

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

FILED
GWENT T. HYATT
IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
2013 MAY 28 AM 9:48

CLERK OF COURT Nos.: 2011-CP-17-356 & 357
DILLON COUNTY

Road/Route Route I-73
File 47.036358A.2
Tracts 193 & 194
Project EM07(008)
PIN 36358_RD02

ORDER DENYING SCDOT'S
POST-TRIAL MOTIONS AND
AWARDING ATTORNEY'S FEES
TO COUNSEL FOR LANDOWNER

South Carolina Department of
Transportation,

Condemnor,

v.

H. E. Ellerbe

Landowner,

A CERTIFIED
TRUE COPY
Gwent T. Hyatt
CLERK OF COURT
DILLON COUNTY

This Court convened a hearing by consent of all parties on May 9, 2013 in Bennettsville, South Carolina to consider the post-trial motions filed by the Condemnor, South Carolina Department of Transportation ("SCDOT"). SCDOT has filed a motion pursuant to SCRCP 59 seeking a new trial *nisi remittitur*, or in the alternative, a new trial absolute or judgment notwithstanding the verdict ("JNOV"). Specifically, SCDOT argues that the jury's determination of "just compensation" was not supported by the evidence in the record, and further, that the Court's charge on the law of eminent domain improperly influenced the jury's verdict in this case. Present and participating at the May 9, 2013 hearing were Andrew F. McLeod, Esq., on behalf of the South Carolina Department of Transportation, and Robert J. Sheheen, Esq. and Douglas Jennings, Jr., on behalf of Landowner H.E. Ellerbe.

Jub

After considering all arguments of counsel and all briefs and written submissions provided by counsel, the Court denies SCDOT's post-trial motions for the following reasons:

1
JR 2011-CP-17-356

1. This case arises from SCDOT's condemnation of 28.16 acres of the Landowner's farm in Dillon County for the construction of I-73. The parties engaged in extensive settlement negotiations on the morning of April 8, 2013. After these negotiations failed, this case was tried before a jury in Dillon County on April 8-9, 2013, resulting in a jury verdict in favor of the Landowner in the amount of Three Hundred Thousand dollars (\$300,000.00).
2. The Court finds that this condemnation case was thoroughly and professionally litigated by very capable counsel for both parties, and that the jury verdict was well-supported by the evidence and testimony presented before the jury. The Court further finds that the resulting jury verdict of \$300,000.00 reflected a reasonable compromise between the amount presented into evidence by SCDOT as to the value of the land in question – \$156,200.00 – and the amount presented and requested by the Landowner - \$346,320.00. In addition, the testimony by the Landowner as to comparable sales of his property did not constitute error, but was proper evidence for the jury to consider along with and as a basis for Landowner's opinion testimony as to the value of land taken by SCDOT in this case.¹ The verdict was not "shocking," but rather constituted a fair and appropriate determination of "just compensation" for the taking of a significant portion of the Landowner's farm. Accordingly, SCDOT's post-trial motions on this basis are DENIED.
3. SCDOT has raised an objection to the following language which was a part of the Court's charge on the law of eminent domain at the close of the case:

I charge you that, under South Carolina law, any amount awarded in this case by the jury as just compensation will not be paid from Dillon County tax revenues; thus, as local citizens and taxpayers, the members of the jury have no financial interest in this case.

¹ The Landowner testified at trial that he believed his property to be worth \$8,000.00 per acre, but that he had also sold various tracts of land over the years, with prices ranging from \$1,500.00 per acre to \$11,000.00 per acre.

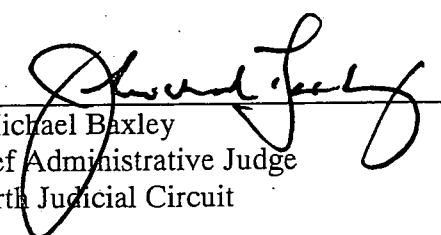
SCDOT asserts that this language improperly influenced the jury and resulted in an exorbitantly high verdict. The Court disagrees and finds that such a charge was appropriate and fair to both parties. The specific reasons for the Court's decision to include this language in its charge were stated in detail on the record at the hearing on the post-trial motions. Succinctly stated, given the current fiscal difficulties faced by small, rural counties such as Dillon, and the concomitant financial burden placed upon the citizenry, the Court believed it important for the jury to understand that they would have no financial liability for payment of any "just compensation" award. Therefore, SCDOT's post-trial motions on the issue of the Court's charge on the law of eminent domain are DENIED.

4. Prevailing counsel for the Landowner, Attorneys Robert J. Sheheen and Douglas Jennings, Jr., have made a claim for attorney's fees and costs in the amount of \$70,148.45 in accordance with S.C. Code Ann. § 28-2-510, as amended, and the cases applicable thereto. This amount was calculated based on a contingent fee agreement allowing for an attorney fee of 33.33% of the amount over the original deposit of \$132,000.00 recovered by verdict. SCDOT has raised an objection to this amount, contending that it was justified in pressing this case to trial given the value attributed to the land by the Landowner. SCDOT further asserts that the amount awarded in attorney's fees should be determined based on an itemized accounting of time applied to a reasonable hourly fee that reflects the reasonable time and effort involved in litigating this case. The Court denies SCDOT's objections and finds the amount requested to be appropriate in this case. Pursuant to *Vick v. SCDOT*, the Court is to consider six factors when assessing an award of attorney's fees: "(1) the nature, extent, and difficulty of the case; (2) the time

necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” 347 S.C. 470, 484; 556 S.E.2d 693, 700 (Ct. App. 2001). Each of these factors was discussed and specific findings made on the record by the Court at the post-trial hearing in this matter. After considering these factors, as well as the briefs and affidavits submitted by counsel, the Court concludes that the amount requested for attorney’s fees and costs in the amount of \$70,148.45 is fair, reasonable, and well within the standards applying to such matters pursuant to S.C. Code Ann. § 28-2-510 and South Carolina case law. Therefore, the total requested sum of Seventy Thousand One Hundred and Forty-Eight dollars and .45/100 (\$70,148.45) is awarded to the prevailing Landowner’s counsel. That amount shall be added to the Judgment entered by the Clerk of Court for Dillon County in this case; \$337,610.95 (including the verdict of \$300,000.00 plus interest in the amount of \$37,610.95 since September 16, 2011).

All post-trial motions and issues now having been fully heard, ruled on and decided, IT IS HEREBY ORDERED that a Judgment shall be entered on behalf of the Landowner, H. E. Ellerbe, in the total amount of **Four Hundred and Seven Thousand, Seven Hundred Fifty-Nine Dollars and Forty Cents (\$407,759.40)** with the Clerk of Court for Dillon County.

IT IS SO ORDERED.



J. Michael Baxley
Chief Administrative Judge
Fourth Judicial Circuit

Hartsville, South Carolina

May 24, 2013

STATE OF SOUTH CAROLINA
COUNTY OF DILLON

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS **FILED**
GWEN T. HYATT

CASE NO. 2011 CP-17-356 & 357

South Carolina Department of Transportation

H. E. Ellerbe

2013 MAY 28 AM 9:48

PLAINTIFF(S)

**CLERK OF COURT
DILLON COUNTY**

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

**AGREED AND
TRUE COPY**
[Signature]
**CLERK OF COURT
DILLON COUNTY**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
H. E. Ellerbe	SC Department of Transportation	\$407,759.40
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

[Signature]

2121

Judge Code

5-24-13

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

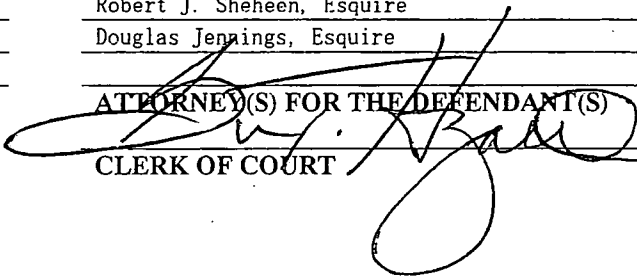
Andrew F. McLeod, Esquire

Robert J. Sheheen, Esquire
Douglas Jennings, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT



Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Multiple horizontal lines for additional information.