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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 20-CP-22-00600
CASE NO. 20-CP-22-00601

Sunset Lodge, LLC, ...Appellant,

v.

Town of Pawleys Island,.....Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie Preservation Trust, ...Appellant,

v.

Town of Pawleys Island,.....Respondent.

APPELLANTS' REPLY BRIEF

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ARGUMENT

I. The Circuit Judge erred and should be reversed for considering only his erroneously narrow "concepts" of the sole two "factors" he employed, and for changing the facts contrary to the undisputed procedural history of the matter set forth in the Appellants' Statement of the Case, and contrary to the law of the case which was established in the prior summary judgment order.

A. The true, indisputable "nature" of the case included the high stakes, the time constraints, the public interests, the volume and complexity of the truly pertinent facts all initially denied by the Town, the acts of the adversary, the limited case law, the novelty of some issues and remedies, and many things besides a flawed "either-or" decision of whether the case was either "complex" or "simple," and, even if the case had been "simple," simplicity does not justify fee-stripping.

The Landowners' improved oceanfront land was worth millions of dollars (in 2020 dollars) when the Landowners were targeted by the Town Council.

Without question, it was a high stakes matter from the beginning. Each condemnation action started with service of a notice containing false certifications, along with an attached lengthy proposed conveyancing document incorporating large blocks of verbiage covering detailed easement terms and undefined coastal zone concepts, and a map of the Landowner's land, none of which was previously of record and none of which was prepared by, in consultation with, or at the behest of, the Landowner.

There is also no question that the Town's suit began with the Town withholding legally required information, while starting a proceeding requiring any defense to be commenced immediately.

Clear without dispute in the record is that, as a defensive measure, the Landowners shopped attorneys, selected an attorney, agreed on a relatively low hourly rate, agreed to split the bill three ways, and agreed to pay the bills to be periodically rendered during the course of the matter, regardless of success or failure, and regardless of degree of success or failure.

They did not hire the attorney to seek any damages. The attorney charged $190 per hour,

whereas, of the four attorneys eventually employed by the Town, the two lead attorneys both charged $250 per hour.[1]

The Landowners brought an action to stop the Town's highly publicized condemnation attempt. It is undisputed that the Town attempted to condemn an easement substantially similar in terms to the terms of easements that Town had already cajoled approximately 110 other owners into granting.

Without question, the Town's suit came after publication of the Landowners' names and addresses by the Town, public misrepresentation of the circumstances by the Town, and public threatening of condemnation by the Town. Without question, it was a publicly controversial matter from the beginning, which affected other landowners as well.

The record shows without dispute that the Town raised the stakes and the time demands by responding with a motion to accelerate the case, a motion to dismiss the challenge action, and a request that the Landowners be required to pay the Town's attorney's fees.

The Town also asserted that the Landowners should be liable for Thirty Million

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[1] The Landowners suggested in their Appellants' Brief at 31 that the Town had spent $80,000 or more, employing attorneys at $250 per hour. In its Respondent's Brief at 21 n.10, the Town states that the information is speculative and that "[n]o such information is in the record." It strains credulity to look at the record of the true proceedings set forth in the Appellants' uncontested Statement of the Case and conclude that the Town could have spent much less over the course of a year and a half at $250 per hour, eventually employing three lawyers and a fourth as a hired affiant.

Stanton stated in the sworn fee petition affidavit, his personal familiarity with the case and with discovery in the case and noted that both Mr. DuRant and Mr. Dillard charged $250 per hour. In Exhibit A to the 10/4/21 Reply Brief of the Landowners to one of several opposition papers of the Town, there is extended discussion, over several pages, demonstrating Stanton's personal involvement and followup on the total amount expended by the Town on the condemnation employing Mssrs. DuRant and Dillard, including obtaining FOIA responses on the matter, and then comparing the responses with bills of DuRant and Dillard published online by the Town. One exchange concerns an omitted bill from Mr. DuRant for just one month, which was in excess of $4000. That is, in one month, half of the total amount awarded to each Landowner for the many months of work performed by the Landowners' attorney.

($30,000,000) Dollars if their challenge failed.

Without question, almost simultaneously, the Town began resisting discovery by not responding to it and moving to block discovery as the time for response to it approached. The Town also undeniably opposed expediting of any of the Landowners' motions, further creating circumstances in which the Landowners were expected to "hurry up and lose."

Without question, there was a need for the Landowners' experienced counsel to clear highly valuable land titles now clouded by both the Town's litigation and its public announcements, get discovery, determine the factual bases on which the Town denied almost 100% of the hundreds of facts alleged in the challenge complaints, and prepare for a potentially premature bench trial.[2]

In the event of failure in the expedited bench trial of the challenge, the Landowners would also need to be prepared for a statutorily expedited valuation jury trial, which could be held virtually immediately after a loss of the bench trial. Without question, there was also a need to press for hearing of the Landowners' motions. None of these things can be denied. It is astounding that they were neither considered nor mentioned by the Circuit Judge.

To complicate things further, in addition to these high stakes, the highly compressed time schedule of the case, the public issues involved, and the procedurally and factually dense progress of the multi-party litigation, the Town soon commenced duplicative litigation during the same time the Town's first cases were pending. The two sets of three/six cases then proceeded with staggered procedural status, often with different judges and some apparent jockeying.

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[2] For contemporaneous, rather than hindsight, discussion of some of these concerns and constraints, see the Landowners' 10/14/20 Return to the Town's request for continuance of the hearing of the Landowners' motion for summary judgment and of the Town's then still-pending motion to block discovery (R. pp. 595-99), and see the accompanying 10/14/20 affidavit (R. pp. 600-604).

On many of the matters, the Town not only concedes, but asserts in its Brief, that there was "limited case law." Additionally, some issues, facts, and arguments, and the litigation itself, were highly unusual, if not at times bizarre.

For example, indisputably, the Town maintained throughout, that the proposed easement's granting of "public access" was limited when no limitation was stated. The Town definitively declared that an easement was not necessary, then started and completed the project, and then said the Town needed an easement and sued to condemn one. The Town publicly announced in doing the one first-ever nourishment project, that sand volume probably would not diminish to pre-nourishment levels again for decades, but in the following year, represented to the court that the whole beach was in imminent danger of washing away that year. The Town publicly declared that the Corps reneged on its word given in writing, could not be trusted, and was unreliable, but then contended that entering into a highly conditional and uncertain contract with the Corps was imperative and desirable. The Town also never explained to the Landowners or the Circuit Court, the actual purpose of suing twice at the same time, and resisted discovery inquiring why.

Yet, despite all the foregoing indisputable aspects of the case, the Circuit Judge essentially ruled that the Town's abject failure in the litigation meant the "nature" of the case was "simple," especially since bright-line procedural requirements had been violated by the Town's behavior.

On the basis of this one-dimensional conclusion as to the "simple" "nature" of the case, the Judge essentially concluded, erroneously, that lawyers should not spend much time on "simple" cases, no matter what the stakes. On the basis that the "nature" of the case was "simple," he erroneously then skipped a determination of the sworn, undisputed, actual hours

expended, brushing them off as merely "claimed," and instead adopted a hired affiant's estimate of the hours a differently handled, "simple," case would have required. The Judge then made no determination that the low actual hourly rate should be higher, and awarded fees of barely a tenth of what had actually been incurred fending off the Town.[3]

This reduction included, without distinction, disregard of the hours and actual fees the Landowners incurred in trying to recover the fees they incurred defending themselves. The Town admits in its Brief at 27 that Mr. Dillard left this multi-thousand-dollar item out of his "list" prepared for Mr. Pagliarini, and at 24, admits that Pagliarini in turn based his conclusions on "a non-exclusive list of several types of motions that were filed" (emphasis added), as distinguished from all the actual motions. Statements in the order indicate that the estimate the Judge adopted included nothing for the time incurred in applying for the fees themselves, and the order also did not specifically indicate which, if any, other hours incurred for other things in the last several months of the case were included.

The Judge essentially ruled, and the Town still argues in its Reply Brief, that because hindsight[4] now shows that the Town lost almost every motion in the case and the Landowners won almost every motion in the case -- and also won the overall case without a trial -- the Landowners and their counsel should have known to regard the case as "simple."

The ruling is that the Town's case was so bad that the Landowners should have known in advance conclusively what the result would be. The erroneous reasoning is that the Landowners

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[3] Alternatively, or at least adding confusion to this reasoning, he slashed the "claimed" (actual) hours by almost 90% (with no specification of which particular hours or for which particular things), made no upward adjustment to the low hourly rate, and awarded fees of barely a tenth of what had actually been incurred.

[4] The decisions of counsel to devote time to a case are determined as of the time he or she determined to spend the time, not in hindsight. Gurrobat v. HTH Corp., 346 P.3d 197 (Hawaii 2015)(cited in the Town's Brief).

should have done no further preparation, should have simply disregarded the Town's positions as meritless, should have assumed a court would catch and deny these things on its own, and should have taken a chance with millions of dollars' worth of property, and done less work.

This erroneous "nature of the case" reasoning, first, that the "nature" of the case does not involve what is at stake, novelty, difficulty, public interests, spurious positions of the adversary, and other features, and that the factor involves only the question of whether the case is "simple" or "complex," is based on errors of law. The Judge's erroneous "nature of the case" reasoning, secondly, that such a sole broad and subjective factor allows a draconian slashing of actually incurred fees as if they were unethical, is also based on errors of law. The Judge's erroneous "nature of the case" reasoning, third, that the case was actually so "simple" as to warrant an 87% reduction of the bills actually incurred, is also based on errors of law.

B. The true, indisputable "beneficial" results obtained included defeating virtually all the Town's motions, avoiding liability the Town sought to impose, avoiding a bench trial, avoiding a jury trial, not losing valuable property with or without compensation, protecting the result against appeal, exposing issues of public interest, permanently blocking the Town from repeating certain dishonest maneuvers, and many things besides an "either-or" decision of whether relief obtained was "nonprocedural" or "procedural" and, even if the relief obtained had been procedural with no reference to facts, complete procedural victory does not justify fee-stripping.

What would be a "beneficial" result in a case seeking to quash a condemnation attempt? Most would answer, "Quashing the condemnation attempt." Not so, ruled the Judge.

When the Landowners challenged the condemnation attempt, they objected that, among other things, the noxious and excessive features of the requested easements, such as permanent public recreational use of the land, had not been properly taken into account. The Landowners objected that the Town had lied at multiple stages and in multiple circumstances about the actual nature of the easements the Town sought, that the Town had lied at multiple stages about the need or lack of need for any easement at all, and that the Town had lied at multiple stages about

the need or lack of need for the proposed features of the easements.

The Landowners won their summary judgment motion. The condemnation attempt was quashed. Not a single issue raised in the summary judgment motion or the Amended Complaint was determined adversely to the Landowners. Not one. This is contrary to repeated intimations, suggestions, implications and euphemistically-packaged statements by the Town in its Brief and in the order the Judge signed. (See, e.g., Town's Brief at 14 ("did not prevail"), 18 ("nonpreviling claims"), and 19 ("did not prevail").)

The Landowners also won almost every other motion in the course of the case. They certainly "lost" almost none. These included: the Town's motion to expedite; the Town's motions to require bonds for $30,000,000; the Town's motion to dismiss and request for award of attorney's fees; the Town's motion to block discovery; various other discovery motions; the Landowners' motion to quash the condemnation on summary judgment; the Town's motion to disqualify the Landowners' counsel; various motions to compel discovery, and the Town's motion to reconsider summary judgment. The Town did succeed in getting the hearing of the Landowners' promptly filed summary judgment motion delayed.

As a result of what was established in the instant suits, the Landowners were also successful in terminating a second set of suits which the Town commenced with no permission and with no explanation of its purpose or authorization. These were the additional suits for condemnation which the Town commenced while the first three sets of cases were pending, after first moving to continue, rather than expedite, the hearing of the Landowners' summary judgment motion. After the Landowners finally got their summary judgment motion heard and granted, the Town filed an abandonment of its second condemnation attempt.

As a result of the foregoing successes, the Landowners had the Town's condemnation

attempt quashed and dismissed without the expense, delay or uncertainty of a protracted bench trial on the challenge. Because the challenge was successful, the Landowners additionally avoided further condemnation proceedings, such as a jury trial on valuation. They also prevented permanent damaging easements from being imposed on millions of dollars' worth of property.

It is without question that they also established important "procedural" law permanently against the Town, as a result of res judicata, and as a simple result of the law simply being the law and being good precedent. For example, they established that in any condemnation, the deliberation concerning necessity and other factors must be conducted honestly and with regard to what is actually being sought and what the Landowners' true concerns are.

Further, the Town must be truthful with the appraiser for the statutorily required appraisal, and the appraisal therefore has to be an appraisal of what the Town is actually seeking.

The Landowners also permanently established as law between the parties, a strange requirement for the Town – namely, that the condemnation notice must not certify things that are not true as of the time it is signed and served.[5]

This was "procedural" law, involving dishonesty and falsity incorporated into "procedure," for which there had not been explicit precedent in South Carolina, but which the

[5] The interdimensional Town had disregarded the requirement of "contemporaneous truth" in its condemnation notices. It also did so in its October 12, 2020 Town Council proceedings (referring to public documents just then being created as already having been sent to the Landowners), and in its second set of suits (still referring to an accurate appraisal as already having been provided when nine (9) additional lines had been added to the description of the interest in land which was sought, and no new appraisal had been obtained).

In a brief below, the Town explained that it was sufficient if an act stated to have already been performed would be performed in the future. No court has yet addressed the Town's similar use of "retrograde truth" in backdating the condemnation notices in the October set of suits to June 9, 2020, which is an act which could affect public perception of the truth, deadlines, court records, etc.

Town argues equivocally is both "noncomplex" and "novel."[6]

Another undisputed "benefit" obtained as a result of the efforts of the Landowners and their counsel were facts permanently established against the Town, which were of significance in defeating the Town's second condemnation attempt. These would also be of lasting significance in any future (e.g., third) condemnation attempts.

The 24-page summary judgment order sets forth six (6) pages of facts as to which "there is no genuine dispute," and further discusses inferences which can and cannot be drawn from them. These facts are also of great interest to the public, including 110 other affected landowners who signed the misrepresented permanent easement grant after being told it granted virtually nothing and was worth nothing.

It is now a judicially declared fact that the requested easement really did grant public access for purposes having nothing to do with performing work,[7] granted the access right up to

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[6] The Town states in its Brief at 11 that "[i]n any condemnation challenge action there are only a limited number of grounds for the challenge – fraud, bad faith, or abuse of discretion" -- and that there is "limited relevant South Carolina case law," and states again in its Brief at 12 that "[c]hallenge actions are limited in scope and relevant case law is also limited."

Yet, the Landowners won the challenge action. According to the Town's statements above, the Town concedes that the victory was based on the "limited grounds" of fraud, bad faith or abuse of discretion.

In seeming conflict with the foregoing statements, the Town asserts that the "procedural" basis on which the Landowners obtained an order quashing and dismissing the Town's condemnation action did not in any way involve fraud or bad faith. The Judge's order makes the same assertion. The Town in fact asserts that fraud and bad faith are "nonprevailing claims," on which the Town implies the Landowners' counsel wasted his time.

The Town's assertions, and the Judge's rulings, that the Town's dishonesty was extricable from the Town's "procedural" noncompliance and that the Landowners "nonprevailed" on the facts of bad faith or fraud are unsustainable. However, the conclusion to be drawn if the Landowners did prevail on a basis other than "the limited bases available" and did so with "limited South Carolina case law," is that the result obtained by the Landowners was anything but simple or easy, and was extraordinary, unusual, novel.

[7] Obtaining a judicial declaration of what is stated in the lengthy run-on granting paragraph of an easement document which was proposed to 113 landowners may strike the Court as something that should come easy. However, the Town still will not admit publicly that the

the landowner's house door, and granted the access to decks, stairs, showers, or anything else in the easement area. It is also a judicially declared fact that the publicized appraisals the Town had obtained were based on false information, and that the Town's elected officials presented false information in their live-streamed, video-recorded Town Council meeting.

Another result which was without question obtained in the litigation was that the Landowners also defeated the Town's request for attorney's fees from the Landowners, did not incur $30,000,000 in liability to the Town, and never had to pay bond premiums for bonds covering $30,000,000 in liability.

Despite these indisputable resulting benefits and others, the Circuit Judge signed an order which ruled that the "benefits obtained" were minimal, and that this compelled severely docking the hours spent on the case in an amount tantamount to a penalty.

Strangely, the Judge's erroneous ruling of lack of benefit was based on the fact that the Landowners won without a trial.

The erroneous reasoning is that the premature victory did not allow the court to fully reach or explicitly adopt, by name, the additional grounds proffered by the Landowners for quashing the condemnation attempt,[8] and that the order quashing the condemnation would not

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proposed easement granted general public access and use. This refusal is despite having the verbiage in hand for four years and ignoring the Landowners' objections to the verbiage for two and a half years.

Thus, "perpetual""public access and use" means perpetual public access and use. This is not admitted in any of the briefs or other papers filed by the Town to date. The Town's Reply Brief to this Court in fact never once mentions public access in any context. The Town sticks to euphemistically mentioning only a "beach renourishment easement."

The Court would also have no success looking for such an acknowledgment in the video of the May 18, 2020 Town Council meeting or the more bizarre October 12, 2020 Town Council meeting, both attended by the then Town Administrator and the Town Attorney. It takes time to view them, however.

[8] There is absolutely no support in the record for the repeated oblique conclusion that these grounds were actually determined against the Landowners. The Judge made a legal mistake and

prohibit the Town from trying again (a third time[9]) to condemn a similar or different easement -- even though the Town would have to do so subject to all the law and facts already established permanently against the Town in the instant case.[10]

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should be reversed. Obscuring terms or references like "nonprevailing claims" do not change this. The additional grounds either constitute, or are laced throughout, the six (6) pages of facts the Judge himself earlier concluded were undisputed.

[9] The Town argues that no "benefit" was obtained because the result was not "permanent," in the sense of prohibiting the Town from making additional condemnation attempts.

This argument ignores the fact that the now established requirements of honesty have already put down the Town's second three attempts because the Town was unable or unwilling to proceed honestly.

More important, however, is that, in the instant cases, the Town argues that permanent relief was sought and not obtained, whereas the Town argued in the Challenge II cases that the cases were moot because permanency was not sought by the Landowners, and can almost never be the result.

These contradictions are so astounding that they warrant treatment in a separate section of this Brief below.

[10] A condensed and partial summary of the facts which will not change, and will continue to be relevant, even in a third or subsequent attempt, includes the following:

1. The proposed easement in question was a perpetual public access easement. It was no small problem. It irrevocably granted, forever, "public access and use" on the Landowner's extremely valuable oceanfront private residential property. The wording for that access had nothing to do with access to do sand work. That access was not conditioned upon sand work ever being done at all in the future. This access "and use" was to be granted forever, in a space just a few feet from the door of the house, in a space which enveloped parts of the house or other improvements.

2. The proposed easement was thus not merely a "renourishment easement," as the Town euphemistically and falsely referred to it.

3. The first-ever nourishment project completed by the Town in February-March 2020, for which the Town had declared no easement was necessary, had never been done before. (This is a fact likely lost on some with limited accurate knowledge of local history and geology, including even some fairly longstanding property owners, judges and others.)

4. There was no concrete assurance that nourishment would ever be done again at all, nor did the proposed easement to the Town "and its assigns" contain a narrow limitation on, if it were ever done again, by whom it might be done, at what time it might be done, in what manner it might be done, what project design or specs might be adopted (or not adopted), what would be torn down or what would be constructed. The proposed easement also granted a perpetual right to determine restrictions on the Landowner's use of – and even presence on -- the property.

5. It is the unappealed law of case that the Town's condemnation attempt was defeated because the Town based its condemnation attempt on matters which were false, and which the Town knew to be false. Not only will future attempts not be allowed to be based on similar falsities, but the Town's mindset and discretion, in light of its past dishonest acts, will continue

to be relevant. The following indisputable facts were integral to the Circuit Judge's unappealed 24-page ruling that the Town did not have a right to condemn:

a. The Town told the Landowner in writing, specifically, that the proposed easement was limited to earthwork and associated work when it was not so limited;

b. The Town Council based its May 18, 2020 resolution to condemn upon false, recorded, public declarations that the proposed easement was limited to placing sand on the land and the construction activities necessary to do so;

c. The Town Council based its resolution upon false, recorded, public declarations that the Landowners refused to give or sell such an easement to the Town, when the Landowners had offered extensive construction and sand-placement easements;

d. The Town Council passed a resolution authorizing condemnation of such a limited sand placement easement even though one had already been offered, and the Town Council did so when the Town Council actually intended to immediately condemn an easement known to have dramatically greater scope;

e. The Town Council thus avoided all discussion of the true features of the actually sought easement, the Landowners' objections, the burdens imposed, and alternative courses of action;

f. The Town Council thus also avoided shameful public discussion of the true aspects of the easements the Town had already obtained from other landowners while misrepresenting the scope of the easement;

g. The Town dishonestly attempted to evade the statutory requirements for an appraisal in the course of the condemnation procedure:

(i) by withholding from the appraiser, the specific easement terms the Landowner found objectionable, including any mention of public access,

(ii) by knowingly, falsely, informing the appraiser that the written easement terms were unavailable, and

(iii) by affirmatively misinforming the appraiser of the nature and extent of the very easement the appraiser was hired to place a value upon, e.g., by informing him that owner improvements located within the easement area were unaffected by the perpetual easement;

h. Having obtained an appraisal with a dishonestly obtained low value, the Town then commenced a condemnation action based on that appraisal -- thus triggering a 30-day countdown to termination of the Landowner's right to challenge -- without previously providing the appraisal to the Landowner for purposes of evaluation and pre-suit negotiation as required by statute;

i. The Town falsely certified in the condemnation pleadings themselves (the condemnation notice) that the appraisal previously had been furnished to the Landowner as required by statute, when in truth, the appraisal was not furnished before service of the suit (the Town's not-subtle implication in its Brief at 17, n.7, that the appraisal was furnished at the time of suit, but was simply not furnished "separate from service of the Condemnation Notice," has no support in the record);

j. The Town stated in the condemnation pleadings themselves (the condemnation notice), a statutorily required offer to purchase the easement for the amount determined in the appraisal, but the value of zero stated in the appraisal was dishonestly obtained as described above because what was appraised was different from what the Town attempted to take; and

k. The Town thus also used the dishonestly obtained appraisal amount of zero to

The Judge essentially ruled, and the Town continues to argue in its Reply Brief, that the hours diligently spent by the Landowners' counsel should be docked by nearly 90% on the basis, alone, of a nebulous combination of a flawed lack-of-"beneficial results" determination and a flawed "simple" "nature"-of- the- case determination. The erroneous reasoning on the "beneficial results obtained" factor is also based on error of law, and should be reversed.

II. The Town should be judicially estopped from arguing that quashing the Town's condemnation attempt without issuing a permanent injunction against any further condemnation attempts on the same or different property interest provided virtually no "beneficial result."

In its Brief at 17, the Town argues that nearly 90% of the hours spent by the Landowner's counsel on the case should be disregarded on the basis that the quashing of the condemnation notice "was essentially temporary procedural relief."

The Town argues that therefore, virtually no "beneficial result" was obtained by attaining the nominal object of the action.

Aside from the already inaccurate and insufficient descriptions by the Town of the "nature" of the case and of the effect of winning it, this included argument should not be countenanced. There is not a grain of salt big enough to take with any of the Town's equivocal and constantly shifting, contradictory arguments.

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establish an inadequate amount of cash security the Town would be required by statute to post in order to "take possession" and in order to proceed with a valuation trial.

If the foregoing and other dishonest acts of the Town are to be regarded as "procedural," as the Town repetitively asserts in its Brief and the Judge adopted in his order, the dishonesty and falsity of the Town's acts and statements are not just intertwined with, but integral to, the "procedural" defects in the Town's attempt to condemn, and there is no legal authority for discounting the work on them.

This mammoth legal mistake regarding the law of the case, the indisputable facts, and the holding of Hensley is the primary basis on which the Circuit Judge was persuaded to reduce the actual fees actually incurred by over 80%. Respectfully, he should be reversed.

After withdrawing its second set of condemnation attempts, the Town secured – from a different judge -- a dismissal of the Challenge II cases as "moot." That is, the Town asserted the cases did not even possibly call for any further remedy because condemnation was dismissed by being "temporarily" withdrawn by the Town. The Landowners' appeal of that ruling is pending in this Court as of the initial submission of this writing. (Ct. App. file no. 2021-000757, Civil Action Numbers 2020CP2200930, -931 and -932 (respectively "Stanton II," "Beattie II," and "Sunset II," or the "Challenge II cases".)

The Town secured the ruling by persuading the other judge specifically that "the pleading does not contain a request for preclusive relief that would permanently bar the Town from any future similar condemnation action based on 'bad faith' or similar allegations." (4/22/21 dismissal order being appealed by Landowners in Ch.II cases (emphasis added).)

The referenced "pleading" in the Challenge II cases incorporates by reference (in para. 182), the Challenge I Amended Complaint from the instant cases (which is an exhibit to the original Complaint in Challenge II). The Town's brief opposing the Landowner's motion to reconsider the foregoing ruling dismissing the Ch.II cases as moot argues throughout that, not only do the Landowners not seek permanent relief, but that permanent relief based on fraud and bad faith is unavailable for anything except relief from a particular condemnation notice and action. See, e.g., p. 1 of the Town's 6/2/21 brief in the record on appeal in the Ch.II cases, specifically stating that the allegations of the Challenge II Amended Complaint do not "give rise to any issue of fact that would entitle the plaintiff to judgment in the form of prospective relief prohibiting the Town from ever condemning a beach renourishment easement on the plaintiff's property."

Now the Town argues elaborately to this Court exactly the contrary – that permanent injunctive relief was sought, was available, and was not obtained. See the Town's Respondent's Brief herein at 18, asserting that the main thrust of the Landowners' complaint was "the permanent and prohibitive relief that the Appellants so extensively pleaded and sought." (Emphasis added.) Continuing, the Town states that the allegations of fraud, bad faith, and lack of necessity, all were "asserted in an effort to prevent not just the subject condemnation attempt but also any future attempt."

In its Brief at 19, the Town specifically continues this contradiction as follows: "Appellants specifically sought an order permanently prohibiting condemnation of the easements." (Emphasis added.) The Town further elaborated in a footnote, 9, quoting the Challenge I Amended Complaint.

The Landowners presented to the Circuit Judge in the instant cases, some of the Town's other contradictory positions taken in the Challenge II cases (e.g., assertion in the same 6/2/21 brief in the Challenge II cases that reimbursement of legal expenses would make it equitable to subject landowners to repeated and multiple litigation[11]), and have recited the events of the Challenge II cases among the undisputed facts in the Statement of the Case in the instant appeal.

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[11] Specifically, in arguing against reconsideration of a dismissal of the Challenge II cases as moot, and thus arguing against allowing the Landowners to explore bases for injunctive or declaratory relief against further multiplicitous litigation, the Town's counsel as much as assured the other judge that a plenary award of attorney's fees would be sufficient to compensate the Landowners each time they were sued, and deter repetitive use of public funds to beat them down.

However, the Town's counsel did not go into the prospects of it taking more than eight months to get the fee award. He also did not go into the prospect of the fee request being opposed, and the Landowners only being reimbursed, as here, for about a tenth of what they actually incurred and their counsel honestly billed. The Town's counsel certainly did not forecast the irony of the Landowner being denied these compensatory and protective fees for the very reason that the same Town's counsel would later argue that the fees should only be awarded when the condemnor was permanently enjoined from suing again on any basis.

Without disputing the existence of any of the listed filings and events in the Challenge II cases at all, the Town states only that it "does not stipulate" to them. The already completed record on appeal in the Challenge II cases, which have been fully briefed, should be available to this Court to confirm the existence and contents of the various court filings referred to.

This Court can and should take judicial notice of the Town's positions in the Challenge II cases, and should estop the Town from contradictory positions in the instant case because the the Town obtained and accepted the benefit of the ruling the Town secured by taking these positions in other cases.

An appellate court can take judicial notice of proceedings in a different or related case, especially if already within the appellate court's files, if the matters are readily determined from accurate sources and not subject to reasonable dispute. See Rule 201, SCREvid. (stating that judicial notice may be taken of adjudicative facts "at any stage" of the proceeding, that the court shall take such notice upon the request of a party, and that the other party may upon request be heard on the matter of taking notice). An appellate court may thus examine its own records and take judicial notice of the proceedings and judgment in a former action involving one of the parties, and it may take judicial notice of a document, including briefs filed in an appeal, in a separate but related action concerning the same subject matter in the same court. Western

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The Town's counsel stated at page 5 of the Town's 6/2/21 memorandum opposing reconsideration of dismissal in Case 2020CP2200932:

> The General Assembly deemed it appropriate to protect landowners from the expense of condemnation disputes by, among other things, providing statutory rights to recover attorney fees and costs in the event of a condemnation abandonment or a successful challenge action. These statutory protections satisfy considerations of equity and due process, and clearly disincentive any condemnor from attempting to use "multiplicity of litigation" to gain leverage over a landowner.

(Quoted to the Circuit Judge in the instant case in the Landowners' 10/4/21 brief, p. 5, n. 3, R. p. 1269.)

Ethanol Co. v. Midwest Renewable Energy, 305 Neb. 1, 938 N.W.2d 329 (2020). An appellate court may take judicial notice of a document, including briefs filed in an appeal, in a separate but related action concerning the same subject matter in the same court. Pennfield Oil Co. v. Winstrom, 276 Neb. 123, 752 N.W.2d 588 (2008).

Courts routinely take judicial notice of pleadings, records and judgments in other court cases. See, e.g., Green v. Warden, U.S. Penitentiary, 699 F.2d 364, 369 (7th Cir. 1983); E.I. du Pont de Nemours & Co. Inc. v. Cullen, 791 F.2d 5, 7 (1st Cir. 1986).

Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004). Five circumstances are generally necessary: (1) two inconsistent positions must be taken by the same party or parties in privity with each other; (2) the positions must be taken in the same or related proceedings involving the same parties or parties in privity with each other; (3) the party taking the position must have been successful in maintaining the first position and must have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Id. All these requirements are present here, except that Appellants note the doctrine is generally confined to "facts," as opposed to legal arguments. The assertion that a pleading "does not contain" something seems factual, rather than legal, as does the assertion that a party "extensively pleaded and sought" and directed "efforts" toward the thing previously asserted not to have been pled or sought.

III. The Town's Respondent's Brief largely ignores the law, the law of the case, and Appellants' arguments, and simply repeats the Judge's challenged rulings, including the same mis-cited cases and the same distortion of immutable facts discussed in Appellants' Brief, and the Respondent's Brief thus provides little requiring a reply other than a reply which repeats the corrections, distinctions, and points of error already in the Appellants' Brief.

Of course repetitively saying something does not make it so, and repetitively ignoring

something, or calling it something else, does not make it go away or change its actual nature. This was the case with the original mischief of the Town repetitively telling owners, and even the telling the Circuit Court, that all the Town wanted was a "renourishment easement," and that the Town was not demanding that select owners permanently grant public recreational access to their property.

It is also now largely the case with the Town's present arguments. In its Brief, the Town continues to argue, erroneously, that denying the prevailing Landowners reimbursement of over 80% of the fees they incurred solely for defending the fraud-fraught condemnation suits brought by the Town was a proper exercise of "discretion." The Town argues that this is the case largely by repeating the Judge's and the Town's previous bald assertions already refuted and corrected in Appellants' Brief, such as that the Town's dishonest actions had nothing to do with the quashing of the condemnation.

Wishful thinking and repetition will not change the established facts, the law, or the law of the case.[12] The Circuit Judge's surprising subscription to extensive fiction, and strange dispensation of charity to the errant Town at the expense of the Landowners, violates the law of the case, and is one of numerous fundamental errors of law requiring reversal.

In the Landowners' Appellant's Brief, they carefully explained the numerous fundamental legal errors of the order the Circuit Judge signed. A partial list of some of the other errors includes:

(i) misinterpreting the specific applicable fee award subsection (Subsection 510(A)) of the fee award section of the EDPA (Section 510), and treating 510(A) as if it contained excessive

[12] The law-of-the-case principle is discussed in the Scope of Review portion of the Landowners' Appellants' Brief.

particularity requirements and in fact included discretionary features and requirements of other, different, subsections under Section 510, when these features were in fact omitted in the applicable Subsection 510(A);[13]

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[13] Subsection 510(A) deals with mandatory fees (fees the court "must award") to the landowner for winning a challenge action in whole or in part. Subsection 510(C) also deals with mandatory fees (fees to which the landowner "is entitled"), but applies when the condemnor abandons the condemnation. However, Subsection 510(B) deals with "may award" fees to the prevailing party in a valuation trial.

The statutes have different standards, including different levels of discretion and different thresholds and requirements.

The Town, however, mentions holdings concerning these different statutes without distinction as if they are interchangeable. See the Town's Respondent's Brief at 5, perfunctorily referring to a holding that Subsection 510(B) requires an "itemized fee statement."

First, neither the statute nor the Revels case the Town referenced as citing the statute uses the term, "itemized fee statement." Both use "itemized statement."

Both then state what it should contain. It is therefore important to notice that "itemized fee statement" is the exact term the Town has already planted, without definition, in its Statement of the Case at 2, as discussed below.

Second, Subsection 510(A), as opposed to 510(B), actually contains no such explicit requirement.

Third, this mistake on the notion of an "itemized statement" is a matter which counsels further examination and careful distinction between the terms the Town uses, on the one hand, and what is meant by the terms actually used in statutes and cases, on the other hand.

For many decades, courts have made fee awards in cases in which the prevailing party's attorney kept little or no record of every hour and activity spent on the case. These include cases in which the attorney's agreement with the client called for a contingent fee, or cases involving billing done in the discretion of the attorney simply for "services rendered," where the client is satisfied by having observed in real time, what the attorney did and accomplished. It is sometimes requested or required that an attorney later prepare a statement.

The Town asserts in its Statement of the Case at 2, as if it were an uncontroverted fact, that the Landowners initially did not include any "itemized fee statements" along with their fee petition. This is incorrect.

The Landowners did include along with their fee petition, an itemized statement in the form of a sworn affidavit setting forth an itemization of out-of-pocket expenses incurred, setting forth the rates and fees charged, setting forth the number of hours worked in tenths of hours, setting forth information on events and issues in the case, setting forth the background on the attorney, etc.

The statement referred to in Subsection 510(B) and the Revels case is a statement composed and submitted for purposes of asking the court for a fee award against the opposing party (who is not the lawyer's client), not the actual bills the lawyer sent to his client during the progress of the case in accordance with the lawyer's agreement with the client as to compensation and manner of billing.

The "itemized statement" to be submitted to the court, as mentioned in the inapplicable Subsection 510(B), and sometimes referred to in South Carolina case law on other subjects, is created after winning the trial.

Under Subsection 510(B), it is a "statement from an attorney or expert witness representing or appearing at trial in behalf of the landowner stating the fee charged, the basis therefor, the actual time expended, and all actual expenses for which recovery is sought." S.C. Code Ann. §28-2-510(B)(1). As noted, although this is not a statutory requirement applicable to the Landowners' fee petition under Subsection 510(A), this is exactly what the Landowners' attorney submitted, except he submitted much more, including information about the true nature and progress of the case, notable issues or problems, the experience of the attorney, rates in the community, etc.

The Town's assertion at 2 thus incorrectly implies noncompliance with the inapplicable statute the Town mentions in its Brief at 5, Subsection 510(B). The Town may contend that the Town was actually referring, not to "itemized fee statements," but to past bills sent by the attorney to the client.

As a further form of argument conducted by mere nomenclature, the Town also later characterizes these bills – containing pages and pages of description of particular tasks performed – as not "itemized." The Town merely refers to the fact that the multiple tasks sometimes performed for the client in the course of the day are described in detail, but are grouped together for the block of time stated on the bill, rather than atomized and set forth in multiple additional pages of billing, with separate time entries for separate or even intertwined tasks.

Balance in all things also requires some billing judgment that describing and tracking separately, the time for every single atomized activity or word uttered could consume time approaching the time spent on the case itself, and could slow down performance and drive up the cost of performing the legal work. A perfectly atomized legal bill could become the logical equivalent of the comedian Steven Wright's "life-sized map of the United States," having a scale of "1 mile = 1 mile," which he indicated was impractical because it took all summer to fold it.

Notably, the Hawaii case of Gurrobat cited by the Town (but not the Judge) discredits the unreasonable "block billing" proposition for which the Town cites the case and the proposition advanced by the Town cannot be reconciled with South Carolina law allowing mere estimates of time in cases in which some or all time is not even recorded by the attorneys. See, e.g., Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998), Revels, Sauders v. South Carolina Pub. Serv. Auth., C.A. no. 2:93-3077-23 (D.S.C. Mar. 30, 2011)("Mr. Bell testifies that the true number of hours he spent on this case ranges between 7,000 and 10,000 hours"), and Taylor v. Taylor, 333 S.C. 209, 508 S.E.2d 50 (Ct. App. 1998)("Husband decries the court's award of 10 additional hours spent by Wife's attorneys in preparing for the fees hearing, without the support of an affidavit. We do not see the need for an affidavit in this case.").

The Judge's statement at 10 in the order he signed, that the numerous pages of bills heavily laden with extensive descriptions of the activities for which all the time is accounted do not "shed light" on the time expended does not explain or justify the Judge's gross errors in the fee award.

It was the actual bills, with detailed private descriptions of the lawyer's activities, the client contact, the client's address, etc., which the Landowners' counsel initially sought to keep

(ii) misinterpreting and ignoring the intent of the applicable fee award subsection that an orderly and methodical "lodestar" calculation initially be performed;[14]

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mostly or completely private pursuant to his duties under Rule 1.6 of the Rules of Professional Conduct.

He explained that he was cautious, particularly in light of the small community, the Town's previous publications of private facts and public misstatements, the continued pendency of merits proceedings in the case itself, the continued pendency of duplicative litigation started by the Town against the Landowners, and the Town's explicit threats of still further, duplicative, litigation. As the record reflects, representative segments of these bills were also eventually provided, but in redacted form, under a protective order.

[14] The Town maintains that the approach dictated by Layman allows bypassing any attempt to initially determine actual hours spent, even when the hours have been recorded, or estimated in good faith by the attorney actually doing the subject work.

The Town posits that the approach dictated in Layman allows this, if the court simply prefers to make findings, first, on the "nature of the case" and the "beneficial results obtained," and then either severely deduct large blocks of time without stating specifically how much is for which things, or estimate hypothetical alternative amounts of time from the bottom up. This is the old vague approach which Layman and its ancestors were designed to replace with more of a "market value" approach.

The Town posits that, in light of the court's impressions on these "nature" and "benefit" factors alone, the court may then ordinarily decide not to base the hours in any way on the actual recorded hours, and may decide to construct hypothetical hours from the bottom up, from scratch, just as the Judge did here by adopting the affidavit of a hired affiant. Here, the Judge based on his own estimate – in hindsight -- of how many hours the "simple" version of the case might have taken if time were spent only on "major case activities" deemed "relevant" by the barely involved, late-appearing opposing counsel, of the losing party.

This is simply not the approach dictated by Layman and other case law – not even the Hawaii case cited by the Town, Gurrobat v. HTH Corp., 346 P.3d 197 (Hawaii 2015)(holding that procedure required first determining actual hours, reducing them for work on matters not covered by the fee statute, and multiplying them by a reasonable rate between $325 and $425 per hour, and then diverging from the resulting presumptive fee only if the strong presumption of reasonableness were rebutted).

First, "[t]he reasonableness of attorney's fees is based on the point in time when the work is performed, and not based on hindsight." Gurrobat.

According to Layman, the ordinary approach is to first determine actual hours, if possible, and first determine a reasonable rate, and first determine a lodestar fee, and only then apply other factors to enhance or reduce the lodestar fee. That is why it is called the "lodestar."

In Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973), the court held that the chief determinant of a fee award was the market value of the attorney's services. Lindy required the trier to determine the number of hours reasonably spent in providing legal services and to multiply this number by a reasonable hourly rate. The resulting figure was stated in Lindy to be the "lodestar of the court's fee determination."

(iii) mis-citing and misapplying the facts and holdings of various case law such as

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In initially determining the actual hours, or "hours reasonably devoted," when the actual hours are recorded and attested to by a member of the bar, the court does not ordinarily conjure an alternative total of hours as an estimate from scratch. Rather, specific reductions of the actual hours spent are, in a proper case, made, usually in specific amounts justified by special circumstances, rather than in wholesale general fashion.

These are generally confined to three circumstances, none of which were present here.

One is work on separate causes of action which are not the subject of the fee award statute, but only if the separate cause of action is not factually and legally "intertwined" with the one or more causes of action for which the fee award statute does apply.

The other is work on nonintertwined separate causes of action to which the fee award statute does apply, but which were not advanced as alternative or additional sustaining bases for the relief obtained and which are actually determined completely adversely to the otherwise overall prevailing party. Hensley v. Eckerhart, 461 U.S. 424 (1983).

A possible third category is one requiring much caution and clear findings and reasoning, and is one which can instead be addressed after the initial lodestar calculation stage, at the enhancement-or-reduction stage. This category is wholly unsuccessful work on noninterwined discretely identifiable issues or proceedings which do not necessarily constitute discrete "causes of action," but which are battles which court rules and standards actually prohibit because they are frivolous or unethical.

This is an exception requiring much circumspection, because simply losing one or more arguments, motions, or issues in the course of a case is a common occurrence for an overall prevailing party in a case, fees are still incurred by the client for both successful issues and unsuccessful issues, and it is also sometimes even necessary for a good lawyer or other adversary to lose a battle in order to win a war.

Sunrise,[15] Hensley,[16] Revels,[17] and Rice;[18] and

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[15] Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp., 295 S.C. 208, 367 S.E.2d 696 (1988), did not state, as implied by the Town in its Brief at 11 and 13, that the party seeking fees is "not entitled to a presumption" that the duly recorded attorney time is reasonable.

Sunrise states that an attorney who does not present the time that was spent in any form – whether recorded or estimated – and does not even describe generally what was done – is not entitled to a presumption that the fee requested is reasonable.

Compare Gurrobat, cited in the Town's Brief at 13, which actually holds that after the actual hours reasonably devoted are multiplied by a reasonable rate to determine the lodestar fee as the first stage of the lodestar approach, the resulting lodestar fee is entitled to a "strong presumption of reasonableness," and will be modified only upon rebuttal showing unreasonableness.

Thus, Sunrise, does not involve, as the Town implies, a party being entirely denied fees for the overwhelming majority of the work actually performed, on the basis of a thin "burden of proof" argument. Sunrise did not involve an attorney who somehow failed to meet some higher "burden" of proof and persuasion than submitting a plenary affidavit about the case, the work, the attorney, the rates and the sworn recorded time spent, in tenths of hours.

Sunrise, rather, is completely inapposite to this case or any issue before this Court. The Circuit Judge erred in relying on it at page 6 of the order he signed.

Sunrise involved a complete failure to provide any information about a $125,000 fee requested for a fifth discrete cause of action which could have been brought as its own separate case. The $125,000 was in addition to the fees granted for four other causes of action. The fifth cause of action was for collection on an additional promissory note. The requesting party only stated the additional amount requested and asserted that it was reasonable. Even so, rather, than deny the fees, the appellate court remanded the case for submission of additional information and a determination of what part of the extra $125,000 requested should be awarded.

Similarly inapposite cases cited again by the Town in its Brief at 11 and 13 are Getzen v. L. Offs. of James M. Russ, P.A., 323 S.C. 377, 475 S.E.2d 743 (1996), and City of N. Charleston v. Claxton, 315 S.C. 56, 63, 431 S.E.2d 610, 614 (Ct. App. 1993), which refer to deduction of time for clearly "duplicitous" work.

Demonstrating he was guided by legal error, the Judge subscribed to these cases in the order he signed, as if they supported his ruling, but, like the Town, was unable to point to anything whatsoever that anything was duplicated or overstaffed, and he made no finding that anything was.

This was because nothing was. He mentioned no evidence whatsoever of such duplication. To the contrary, where the Town employed two attorneys, then hired a third, and then hired a fourth to give opinion on a case in which he had no involvement, only one attorney handled the three cases of the three Landowners, and the total fee was then divided, not multiplied, by three.

[16] Hensley v. Eckerhart, 461 U.S. 424 (1983), did not hold, as implied by the Town in its Brief at 16, that attorney work on alternative sustaining grounds which are not reached, or which are even determined adversely to the overall prevailing party, should be deducted from the "time reasonably devoted."

(iv) subjecting the "fees for fees" portion of the award to the completely wrong legal analysis, commingling it with the "fees for merits" analysis.[19]

To the contrary, Hensley dealt with actual adverse determinations on whole factually independent claims which are distinct in all respects from the successful claim, but, in clarification, Hensley held explicitly, "Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee." 461 U.S. at 435–36.

[17] S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 766 S.E.2d 700 (2014), did not involve, as implied by the Town in its Brief at 5, a mere decision not to submit copies of private bills ordinarily kept between the attorney and the client.

Rather, "counsel's original affidavit failed to identify the 'fee charged' and the actual number of hours expended." This is not the case here.

Nor does Revels describe, as the Town implies, the need for a bill or separately prepared statement which is "itemized" by a separate line item and time entry for every single activity or repeated activity engaged in by the attorney while advancing the client's cause.

Revels applied S.C. Code Ann. §28-2-510(B)(1) as discussed in a previous footnote herein. That subsection applies to fees after a condemnation trial (not a challenge case) and specifies only that the itemized statement include the specific expenses incurred, the fee charged, and the hours worked. That subsection contemplates the attorney preparing the statement, not the attorney submitting the attorney's actual bills, if any, earlier submitted to his client.

Unlike the case here, Revels involved the attorney submitting no hours or actual amounts charged.

[18] Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995), did not involve, as implied by the Town in its Brief at 15, deduction of attorney time spent on additional sustaining theories or issues which were not explicitly adopted or which were not reached by the court. And Rice certainly did not involve deducting time or fees for an adversely determined "claim" and then employing, as the Town suggests, the "beneficial results obtained" factor to additionally ding the party for time and fees attributable to the "successful" claims and the time spent in order to ask for fees.

Rather, completely inapposite to the instant case, Rice involved simply deducting for time spent on separate factually independent causes of action based on different contracts, with different parties, on which the jury determined the prevailing plaintiff was not entitled to relief.

[19] Generally, the fees incurred in applying for fees on the merits should be more or less automatically awarded, as the fees for fees are generally not susceptible to a pre- or post-lodestar enhancement or deduction analysis.

See Commissioner, Immigration and Naturalization Service v. Jean, 496 U.S. 154 (1990). Jean held that the prevailing party could recover attorneys' fees for services rendered in seeking a fee award without regard to a factor required by the fee statute to be applied in determining whether fees should be awarded for the merits work (here, whether the position of the United States on the matter for which fee award was sought was "substantially justified") and that, if the prevailing party is entitled to fees in the main action, then he is automatically entitled to fees for the time spent seeking fees.

IV. The Judge did state that the cases "were once separate cases."

In its Brief at 27, the Town asserts, incorrectly, that the phrase, "were once separate cases," does not appear in the order of the Circuit Court, and that thus, there is no need to correct it. It appears in the order at page 1, R. p. 102, where the Circuit Court states that the instant fee matters arose from what "were at the time three separate cases." The ruling or statement does need correction.

Respectfully submitted,

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ATTORNEY FOR APPELLANTS
Sunset Lodge, LLC and Franklin D. Beattie as trustee

Date: September 14, 2023

See also Layman v. State, 2008-03-10-01 (S.C. Sup. Ct. dated March 10, 2008)("Layman III Order"). In Layman III Order, the S.C. Supreme Court modified the S.C. Supreme Court's prior order awarding attorney's fees, to add to the previous principal fee award of $445,226.60, another $588,872.56 in fees incurred in litigating the issue of attorney's fees.

The added $588,872.56 for fees-for-fees included the same 125% enhancement of the lodestar that had been determined for the case in chief, but specifically excluded the 3% reduction in hours applied to the case in chief.

The S.C. Supreme Court awarded the full amount for all hours spent on litigation concerning the fees, and further enhanced the fees-for-fees award by 125%. The Court did not deduct anything for the "degree of success" or similar notion with regard to the fees, even though the previous award by the Supreme Court of $445,226.60 had been a substantial direct modification by the Supreme Court dramatically reducing the Circuit Judge's appealed previous award of fees of $8,660,000.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

CASE NO. 20-CP-22-00600
CASE NO. 20-CP-22-00601

Sunset Lodge, LLC, ...Appellant,

v.

Town of Pawleys Island,.....Respondent.

and

Franklin D. Beattie, as trustee of the Franklin D. Beattie Preservation Trust, ...Appellant,

v.

Town of Pawleys Island,.....Respondent.

CERTIFICATE OF SERVICE AND 211(b) COMPLIANCE

I, M. Baron Stanton, do hereby certify that I have, on this date, served the foregoing final **Appellants' Reply Brief** upon the Respondent by causing a copy to be e-mailed in accordance with current rules to will@belserpa.com and do further certify that the brief complies with Rule 211(b). The postal mailing address of the above addressee is:

William C. Dillard, Jr., Esquire
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Columbia, SC 29202

s/M. Baron Stanton
M. Baron Stanton

Date: September 14, 2023