

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Daniel Coble Circuit Court Judge

Case No. 2025-001903

Bush River C-Store, LLC, Appellant,

v.

South Carolina Department of Transportation, Respondent.

**APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL**

Appellants propose the following to be included in the Record on Appeal:

1. Summons and Complaint dated March 13, 2025
2. Answer dated April 4, 2025
3. Defendant's Motion for Summary Judgment dated May 8, 2025
4. Order of the Honorable Daniel Coble dated September 9, 2025
5. Notice of Appeal dated September 17, 2025
6. Transcript of Record, August 6, 2025

I certify that this designation contains no matter which is irrelevant to this appeal.

s/ S. Jahue Moore
S. Jahue Moore, SC Bar #4063
Moore Bradley Myers Law Firm, P.A.
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Jake@mbmlawsc.com
Attorney for Appellant

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS

Bush River C-Store, LLC,)
) C.A. No.:
)
Plaintiff,)

vs.)

SUMMONS
(Jury Trial)

S.C. Department of Transportation,)
)
)
Defendant.)
_____)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office, 1700 Sunset Boulevard, P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MOORE BRADLEY MYERS LAW FIRM, P.A.

BY: s/ S. Jahue Moore
S. Jahue Moore, SC Bar No. 4063
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR PLAINTIFF

West Columbia, South Carolina
March 13, 2025

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
Bush River C-Store, LLC,)	C.A. No.:
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	
S.C. Department of Transportation,)	
)	
Defendant.)	
_____)	

Plaintiff above-named Complaining of the Defendant herein alleges that:

1. The Defendant has recently served Plaintiff with a Condemnation Notice and Tender of Payment. A copy of the documentation recently served is attached hereto.
2. Under the Condemnation Notice, the Landowner/Plaintiff is advised that if it does not object to the taking it will be forever barred in its rights to object.
3. Without knowing the nature extent of the condemnation and whether there are engineering alternatives, the Plaintiff is without the ability to determine whether the right to condemn exists.
4. Upon information and belief, the right to condemn does not exist and the Plaintiff is entitled to discovery as to whether or not the right to condemn exists.
5. Plaintiff is informed and believes that this Court should issue its order declaring the Defendant has no right to condemn its property. This action is filed pursuant to the Notice served on the Plaintiff by Attorney David G. Pagliarini as counsel for the South Carolina Department of Transportation.

WHEREFORE, the Plaintiff seeks a declaration of the rights of the parties one to another and to a declaration that there is no right to proceed to condemn the property in question.

(Signature on the following page)

MOORE BRADLEY MYERS LAW FIRM, P.A.

BY: s/ S. Jahue Moore

S. Jahue Moore, SC Bar No. 4063

1700 Sunset Boulevard

P. O. Box 5709

West Columbia, SC 29171

(803) 796-9160

ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina
March 13, 2025

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2025-CP-40-01667

Bush River C-Store, LLC,

Plaintiff/Landowner,

v.

South Carolina Department of Transportation,

Defendant.

SOUTH CAROLINA
DEPARTMENT OF
TRANSPORTATION'S
ANSWER TO COMPLAINT

DEFENDANT, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION ("SCDOT"), BY AND THROUGH ITS UNDERSIGNED COUNSEL, ANSWERING THE PLAINTIFF'S COMPLAINT, ALLEGES UPON INFORMATION AND BELIEF, AS FOLLOWS:

FOR A FIRST DEFENSE

1. Each and every allegation of Plaintiff's Complaint, which is not hereinafter specifically admitted, modified, or qualified, is denied, and strict proof thereof is demanded.

FOR A SECOND DEFENSE

2. Defendant SCDOT admits to the allegations contained in Paragraph 1. For clarity, the Notice of Condemnation and supporting documents was served, but not filed, on or about September 23, 2023. Landowner filed a statutory challenge action to the case (2023-CP-40-05117) which was ultimately decided by an Order granting summary judgment in favor of SCDOT filed on October 10, 2024. Landowner appealed the lower court's grant of summary judgment, however the appeal was dismissed by Order of the South Carolina Court of Appeals dated February 10, 2025. The Court of appeals remitted the challenge action to the trial court where motions SCDOT maintains motions for recovery of fees and costs. Upon dismissal of the appeal, SCDOT filed the Notice of Condemnation on February 24, 2025 (2025-CP-40-01239) and deposited its estimate of just

compensation (\$115,000.00) with the Clerk of Court. Landowner has now filed this statutory challenge action despite dismissal of its prior challenge by the circuit court and dismissal of its appeal. The trial court's Order Granting Defendant's Summary Judgment filed October 10, 2024 is attached as Exhibit A. The South Carolina Court of Appeals Order filed February 10, 2025 is attached as Exhibit B.

3. The allegations in Paragraph 2 are denied. The Notice of Condemnation is prepared in accordance with the provisions of the South Carolina Eminent Domain Procedure Act and, as such, notice of Landowner's right to file a statutory challenge action in accordance with South Carolina Code section 28-2-470 is provided. Landowner has already challenged the condemnation action in case number 2023-CP-40-05117 and the challenge failed.
4. The allegations in Paragraph 3 are denied. Landowner has already challenged the condemnation action in case number 2023-CP-40-05117 and the challenge failed.
5. The allegations in Paragraph 4 are denied. Landowner has already challenged the condemnation action in case number 2023-CP-40-05117 and the challenge failed.
6. The allegations in Paragraph 5 are denied. Landowner has already challenged the condemnation action in case number 2023-CP-40-05117 and the challenge failed.
7. Defendant SCDOT denies all information included in the "WHEREFORE" Paragraph.

FOR A THIRD DEFENSE
(Rule 12(b)(6) SCRPC)

8. Pursuant to SCRPC 12(b)(6), the Complaint, in whole or in part, fails to state a claim upon which relief can be granted.
9. The South Carolina Eminent Domain Procedure Act, section 28-2-470, provides the sole and exclusive procedure to challenge a condemnation action. Any challenge must be filed in a

separate action in accordance with the Act and Landowner's challenge of this condemnation failed in case number 2023-CP-40-05117.

10. Plaintiff's allegations are conclusory and not based on the law.
11. The Complaint, therefore, must be dismissed.

FOR A FOURTH DEFENSE
(Rule 12(b)(5) SCRPC)

12. Plaintiff has not properly served SCDOT and therefore the action must be dismissed in accordance with SCRPC Rule 12(b)(5).

FOR A FIFTH DEFENSE

13. The doctrine of res judicata bars this claim.

FOR A SIXTH DEFENSE

14. By filing this case, Plaintiff has abused process. This action has been filed in bad faith with no factual support and the sole purpose is to delay a clearly defined and engineered public project.

WHEREFORE, having answered the Plaintiff's Complaint, Defendant SCDOT respectfully asks the Court for the following relief:

- a. Dismissal of Plaintiff's Complaint with prejudice;
- b. An award of attorney's fees and costs to Defendant SCDOT in accordance with common law, the South Carolina Eminent Domain Procedure Act and other relevant statutory law;
and
- c. Further relief as this Court deems just and proper.

PAGLIARINI LAW FIRM, LLC

s/ DAVID G. PAGLIARINI

David G. Pagliarini, Esq.

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Charleston, South Carolina
April 4, 2025

EXHIBIT A

STATE OF SOUTH CAROLINA

**IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117**

COUNTY OF RICHLAND

Bush River C-Store, LLC and Pallav Desai,

Plaintiffs,

vs

South Carolina Department of Transportation,

Defendant.

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation (“SCDOT”) filed a Motion for Summary Judgment, pursuant to Rule 56, SCRCP, on April 30, 2024 and a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRCP, on October 10, 2023 (collectively referred to hereafter as “Motions”). Defendant’s Motions are based on the grounds that (i) no genuine issues of material fact exist as to Plaintiffs’ challenge action; and (ii) Plaintiffs have failed to state proper causes of action. A hearing on SCDOT’s Motions was noticed and held on June 18, 2024 via Zoom. David G. Pagliarini, Esq. and Julia Anne E. McKeachie, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq. appeared on behalf of the Plaintiffs. SCDOT has conceded that the Rule 12(b)(6) motion has been superseded by the Rule 56 motion and, therefore, only the latter is addressed.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge action, brought pursuant to South Carolina Code Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that “[a]n action challenging the condemnor’s right to condemn must be commenced in separate proceedings filed in the court of common pleas . . .” The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

For Tract 376 (Pallav Desai), SCDOT seeks to acquire a small strip (826 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$8,300.00) once the condemnation action is permitted to proceed.

For Tract 377 (Bush River C-Store, LLC), SCDOT seeks to acquire a small strip (1,734 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$115,000.00) once the condemnation action is permitted to proceed.

Plaintiffs/Landowners elected to file one statutory challenge action to address the condemnation actions, basing the challenge action on the following:

1. That the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions;
2. That the SCDOT does not have to take these properties and that there are “other ways the properties can be taken;”
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of “an abundance of caution” and “are obligated to file this action.”

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCF. Summary judgment is appropriate when “plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCF, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiffs allege that acquisitions of small portions of the subject properties are not necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false, as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient: The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

683 (1963). It is insufficient for a Landowner to simply provide an alternate or competing plan for a court sitting in equity to determine which plan is “better.” It is presumed that the condemning authority is correct that the acquisitions, in size and scope, are necessary to design and construct a safe and effective public project:

When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor. It follows that if the landowner fails to allege facts in the complaint constituting fraud, bad faith or clear abuse of discretion on the part of the condemnor, such complaint does not state a cause of action.

Id. at 525-26 (citing Atkinson v. Carolina Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)). Plaintiffs have failed to put forth any facts that would indicate that SCDOT has abused its discretion.

Plaintiffs also argue that damages to the property remainders have not been considered by SCDOT. Damages are an element of just compensation. The Act provides that evidence for the purpose of valuation matters is to be heard in the condemnation cases and not this equitable challenge proceeding. S.C. Code Ann. § 28-2-340.

Plaintiffs further argue that they filed this action out of “an abundance of caution” and “are obligated to file this action.” This assertion is incorrect. South Carolina Code section 28-2-280(7) provides that the following language must be included in every condemnation notice:

AN ACTION CHALLENGING THE CONDEMNOR’S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCF summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

EXHIBIT B

The South Carolina Court of Appeals

Bush River C-Store, LLC and Pallav Desai, Appellants,

v.

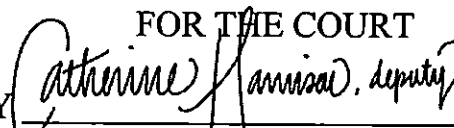
South Carolina Department of Transportation,
Respondent.

Appellate Case No. 2024-001901

The Honorable Diane Schafer Goodstein
Richland County
Trial Court Case No. 2023CP4005117

ORDER

Appellant has failed to serve and file their initial brief of appellant and designation of matter, as required by Rule 208 of the South Carolina Appellate Court Rules and this Court's letter dated January 23, 2025. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT
BY  Deputy
CLERK

Columbia, South Carolina

cc:
S. Jahue Moore, Esquire
James Edward Bradley, Esquire
Julia Anne E. G. McKeachie, Esquire
David Guy Pagliarini, Esquire

FILED
Feb 10 2025

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**IN THE COURT OF COMMON PLEAS
C/A NO. 2025-CP-40-01667**

Bush River C-Store, LLC,

Plaintiff/Condemnee,

VS.

South Carolina Department of Transportation,

Defendant/Condemnor

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
ATTORNEY'S FEES**

**(Challenge to Condemnation
Action)**

YOU WILL PLEASE TAKE NOTICE that, at such time as may be convenient for this Court and counsel following the service of this Motion, Defendant, South Carolina Department of Transportation (SCDOT), by and through its counsel, will move the court for Summary Judgment in its favor, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Defendant's motion is based on the grounds that no genuine issues of material fact exist as to Plaintiff's Challenge action and associated claims and Defendant is entitled to judgment as matter of law.

In support of this Motion, Defendant will rely upon the Court the pleadings, affidavits, memoranda and other arguments of counsel during oral argument on this motion pursuant to the South Carolina Rules of Civil Procedure.

Defendant moves for summary judgment on the following grounds:

- (1) In accordance with the South Carolina Eminent Domain Procedure Act, Defendant SCDOT filed and served a Notice of Condemnation (c/a number 2025-CP-40-01239) on Landowner

on or around February 24, 2025 and deposited its estimate of just compensation (\$115,000.00) with the Clerk of Court.¹

- (2) SCDOT is charged with maintaining South Carolina highways and the Carolina Crossroads project is undoubtedly for public use. S.C. Code Ann. § 57-5-10; S.C. CONST. art. I, § 13 (1895).
- (3) Plaintiff Bush River C-Store filed this challenge action on March 13, 2025.
- (4) Defendant SCDOT filed an Answer on April 4, 2025.
- (5) Bush River C-Store has already challenged the condemnation action in case number 2023-CP-40-05117; the challenge failed.²
- (6) Plaintiff Bush River C-Store's previous challenge in case number 2023-CP-40-05117 and the instant challenge to SCDOT's right to condemn fail to state facts sufficient to constitute a cause of action for which relief can be granted; further, the allegations are conclusory and not based on law.
- (7) The principle of res judicata is clear: "final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action." Venture Eng'g, Inc. v. Tishman Constr. Corp. of S.C., 360, S.C. 156, 600 S.E.2d 547, 550 (2004) (citing In re S.N.A. Nut Co., 215 B.R. 1004, 1008 (1997) (internal quotations omitted)). The parties in the instant case are the same as in case number 2023-CP-40-05117³; the Plaintiff's claim is the same in the instant case as in case number 2023-

¹ Condemnor previously served, but did not file a Notice of Condemnation on or around September 7, 2023. Landowner filed a statutory challenge action to the case (2023-CP-40-05117) which was ultimately decided by an October 10, 2024 Order granting summary judgment in favor of Condemnor/SCDOT. Landowner appealed the lower court's grant of summary judgment; however, the appeal was dismissed by Order of the South Carolina Court of Appeals dated February 10, 2025. The Court of Appeals remitted the challenge action to the trial court where SCDOT maintains motions for recovery of fees and costs.

² Plaintiff Bush River C-Store challenged Condemnor's acquisition of 36,391 square feet (0.835 acres).

³ In case number 2023-CP-40-05117, the Plaintiffs challenging Defendant SCDOT's condemnations were Bush River C-Store and Pallav Desai. Per Judge Goodstein's October 10, 2024 Order Granting SCDOT's Motion for Summary

CP-40-05117; and the claim in the instant case has been adjudicated – an October 10, 2024 Order granting SCDOT’s motion for summary judgment is attached hereto as **Exhibit A**.

(8) The principle of issue preclusion is clear: “when an issue has been actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.” S.C. Prop. & Cas. Ins. Guaranty Ass’n v. Wal-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625, 627 (1991) (see Restatement (Second) of Judgments, § 27 (1982)).

CONCLUSION

For the above reasons and to avoid further unnecessary delay, Defendant respectfully moves that there is no genuine issue of material fact and would further request that it be granted summary judgment as a matter of law. Furthermore, on the grounds and for the reasons stated herein, Defendant SCDOT respectfully requests that this Court award Defendant attorney’s fees and costs pursuant to S.C. Code Ann. 15-36-10(G)(1): “Sanctions may include: an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section.”

PAGLIARINI LAW FIRM, LLC

s/David G. Pagliarini
David G. Pagliarini
SC Bar No. 8850
Julia Anne E. McKeachie
SC Bar No. 106631
145 River Landing Drive, Suite 101 B
Charleston, SC 29492

Judgment, the challenge action with case number 2023-CP-40-05117 stemmed from two (2) separate, unfiled condemnation actions; one condemnation (Tract 376) named Pallav Desai as Landowner, the other (Tract 377) named Bush River C-Store as Landowner. Plaintiffs’ challenge combined the two condemnations into one statutory challenge action with case number 2023-CP-40-05117.

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david@lawplf.com
Attorneys for Defendant, SCDOT

Charleston, SC
May 8, 2025

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117

Bush River C-Store, LLC and Pallav Desai,

Plaintiffs,

vs

South Carolina Department of Transportation,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation (“SCDOT”) filed a Motion for Summary Judgment, pursuant to Rule 56, SCRPC, on April 30, 2024 and a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRPC, on October 10, 2023 (collectively referred to hereafter as “Motions”). Defendant’s Motions are based on the grounds that (i) no genuine issues of material fact exist as to Plaintiffs’ challenge action; and (ii) Plaintiffs have failed to state proper causes of action. A hearing on SCDOT’s Motions was noticed and held on June 18, 2024 via Zoom. David G. Pagliarini, Esq. and Julia Anne E. McKeachie, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq. appeared on behalf of the Plaintiffs. SCDOT has conceded that the Rule 12(b)(6) motion has been superseded by the Rule 56 motion and, therefore, only the latter is addressed.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge action, brought pursuant to South Carolina Code Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that “[a]n action challenging the condemnor’s right to condemn must be commenced in separate proceedings filed in the court of common pleas . . .” The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

For Tract 376 (Pallav Desai), SCDOT seeks to acquire a small strip (826 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$8,300.00) once the condemnation action is permitted to proceed.

For Tract 377 (Bush River C-Store, LLC), SCDOT seeks to acquire a small strip (1,734 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$115,000.00) once the condemnation action is permitted to proceed.

Plaintiffs/Landowners elected to file one statutory challenge action to address the condemnation actions, basing the challenge action on the following:

1. That the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions;
2. That the SCDOT does not have to take these properties and that there are “other ways the properties can be taken;”
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of “an abundance of caution” and “are obligated to file this action.”

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCF. Summary judgment is appropriate when “plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCF, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiffs allege that acquisitions of small portions of the subject properties are not necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false, as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient: The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

683 (1963). It is insufficient for a Landowner to simply provide an alternate or competing plan for a court sitting in equity to determine which plan is “better.” It is presumed that the condemning authority is correct that the acquisitions, in size and scope, are necessary to design and construct a safe and effective public project:

When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor. It follows that if the landowner fails to allege facts in the complaint constituting fraud, bad faith or clear abuse of discretion on the part of the condemnor, such complaint does not state a cause of action.

Id. at 525-26 (citing Atkinson v. Carolina Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)). Plaintiffs have failed to put forth any facts that would indicate that SCDOT has abused its discretion.

Plaintiffs also argue that damages to the property remainders have not been considered by SCDOT. Damages are an element of just compensation. The Act provides that evidence for the purpose of valuation matters is to be heard in the condemnation cases and not this equitable challenge proceeding. S.C. Code Ann. § 28-2-340.

Plaintiffs further argue that they filed this action out of “an abundance of caution” and “are obligated to file this action.” This assertion is incorrect. South Carolina Code section 28-2-280(7) provides that the following language must be included in every condemnation notice:

AN ACTION CHALLENGING THE CONDEMNOR’S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCF summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

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ELECTRONICALLY FILED - 2024 Oct 10 4:08 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4005117
ELECTRONICALLY FILED - 2025 May 08 10:14 AM - RICHLAND - COMMON PLEAS - CASE#2025CP4001667

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2025-CP-40-01667

Bush River C-Store, LLC,

Plaintiff/Landowner

vs

South Carolina Department of Transportation,

Defendant/Condemnor.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation ("SCDOT") filed a Motion for Summary Judgment, pursuant to Rule 56, SCRPC, on May 8, 2025. Defendant's Motion is based on the grounds that (i) no genuine issues of material fact exist as to Plaintiff's challenge action; (ii) Plaintiff has failed to state proper causes of action; and (iii) Plaintiff's statutory challenge action has previously been decided and is barred by the doctrine of res judicata. A hearing on SCDOT's Motion was noticed and held on August 6, 2025 at the Richland County Courthouse. David G. Pagliarini, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq., attorney for the Plaintiff, did not appear following receipt of proper notice.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge, brought pursuant to South Carolina Code Section 28-2-470, to a condemnation action. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act ("the Act"), S.C. Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

In accordance with the Act, Defendant SCDOT filed and served a Notice of Condemnation (c/a number 2025-CP-40-01239) on Landowner on or around February 24, 2025 and deposited its estimate of just compensation (\$115,000.00) with the Clerk of Court. SCDOT is acquiring 1,734 square feet (0.040 acre) of right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation case was originally served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). Landowner filed a statutory challenge action to the case (2023-CP-40-05117) which was ultimately decided by an October 10, 2024 Order granting summary judgment in favor of Condemnor/SCDOT. Landowner appealed the lower court's grant of summary judgment; however, the appeal was dismissed by Order of the South Carolina Court of Appeals dated February 10, 2025. The Court of Appeals remitted the challenge action to the trial court where SCDOT maintains motions for recovery of fees and costs. Upon dismissal of the appeal, SCDOT filed and served the condemnation action now pending (c/a number 2025-CP-40-01239). Despite the grant of summary judgment and the dismissal of the appeal on the first statutory challenge action, Landowner filed this second challenge action on March 13, 2025. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and moving forward with Project construction.

The underlying condemnation action is referenced as Tract 377 (the tract reference in the Project plans), naming Bush River C-Store, LLC as Landowner. SCDOT seeks to acquire a strip

along the property frontage. SCDOT appraised the value of the acquisition, and has deposited its estimate of just compensation based on the appraisal.

Plaintiff/Landowner based the challenge action on an unsubstantiated claim that SCDOT lacks the right to condemn (despite SCDOT providing the statutory codes for its authority in the February 24, 2025 Condemnation Notice, paragraph 4).

Defendant SCDOT primarily argues that Judge Goodstein has previously addressed these issues and granted summary judgment by Order dated October 10, 2024 in case 2023-CP-40-05117. SCDOT further argues that the acquisition is for public use and is necessary to properly and safely design the Project.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP. Summary judgment is appropriate when “plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiff’s March 13, 2025 Complaint contends that SCDOT’s right to condemn does not exist and the Plaintiff is entitled to discovery as to whether or not the right to condemn exists.” Summons and Complaint, p. 2.¹ In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable, but it is not required to be absolute; the “use must be clearly appropriate and

¹ In the instant challenge action, Plaintiff has only filed a Complaint that provides limited basis for its challenge of the condemnation.

fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. See Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963). Judge Goodstein’s October 10, 2024 Order Granting SCDOT’s Motion for Summary Judgment clearly addresses and rules on SCDOT’s authority to condemn and SCDOT’s responsiveness to discovery.

The principle of res judicata provides that “final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action.” Venture Eng’g, Inc. v. Tishman Constr. Corp. of S.C., 360, S.C. 156, 600 S.E.2d 547, 550 (2004) (citing In re S.N.A. Nut Co., 215 B.R. 1004, 1008 (1997) (internal quotations omitted)). The parties in the instant case are the same as in case number 2023-CP-40-05117; the Plaintiff’s claim is the same in the instant case as in case number 2023-CP-40-05117; and the claim in the instant case has been adjudicated – an October 10, 2024 Order granting SCDOT’s motion for summary judgment is attached hereto as **Exhibit A**.

The principle of issue preclusion provides that “when an issue has been actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.” S.C. Prop. & Cas. Ins. Guaranty Ass’n v. Wal-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625, 627 (1991) (see Restatement (Second) of Judgments, § 27 (1982)).

Ultimately, Plaintiff’s complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCF summary judgment is mandated.

The Defendant has moved for fees and costs and may pursue the same by separate motion.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED and that Defendant may pursue recovery of fees and costs, in accordance with The Act, by separate motion.

IT IS SO ORDERED.

September _____, 2025

The Honorable Daniel M. Coble
Richland County, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc vs S C Department Of Transportation
Case Number: 2025CP4001667
Type: Order/Summary Judgment

So Ordered

s/ Daniel Coble, 2774

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EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117

Bush River C-Store, LLC and Pallav Desai,

Plaintiffs,

vs

South Carolina Department of Transportation,

Defendant.

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation (“SCDOT”) filed a Motion for Summary Judgment, pursuant to Rule 56, SCRPC, on April 30, 2024 and a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRPC, on October 10, 2023 (collectively referred to hereafter as “Motions”). Defendant’s Motions are based on the grounds that (i) no genuine issues of material fact exist as to Plaintiffs’ challenge action; and (ii) Plaintiffs have failed to state proper causes of action. A hearing on SCDOT’s Motions was noticed and held on June 18, 2024 via Zoom. David G. Pagliarini, Esq. and Julia Anne E. McKeachie, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq. appeared on behalf of the Plaintiffs. SCDOT has conceded that the Rule 12(b)(6) motion has been superseded by the Rule 56 motion and, therefore, only the latter is addressed.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge action, brought pursuant to South Carolina Code Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that “[a]n action challenging the condemnor’s right to condemn must be commenced in separate proceedings filed in the court of common pleas . . .” The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

For Tract 376 (Pallav Desai), SCDOT seeks to acquire a small strip (826 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$8,300.00) once the condemnation action is permitted to proceed.

For Tract 377 (Bush River C-Store, LLC), SCDOT seeks to acquire a small strip (1,734 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$115,000.00) once the condemnation action is permitted to proceed.

Plaintiffs/Landowners elected to file one statutory challenge action to address the condemnation actions, basing the challenge action on the following:

1. That the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions;
2. That the SCDOT does not have to take these properties and that there are “other ways the properties can be taken;”
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of “an abundance of caution” and “are obligated to file this action.”

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP. Summary judgment is appropriate when “plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” Thompkins v. Festival Ctr. Grp., I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

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See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiffs allege that acquisitions of small portions of the subject properties are not necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false, as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient: The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

683 (1963). It is insufficient for a Landowner to simply provide an alternate or competing plan for a court sitting in equity to determine which plan is "better." It is presumed that the condemning authority is correct that the acquisitions, in size and scope, are necessary to design and construct a safe and effective public project:

When a landowner brings an action to enjoin a condemnation proceeding the burden is upon him to allege and establish fraud, bad faith, or clear abuse of discretion on the part of the condemnor. It follows that if the landowner fails to allege facts in the complaint constituting fraud, bad faith or clear abuse of discretion on the part of the condemnor, such complaint does not state a cause of action.

Id. at 525-26 (citing Atkinson v. Carolina Light Co., 239 S.C. 150, 121 S.E.2d 743 (1961)). Plaintiffs have failed to put forth any facts that would indicate that SCDOT has abused its discretion.

Plaintiffs also argue that damages to the property remainders have not been considered by SCDOT. Damages are an element of just compensation. The Act provides that evidence for the purpose of valuation matters is to be heard in the condemnation cases and not this equitable challenge proceeding. S.C. Code Ann. § 28-2-340.

Plaintiffs further argue that they filed this action out of "an abundance of caution" and "are obligated to file this action." This assertion is incorrect. South Carolina Code section 28-2-280(7) provides that the following language must be included in every condemnation notice:

AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCP summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

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ELECTRONICALLY FILED - 2025 Sep 09 11:18 AM - RICHLAND - COMMON PLEAS - CASE# 2023CP4001667

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court for the Fifth Judicial Circuit

Daniel Coble, Circuit Court Judge

Case No. 2025-CP-40-01667

Bush River C-Store, LLC,

Appellant,

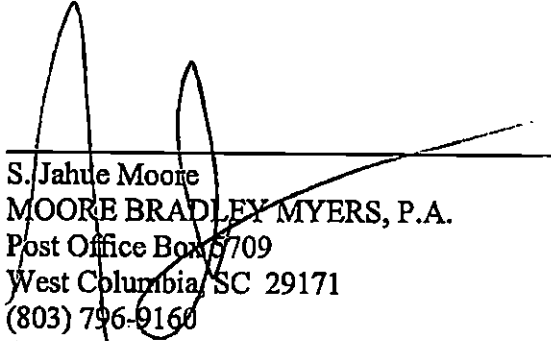
vs.

South Carolina Department of Transportation,

Respondent.

NOTICE OF APPEAL

Bush River C-Store, LLC, appeals the Order of the Honorable Daniel Coble, signed on September 9, 2025 and E-filed by the Clerk on that date. Appellants received electronic notice of entry of this Order on September 9, 2025.



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ATTORNEYS FOR APPELLANTS

Other Counsel of Record:
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ATTORNEYS FOR THE RESPONDENT

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Sep 17 2025
SC Court of Appeals

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Sep 17 2025

SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Bush River C-Store, LLC,

Plaintiff/Landowner

vs

South Carolina Department of Transportation,

Defendant/Condemnor.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2025-CP-40-01667

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation ("SCDOT") filed a Motion for Summary Judgment, pursuant to Rule 56, SCRCP, on May 8, 2025. Defendant's Motion is based on the grounds that (i) no genuine issues of material fact exist as to Plaintiff's challenge action; (ii) Plaintiff has failed to state proper causes of action; and (iii) Plaintiff's statutory challenge action has previously been decided and is barred by the doctrine of res judicata. A hearing on SCDOT's Motion was noticed and held on August 6, 2025 at the Richland County Courthouse. David G. Pagliarini, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq., attorney for the Plaintiff, did not appear following receipt of proper notice.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge, brought pursuant to South Carolina Code Section 28-2-470, to a condemnation action. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act ("the Act"), S.C. Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

In accordance with the Act, Defendant SCDOT filed and served a Notice of Condemnation (c/a number 2025-CP-40-01239) on Landowner on or around February 24, 2025 and deposited its estimate of just compensation (\$115,000.00) with the Clerk of Court. SCDOT is acquiring 1,734 square feet (0.040 acre) of right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation case was originally served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). Landowner filed a statutory challenge action to the case (2023-CP-40-05117) which was ultimately decided by an October 10, 2024 Order granting summary judgment in favor of Condemnor/SCDOT. Landowner appealed the lower court's grant of summary judgment; however, the appeal was dismissed by Order of the South Carolina Court of Appeals dated February 10, 2025. The Court of Appeals remitted the challenge action to the trial court where SCDOT maintains motions for recovery of fees and costs. Upon dismissal of the appeal, SCDOT filed and served the condemnation action now pending (c/a number 2025-CP-40-01239). Despite the grant of summary judgment and the dismissal of the appeal on the first statutory challenge action, Landowner filed this second challenge action on March 13, 2025. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and moving forward with Project construction.

The underlying condemnation action is referenced as Tract 377 (the tract reference in the Project plans), naming Bush River C-Store, LLC as Landowner. SCDOT seeks to acquire a strip

along the property frontage. SCDOT appraised the value of the acquisition, and has deposited its estimate of just compensation based on the appraisal.

Plaintiff/Landowner based the challenge action on an unsubstantiated claim that SCDOT lacks the right to condemn (despite SCDOT providing the statutory codes for its authority in the February 24, 2025 Condemnation Notice, paragraph 4).

Defendant SCDOT primarily argues that Judge Goodstein has previously addressed these issues and granted summary judgment by Order dated October 10, 2024 in case 2023-CP-40-05117. SCDOT further argues that the acquisition is for public use and is necessary to properly and safely design the Project.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP. Summary judgment is appropriate when “plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” Thompkins v. Festival Ctr. Grp., I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiff’s March 13, 2025 Complaint contends that SCDOT’s right to condemn does not exist and the Plaintiff is entitled to discovery as to whether or not the right to condemn exists.” Summons and Complaint, p. 2.¹ In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable, but it is not required to be absolute; the “use must be clearly appropriate and

¹ In the instant challenge action, Plaintiff has only filed a Complaint that provides limited basis for its challenge of the condemnation.

fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. See Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963). Judge Goodstein’s October 10, 2024 Order Granting SCDOT’s Motion for Summary Judgment clearly addresses and rules on SCDOT’s authority to condemn and SCDOT’s responsiveness to discovery.

The principle of res judicata provides that “final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action.” Venture Eng’g, Inc. v. Tishman Constr. Corp. of S.C., 360, S.C. 156, 600 S.E.2d 547, 550 (2004) (citing In re S.N.A. Nut Co., 215 B.R. 1004, 1008 (1997) (internal quotations omitted)). The parties in the instant case are the same as in case number 2023-CP-40-05117; the Plaintiff’s claim is the same in the instant case as in case number 2023-CP-40-05117; and the claim in the instant case has been adjudicated – an October 10, 2024 Order granting SCDOT’s motion for summary judgment is attached hereto as Exhibit A.

The principle of issue preclusion provides that “when an issue has been actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.” S.C. Prop. & Cas. Ins. Guaranty Ass’n v. Walm-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625, 627 (1991) (see Restatement (Second) of Judgments, § 27 (1982)).

Ultimately, Plaintiff’s complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCF summary judgment is mandated.

The Defendant has moved for fees and costs and may pursue the same by separate motion.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED and that Defendant may pursue recovery of fees and costs, in accordance with The Act, by separate motion.

IT IS SO ORDERED.

September _____, 2025

The Honorable Daniel M. Coble
Richland County, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc vs S C Department Of Transportation
Case Number: 2025CP4001667
Type: Order/Summary Judgment

So Ordered

s/ Daniel Coble, 2774

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STATE OF SOUTH CAROLINA) IN THE GENERAL SESSIONS COURT
)
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Pallav Desai,)
)
Plaintiff,) Case No. 2025-CP-40-01666
)
vs)
)
South Carolina Department)
of Transportation)
)
Defendant.

H E A R I N G

BEFORE THE HONORABLE DANIEL COBLE

DATE: August 6, 2025
LOCATION: South Carolina Circuit Court 5
TRANSCRIBER: Jessica Antonucci

LEGAL EAGLE

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(864) 467-1373 -- depos@legaleagleinc.com

APPEARANCES

David G. Pagliarini, Esquire
145 River Landing Drive, Suite 101-B
Daniel Island, South Carolina 29492

On behalf of the Defendant

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EXHIBITS

(No Exhibits Were Marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTE MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: So we have two motions for summary
2 judgment the Desai versus SCDOT, case 1666.

3 MR. PAGLIARINI: Your Honor, I'm David Pagliarini
4 for SCDOT. This motion -- or separate motions involving
5 cases 15 and 16 on our roster. Your Honor, just for your
6 information we have not heard from Mr. Moore on this. He
7 has not filed anything responsive, and I know he's not
8 here. This is not an attempt to pile on. He has not
9 returned our calls for the better part of two years, Your
10 Honor, so it doesn't surprise me that he hasn't called
11 me, but I did want to put that on the record. We made
12 every attempt over the period of time this litigation is
13 going on to try to discuss, you know, I have no feedback.
14 So I'll proceed as Your Honor wishes.

15 THE COURT: Go right ahead.

16 MR. PAGLIARINI: Your Honor, these two motions come
17 out of two separate condemnation actions filed on the
18 Carolina Crossroads project here in Richland and parts of
19 it in Lexington County.

20 In 2023, the DOT filed two separate actions --
21 excuse me, served two separate actions, as you're aware,
22 The Eminent Domain Procedure Act, the procedure is to
23 serve the notice, then there is a 30-day period in which
24 the land owner can challenge the right to condemn, which
25 extend from of course from the just compensation
26 (inaudible) it is the statute -- statutory action related

1 to the right to condemn.

2 The respective landowners did just that in 2023,
3 they filed challenge actions, discovery took place. Last
4 June of 2024 Judge Goodstein heard our summary judgment
5 motion in that challenge action for both of these cases
6 and granted us summary judgment. I've attached that to
7 our respective motions. That order was entered in
8 October of 2024 granting summary judgment as to the
9 statutory challenge action.

10 Following that, Mr. Moore and his respective clients
11 appealed the matter to the Court of Appeals. The Court
12 of Appeals dismissed that appeal for failure to
13 prosecute, failure to file briefs. I'm not sure if you
14 were able to obtain a copy of that order. Your Honor,
15 that was filed in February 10th of 2025, and the case was
16 remanded back to the State courts, at which time DOT then
17 filed the respective notices and deposited our estimate
18 of just compensation, which is mandated by The Eminent
19 Domain Procedure Act. Mr. Moore then filed challenge
20 actions in each case again, even though it had already
21 been decided by Judge Goodstein, and now here we are we
22 immediately filed these motions.

23 Your Honor, it's in our opinion it's fairly simple.
24 This is a res judicata issue; final judgment had already
25 been issued by Judge Goodstein. Its challenge action or
26 these challenge actions are the same that they filed the

1 first time around. This is my editorialization. This
2 has been an attempt to delay this condemnation as I may
3 have alluded to earlier (inaudible) two years. The
4 project is ongoing and underway and we need to access, we
5 being DOT, need to access these properties in order to
6 construct the project or the DOT faces thousands and
7 thousands of penalty dollars if the contractor cannot get
8 it through. We are not yet at these properties, but that
9 is estimated that that will come in October or so, so we
10 are butting up against these deadlines.

11 Your Honor, from the legal standpoint though,
12 (inaudible) of my opinion this is a clear matter of res
13 judicata, Judge Goodstein ruled on these issues. Her
14 motion -- or excuse me, her order is attached, if you'd
15 like I can go through the various legal arguments, but I
16 think it was fairly clear that the initial challenge
17 actions lacked merit as far as things that I've seen.

18 THE COURT: All right. So this will -- it's still
19 going to be -- are they going to challenge the
20 connotation?

21 MR. PAGLIARINI: Yes, sir. It's this only action --
22 these challenge actions, 28-2-470 are challenges to the
23 right to condemn. What will remain -- what we'll proceed
24 with is the just compensation phase of each case, and
25 those amounts, the respective just compensation
26 estimates, are those dollars are sitting in the court

1 right now, we will then proceed with the just
2 compensation portion of each case and (inaudible) as Your
3 Honor is aware, once we filed and deposited (inaudible)
4 the stay that is brought on by these challenge actions,
5 we then have a right to get on the property, take us
6 another year or so to fully litigate the compensation
7 issues, but DOT will then be allowed to get on the
8 property and perform the tasks it needs to complete this
9 project.

10 THE COURT: And the other case that you're here for
11 today is the (inaudible) and it's the same (inaudible) --

12 MR. PAGLIARINI: They're exactly the same, yes, sir.
13 Mr. Moore combined those in his last challenge action, so
14 Judge Goodstein's order covers both cases. He now has
15 filed this time around two separate challenge actions and
16 that's why you see the two separate 2023 -- or excuse me
17 (inaudible) case -- or 2025 case numbers on this.

18 THE COURT: All right, we will grant your motions
19 for summary judgment. You will eFile the proposed order.
20 We would inform (inaudible) saying that motion for
21 summary judgment was granted. If we hear from Mr. Moore,
22 I will invite them to send in a brief, and set them both
23 to having a (inaudible) I mean, (inaudible) Charleston so
24 it's (inaudible) if that is -- if that is necessary and
25 that will probably be their response. So, if you'll just
26 eFile those orders within the next 10 days.

1 MR. PAGLIARINI: Very well. Thank you, Your Honor.
2 I appreciate your time.

3 THE COURT: All right, thank you.

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6 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

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CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Richland

I, JESSICA ANTONUCCI, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the hearing of the captioned case, relative to appeal, in South Carolina Circuit Court 5, on the 6th day of August, 2025.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Jessica N. Antonucci

Transcriber

December 19, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble Circuit Court Judge

Case No. 2025-001903

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SC Court of Appeals

Bush River C-Store, LLC, Appellant,

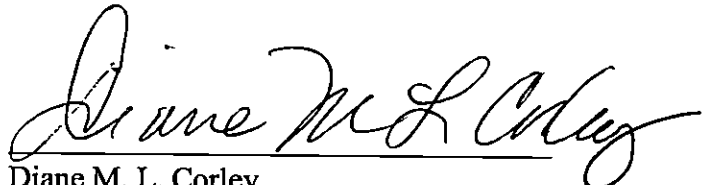
v.

South Carolina Department of Transportation, Respondent.

PROOF OF SERVICE

I, Diane M. L. Corley, an employee of Moore Bradley Myers Law Firm, P.A., certify that I have served the Appellant's Initial Brief and Designation of Matter by transmitting a copy of same on April 20, 2026, by electronic mail, addressed to its attorney of record as follows:

David G. Pagliarini, Esquire
Pagliarini Law Firm, LLC
145 River Landing Drive, Suite 101-B
Daniel Island, SC 29492
E-mail: david@lawplf.com


Diane M. L. Corley



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 Sheila McNair Robinson
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 Ralph Nichols Riley, Jr.
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 Lester McGill Bell, Jr.
 Sierra Carini Hartley
 Emily E. Collins

Melissa K. Moore
 Catherine Liscusky Jumper
 Brian M. Eckstrom
 Joshua S. E. Martin
 Madison B. Kelly

Retired
 J. Mark Taylor**
 C. David Sawyer, Jr.*
 Billy C. Coleman (1916-2019)
 Stanley L. Myers** (1976-2023)
 Robert D. Hazel* (1936-2024)

April 20, 2026

VIA E-MAIL: ctappfilings@sccourts.org
VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
 Clerk, South Carolina Court of Appeals
 1220 Senate Street
 Columbia, South Carolina 29201

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APR 20 2026

SC Court of Appeals

RE: Bush River C-Store, LLC vs. SC Department of Transportation
 Appellate Case No.: 2025-001903

Dear Ms. Kitchings:

Please find included with this cover letter Appellant's Initial Brief and Designation of Matter with Attorney Certification for filing of the same.

Thank you in advance for your assistance in this matter.

Yours very truly

s/S. Jahue Moore
 S. Jahue Moore

SJM:dc
 Enclosures
 cc w/encls.: David G. Pagliarini, Esquire

MBM MOORE
BRADLEY
MYERS

PO Box 5703, West Columbia SC 29171
1700 Sunset Boulevard, West Columbia SC 29169

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APR 20 2026

SC Court of Appeals

VIA HAND DELIVERY

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