRUCTURES AND EQUIPMENT

115.1 Conditions. Structures or existing equipment that are or hereafter become unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

115.2 Record. The building official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

115.3 Notice. If an unsafe condition is found, the building official shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order.

115.4 Method of service. Such notice shall be deemed properly served if a copy thereof is (a) delivered to the owner personally; (b) sent by certified or registered mail addressed to the owner at the last known address with the return receipt requested; or (c) delivered in any other manner as prescribed by local law. If the certified or registered letter is returned showing

that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.

115.5 Restoration. The structure or equipment determined to be unsafe by the building official is permitted to be restored to a safe condition. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of Section 105.2.2 and Chapter 34.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Deadra Jefferson
Circuit Court Judge

Appellate Case No.: 2015-002533
Trial Case No.: 2012-CP-26-4852

RECEIVED

JUN 14 2017

S.C. SUPREME COURT

Jacklyn J. Donevant,Respondent,

vs.

Town of Surfside Beach, Petitioner.

PROOF OF SERVICE

I, Carole Koerner, an employee of McNair Law Firm, P.A., attorneys for Respondent, Jacklyn J. Donevant, in the above-entitled action, certify that I have served the Respondent's Brief to the Supreme Court, and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 13th day of June, 2017.

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