


STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master in Equity

Case No. 2012-CP-08-02964

 James Pugh, d/b/a Budget Tire Express.....Respondent

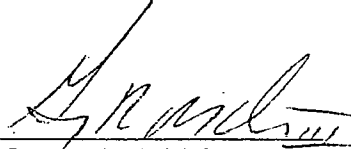
v.

XMA, LLC.....Appellant

NOTICE OF APPEAL

XMA, LLC appeals the order of the Honorable Robert E. Watson dated May 16, 2013. Appellant, through his attorney, received written notice of the entry of this order on May 21, 2013.

Christopher Murphy
123 Meeting Street
Charleston, SC, 29401
843 577-9323
ATTORNEY FOR
RESPONDENT


George R. McElveen, III
2229 Bull St.
Columbia, SC 29201
803 799-9581
ATTORNEY FOR
APPELLANT

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June 19, 2013

SC Court of Appeals

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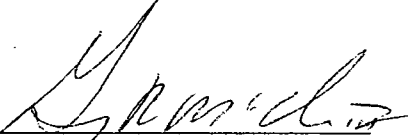
v.

XMA, LLC.....Appellant

CERTIFICATE OF SERVICE

I, George R. McElveen, III, hereby certify that I have served one copy of the Notice of Appeal counsel for Respondent by placing the same in the regular US Mail, postage pre-paid, and addressed as follows:

Christopher Murphy
123 Meeting Street
Charleston, SC 29401



George R. McElveen, III

Columbia, SC
June 19, 2013

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SC Court of Appeals

George R. McElveen, III
G. Raymond McElveen, Jr.
of counsel

The Law Offices of
MCELVEEN & MCELVEEN
Attorneys at Law
2229 Bull Street
Columbia, South Carolina 29201
Telephone (803) 799-9581
Fax (803) 799-2011

G. Raymond McElveen
(1896-1989)

June 24, 2013

The Hon. Mary P. Brown,
Berkeley County Clerk of Court
300 California Avenue
Moncks Corner, South Carolina 29461

Re: XMA, LLC v. James Pugh, dba Budget Tire Express

Dear Ms. Brown;

Enclosed please find Notice of Appeal in the above captioned action. Also enclosed is our check in the amount of \$150.00, the order appealed from, and a Certificate of Service. Let me know if you need anything else.

Yours very truly;



George R. McElveen, III

GRMcEIII/

cc: South Carolina Court of Appeals
Christopher L. Murphy, Esq.

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE OF COMMON PLEAS
Case No. 2012-CP-08-02964

South Carolina Department of
Transportation,)
)

Condemnor,)

-versus-)

XMA, LLC,)

Landowner,)

and)

First Palmetto Savings Bank,)

Other Condemnee.)

APPORTIONMENT ORDER

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SC Court of Appeals

CLAYTON P. GROWTH
CLERK OF COURT
BERKELEY COUNTY, SC

2013 MAY 16 PM 4:46

FILED

This matter came before the court on April 4, 2013 pursuant to an order of reference to determine the apportionment between the landowner and the tenant James Pugh. George McElveen, III represented landowner, XMA, LLC while Christopher Murphy represented James Pugh.

This matter arises out of a condemnation action wherein the South Carolina Department of Transportation (SCDOT) made an initial offer of \$426,000.00 for the total taking of landowner's property located at 1367 College Park Road. The property was improved with a 6,000 square foot building. Jason Pugh leased the property and used it as an auto repair shop. The landowner and SCDOT eventually settled the matter for \$460,000.00 and set aside \$34,000.00 to remain with the clerk of court pending resolution of the apportionment issues between landowner and tenant.

REW

At this hearing the court had to determine what, if any leasehold interest the tenant James Pugh possessed. Because this was a total taking, the leasehold interest is measured by the difference between market rent and tenant's actual rent. At the hearing, the court heard from two witnesses, Robert Burton, who owned XMA, LLC and the tenant James Pugh. Mr. Pugh testified his leasehold interest equaled \$24,300.00. At the time of departure, Mr. Pugh testified he was paying approximately \$3,400.00 per month. While trying to find an alternate site, he found rents ranged from \$10.00 to \$12.00 per square foot which translates to annual rents of \$60,000.00 to \$72,000.00 for a 6,000 square foot building. This leasehold interest was based on testimony that he had sixteen months remaining on his lease which he discounted by 5 per cent. Mr. Burton testified Mr. Pugh that actual rent equaled the market rent which would not entitle Mr. Pugh to anything. He also testified Mr. Pugh left with twelve months remaining on his lease.

Based on the following testimony, this court finds tenant vacated the premises with twelve months remaining on his lease and that he was paying actual rent of \$3,400.00. The court further finds that market rent for a 6,000 square foot building equaled \$5,000.00 per month for a difference of \$1,600.00. Multiplying this difference by the remaining twelve months and discounting the final figure by 5% indicates an \$18,240.00 loss of leasehold interest.

THEREFORE, IT IS ORDERED that tenant is entitled to share in the condemnation award in the amount of \$18,240.00 which represents the loss of his leasehold interest.

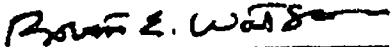
IT IS FURTHER ORDERED that the Clerk of Court shall issue a check to landowner's counsel for the entire \$34,000.00 plus any accrued interest and made payable to the trust account of George McElveen, III and send it to the attention of:

REW
/2

George McElveen, III
McElveen and McElveen
2229 Bull Street
Columbia, South Carolina 29201

Upon receipt, Mr. McElveen shall tender a check in the amount of \$18,240.00 to Mr. Pugh and his counsel of record.

IT IS SO ORDERED!


The Honorable Robert E. Watson
Master in Equity

5/16
April, 2013

Berkeley County, South Carolina