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**Oct 27 2023**

**S.C. SUPREME COURT**

**THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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APPEAL FROM HORRY COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENJAMIN H. CULBERTSON  
CIRCUIT COURT JUDGE

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APPELLATE CASE NO. 2023-001448  
CIVIL ACTION NO. 2018-CP-26-06064  
CIVIL ACTION NO. 2018-CP-26-06424

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Opinion No. 2023-UP-202 (S.C. Ct. App. filed May 24, 2023)

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South Carolina Electric & Gas Company,

**RESPONDENT,**

v.

Barbara A. Todd, Landowner,

and

Public Service Authority; Pitch Landing, LLC; and David O. Heniford, Jr., Other Condemnees,  
of which Pitch Landing, LLC is the,

**PETITIONER.**

AND

South Carolina Electric & Gas Company,

**RESPONDENT,**

v.

Pitch Landing, LLC,

**PETITIONER,**

and

South Carolina Public Authority; Horry Telephone Cooperative; Grand Strand Water and Sewer  
Authority; Coastal Carolina National Bank; Billy J. McDowell & Sally R. McDowell; Bobby D.  
McDowell, Other Condemnees.

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**ATTORNEYS FOR RESPONDENT  
SOUTH CAROLINA ELECTRIC & GAS COMPANY  
n/k/a DOMINION ENERGY SOUTH CAROLINA,  
INC.**

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## **COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW**

- I.** Whether the Court of Appeals correctly held that Pitch Landing, as an easement holder, is not a “landowner” as defined by the South Carolina Eminent Domain Procedure Act and thus not entitled to a jury trial in the condemnation of the servient estate?
- II.** Whether the Court of Appeals correctly held the Circuit Court did not err by placing the condemnation proceeding of the servient estate, Case No. 2018-CP-26-06064 (“the Todd Case”), on the non-jury roster where the condemnor noticed the trial as a non-jury trial and the landowner did not object to a non-jury trial in accordance with the procedures of the Eminent Domain Procedure Act?
- III.** Whether the Court of Appeals correctly held the Circuit Court did not err in denying Pitch Landing’s motion to consolidate the Todd Case with the condemnation of land owned by Pitch Landing, Case No. 2018-CP-26-06424 (referred to as “the Pitch Landing Case”)?

## **COUNTERSTATEMENT OF THE CASE**

This appeal arises out of the question as to whether an easement holder is entitled to a jury trial in the condemnation proceeding of the servient estate pursuant to the procedures set forth in the South Carolina Eminent Domain Procedure Act (the “Act”), S.C. CODE ANN. §§ 24-2-10 *et seq.* The answer is unequivocally “no” because the Act explicitly gives only the condemnor and a landowner having a record fee simple interest in the property condemned the right to seek a jury trial.

There are two separate condemnation actions pertinent to this appeal: (1) South Carolina Electric & Gas Company v. Barbara A. Todd, Landowner, *et al.*, Case No: 2018-CP-26-06064, commenced by Respondent Dominion Energy South Carolina, Inc. f/k/a South Carolina Electric & Gas Company (“Dominion”)<sup>1</sup> on October 29, 2018 (the “Todd Case”); and (2) South Carolina

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<sup>1</sup> South Carolina Electric & Gas Company was renamed Dominion Energy South Carolina. Dominion Energy South Carolina is the Respondent in this case. It is a separate entity from Dominion Energy, Inc., which is not a party to this action.

Electric & Gas Company v. Pitch Landing, LLC, Landowner, *et al.*, Case No. 2018-CP-26-06424, commenced by Dominion on November 14, 2018 (the “Pitch Landing Case”).

**A. The Todd Case.**

In the Todd case, Dominion sought to condemn a property owned by Barbara A. Todd in Horry County (the “Todd Property”). [R.p. 23]. On September 19, 2018, pursuant to the Act, Dominion served on Todd a Condemnation Notice and Tender of Payment. [R.pp. 27, ¶ 10; 39-45.] Dominion sought to procure the Todd Property to construct a natural gas pipeline and described the interest to be acquired as, among other things, “a fifty foot (50’) underground gas easement.” [R.pp. 25-27, ¶ 6; 41-42, ¶ 5.]

Pursuant to subsection 28-2-280(C)(2) of the South Carolina Code (2023), the Condemnation Notice designated Todd as the “landowner” and further designated the South Carolina Public Service Authority; Pitch Landing, LLC (“Pitch Landing”); and Davis O. Heniford, Jr. as “other condemnees.” [R.pp. 39-41, ¶¶ 2-3.] Todd had acquired the Todd Property on January 27, 2005 from Issac Lacy Cannon, Jr. as shown in the Deed recorded on January 28, 2005 in the Horry County Register of Deeds and, at that time, owned the Todd Property in fee simple absolute. [R.pp. 23-24, ¶ 3; 39-40, ¶ 2; 132-135.] The other condemnees<sup>2</sup> were named due their holdings of various lesser interests in the Todd Property. [R.pp. 40-41, ¶ 3.]

More specifically to this appeal, Pitch Landing was named in the Condemnation Notice due to its interest in the Todd Property by virtue of the reservation of an “easement and right of way, in, over and across that certain 50 foot private road access easement . . . for the purpose of ingress, egress and the installation and maintenance of utilities” as excepted in the Cannon Deed

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<sup>2</sup> South Carolina Public Service Authority and Davis O. Heniford, Jr. have no interest in this appeal.

to Todd recorded on January 28, 2005. [R.pp. 40-41, ¶¶ 2, 3(b).] Pitch Landing’s easement across the Todd Property was one of two points of access of entry; the Pitch Landing property is not landlocked without the Todd Property easement. [R.pp. 164, ll. 22-25.]

As set forth in the Condemnation Notice, Dominion—through its appraiser—determined that just compensation for the Todd Property was \$12,500.00. [R.p. 43, ¶ 11.] The Condemnation Notice advised Todd that she as landowner had thirty (30) days after the service of the Condemnation Notice to give Dominion written notice that she either rejected the amount tendered or would accept the amount tendered and would agree to execute the necessary instruments to convey the property or interest described in the Condemnation Notice. The Notice further advised that the landowner’s failure to respond to the tender would constitute a rejection. [R.pp. 43-44, ¶¶ 12-13.]; See also S.C. CODE ANN. § 28-2-220(C).

The Condemnation Notice also notified Todd as landowner that Dominion had elected not to utilize the appraisal panel procedure as set forth in the Act and that if she as the landowner rejected the tender, Dominion would notify the Clerk of Court and demand a trial to determine the amount of just compensation to be paid. The Condemnation Notice further explained that Dominion would at that point demand a trial by jury or by the court without a jury and that the landowner would have the right to demand a trial by jury. [R.p. 44, ¶ 15.]; See also S.C. CODE ANN. § 28-2-280(C)(8).

Todd rejected the tender set forth in the Condemnation Notice. [R.p. 27, ¶ 10.] Dominion therefore filed a Summons and Complaint with the Court of Common Pleas for Horry County on October 29, 2018. [R.pp. 21-29.] The Complaint, like the Condemnation Notice, named Todd as the “landowner” and Pitch Landing as an “other condemnee” due to its interest as an easement holder with respect to the Todd Property. [R.pp. 23, ¶ 3; 25, ¶ 4(b).]

The Summons advised that Dominion would move for an Order of Reference or that the Circuit Court could issue a general Order of Reference of the action to a Master or Special Referee pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and the Complaint specifically noticed that Dominion was requesting a non-jury trial. [R.pp. 21; 23.] Dominion asked the Circuit Court to determine that \$12,500.00 was just compensation for the interests acquired in the Todd Property. [R.pp. 27-28.] Todd did not file any response and did not demand a jury trial.

On December 24, 2018, Pitch Landing, as an other condemnee, filed an Answer and demanded a jury trial in the Todd Case. [R.pp. 35-37.]

Dominion eventually settled the Todd Case with Todd as the landowner, and Dominion and Todd agreed to \$18,000.00 as just compensation. [R.pp. 51-54] Dominion and Todd filed a proposed Consent Order of Dismissal on May 16, 2019 which the Circuit Court entered on May 29, 2019. [R.pp. 4-8; 116; 181-182.] Pitch Landing received notice of the Proposed Consent Order of Dismissal as well as the Consent Order of Dismissal entered by the Circuit Court through the Circuit Court's e-filing system. [R.pp. 180-182.] The Consent Order of Dismissal gave notice to Pitch Landing that Dominion and Todd had reached a settlement of the condemnation claim in the Todd Case for \$18,000.00. [R.p. 5.] There was no objection by Pitch Landing to either of these submissions.

On June 10, 2019, Dominion filed the Return of the Condemnation Notice from the Register of Deeds, and Pitch Landing received notice of this filing through the e-filing system the same day. [R.pp. 38, 181.] On July 25, 2019, Dominion filed a Notice of Dismissal of the Todd Case through the e-filing system, which Pitch Landing also received notice of through the e-filing system the same day. [R.pp. at 50, 181.] Finally, on July 25, 2019, Dominion filed a cancellation

of the Lis Pendens on the Todd Property. [R.pp. 69-70; 181.] On July 26, 2019, Pitch Landing received notice of the cancellation of the Lis Pendens through the e-filing system. [R.p. 181.]

Pitch Landing therefore received notice of Dominion's settlement of the Todd Case with Todd as the landowner through these filings, but Pitch Landing never objected to the settlement or dismissal of the Todd Case, never indicated that it had any dispute as to the amount or disposition of the condemnation proceeds, and never requested an equitable proceeding in accordance with S.C. CODE ANN. § 28-2-460 for apportionment of the settlement proceeds.

Pitch Landing's only filing subsequent to its Answer came almost a year later on March 3, 2020 when it filed a motion limited to a proposed scheduling order. [R.p. 181.] On March 6, 2020, the Circuit Court declined to issue a scheduling order finding the "[c]ase is dismissed therefore Scheduling Order is denied." [R.p. 181.]

Pitch Landing did not object to the Circuit Court's March 6, 2020 Order and did not file anything further in the Todd Case until over five months later when it filed a Motion to Restore the Todd Case to the docket on September 3, 2020. [R.pp. 108-109.] Dominion opposed Pitch Landing's Motion to Restore on February 26, 2021. [R.pp. 115-116.] The Circuit Court held a hearing on the Motion to Restore on March 1, 2021. [R.pp. 157-179.] On March 3, 2021, the Circuit Court granted Pitch Landing's Motion to Restore, finding Pitch Landing was entitled to an "equitable proceeding to determine its equitable interest in the condemned property." The Circuit Court accordingly placed the case on the non-jury docket. [R.pp. 12-14.]; see S.C. CODE ANN. § 28-2-460 (2023).

On March 15, 2021, Pitch Landing moved to alter or amend the Circuit Court's order restoring the Todd Case and placing the case on the non-jury docket, arguing it was entitled to a

jury trial. [R.pp. 138-142.] The Circuit Court denied the motion in Form 4 Order filed March 17, 2021. [R.pp. 15-17.]

**B. The Pitch Landing Case.**

In a separate condemnation action—the Pitch Landing Case—Dominion filed a Complaint with the Court of Common Pleas for Horry County on November 14, 2018 naming Pitch Landing as the “landowner.” [R.pp. 71-81.] The Pitch Landing Case included the South Carolina Public Service Authority, Horry Telephone Cooperative, Grand Strand Water and Sewer Authority, Coastal Carolina National Bank, Billy J. and Sally R. McDowell, and Bobby D. McDowell as the other condemnees. [R.p. 71.] In the Pitch Landing Case, Dominion sought to condemn property owned by Pitch Landing which abutted the Todd Property for the same natural gas pipeline as the property in the Todd Case. [R.pp. 77-79, ¶ 6.] Pitch Landing filed an Answer in the Pitch Landing Case on December 24, 2018 and demanded a jury trial. [R.pp. 104-106.]

On September 4, 2020, Pitch Landing filed a Motion to Consolidate the Todd Case with the Pitch Landing case which was heard by the Circuit Court at the same time as its Motion to Restore the Todd Case. [R.pp. 136-137; 158-179.] The Circuit Court denied the Motion to Consolidate in a Form 4 Order filed March 3, 2020, stating: “Defendant Pitch Landing, LLC (as Landowner) is entitled to a jury trial in [the Pitch Landing Case]. However, Pitch Landing, LLC (as non-landowner/equitable condemnee) is not entitled to a jury trial in [the Todd Case.]” [R.pp. 9-11.] Pitch Landing moved for reconsideration of the Circuit Court’s denial of its Motion to Consolidate on March 15, 2021, which the Circuit Court denied by Form 4 Order filed March 17, 2021. [R.pp. 138-142; 18-20.]

Pitch Landing filed a Notice of Appeal with the Court of Appeals on April 15, 2021. Pitch Landing argued the Circuit Court erred by placing the restored Todd Case as to Pitch Landing on

the non-jury docket and by further denying Pitch Landing’s motion to consolidate the Pitch Landing Case and the Todd Case.

The Court of Appeals affirmed in an unpublished opinion, holding Pitch Landing was not entitled to a jury trial and thus, the Pitch Landing Case and Todd Case should not have been consolidated. SCE&G Co. v. Pitch Landing, LLC, 2023-UP-202 (S.C. Ct. App. filed May 24, 2023). Pitch Landing has now filed a Petition for Writ of Certiorari with this Court seeking review of the decision of the Court of Appeals to which Dominion hereby responds and requests this Court to deny for the reasons set forth herein.

### **ARGUMENT**

Pitch Landing had an easement over the property Barbara Todd held in fee simple estate in the Todd Case. Nothing more. Pursuant to the South Carolina Eminent Domain Procedure Act (“the Act”), Pitch Landing is not a landowner of the Todd Property and is not entitled to a jury trial in the Todd Case. Pitch Landing was, and still is, entitled to only an equitable proceeding in the Todd Case. In that proceeding, Pitch Landing may prove it is entitled to a portion, if any, of the just compensation paid by Dominion, the condemnor, to Todd, the landowner. The clear provisions of the Act do not entitle an easement holder to a jury trial in the condemnation of the servient estate to which the easement attaches.

As to whether this Court should grant Petitioner Pitch Landing’s Petition for a Writ of Certiorari, Rule 242(b) of the South Carolina Appellate Court Rules notes that a petition will only be granted “where there are special and important reasons” and sets forth the various bases that may be considered by the Court when deciding on a Petition for a Writ of Certiorari.

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b), SCACR.

Here, Pitch Landing has not asserted any basis for certiorari exists. First, the statutory scheme surrounding condemnation is unambiguous and thus does not present any novel question of law. Second, the Court of Appeals' decision was unanimous and does not conflict with the provisions of the Act or any prior decision of this Court.<sup>3</sup> Third, no constitutional questions are involved. Pitch Landing has also not alleged the Act violates either the United States or the South Carolina Constitution.<sup>4</sup> And finally, no federal questions are presented here. This question is wholly decided by South Carolina law.

Accordingly, there is no reason for this Court to review a straightforward application of the unambiguous language of the South Carolina Eminent Domain Procedure Act.

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<sup>3</sup> In S.C. Dep't of Com., Div. of Pub. Railways v. Clemson Univ., the Court of Appeals reached a nearly identical holding as it did in this case. 432 S.C. 352, 851 S.E.2d 735 (Ct. App. 2020), certiorari dismissed and opinion vacated pursuant to settlement, 439 S.C. 80, 886 S.E.2d 482 (2021). While that decision was vacated due to settlement between the parties, the decision by the Court of Appeals was also unanimous and further indicates a manner of consensus as to this issue. Id.

<sup>4</sup> Insofar as Pitch Landing asserts in a reply that either the South Carolina or United States Constitution are implicated, those arguments are procedurally improper. First, "Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance" should be filed with the Clerk of the Supreme Court. Rule 203(d)(1)(A)(ii), SCACR. Second, Pitch Landing concedes the only possible right to jury trial in this case could come from statute. See Pet. for Writ of Cert. at 4.

**I. The Court of Appeals correctly held that Pitch Landing, as an easement holder, is not a “landowner” as defined by the South Carolina Eminent Domain Procedure Act and thus not entitled to a jury trial in the condemnation of the servient estate.**

In arguing that it is entitled to a jury trial in the condemnation of the Todd Property, Pitch Landing asserts various sections of the South Carolina Eminent Domain Procedure Act, § 28-2-10 *et seq.*, work in conjunction to permit any entity with a certain “level of ownership and control over land” to be permitted to a jury trial in a condemnation proceeding. Pet. for Writ of Cert. at 6. This is a misinterpretation of the plain language of the statute. The crux of Pitch Landing’s argument is that its easement, reserving an “unobstructed, unencumbered easement and right of way,” constitutes enough of an ownership interest that it should be considered a “landowner” under the Act and thus entitles Pitch Landing to a jury trial. This argument fails to give due weight to the plain and unambiguous language of the statute.

Under the provisions of the Act, only the condemnor and the landowner are entitled to a jury trial—if such parties so choose. Under subsection 28-2-240(A)(3) of the South Carolina Code, if the condemnor elects to proceed with condemnation by way of trial, it shall serve upon the landowner and file with the clerk of court an affidavit stating “whether the condemnor demands a trial by jury or by the court.” Section 28-2-280 states that when a condemnor elects to proceed under section 28-2-240, its condemnation notice shall state whether the condemnor “demands a trial by jury or by the court without a jury” and “[t]he landowner has the right to demand a trial by jury.” S.C. CODE ANN. § 28-2-280(C)(8); see also S.C. CODE ANN. 28-2-310(B) (2023) (“If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster”); S.C. CODE ANN. § 28-2-460. The definition of landowner under the Act is therefore important because it is the landowner who has a right to demand a trial by jury.

Section 28-2-30 of the South Carolina Code (2023) sets forth the definitions that apply in the Act. Subsection (12) of the definitions provides:

“Landowner” means one or more condemnees having a record fee simple interest in the property condemned or any part thereof, as distinguished from condemnees who possess a lien or other nonownership interest in the property; where there are more than one, the term means the condemnees collectively, unless expressly provided otherwise.

S.C. CODE ANN. § 28-2-30(12).

Subsection 28-2-30(12) creates a dichotomy between a landowner—one who has a “record fee simple interest”—and other condemnees—like Pitch Landing—who have nothing more than a lien or other “nonownership interest in the property.”

One basic principle aids in understanding the statutory framework of the Act. “When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.” Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (citing Timmons v. South Carolina Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970)). A “fee simple interest” is as clear and unambiguous a term as the General Assembly could have selected when drafting the Act. See Fee Simple, BLACK'S LAW DICTIONARY (11th ed. 2019) (“An interest in land that, being the broadest property interest allowed by law . . .”).

In fact, multiple South Carolina statutes define fee simple in relation to other interests. See, e.g., S.C. CODE ANN. § 51-18-10(8)(b) (2024) (differentiating easement from fee simple interest); S.C. CODE ANN. § 31-15-310 (differentiating owners with fee simple title from other parties); S.C. CODE ANN. § 31-15-10 (2015) (same); S.C. CODE ANN. § 49-29-20(6) (2008) (defining perpetual easement as a right “less than fee simple”). Moreover, the General Assembly is clearly capable of

differentiating between different possessory interests when drafting definitions in the context of statutes involving real property. Compare S.C. CODE ANN. § 27-33-10(7) (2007) (defining “landlord” as “the owner *or* person in possession *or* entitled to possession” (emphasis added)), and S.C. CODE ANN. § 27-40-210(8) (2007) (“‘owner’ means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.”), with S.C. CODE ANN. § 28-2-30(12) (defining landowner). For condemnation proceedings, the General Assembly explicitly distinguished those condemnees having a record fee simple interest—the landowners—from those condemnees possessing a lessor nonownership interest in the property being condemned. S.C. CODE ANN. § 28-2-30(12) (2007).

The key consideration in the construction of a statute is that a court must “ascertain and effectuate the intent of the legislature.” Hodges, 341 S.C. at 85, 533 S.E.2d at 581. To that end, the General Assembly included a lengthy statement in the Act as to its intentions:

This act amends the law of this State relating to procedures for acquisitions of property and to the exercise of the power of eminent domain. It is the intention of the General Assembly that this act is designed to create a uniform procedure for all exercise of eminent domain power in this State. It is not intended by the creation of this act to alter the substantive law of condemnation, and any uncertainty as to construction which might arise must be resolved in a manner consistent with this declaration. In the event of conflict between this act and any other law with respect to any subject governed by this act, this act shall prevail.

S.C. CODE ANN. § 28-2-20.

This statement is clear and when read in conjunction with the plain language of the statute, indicates the Act lays out the *procedure* to be followed. Moreover, in the event of any conflict between the Act and other law, the Act prevails. Thus, insofar as Pitch Landing asserts there is

any other definition of landowner that prevails, the “Intent of General Assembly” defeats that contention.

Pitch Landing asserts it held “more than the ‘nonownership interest,’” (Pet. For Writ of Cert. 6), but this fails to acknowledge there are only two options under the Act: the landowner in fee simple and everyone else. The concept that an easement holder has rights, but not an estate or ownership, is central to property law. See Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 582 (2009) (“An easement is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed. An easement is therefore not an estate in lands in the usual sense.” (citations omitted) (quotation marks omitted)); Steele v. Williams, 204 S.C. 124, 28 S.E.2d 644, 647 (1944) (“An easement is a right which one person has to use *the land of another* for a specific purpose.” (emphasis added)). Even cases interpreting easements address them in terms of not overly impeding the *owner’s* rights in the property. Tupper v. Dorchester Cnty., 326 S.C. 318, 326, 487 S.E.2d 187, 191 (1997) (“Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted.”). In fact, that the “Todd action takes by eminent domain Pitch Landing’s *entire interest in the Todd parcel*” is actually exactly how eminent domain and easements are intended to function. Pet. for Writ of Cert. (emphasis in original).

Pitch Landing relies on United States v. Gossler, 60 F. Supp. 971 (D. Or. 1945), a 1945 federal district court case from Oregon, to support its proposition that the South Carolina Eminent Domain Procedure Act entitles Pitch Landing to compensation. Under the Act, Pitch Landing may be entitled to a portion of the just compensation proceeds insofar as it proves its case in the Circuit Court in an equitable proceeding permitted by the statute. See S.C. CODE ANN. § 28-2-460 (permitting equitable proceeding to determine distribution of just compensation proceeds paid by

condemnor)<sup>5</sup>. The question in this case is not whether Pitch Landing may be entitled to any compensation, but whether the Act permits Pitch Landing to demand a jury trial.

The Court of Appeals properly held the Act only provides for the condemnor or landowner to request a jury trial. Pitch Landing, as an easement holder with respect to the servient estate being condemned by Dominion, is not a landowner of the Todd Property as the term landowner is expressly defined in the Act. Accordingly, Pitch Landing has no statutory right to demand a jury trial in the Todd Case, and the Opinion of the Court of Appeals should be affirmed.

**II. The Court of Appeals correctly held the Circuit Court did not err by placing the condemnation proceeding of the servient estate, Case No. 2018-CP-26-06064 (“the Todd Case”), on the non-jury roster where the condemnor noticed the trial as a non-jury trial and the landowner did not object to a non-jury trial in accordance with the procedures of the South Carolina Eminent Domain Procedure Act.**

Pitch Landing further argues that regardless of whether it qualifies as a landowner under the Act, the Todd Case must nevertheless be placed on the jury roster under subsection 28-2-310(B) of the Act which states: “If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.” In making this argument, Pitch Landing not only misconstrues the mechanisms of the Act, but also the relevant procedural facts of this case.

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<sup>5</sup> As noted herein, Pitch Landing had notice of the settlement between Dominion and Todd, but never made any objection to the settlement or its amount. In addition, insofar as an easement holder believes the compensation received from the landowner is inadequate or otherwise has a dispute with the landowner over the distribution of condemnation proceeds, the parties to the easement could have included in the easement terms how a condemnation of the easement would be handled, including to what extent the easement holder would be entitled to any condemnation proceeds received by the landowner. Those matters are up to the party who secures the easement and is an exercise in proper drafting of the clause or provision in the deed where the easement is reserved. Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 383, 635 S.E.2d 538, 541 (2006) (noting the scope or breadth of an easement is determined by the language of the easement itself).

As noted, when the language of a statute is clear and unambiguous, there is no interpretation for the Court to conduct. See Hodges, 341 S.C. at 85, 533 S.E.2d at 581. Thus, “where the language is clear and explicit, the courts cannot rewrite the statute and inject matters into the statute which are not in the legislature's language.” Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970). Here, the Court of Appeals correctly took the clear language of the Act and applied it to the facts of this case. Accordingly, there is nothing for the Court to review.

The Act—as the General Assembly noted in its statement of intent—was “designed to create a uniform procedure for all exercise of eminent domain power in this State.” S.C. CODE ANN. § 28-2-20. As described above, in the Todd Case, Todd was the sole “landowner” under the Act. Numerous instances in the Act indicate who may opt for a jury trial. There are only two entities—the landowner and the condemnor. S.C. CODE ANN. § 28-2-280. First, early in the Act, the General Assembly states the condemnor—here, Dominion—may take possession of the property upon consent of “the record owner or owners of fee simple title to the property.” S.C. CODE ANN. § 28-2-90(1). Second, the opportunity to demand a jury trial falls with the condemnor when the condemnor initiates the proceeding if the condemnor has selected trial over an appraisal panel. See S.C. CODE ANN. § 28-2-240. Third, the landowner is also given the option under subsection 28-2-310(B), which requires the clerk of court to place the matter on the jury trial roster unless both the “condemnor and the landowner have demanded trial by the court without a jury.” Id. These code sections apply to only the condemnor and the landowner. That Todd never made an explicit request for a non-jury trial is not at all relevant to Pitch Landing.

The procedural facts of the Todd Case further show that Dominion, as condemnor, and Todd, as landowner, agreed to a non-jury trial and therefore it would have been inappropriate for

the clerk to have placed the Todd Case on the jury roster pursuant to subsection 28-2-310(B) where a jury trial was clearly not desired by the condemnor and the landowner. When Dominion, the condemnor, filed its Summons and Complaint in the Todd Case, it expressly provided notice to Todd in the Summons that it would move for an Order of Reference or that the Circuit Court could issue a general Order of Reference of the action to a Master or Special Referee pursuant to Rule 53 of the South Carolina Rules of Civil Procedure. Dominion further requested a non-jury trial in the Complaint. [R.pp. 21; 23.] Todd never objected to the placement of the case on the non-jury roster, even though she was informed in the Condemnation Notice that she could demand a jury trial, and thus implicitly consented to a non-jury trial. [R.p. 44, ¶ 15.]; See also S.C. CODE ANN. § 28-2-280(C)(8).

Under subsection 28-2-310(B), the clerk had no authority to place the Todd Case on the jury roster where Dominion, as the condemnor, and Todd, as the landowner, consented to a non-jury trial. Had both the Dominion and Todd remained silent as to the mode of trial, then under subsection 28-2-310(B), it would have been appropriate for the clerk to place the Todd Case on the jury trial roster. But there was a demand for a non-jury trial by Dominion to which Todd did not object, and the court properly placed the Todd Case on the non-jury docket.

The right to choose the mode of trial condemnation action is limited to the condemnor and the landowner. This is evident in the Act. As is obvious, and as both the Circuit Court and the Court of Appeals correctly noted, the right to demand a trial by jury under the Act is directly related to a person or entity's status as a "landowner" pursuant to subsection 28-2-30(12). Accordingly, the fact Pitch Landing is not a landowner in fee simple absolute resolves the question of whether it is entitled to a jury trial.

The General Assembly has clearly provided for the optional right to a jury trial for the entities it clearly defined: the condemnor and the landowner. For all others, the right to recovery for their taken land lies in an equitable—by definition, non-jury—proceeding against the landowner. This is exactly what the Court of Appeals held, and because that holding is in accordance with the General Assembly’s intent as evidenced by the plain language of the statute, there is nothing for this Court to review.

**III. The Court of Appeals correctly held the Circuit Court did not err in denying Pitch Landing’s motion to consolidate the Todd Case with the condemnation of land owned by Pitch Landing, Case No. 2018-CP-26-06424 (referred to as “the Pitch Landing Case”).**

This issue was properly resolved due to the straightforward nature of the underlying law. As a result, there is nothing for the Court to review. Decisions on motions to consolidate are within “the sound discretion of the trial judge.” Alcorn v. Ford Motor Co., 276 S.C. 180, 182, 276 S.E.2d 925, 926 (1981). Only if a judge acts outside of that discretion and “deprive[s] a party of a substantial right to which he is entitled under the law” can the decision as to consolidation be overturned on appeal. Id. (citing Bishop, et al. v. Bishop, 164 S.C. 493, 162 S.E.2d 756 (1932); In Re Norwood's Adoption, 258 S.E.2d 869 (N.C. App. 1979)).

First, the Circuit Court did not abuse its discretion in declining to consolidate the Todd Case and the Pitch Landing Case because the two cases involve different properties, different parties named as other condemnees, and most importantly, different modes of trial. As fully explained herein, Pitch Landing is only entitled to a non-jury, equitable proceeding in the Todd Case, while it is entitled to a jury trial as landowner in the Pitch Landing Case.

Second, Pitch Landing asserts the value of its easement can be ascertained only if the Todd Case and Pitch Landing Case are consolidated. However, neither the Circuit Court nor the Court of Appeals’ decisions deprive Pitch Landing of a substantial right to which it is entitled. See id.

Both courts' decisions afford Pitch Landing the right it *is* entitled to under the law in each case: (1) an equity proceeding in the Todd Case whereby Pitch Landing, as an easement holder, may secure compensation from Todd, see S.C. CODE ANN. § 28-2-460,<sup>6</sup> and (2) a jury trial in the Pitch Landing Case where Pitch Landing is the landowner of the property for which Pitch Landing can seek just compensation.<sup>7</sup> As is obvious, Pitch Landing is unable to provide South Carolina authority for its assertion precisely because the Act is so clear as to Pitch Landing's remedy as an "other condemnee" in the Todd Case. The Circuit Court therefore did not abuse its discretion in denying Pitch Landing's motion to consolidate the Todd and Pitch Landing Cases.

### **CONCLUSION**

Petitioner Pitch Landing has failed to demonstrate any basis under which this Court would need to review the Court of Appeals' decision in this case. The General Assembly has stated clearly its intention in the South Carolina Eminent Domain Procedure Act that the right to a jury trial exists for the condemnor and the landowner. For all others, an action in equity resolves the claim. Pitch Landing is entitled to a jury trial, pursuant to the statute, in the condemnation proceeding in which it is a landowner, separate and apart from the Todd Case, just as the Circuit Court ruled and the Court of Appeals affirmed. This Court does not need to review the unambiguous condemnation procedure, including modes of trial permitted, set forth in the Act.

For the reasons set forth herein, Respondent Dominion Energy South Carolina, Inc. respectfully requests this Court to deny Petitioner's Petition for Writ of Certiorari.

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<sup>6</sup> The Act contemplates that once the condemnor has made payment to the landowner of the just compensation, it can take possession of the condemned property and its role in the condemnation proceeding ceases. See S.C. CODE ANN. § 28-2-90.

<sup>7</sup> As the landowner of the parcel in the Pitch Landing Case which is the dominant estate to the easement in the Todd Case, Pitch Landing can assert arguments before the jury as to the diminished value as a result of the Todd Case.

Respectfully submitted,

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