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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2024-000582

South Carolina Department of Transportation.....Appellant,

v.

Briargate Condominium Association, Inc. (HOA) and Mohammed Arabi,
as class representative for himself and all unit owners, to pursue just
compensation for all unit owners.....Respondents,

and

Magna Capital, Mortgagee, The National Bank of South Carolina,
Mortgagee, South Carolina Department of Revenue, Tax Liens,
Arrow Financial Services, LLC, Judgment, Portfolio Recovery
Associates, LLC, Judgment, The National Bank of South Carolina,
Mortgagee, State Employees Credit Union, Mortgagee, NBSC a
division of Synovus Bank, Mortgagee, Carolina First Bank,
Mortgagee, Richland County, Judgment, Bank of America, N.A. c/o
Cooling & Winter, LLC, Judgment, Department of Treasury-Internal
Revenue Service, Judgment, HSBC Mortgage Corporation,
Mortgagee, First Community Bank-Gilbert, Mortgagee, America's
Wholesale Lender, Mortgagee, William R. Hollingsworth, Jr. and
Myong Hollingsworth, Mortgagee, First Palmetto Savings Bank,
Mortgagee, MERS as nominee for ERA Mortgage, Mortgagee, The
Resolution Trust Corporation as Receiver for Metropolitan Federal
Savings and Loan Association, Mortgagee, Wachovia Bank National
Association, Mortgagee, The Resolution Trust Corporation as
Receiver for Metropolitan Federal Savings and Loan Association,
Mortgagee, Brittany Frances Minogue, Mortgagee, Mutual Savings
Bank, F.A., Mortgagee, Richland County Tax Assessor, Delinquent
Taxes, Bank of America, N.A., Mortgagee, UCC Financing, Miriam
Properties Group, LLC, Turnberry Associates, Inc., Mathes Auto
Sales, Inc., BB&T of South Carolina, Navy Federal Credit Union,
Briargate Condominium Association, Inc., Foreclosure Action, Other Condemnee(s).

**LANDOWNERS' RESPONSE TO COURT OF APPEAL'S REQUEST FOR
MEMORANDA AND MOTION TO DISMISS APPEAL AS INTERLOCUTORY**

INTRODUCTION

Briargate Condominium Association, Inc. (“HOA”) and Mohammed Arabi, as class representative for himself and all unit owners pursuing just compensation for all unit owners (hereinafter jointly “Respondents”), pursuant to Rule 240, SCACR, and S.C. Code § 14-3-330(2), move to dismiss this appeal and respond to the Court of Appeal’s request for Memoranda dated April 16, 2024.

Appellant SCDOT, the Condemnor in the above-action is taking by eminent domain portions of the Briargate Condominium Property, which affect all unit owners’ rights to just compensation. It has filed a Notice of Appeal dated April 11, 2024, from the Order of the Circuit Court dated March 25, 2024 (Order Approving Class Notice and Exclusion Request Form), and the Order of the Circuit Court dated February 5, 2024, which granted class certification and issued a Scheduling Order.

The challenge of Appellant SCDOT to these Circuit Court Orders is premature, as both Orders are interlocutory, not final. They are not within the limited exceptions for appealability set forth in S.C. § 14-3-330(2). These Orders certify the class of unit owners, appoint a class representative, approve a Class Notice and Exclusion Request Form, and provide for a Scheduling Order for trial. They make no rulings on the merits of this case, nor the mode of trial. These Orders do not resolve or reject any claim or defense, deny a mode of trial, or enjoin any conduct. Our Supreme Court has definitively ruled that orders certifying class actions are not considered final orders and are not appealable. Salmonsens v. CDG, Inc., 377

S.C. 442, 661 S.E. 2d 81 (2008).

Because the Orders are interlocutory and do not fall into any of the statutory grounds for appeal, this Court should dismiss the appeal.

FACTUAL BACKGROUND

SCDOT served and filed its Condemnation Notice on Landowners in September 2021. Landowners' original counsel withdrew for health reasons and by Order dated April 3, 2023, his withdrawn was approved. Thereafter, Landowners retained the undersigned counsel who filed on July 12, 2023, a Notice of Appearance.

The taking by SCDOT involves the following properties at Briargate Condominium Association, Inc.: .71 acre of land, and the removal of the entire Building 6 (which contained 24 units), garages, sidewalks, a portion of the circular perimeter road at Briargate, and over 50 parking places. There are 336 total units at Briargate (including those in Building 6) in 14 separate condominium buildings owned by approximately 160 persons or entities. In addition, the condemnation project dramatically increases the right of way and elevates I-20. The Landowners' appraiser has opined that these all cause damage to the remaining property of the HOA and of all unit owners.

Because of the large number of unit owners and the condominium form of fee ownership, the Landowners moved on October 10, 2023, for an Order certifying a class and appointing a class representative, for himself and all unit owners of Briargate Condominiums. The proposed class representative Mohammed Arabi is a member of Nezar Properties, LLC, which owns 124 of the 336 units at Briargate. His LLC owns at least one unit in each of the 14 condominium buildings at Briargate. The motion to certify a class of unit owners brought by a single class representative was asserted as the best and only mechanism whereby just

compensation could be determined efficiently and fairly. By Order dated February 5, 2024, the Court granted the motion to certify the class and appointed Mohammed Arabi as class representative for himself and all unit owners at Briargate (Exhibit A).

The Order noted that the claims of the HOA are entirely distinct from the just compensation claims of the unit owners. The claims of the HOA, per the Briargate Master Deed (with By-Laws) in Deed Book 689 at Page 01 and per South Carolina law, S.C. Code § 27-31-20(f) are for the common elements (i.e., the shell of Building 6, the real property, the garage buildings, the parking spaces, the destruction of the perimeter road at Briargate, sidewalks, etc).

The lower court held a hearing on the motion to certify on January 9, 2024. Landowner filed a memorandum in support of the motion, along with affidavits from Mohammed Arabi, Michael Munson (President of Briargate HOA Board of Directors), class counsel Thomas H. Pope III, and class action expert Gibson Solomons. SCDOT filed a memorandum in opposition.

In its Order filed on February 5, 2024, Circuit Court Judge Eugene C. Griffith, Jr. granted the Motion to Certify and the Motion for a Scheduling Order (Exhibit A hereto). This Order noted that it did not address the merits of the claims of just compensation by the landowners, but rather whether they had satisfied the provisions of Rule 23, SCRC, for the case to proceed as a class action.

The Order noted that claims of just compensation for the unit owners include damages for the “non-common” elements, such as remainder damages of each property interest of a landowner (Order, p. 4). The Court found that the claims of the unit owners “must be addressed to have full closure of this matter.” (Order, p. 5).

This Order applied a rigorous analysis to ascertain whether all the prerequisites of Rule 23(a) have been satisfied. It found and concluded that the Landowners satisfied all prerequisites of Rule 23(a), including numerosity, commonality, typicality, adequacy (as to the class representative and as to class counsel), and the \$100 requirement per claim.

In granting the Motion to Certify, the lower court found and concluded that, without class certification, adjudication of the just compensation claims “would potentially involve over 160 trials and that closure would be protracted, with no end in sight.” (Order, p. 8).

SCDOT moved to reconsider this Order. On March 12, 2024, this Court denied the motion by Form 4 Order and noted that its previous Order certifying the class was interlocutory (Exhibit B).

On March 25, 2024, the lower court issued an Order Approving the Class Notice and the Exclusion Request Form (without objection from SCDOT) and directed that both be served on all class members (Exhibit C). The Exclusion Request Form had a deadline for return by May 31, 2024.¹

The SCDOT Notice of Appeal was filed on April 11, 2024.

ARGUMENT

There is no legal or factual basis to deny this motion to dismiss. Orders certifying a class actions are not considered final orders and are not immediately appealable. See Salmonsens v. CGD, Inc., 377 S.C. 442, 661 S.E. 2d 81 (2008), citing Eldridge v. City of Greenwood, 308 S.C. 125, 417 S.E. 2d 532 (1992) (Orders under Rule 23, SCRCP, are interlocutory except in certain, narrow circumstances).

¹ If this motion to dismiss the appeal is not promptly granted, it may result in the need for a new Notice and Exclusion Request Form to be served to allow at least 30-days for its return.

The South Carolina Eminent Domain Procedure Act provides the following description of what is included in “just compensation”:

“In determining just compensation, only the value of the property to be taken, any diminution in the value of the landowner’s remaining property, and any benefits as provided in § 28-2-360 may be considered.” S.C. Code § 28-2-370 (emphasis added)

As explained in the Court’s Order Granting Class Certification, the HOA is entitled to seek the recovery of damages for the “common elements”.² The unit owners are entitled to seek just compensation for the “non-common elements”.³ The Landowners, both the HOA and the unit owners, are entitled to claim damage to the remainder, which is any diminution in the value of the Landowners’ remaining property after the taking.

Our Supreme Court has ruled that S.C. Code § 28-2-370 permits a jury to consider any diminution in the value when determining just compensation for a taking. In SCDOT v. Powell, 424 S.C. 206, 818 S.E. 2d 433 (2018) (reversed a ruling of the Court of Appeals affirming grant of partial summary judgment to SCDOT that the landowner was not entitled to compensation for diminution in value of his remaining property), our Supreme Court ruled as follows:

“Employing the clear language of our just compensation statute, we hold that a jury should be permitted to hear evidence on the diminution in value to the remaining property.” Id. at 438.

² “Common elements” is defined in South Carolina law at S.C. Code § 27-31-20(f) and in the Bylaws of Briargate Condominium Association, Inc.

³ The “non-common elements” are defined in the Bylaws of Briargate Condominium Association which are attached and recorded with the Master Deed. Non-common elements include generally speaking the unit itself – all walls, doors, windows, contents, floors, flooring, etc. – exclusive of the common areas in the condominium buildings.

SCDOT erroneously argued to the lower court that granting class certification “negatively affects the mode of trial” and affects a “substantial right” per S.C. Code § 14-3-330(2). This code section does not apply to these facts and the order of the lower court is not appealable.

Appealability of an Order is governed by S.C. Code § 14-3-330(2) which states that the Supreme Court has appellate jurisdiction for:

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial, or (c) strikes out an answer or any part thereof or any pleading in any action.”

This provision is inapplicable here. This Court’s Order is not appealable. It did not “determine the action,” nor did it “prevent a judgment from which an appeal might be taken.” Nor did it “discontinue this action” or “negatively affect the mode of trial.” In fact, the effect of the Order is to allow all claims for just compensation of the HOA and unit owners to be addressed in one jury trial. It provides for judicial efficiency – having one trial rather than 336 trials is the model of efficiency.

An order granting class certification is not immediately appealable. Salmonsens v. CDG, Inc., 377 S.C. 442, 661 S.E.2d 81 (2008) (class certification order was not immediately appealable). This case also established that an “opt-out” class action and notification procedure is the exclusive method of class action litigation in this state. Id. at 454. In Salmonsens, the lower court granted the motion to certify the class and found that all of the prerequisites under Rule 23 were satisfied. The defendants moved to reconsider the order certifying the class. In that case, the defendants also moved to decertify the class. The defendants’ position was that class certification should be reconsidered and that decertification

was appropriate because trying the case would involve numerous separate “mini-trials”. The lower court denied that motion and ruled that the differences in the claims and the damages of the homeowners in the class was not so great that they would weigh against class certification. Id. at 447. The argument that a case should not be “classed” because of differences in damages among class members has been routinely denied. See McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154 (1986) (a class was sufficiently defined where there were common issues among the class, noting that the mere existence of individual issues does not defeat class action status and property owners whose claims were for different amounts of damages did not defeat class action status); See also King v. American General Finance, Inc., 687 S.E.2d 321 (2009) (reversed lower court order decertifying case, where the class of 5,000 loan recipients had claims which arose out of a common event).

CONCLUSION

As noted in Salmonsens, a court can revisit class certification prior to trial, as Rule 23(d) grants authority in the circuit court “to alter, amend or modify its orders as changes during the course of the case may warrant.” Id. at 447. If this motion to dismiss is granted, the circuit court can establish a trial management plan, and the case can be tried and resolved in the next few months. On the current record presented in the case at bar, the lower court order certifying the class is interlocutory and not appealable.

Respectfully Submitted,

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Attorneys for Respondents/Landowners

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON/RICHLAND

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 195

South Carolina Department of Transportation

Condemnor.

v.

Briargate Condominium Association, Inc. (HOA) and Mohammed Arabi, as class representative for himself and all unit owners, to pursue just compensation for all unit owners

Landowner(s),

and

Magna Capital, Mortgagee, The National Bank of South Carolina, Mortgagee, South Carolina Department of Revenue, Tax Liens, Arrow Financial Services, LLC, Judgment, Portfolio Recovery Associates, LLC, Judgment, The National Bank of South Carolina, Mortgagee, State Employees Credit Union, Mortgagee, NBSC a division of Synovus Bank, Mortgagee, Carolina First Bank, Mortgagee, Richland County, Judgment, Bank of America, N.A. c/o Cooling & Winter, LLC, Judgment, Department of Treasury-Internal Revenue Service, Judgment, HSBC Mortgage Corporation, Mortgagee, First Community Bank-Gilbert, Mortgagee, America's Wholesale Lender, Mortgagee, William R. Hollingsworth, Jr. and Myong Hollingsworth, Mortgagee, First Palmetto Savings Bank, Mortgagee, MERS as nominee for ERA Mortgage, Mortgagee, The Resolution Trust Corporation as Receiver for Metropolitan Federal Savings and Loan Association, Mortgagee, Wachovia Bank National Association, Mortgagee, The Resolution Trust Corporation as Receiver for Metropolitan Federal Savings and Loan Association, Mortgagee, Brittany Frances Minogue,

IN THE COURT OF COMMON PLEAS
C/A NO. 2021-CP-40-04582

**ORDER GRANTING
MOTION TO CERTIFY CLASS
AND
SCHEDULING ORDER**

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Mortgagee, Mutual Savings Bank, F.A.,
 Mortgagee, Richland County Tax Assessor,
 Delinquent Taxes, Bank of America, N.A.,
 Mortgagee, UCC Financing, Miriam Properties
 Group, LLC, Turnberry Associates, Inc., Mathes
 Auto Sales, Inc., BB&T of South Carolina, Navy
 Federal Credit Union, Briargate Condominium
 Association, Inc., Foreclosure Action

Other Condemnee(s).

This matter came before this Court for a hearing held via WebEx on January 9, 2024. Attending the hearing were counsel for the Landowners, and David G. Pagliarini, Esquire, counsel for SCDOT. In support of to the Motion to Certify the Class, the Landowners have submitted the following affidavits: Affidavit of Mohammed Arabi, Affidavit of Michael Munson, Affidavit of Thomas H. Pope III, and Affidavit of Expert Gibson Solomons. The Landowners also submitted a Memorandum in Support of the Motion and a Supplemental Memorandum with attached exhibits. SCDOT submitted its Memorandum in Opposition to the Motion to Certify dated February 5, 2024. This Court has carefully considered the filings of the parties and the arguments of counsel and for the reasons set forth herein grants the Motion to Certify the Class. This Court notes that, in granting class with certification, it does not address or rule on the issues in this case – i.e., what just compensation should be awarded to the HOA or to the unit owners. The Court heard from counsel as to its Motion for Scheduling Order and accordingly will rule here on the specifics of same.

BACKGROUND

Briargate Condominium Association, Inc. (“Briargate” or “HOA”) is a horizontal property regime as authorized by the South Carolina Horizontal Property Act, S.C. Code § 27-31-10 et. seq. Pursuant to state law, Briargate filed its Master Deed (with Bylaws attached) in the Office of Clerk

of Court of Richland County in Deed Book 689 at Page 01 on March 30, 1984. S.C. Code § 27-31-150 provides that the administration of property constituted into a horizontal property “shall be governed by bylaws which shall be inserted in or appended to and recorded with the Master Deed.”

Briargate consists of approximately 20 acres, an office building, 14 condominium buildings (with 24 units each), a swimming pool, tennis court, playground area, hundreds of parking spots, garage buildings, roads, and sidewalks. There are a total of 336 units in these 14 buildings and they are owned by 164 persons or entities.

The Horizontal Property Act of South Carolina defines “common elements” in S.C. Code § 27-31-20(f) as follows:

(f) "General common elements" means and includes:

- (1) The land whether leased or in fee simple and whether or not submerged on which the apartment or building stands; provided, however, that submerged land developed or used under this chapter is subject to any law enacted relating to the leasing of submerged lands by the State for the benefit of the public;
- (2) The foundations, main walls, roofs, halls, lobbies, stairways, moorages, walkway docks, and entrance and exit or communication ways in existence or to be constructed or installed;
- (3) The basements, flat roofs, yards, and gardens, in existence or to be constructed or installed, except as otherwise provided or stipulated;
- (4) The premises for the lodging of janitors or persons in charge of the property, in existence or to be constructed or installed, except as otherwise provided or stipulated;
- (5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like, in existence or to be constructed or installed;
- (6) The elevators, garbage incinerators, and, in general, all devices or installations existing or to be constructed or installed for common use;

(7) All other elements of the property, in existence or to be constructed or installed, rationally of common use or necessary to its existence, upkeep, and safety;”

The Briargate Master Deed defines “Common Elements” (which are the responsibility of the Briargate HOA) as follows:

“Land; parking areas; garages; swimming pools; pool house; tennis courts; laundries; club house; office; maintenance shop; entrance hallways; stairways; storage areas; sump pumps; landscaping improvements; all personal property held and maintained for the joint use and enjoyment of all Unit Owners; all leases of personalty and service contracts assigned to the Association by Declarant; those portions of any chute, flue, duct, wire, or conduit, located partially within and partially outside Unit which serve more than one Unit or any portion of Common Elements; load-bearing columns and load-bearing walls; all real property, improvements and facilities other than the Units and Limited Common Elements.”

The Master Deed defines “Non-Common Elements” (which are owned by, and the responsibility of, the unit owners) as follows:

“All components located within or constituting the boundaries of the unit including, but not limited to: wallboard; wallpaper; paint; all finished flooring; appliances; carpet; exterior doors, including sliding glass doors; windows; all pipes, ducts, electrical wiring and conduits located entirely withing Unit and serving only such Unit.”

The unit owners, per the Master Deed and the law of South Carolina, have an undivided fee simple interest in all properties of the Briargate Condominium Association.

The elements of compensation asserted in a condemnation case include just compensation and remainder damages to each property interest of a landowner. Based on the definitions in South Carolina law and in the Master Deed, just compensation and damages sought by the HOA are entirely different from those sought by the unit owners.

This condemnation action was commenced by SCDOT's filing a Condemnation Notice on September 9, 2021.¹ The condemnation project includes the widening of I-20, which is contiguous to Briargate. The taking in this instance, based on the documents provided, includes the demolition and removal of Building 6 (with 24 units) as well as eliminating over 50 parking places, portions of several garage buildings, and a large segment of the perimeter road. In addition, the landowners assert that expansion of the existing right-of-way will bring the highway significantly closer to the remaining buildings of Briargate.

The Landowners have asserted in support of their Motion to Certify the Class that the most equitable and efficient way to resolve all just compensation issues in this case is for the 164 unit owners' claims to be resolved by designating a class representative to pursue all claims for just compensation for the unit owners ("non-common elements"). A class action will allow one representative to pursue these claims for all unit owners in one proceeding.

The SCDOT Memorandum in Opposition asserts that "this acquisition is solely for common elements" (Memorandum, p. 5); however, the Condemnation Notice, which lists as "Landowners" the HOA and all unit owners², does not restrict its scope to common elements only since the claims of unit owners must be addressed to have full closure of this matter. The Landowners have presented the class action device as a means to fully resolve all claims arising out of the taking.

¹ The Landowners were originally represented by different counsel who withdrew by Order of the Court dated April 3, 2023, due to health issues. Current counsel filed Notices of Appearance on July 12, 2023, and September 6, 2023.

² Exhibit C to the Affidavit of Landowners' Counsel includes a current list of all unit owners and notes that the Condemnation Notice filed by SCDOT incorrectly includes persons/entities that do not own units at Briargate and fails to include persons/entities that do own units.

LEGAL STANDARD

Rule 23(a), SCRCPC, provides that one or members of any class “may sue or be sued as representative parties on behalf of all” only if the court finds:

- (a) the class is so numerous that joinders of all members is impractical;
- (b) there are questions of law or fact common to the class;
- (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) the representative parties will fairly and adequately protect the interest of the class; and,
- (e) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Proponents of class certification have the burden of proving that the prerequisites of class certification have been met. Waller v. Seabrook Island Property Owners Association, 300 S.C. 465, 467, 388 S.E.2d 799, 801 (1990). The trial court is to apply a rigorous analysis to assume that the prerequisites of Rule 23(a) have been satisfied. Under the law of South Carolina, an analysis of the facts and law, both as to the claims and defenses asserted, must focus on the appropriateness of class treatment, not the merits of the case. King v. American General Finance, 687 S.E.2d 321 (2009). It is also the law of South Carolina that the proponents must satisfy all of the prerequisites of Rule 23(a) for a motion to certify to be granted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Landowners have satisfied all of the prerequisites of Rule 23(a), SCRCPC.

1. **Numerosity.** The number of class members (there are 336 units which are owned by 164 unit owners) is so numerous that joined is impractical. The practicality of joinder depends on several factors, including, for example, the size of the class, the ease of identifying its numbers and determining their addresses, and the facility of making service on them. George v. Duke Energy Retirement Cash Balance Plan, 259 F.R.D. 225, 231 (D.S.C. 2009). Here, the

HOA has the names and addresses of the unit owners. Certifying the class will enable all 164 unit owners to have their claims adjudicated.

2. **Commonality.** All class members seek just compensation for their units, including proximity damages and damage to the remainder of their units. These issues of law and fact common to all are “of sufficient importance in proportion with the rest of the action to render it desirable that the whole of the matter should be disposed of at the same time.” McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154 (Ct. App. 1986); see also, Salmonsens v. CGD, Inc., 377 S.C. 442, 446-447, 661 S.E.2d 81, 84 (2008).
3. **Commonality.** The class representative’s claims are typical of those of the class. Mr. Arabi owns 124 units at Briargate and at least one unit in each of the 14 condominium buildings. The class representative’s claims are in no way adverse to those of the class; they are compatible and virtually identical to those of the class members in the 14 buildings at Briargate.
4. **Adequacy.** South Carolina law requires that a class representative not be antagonistic towards the interest of the class. Mr. Arabi, as stated above, owns units in each of the 14 condominium buildings. His ownership of 124 units constitutes over 36% of the total units at Briargate. He has a degree from the University of South Carolina and is an experienced business person. He has a keen interest in just compensation for all members of the class. Further, Mr. Arabi has hired qualified and experienced counsel (referenced above) and they are most adequate to handle this case and to guide the class representative in this case. This Court finds that class counsel are “qualified, experienced, and able to conduct the proposed litigation,” South Carolina National bank v. Stone, 139 F.R.D. 325, 329 (D.S.C. 1991), and that the proposed class representative and his counsel will adequately represent the interests of the class.
5. **\$100 Requirement.** This Court finds that the claims of Mr. Arabi and the class members’ claims meet the requirement of Rule 23 that the claims have a value in excess of \$100.00.

SCDOT asserts in its memorandum that class treatment should be denied because the court should only consider just compensation “for the common area acquired.” It suggests that unit owners, to assert a claim, should bring separate actions for inverse condemnation claims (SCDOT Memorandum, p. 10). This is incorrect as this is a direct condemnation of Briargate in which the Notice attempts to name all unit owners. These owners have claims (or potential claims) for just compensation to 336 units and damages to remainder regardless of the fact that many claims may

be for damage to the remainder and outside the “common area acquired.” An inverse condemnation is not a direct condemnation, but one which arises when a government agency commits a taking of private property through government action without exercising its formal powers of eminent domain. See, for example, Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (2004) (where the landowner claimed that the city’s maintenance of its drainage systems caused flood damage to landowner, amounting to an inverse condemnation). SCDOT’s position would require hundreds of separate cases for inverse condemnation to resolve the claims for unit owners when they are already named in, and impacted by, this direct condemnation. SCDOT’s position is not efficient nor equitable, particularly for unit owners with smaller claims who could not afford their own lawyer or real estate appraiser. Further, SCDOT’s suggestion is not only inapposite legally, but far less efficient and more inequitable than class treatment.

This Court further finds and concludes that, without class certification, adjudication of the just compensation claims would potentially involve over 160 trials and that closure would be protracted with no end in sight. Further, this Court finds that all prerequisites of Rule 23 have been satisfied and that the proposed class action here is an appropriate and efficient method of providing a resolution for both the unit owners and SCDOT.

THEREFORE, IT IS ORDERED as follows:

- (a) The Court grants the Motion for Class Certification;
- (b) The Court appoints Mohammed Arabi as class representative, for himself and all other unit owners;
- (c) The Court appoints Thomas H. Pope III, Esquire, Walter H. Bundy, Jr., Esquire, and Michael Brent McDonald, Esquire, as class counsel;
- (d) The definition of the class shall be: “All unit owners at Briargate seeking just compensation and/or damage to remainder who have not settled with SCDOT as of January 22, 2024”;

- (e) The caption of the case is revised as set forth above to include as landowners, Briargate Condominium Association, Inc. (HOA), and Mr. Arabi, as class representative for himself and all unit owners, to pursue just compensation for all unit owners;
- (f) A proposed Class Notice (with Exclusion Form) will be agreed upon between counsel, or in any event submitted to this Court for approval. After approval, Landowners' counsel will arrange for service on the class members, which will give them the right to opt-out or exclude themselves from the class – deadline to opt-out is 30-days after service or by April 1, 2024, whichever is sooner; and,
- (g) In the event this matter is settled (or concluded by trial), this Court will appoint a neutral third-party administrator to determine the allocation of money among the class members; this administrator has discretion with finality to resolve the allocation in a written report. The expenses of the third-party administrator will be paid pursuant to the Order of this Court based on either agreement of the parties or Order of the Court.

IT IS FURTHER ORDERED THAT the following Scheduling Order is applicable:

1. All appraisal reports will be served by April 15, 2024;
2. Discovery will be completed by June 10, 2024;
3. Mediation will be held by June 30, 2024;
4. Trial to be set not before August 15, 2024;
5. This Court will retain jurisdiction to approve the Class Notice; and,
6. This Scheduling Order can be revised by agreement of counsel or, upon motion, by Order of the Court for good cause.

AND IT SO ORDERED.

_____, 2024

The Honorable Eugene C. Griffith, Jr.



Richland Common Pleas

Case Caption: South Carolina Department Of Transportation vs Briargate
Condominium Association , defendant, et al
Case Number: 2021CP4004582
Type: Order/Class Certification

It is so ordered

Eugene C. Griffith, Jr. 2154

EXHIBIT B

South Carolina Department Of Transportation
PLAINTIFF(S)

Nezar Properties Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After thoughtful consideration, the Court respectfully denies Plaintiff's Motion to Reconsider this Court's Order Granting Class Certification. The Court Granted Defendant's Motion for Class Certification on February 5, 2024. Subsequently, the Plaintiff's filed a motion to reconsider on February 15, 2024 and the Defendant's filed a memorandum in opposition on February 27, 2024. The Court finds that their Order Granting Class Certification is an interlocutory order, therefore, the order is not immediately appealable. Thus, the Court respectfully denies the Plaintiff's Motion to Reconsider.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2024 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: South Carolina Department Of Transportation vs Briargate
Condominium Association , defendant, et al

Case Number: 2021CP4004582

Type: Order/Electronic Form 4

It is so ordered

Eugene C. Griffith, Jr. 2154

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON/RICHLAND

Road/Route I-20/I-26/I-126 (Carolina Crossroads)
Project ID No. P027662
Tract 195

South Carolina Department of Transportation

Condemnor.

v.

Briargate Condominium Association, Inc. (HOA) and Mohammed Arabi, as class representative for himself and all unit owners, to pursue just compensation for all unit owners

Landowner(s),

and

Magna Capital, Mortgagee, The National Bank of South Carolina, Mortgagee, South Carolina Department of Revenue, Tax Liens, Arrow Financial Services, LLC, Judgment, Portfolio Recovery Associates, LLC, Judgment, The National Bank of South Carolina, Mortgagee, State Employees Credit Union, Mortgagee, NBSC a division of Synovus Bank, Mortgagee, Carolina First Bank, Mortgagee, Richland County, Judgment, Bank of America, N.A. c/o Cooling & Winter, LLC, Judgment, Department of Treasury-Internal Revenue Service, Judgment, HSBC Mortgage Corporation, Mortgagee, First Community Bank-Gilbert, Mortgagee, America's Wholesale Lender, Mortgagee, William R. Hollingsworth, Jr. and Myong Hollingsworth, Mortgagee, First Palmetto Savings Bank, Mortgagee, MERS as nominee for ERA Mortgage, Mortgagee, The Resolution Trust Corporation as Receiver for Metropolitan Federal Savings and Loan Association, Mortgagee, Wachovia Bank National Association, Mortgagee, The Resolution Trust Corporation as Receiver for Metropolitan Federal Savings and Loan Association, Mortgagee, Brittany Frances Minogue,

IN THE COURT OF COMMON PLEAS
C/A NO. 2021-CP-40-04582

**ORDER APPROVING
CLASS NOTICE
AND
EXCLUSION REQUEST FORM**

**Mortgagee, Mutual Savings Bank, F.A.,
Mortgagee, Richland County Tax Assessor,
Delinquent Taxes, Bank of America, N.A.,
Mortgagee, UCC Financing, Miriam Properties
Group, LLC, Turnberry Associates, Inc., Mathes
Auto Sales, Inc., BB&T of South Carolina, Navy
Federal Credit Union, Briargate Condominium
Association, Inc., Foreclosure Action**

Other Condemnee(s).

On February 5, 2024, this Court's Order Granting Motion to Certify Class and Scheduling Order (dated February 2, 2024) was electronically filed in this matter. Pursuant to the terms of this Order, this Court retained jurisdiction of the case to approve the Class Notice.

Class counsel have submitted a proposed Class Notice and proposed Exclusion Request Form (Opt-Out), both of which class counsel proposes to serve on all unit owners at Briargate Condominium Association as soon as practicable after this Court approves same. The Class Notice and Exclusion Request Form have been previously sent by class counsel to SCDOT counsel.

Attached hereto to this Order are the proposed Class Notice and the proposed Exclusion Request Form. This Court has reviewed same and finds that these documents accurately describe the litigation and in plain language explain the class members' options regarding the litigation, including their right to exclude themselves (opt-out) from the class action by returning the Exclusion Form by May 31, 2024. These attached documents constitute due and sufficient notice to all persons entitled to such notice.

SCDOT has not filed any objection to the wording of the Class Notice or the Exclusion Request Form.

THEREFORE, IT IS ORDERED that this Court approves the Class Notice and Exclusion Request Form and that it authorizes and directs class counsel to serve both documents on all class members at the earliest practicable time.

AND IT SO ORDERED.

_____, 2024

The Honorable Eugene C. Griffith, Jr.



Richland Common Pleas

Case Caption: South Carolina Department Of Transportation vs Briargate
Condominium Association , defendant, et al

Case Number: 2021CP4004582

Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154

SOUTH CAROLINA CIRCUIT COURT OF RICHLAND COUNTY

Notice of Class Action

If you own a unit at Briargate Condominium Association, LLC, and you believe you have an entitlement to compensation due to the SCDOT Condemnation at Briargate, a class action lawsuit may affect your rights.

A South Carolina Circuit Court authorized this notice. This is not a solicitation from a lawyer.

- SCDOT initiated a condemnation action against approximately 164 unit owners at Briargate in September 2021. The case is titled *SCDOT v. Mohammed Arabi, et. al.* (Case No. 2021-CP-40-04582), which is currently pending in the Court of Common Pleas of Richland County (hereinafter the “Court”). Mr. Arabi has been appointed by the Court of Common Pleas of Richland County as class representative to represent the interests of all unit owners at Briargate.
- The Court has allowed the lawsuit to be a class action on behalf of the unit owners at Briargate Condominium Association, Inc. for any damages sustained in the way of just compensation and/or damage to the remainder.
- The Court has defined the class as follows: “All unit owners at Briargate seeking just compensation and/or damage to remainder who have not settled with SCDOT as of January 22, 2024”;
- The Court has not made any decision whether the SCDOT Condemnation entitles any unit owners to compensation. There is no money available now and no guarantee that there will be. However, your legal rights are affected and you have a choice to make.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:

DO NOTHING: **Stay in this class action lawsuit. Await the outcome as to compensation to be awarded, if any. Give up certain rights.**

By doing nothing, you keep the possibility of sharing in money or benefits that may come from a trial or a settlement, but you will be legally bound even if no benefits come from it. You give up any rights to make a claim against SCDOT separately about the same legal claims in this lawsuit. If any benefits for the class are obtained, you will have to prove that you are an appropriate member of the class to obtain any benefits awarded.

ASK TO BE EXCLUDED (OPT-OUT): **Get out of this class action lawsuit. Get no benefits from it. Keep your rights to hire an attorney and/or proceed to make your own individual claims at your expense.**

If you ask to be excluded (opt-out) from this lawsuit, you retain rights to make claims against SCDOT on an individual basis, but if money or benefits are later awarded in this case, you will not have any rights to those benefits. You are not legally bound by any Orders issued in this case if you ask to be excluded.

- If you want to exclude yourself (by opting-out), you must sign and return your Exclusion Request Form by May 31, 2024.
- Lawyers for the Class Representative must prove the entitlement to just compensation/remainder damages from SCDOT at a trial in the future. The Court has not yet made any determination as to these issues. If money or benefits are eventually obtained from SCDOT, you will be notified about the process for distribution. You will have to prove that you are an appropriate member of the class, and that you have a right to just compensation/damage to the remainder because of the SCDOT Condemnation.

BASIC INFORMATION

1. Why was this notice issued?

The Richland County Court of Common Pleas has authorized or “certified” this case as a class action lawsuit. If you are a unit owner at Briargate Condominium Association, this means you have a right to entitlement for just compensation and you have a right to decide whether to stay included in this case or exclude yourself from it before trial takes place. This notice explains these things. The Court of Common Pleas of Richland County will be in charge of the case and the case will be known as *South Carolina Department of Transportation v. Mohammed Arabi, class representative for himself and on behalf of all unit owners at Briargate Condominium Association, Inc.* (Case No. 2021-CP-40-04582).

2. What is the lawsuit about?

The lawsuit is about what effect the condemnation of SCDOT has had and specifically what, if any, just compensation should be awarded to the unit owners at Briargate, including any possible claims for just compensation of the unit and/or damage to the remainder due to proximity issues. The court has not made a determination one way or another on these matters.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people are called “class representatives” (in this case, it is Mohammed Arabi, whose LLC is the owner of 124 units at Briargate) who make claims on behalf of other people who have similar claims. All of the similar people are called “class members,” and together they are referred to as a “class.” The court will then resolve the issues for all class members (except those who exclude themselves from the class). The party that has sued in this matter is SCDOT and it is referred to as “condemnor,” and the persons they have brought action against, the class members, are called “landowners.”

4. Who is included in the class?

The Court has defined the class as “All unit owners at Briargate seeking just compensation and/or damage to remainder who have not settled with SCDOT as of January 22, 2024.”

5. Why is this lawsuit a class action?

The court has decided that the lawsuit satisfies all of their requirements for class certification under Rule 23 of the South Carolina Rules of Civil Procedure.

6. Has the court decided who is right?

No. The court has not decided whether the landowners (class members) are right or not right. By establishing the class and issuing this notice, the court is not suggesting which party will win or lose this case. The landowners will have to prove their claims at a trial, which will be scheduled after the deadline for opting out has passed. Until then, the court will not decide whether the allegations regarding SCDOT have merit or not.

7. What are landowners asking for?

The unit owners want to recover any just compensation that they are entitled by virtue of this condemnation action, plus any proximity damages or damages to the remainder of their unit because of the condemnation.

8. Is there any money available now?

No money or benefits are available now because the court has not yet decided whether there is an entitlement to benefits. If money or benefits are obtained, the court will appoint a neutral third-party known as a “third-party administrator” who will review the available information and determine which class members are entitled to benefits and in what amount.

9. What happens if I do nothing at all?

By doing nothing, you are staying in the class. You keep the possibility of sharing in money or benefits from this lawsuit, whether by settlement or trial. If the Plaintiffs obtain money or benefits via a settlement or trial, the court will issue a notice about how to ask for a share. As a member of the class, you will also be legally bound by all the orders and judgments of the court.

10. What happens if I exclude myself?

If you exclude yourself (opt-out) from the class, you will not be able to get any money or benefits from this case even if the landowners/class members obtain them as a result of any trial or from any settlement that may be reached. If you exclude yourself, you will not be legally bound by the court’s judgments. You will, however, be able to press claims or continue to press claims against SCDOT based on the same legal claims which are the subject of this lawsuit. You can hire your own attorney for this purpose, at your expense.

11. How do I ask to be excluded?

To ask to be excluded, you must send an “exclusion request” by completing the Exclusion Request Form attached to this notice. If you choose to opt-out, be sure to include your name, address, and the address of the property on which the claim is based.

12. Do I have a lawyer in this case?

The Court has decided that Thomas H. Pope III of Pope Parker Jenkins of Newberry and Walter H. Bundy, Jr. and Brent McDonald of Bundy McDonald in Summerville are qualified to represent all class members as “class counsel.” These lawyers are experienced in handling similar cases involving condemnations. These lawyers have a duty to represent the interests of class members. However, you may appear in court with your own lawyer. If you do want your own lawyer to represent you and appear in court for you, you will have to pay that lawyer.

13. How will the lawyers be paid?

Class counsel are handling this case on a “contingent fee basis” and that means if they do not obtain money or benefits for the class, they do not get paid. You do not personally have to pay any fees and expenses. If class counsel obtains money or benefits from the class by trial or settlement, they will ask the court for payment of their reasonable attorneys’ fees and costs. Those fees and costs would be deducted from any money obtained for the class. All fees and costs would have to be approved by an Order of this court.

14. How and when will the court decide who is right?

At a trial, class counsel will have to prove the claims of the landowners/class members. The presiding judge of the Court of Common Pleas of Richland County will set a date for the trial. During the trial, a jury or a judge will hear all of the evidence and will decide which party or parties are correct about the claims in the lawsuit. There is no guarantee that the class representative will win or that they will get any money or benefits for the class.

15. Do I have to attend the trial?

No. You do not need to attend the trial. Class counsel will present the case for the landowners and SCDOT will present its case. You, or your own lawyer, are welcome to come at your own expense, to trial.

16. Will I get money after the trial?

If class counsel obtains money or benefits as a result of a trial or a settlement, you will be notified about how to participate and the requirements for participation. All payment of benefits will be under the supervision of a third-party administrator appointed by the Court of Common Pleas of Richland County and be handled by Court Order.

EXCLUSION REQUEST FORM

SCDOT v. Briargate Condominium Association, Inc., et al.
Case No. 2021-CP-40-4582
Court of Common Pleas of Richland County

If you want to be excluded, you must complete, sign, and mail this Exclusion Request Form to the address below. Your form must be postmarked no later than May 31, 2024.

You have to decide whether to stay in the Class or whether to exclude yourself, and you have to decide this by or before May 31, 2024.

If you exclude yourself from the Class, you cannot get any money or benefits from this lawsuit, if any are awarded. If you exclude yourself, you will not be legally bound by any orders or judgments of the Court. You will keep any rights to claim compensation against SCDOT for the same legal claims that are the subject of this lawsuit and you will have a right to hire an attorney of your own if you opt-out.

If you want to stay in the Class, do not send this exclusion request. If you do nothing, you will be eligible for potential payment under a settlement or trial. If you stay in the Class, you will be legally bound by all orders and judgments of the Court, and you will not be able to sue, or continue to sue, as part of any other lawsuit against SCDOT for the same legal claims that are the subject of this lawsuit. If money or benefits are obtained, you will be notified about how to request a share. You will have to demonstrate that you are an appropriate member of the class and are entitled to payment of compensation from SCDOT.

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

Signature: _____

Date: _____

Mail this form, postmarked no later than May 31, 2024, to:

Betsy Alexander
Office Manager/Litigation Paralegal
Pope Parker Jenkins
P.O. Box 190
Newberry, South Carolina 29108

RECEIVED

Apr 19 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2024-000582

South Carolina Department of Transportation.....Appellant,

v.

Briargate Condominium Association, Inc. (HOA) and Mohammed Arabi,
as class representative for himself and all unit owners, to pursue just
compensation for all unit owners.....Respondents,

and

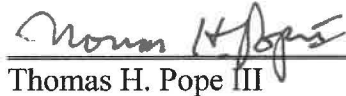
Magna Capital, Mortgagee, The National Bank of South Carolina,
Mortgagee, South Carolina Department of Revenue, Tax Liens,
Arrow Financial Services, LLC, Judgment, Portfolio Recovery
Associates, LLC, Judgment, The National Bank of South Carolina,
Mortgagee, State Employees Credit Union, Mortgagee, NBSC a
division of Synovus Bank, Mortgagee, Carolina First Bank,
Mortgagee, Richland County, Judgment, Bank of America, N.A. c/o
Cooling & Winter, LLC, Judgment, Department of Treasury-Internal
Revenue Service, Judgment, HSBC Mortgage Corporation,
Mortgagee, First Community Bank-Gilbert, Mortgagee, America's
Wholesale Lender, Mortgagee, William R. Hollingsworth, Jr. and
Myong Hollingsworth, Mortgagee, First Palmetto Savings Bank,
Mortgagee, MERS as nominee for ERA Mortgage, Mortgagee, The
Resolution Trust Corporation as Receiver for Metropolitan Federal
Savings and Loan Association, Mortgagee, Wachovia Bank National
Association, Mortgagee, The Resolution Trust Corporation as
Receiver for Metropolitan Federal Savings and Loan Association,
Mortgagee, Brittany Frances Minogue, Mortgagee, Mutual Savings
Bank, F.A., Mortgagee, Richland County Tax Assessor, Delinquent
Taxes, Bank of America, N.A., Mortgagee, UCC Financing, Miriam
Properties Group, LLC, Turnberry Associates, Inc., Mathes Auto
Sales, Inc., BB&T of South Carolina, Navy Federal Credit Union,
Briargate Condominium Association, Inc., Foreclosure Action, Other Condemnee(s).

PROOF OF SERVICE

I hereby certify that I have served Landowners' Response to Court of Appeal's Request for Memoranda and Motion to Dismiss Appeal as Interlocutory by electronic mail on April 19, 2024 to its attorney of record:

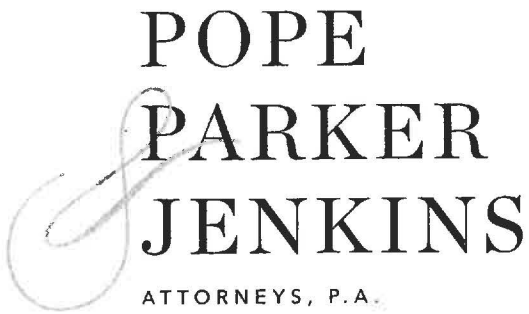
David G. Pagliarini, Esquire
145 River Landing Drive – Suite 101-B
Daniel Island, SC 29492
david@lawplf.com

POPE PARKER JENKINS, P.A.



Thomas H. Pope III
P.O. Box 190
Newberry, South Carolina 29108
Phone: (803) 276-2532
Fax: (803) 276-8684
tom@ppjlaw.com

April 19, 2024



PO Box 190
1508 College Street
Newberry, SC 29108
P: 803.276.2532
F: 803.276.8684
www.ppjlaw.com

Thomas H. Pope III
W. Chad Jenkins
Kyle B. Parker

Thomas H. Pope
(1913-1999)
Joseph W. Hudgens
(1932-2019)

April 19, 2024

RECEIVED
Apr 19 2024
SC Court of Appeals

VIA EMAIL: ctappfilings@sccourts.org

South Carolina Court of Appeals
Attn: Ms. Jenny Abbott Kitchings, Clerk
PO Box 11629
Columbia, SC 29211

RE: SCDOT v. Briargate Condominium Association, Inc., et al.
Appellate Case No. 2024-000582

Dear Ms. Kitchings:

On behalf of Respondents, we are enclosing for filing Landowners' Response to Court of Appeal's Request for Memoranda and Motion to Dismiss Appeal as Interlocutory, along with my Proof of Service for same.

With best regards.

Sincerely,

POPE PARKER JENKINS, P.A.

Thomas H. Pope III

THP III/ba
Enclosures

cc: David G. Pagliarini, Esquire *(via email only)*
Walter Henry "Bill" Bundy, Esquire *(via email only)*
M. Brent McDonald, Esquire *(via email only)*