

RECEIVED
Jul 23 2026
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Marvin H. Dukes III, Circuit Court Judge
Circuit Case No: 2024-CP-10-04474

Appellate Case No: 2026-001589

Exchange Club Fair of Charleston, Inc.

Appellant,

v.

Charleston Area Regional Transportation Authority,

Respondent.

MOTION TO DISMISS

Respondent Charleston Area Regional Transportation Authority (“CARTA”) respectfully moves for an order from this Court dismissing Appellant’s Appeal. CARTA’s motion is based upon the failure of the Appellant to qualify as an aggrieved party in relation to the lower court’s June 18, 2026 Order, as required by Rule 201(b), SCRAC, and the untimely filing of Appellant’s Notice of Appeal as it relates to the lower court’s October 24, 2024 and January 14, 2025 Orders. Appellant, in filing this appeal, is transparently seeking nothing more than to extend the statutory stay of the condemnation proceedings that has been in effect for more than two years by operation of S.C. Code Ann. § 28-2-470.

I. SINCE THERE CAN BE NO IMPROVEMENT IN APPELLANT’S LEGAL POSITION, REGARDLESS OF THIS COURT’S RULING ON THE ISSUES PRESENTED BY THIS APPEAL, APPELLANT DOES NOT QUALIFY AS AN “AGGRIEVED PARTY” UNDER RULE 201, SCRAC.

Appellant’s Notice of Appeal shows, without the necessity of a further review of the record in this case, that it has failed to suffer any injury in a legal sense. The Appellant appeals the lower court’s June 18, 2026 Order granting summary judgment *in favor of the Appellant*. That Order is a final order and disposes of all substantive issues raised in the Appellant’s original complaint. Despite that fact, Appellant asks this Court to review and overrule a narrow finding that does not have any effect on the Appellant’s rights or remedies in this case.

Appellant brought this action, pursuant to S.C. Code Ann. § 28-2-470, challenging the authority of CARTA to exercise the right of condemnation over six (6) acres of real property located in Charleston County, South Carolina (**Ex. C – Appellant’s Notice of Appeal, Pgs. 1-2**). In a pre-trial motion, the Court dismissed Plaintiff’s first cause of action pursuant to Rule 12(b)(6), SCRCP, which alleged that CARTA lacked statutory authority to exercise the power of eminent domain under S.C. Code Ann. § 58-25-50(d) (**Ex. A – Appellant’s Notice of Appeal**). A subsequent motion for reconsideration was denied by the trial court (**Ex. B – Appellants Notice of Appeal**). Thereafter, the trial court granted summary judgment *in favor of the Appellant* on the unrelated grounds that a formal vote of Charleston County Council approving the exercise of eminent domain was required prior to serving the notice of condemnation, and as a result CARTA failed to satisfy a condition precedent to exercising its statutory authority (**Ex. C – Appellant’s Notice of Appeal**).

Appellant was therefore the “prevailing party” at the trial court (**Ex. C – Appellant’s Notice of Appeal, Pg. 9**). Appellant now appeals the Court’s order granting summary judgment “*to the extent the Court reaffirmed its prior ruling, holding that S.C. Code Ann. §58-25-50(d)*

authorizes CARTA to exercise the power of imminent domain for fee simple taking of property contiguous to a right-of-way, and that the proposed parking area constituted a “facility” under the statute” (Appellant’s Notice of Appeal, ¶ 3).

The Appellant is barred from appealing to this Court under these circumstances. “The right of appeal arises from and is controlled by statutory law.” Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). As set forth in S.C. Code Ann. § 18-1-30, only a “party aggrieved” may appeal. *See also* Rule 201(b), SCACR (“Only a party aggrieved by an order, judgment, sentence or decision may appeal.”). *See also* Ralph v. McLaughlin, 432 S.C. 640, 649, 856 S.E.2d 154, 158 (2021). [A]n aggrieved party with[in the meaning of the] statute relating to appeals is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation. Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970) (quoting Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970)).

In short, a party who has suffered no adverse effect from the ruling(s) of the trial court is not entitled to an appeal. In Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970), the Supreme Court reviewed the appeal of a mortgage holder that was named as a defendant in a case brought to foreclose a mechanic’s lien. The case was adjudicated by a jury finding in favor the party asserting a mechanic’s lien, and the property was ordered to be sold subject to the first mortgage which was held by the Appellant. Id. The Court noted that the lower court had affirmed that the Appellant had a first priority lien on the property, and that there could “*be no benefit or improvement in the Appellant's position should we reverse the judgment of the lower court.*” Id. As such, the Court ruled, the appellant was not an aggrieved party.

As in McWhorter, there can be no improvement in the Appellant's position in this case regardless of how this Court rules on the underlying substance of the lower court's rulings. Ultimately, this Court can rule one of two ways: (1) it can find that the lower court erred in finding that CARTA had the statutory authority as a regional transportation authority under S.C. Code §58-25-50(d) to exercise the power of eminent domain over the subject property, or (2) it can find that the lower court did not err in its finding that CARTA has eminent domain authority. In the first scenario, appellant's position is not improved because the lower court ultimately ruled that CARTA was not entitled to condemn the subject property based upon its failure to receive an affirmative vote of Charleston County Council prior to serving its notice of condemnation, thus rendering the issue of CARTA's statutory authority moot. The underlying condemnation was dismissed. In the second scenario, the trial court's prior ruling will be upheld based on failure of a condition precedent. There simply is no scenario in which the Appellant's right(s), legal position, or available remedies will be altered by having this appeal heard by this Court. The underlying condemnation was dismissed in favor of the Appellant as a result of the lower court's June 18, 2026 Order.

II. THE LOWER COURT'S ORDER DISMISSING PLAINTIFF'S FIRST CAUSE OF ACTION CHALLENGING STATUTORY AUTHORITY WAS IMMEDIATELY APPEALABLE AND APPELLANT'S FAILURE TO FILE A TIMELY NOTICE OF APPEAL WARRANTS DISMISSAL OF THE APPEAL

"The right of appeal arises from and is controlled by statutory law." Ex parte Capital U–Drive–It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). "An appeal ordinarily may be pursued only after a party has obtained a final judgment." Id. citing S.C. Code Ann. § 14–3–330(1); Rule 72, SCRPC; Rule 201(a), SCACR. "The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by Section 14–3–330 of the South Carolina Code (1977 & Supp.2013)." Id. "Absent a specialized statute, an order must fall into one

of several categories set forth in [s]ection 14–3–330 in order to be immediately appealable.” Id. “An order ‘involves the merits,’ as that term is used in [s]ection 14–3–330(1)[,] and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense.” Id. at 7, 630 S.E.2d at 467.

Though the *denial* of a motion to dismiss pursuant to Rule 12(b)(6) is not appealable, a motion *granting* such a motion is immediately appealable due to the fact that it impacts a substantial right. Link v. Sch. Dist. of Pickens Cnty., 302 S.C. 1, 393 S.E.2d 176 (1990). *See also* Woodard v. Westvaco Corp., 319 S.C. 240, 460 S.E.2d 392 (1995) (ruling the denial of a Rule 12(b)(1), SCRCF motion was not immediately appealable); Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993) (ruling the denial of a Rule 12(b)(2), SCRCF motion was not immediately appealable); Moyd v. Johnson, 289 S.C. 482, 347 S.E.2d 97 (1986) (ruling the denial of a Rule 12(b)(6), SCRCF motion was not immediately appealable). The Court ultimately ruled in Link that an order dismissing a cause of action pursuant to either Rule 12(b)(6) or Rule 56 may also be raised on appeal following a final order. However, the facts and law of this case are distinguishable from those in Link.

This is an action under S.C. Code Ann. § 28-2-470 challenging condemnation authority, which is an action in equity. *Please see Footnote 3, Georgia Dept. of Transp. V. Jasper County*, 355 S.C. 631, 636, 586 S.E.2d 853, 855 (2003). Barring instances of fraud, lack of a public use, lack of condemnation authority, or defective enabling legislation, nearly all grounds for challenging a condemnation are without prejudice so long as any infirmities can be remedied or cured at a later time. *Please see Hill v. York County Natural Gas Authority*, 384 S.C. 483, 682 S.E.2d 809 (2009). *See also Southern Dev. And Golf Co. v. South Carolina Pub. Serv. Auth.*, 305 S.C. 507, 409 S.E.2d 428, 814 (Ct. App. 1991), *aff’d as modified*, 311 S.C. 29, 429 S.E.2d 7418

(1993). That was ultimately the result in this case as the trial court ruled that “[t]his dismissal is without prejudice to CARTA’s ability to serve a new condemnation notice upon Plaintiff at a future date in accordance with governing and applicable law” (Ex. C – Appellant’s Notice of Appeal, pg. 9).

Appellant’s underlying complaint and posture of the case was therefore different from that in Link. Here, the Appellant’s complaint contained one single cause of action that would have had a permanent dispositive effect on CARTA’s ability to condemn the subject property. Plaintiff’s assertion that CARTA lacked statutory authority to exercise condemnation authority would have been dispositive not only to the entire case, but it would have had a permanent and prejudicial effect on the relative position of the parties. In such instance, CARTA could not have brought forth a new condemnation against the subject property for its intended use barring a change in the statute by the legislature. By comparison, all remaining grounds in Appellant’s challenge action would have been without prejudice since such matters, although potentially defective, could have ultimately been cured or remanded for further evaluation.

Therefore, the time for an appeal of the lower court’s October 24, 2024 Order or its Order denying reconsideration of the same dated January 14, 2025 would have been nearly a year and a half ago. Win or lose, an appeal was clearly going to be filed in this case, and Appellant intentionally elected to engage in drawn out litigation rather than immediately appeal the primary finding of the lower court affirming CARTA’s eminent domain authority when it was Appellant’s only cause of action that would have barred future condemnation attempts by CARTA. Appellant has effectively prolonged the statutorily imposed stay under S.C. Code Ann. § 28-2-470 and weaponized the courts against CARTA by filing this appeal, which should warrant dismissal.

Respectfully submitted,

BURR & FORMAN LLP

Dated: July 23, 2026

s/ T. Jarrett Bouchette
T. Jarrett Bouchette, Esq. (SC Bar No. 101122)
R. Stewart Miller, Esq. (SC Bar No. 101313)
Post Office Box 336 (29578)
2411 North Oak Street, Suite 206
Myrtle Beach, SC 29577
Telephone: (843) 444-1107
jbouchette@burr.com
rsmiller@burr.com

*Attorneys for the Respondent Charleston Area
Regional Transportation Authority*

RECEIVED

Jul 23 2026

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Marvin H. Dukes III, Circuit Court Judge
Circuit Case No: 2024-CP-10-04474

Appellate Case No: 2026-001589

Exchange Club Fair of Charleston, Inc.

Appellant,

v.

Charleston Area Regional Transportation Authority,

Respondent.

PROOF OF SERVICE

I certify that I served Respondent's Motion to Dismiss, on the other party to this matter via email to its counsel of record on July 23, 2026, containing the above-referenced document as attachment in .pdf, sent to the email addresses shown below:

Richard D. Bybee (S.C. Bar No. 1063)

rdb@bybeetibbals.com

Jeffrey S. Tibbals (S.C. Bar No. 72628)

jst@bybeetibbals.com

Evan P. Williams (S.C. Bar No. 101981)

ewilliams@bybeetibbals.com

Bybee & Tibbals, LLC

1100 Queensborough Boulevard, Suite 202

Mt. Pleasant, SC 29464

July 23, 2026

s/ T. Jarrett Bouchette
T. Jarrett Bouchette, Esq. (SC Bar No. 101122)
R. Stewart Miller, Esq. (SC Bar No. 101313)
BURR & FORMAN LLP
Post Office Box 336 (29578)
2411 North Oak Street, Suite 206
Myrtle Beach, SC 29577
Telephone: (843) 444-1107
jbouchette@burr.com
rsmiller@burr.com

*Attorneys for the Respondent Charleston Area
Regional Transportation Authority*



T. Jarrett Bouchette
jbouchette@burr.com
Direct Dial: (843) 443-3056
Direct Fax: (843) 443-3056

RECEIVED

Jul 23 2026

SC Court of Appeals

Burr & Forman LLP
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address:
Post Office Box 336
Myrtle Beach, SC 29578

Office (843) 444-1107

BURR.COM

July 23, 2026

VIA EMAIL ONLY (CTAPPFILINGS@SCCOURTS.ORG)

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

Re: *Exchange Club Fair of Charleston, Inc. vs. Charleston Area Regional Transportation Authority*
Case No. 2026-001589 (Appeal from Circuit Court Case No. 2024-CP-10-04474)
Our File No. 2069639.0000002

Dear Ms, Kitchings:

In connection with the above referenced matter, enclosed for filing, on behalf of the Respondent Charleston Area Regional Transportation Authority ("CARTA"), please find the following documents:

1. Motion to Dismiss; and
2. Proof of Service.

By copy to its counsel of record on the filing transmittal email, Appellant Exchange Club Fair of Charleston, Inc. has been served with the Motion to Dismiss.

A check payment for the filing fee of \$50.00 is being mailed to the Court under separate cover.

Very truly yours,

T. Jarrett Bouchette
Burr & Forman LLP

July 23, 2026

Page 2

TJB/ker

Enclosures

cc: Richard D. Bybee (*via email* - rdb@bybeetibbals.com)
Jeffrey S. Tibbals (*via email* - jst@bybeetibbals.com)
Evan P. Williams (*via email* - ewilliams@bybeetibbals.com)