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SC Court of Appeals

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 Court 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.

APPELLANT’S RETURN TO RESPONDENT’S MOTION TO DISMISS

Appellant Exchange Club Fair of Charleston, Inc. (“ECFC”) submits this Return in opposition to the Motion to Dismiss filed by Respondent Charleston Area Regional Transportation Authority (“CARTA”) on July 23, 2026. The Motion should be denied.

In seeking to dismiss ECFC’s appeal, CARTA advances two contradicting and incompatible arguments. Part I insists that the ruling ECFC appeals is of no consequence; that there is “no scenario in which the Appellant’s right(s), legal position, or available remedies will be altered” by appellate review. Mot. at 6. Part II insists that the very same ruling carries “a permanent and prejudicial effect on the relative position of the parties,” and that had ECFC

prevailed on it, “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.” Mot. at 6. Both cannot be true. The second is correct, and it disposes of the first.

I. BY CARTA’S OWN ACCOUNT, THIS APPEAL PRESENTS THE ONLY ISSUE IN THE CASE WITH PERMANENT CONSEQUENCES.

A. CARTA Describes the Ruling on Appeal as Dispositive of the Parties’ Rights in the Property.

The Court need not take ECFC’s word for the significance of the question presented on appeal. CARTA has described it, at length and without qualification, in the Motion now before this Court:

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.

Mot. at 6 (emphasis added).

CARTA is correct: the construction of S.C. Code Ann. § 58-25-50(d) determines whether CARTA may ever acquire fee simple title to ECFC’s property by condemnation for the construction of a park-and-ride bus station. The question of CARTA’s statutory authority to condemn the subject parcel presents an issue that, indisputably, cannot be cured absent legislative action. That is why ECFC pleaded it, why the circuit court addressed it twice, and why ECFC appeals it.

CARTA also acknowledged that appellate review of this question was inevitable: “Win or lose, an appeal was clearly going to be filed in this case.” Mot. at 6. CARTA’s quarrel does not seem to be about whether the question should be decided, but when. For the reasons to be

explained, *infra*, the current path to final review of the statutory authority decision is the most efficient and streamlined approach.

B. The Condemnation Was Dismissed Without Prejudice, and CARTA Has Announced that It Will Serve a New Condemnation Notice for the Same Property and Same Property Interest.

The circuit court dismissed the condemnation “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.” Mot. at 6 (quoting June 18, 2026 Order at 9).¹ CARTA has advised ECFC that it intends to do exactly that. Indeed, prior to ECFC initiating this appeal, an appraiser retained by CARTA contacted ECFC’s counsel to arrange a new inspection of the property. See July 16, 2026 letter to Judge Dukes from ECFC’s counsel, attached as Exhibit A hereto; Exhibit B attached hereto, emails between ECFC’s counsel and appraiser Scott Johnstone exchanged June and July 2026 (a few hours after the lower court’s final Order was entered on June 16, 2026, Mr. Johnstone emailed, stating “I have been asked [by] CARTA to again appraise the Exchange Park Fairgrounds in Ladson.” (Ex. B at 2)).²

The § 58-25-50(d) question therefore governs the parties’ rights going forward. If this Court agrees with ECFC, no renewed condemnation of this property for the same property interest and purpose may proceed. If this Court disagrees, CARTA proceeds. That is a live dispute with immediate and concrete consequences for both parties—the opposite of an academic question.

¹ The lower court’s June 18, 2026 Order, also referenced herein as the final order, was filed as Exhibit C to ECFC’s Notice of Appeal.

² Mr. Johnstone emailed ECFC’s counsel the business day after this appeal was initiated, advising that the appraisal had been cancelled. Ex. B at 1.

C. If The Question Is Not Reviewed Now, It May Never Be Reviewed at All.

CARTA does not disclaim the preclusive effect of the ruling. It embraces it, telling this Court that a contrary holding would have prevented any renewed condemnation “barring a change in the statute by the legislature.” Mot. at 6. The corollary of that position is that CARTA regards the ruling as it stands to be equally durable in ECFC’s *disfavor*.

The consequences of such a collateral estoppel or *res judicata* sequence would deprive ECFC of the right to appeal an adverse decision of its most powerful and impactful argument. If ECFC may not appeal now because it prevailed on a separate and curable ground, and if CARTA maintains (as expected) in the next proceeding the position it advances here, a purely legal question concerning the outer limits of a regional transportation authority’s power to condemn private property will have escaped appellate review—not because it lacks importance, but because the landowner won on a different ground CARTA contends it can cure. Judicial economy points the same direction. The question is legal, was fully briefed below, is reviewed *de novo*, and deciding it now spares the parties and the courts from litigating it a second time.

II. ECFC IS AN AGGRIEVED PARTY.

A. A Litigant that Prevails in Part but Loses a Cause of Action Is Aggrieved as to the Claim It Lost.

A party is aggrieved when a judgment “operates on his rights of property or bears directly upon his interest.” *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970); *see also* Mot. at 3 (quoting same, quotation marks omitted). CARTA’s contrary argument reduces to the proposition that ECFC was “the ‘prevailing party’ at the trial court” and therefore may not appeal anything, even the dismissal of one of its claims. Mot. at 2.

That reasoning has been considered and rejected. In *Forney v. Apfel*, 524 U.S. 266 (1998), the United States Supreme Court reviewed and reversed a decision dismissing an appeal on

precisely that ground. The Ninth Circuit had held that an appellant had obtained a favorable disposition, ergo the appellant was “a ‘prevailing’ party and therefore cannot appeal.” *Id.* at 271. A unanimous Supreme Court reversed. While “a party who receives all that he has sought generally is not aggrieved by the judgment affording the relief and cannot appeal from it,” a party “is ‘aggrieved’ and ordinarily can appeal a decision ‘granting in part and denying in part the remedy requested.’” *Id.* (quoting *United States v. Jose*, 519 U.S. 54, 56 (1996)); *see id.* at 272 (collecting cases permitting appeals by prevailing parties denied lost profits, reinstatement, punitive damages, attorney’s fees, consequential damages, and injunctive relief).

ECFC does not suggest these federal decisions bind this Court. They are offered as persuasive illustration of the principle that Rule 201(b), SCACR, states in the same terms: aggravement is measured by the relief sought and denied, not by a tally of which party came out ahead overall. ECFC pleaded six causes of action and lost one. Prevailing on another does not transform the dismissal of the first into a ruling in ECFC’s favor.

Cisson does not support dismissal or an inability to appeal, despite CARTA’s efforts to cast it as such. The appellant there was a mortgage holder whose first-priority lien had been affirmed and whose position was identical whether the judgment stood or fell, such that there could “be no benefit or improvement in the Appellant’s position should we reverse.” 255 S.C. at 178, 177 S.E.2d at 605. Here, as CARTA itself explains, the difference between affirmance and reversal is the difference between a condemnation CARTA may renew at will and one it may not pursue at all. Mot. at 6.

B. A Prevailing Party May Appeal Portions of a Judgment that Affect It Adversely.

That a litigant prevailed overall does not prohibit review of portions of the judgment that it lost. As Justice Powell put it, writing in dissent in *Deposit Guaranty National Bank v. Roper*,

445 U.S. 326 (1980), “[t]here never has been any doubt that a party may appeal those aspects of a generally favorable judgment that affect him adversely.” *Id.* at 347 (Powell, J., dissenting). The majority agreed, holding that “[i]n an appropriate case, appeal may be permitted from an adverse ruling collateral to the judgment on the merits at the behest of the party who has prevailed on the merits.” *Id.* at 334. The Court further observed that the notion of barring appeals by a party who “receives all that he has sought” is “derived from the statutes granting appellate jurisdiction and the historic practices of the appellate courts”—a rule addressed to litigants with nothing at stake, not to litigants who lost something. *Id.* at 333–34.

The leading illustration is *Electrical Fittings Corp. v. Thomas & Betts Co.*, 307 U.S. 241 (1939). There the trial court dismissed a patent infringement suit in the defendants’ favor but adjudged the patent claim valid. The Second Circuit dismissed the defendants’ appeal because they had obtained all relief to which they were entitled, and because in that court’s view the decree would not bind them in later suits “as a matter of collateral estoppel or otherwise.” *Roper*, 445 U.S. at 334 (discussing *Elec. Fittings*). The Supreme Court reversed. Although “the adjudication was immaterial to the disposition of the cause, it stands as an adjudication of one of the issues litigated,” and the prevailing parties were entitled to appeal. *Elec. Fittings*, 307 U.S. at 242.

Two features of that decision bear emphasis, and *Roper* confirms both. First, no showing of preclusive effect was required: this Court “did not question the view that the ruling on patent validity would have no effect on subsequent litigation,” and permitted the appeal regardless. *Roper*, 445 U.S. at 334. It was the appellants’ concern that the ruling might be given “stare decisis or collateral-estoppel” effect that supplied the requisite stake. *Id.* at 337. Second, relief was available even though the adverse determination was unnecessary to the judgment. *Elec. Fittings*, 307 U.S. at 242.

C. The Relief Available Is Not Limited to Reformation of the Judgment.

The *Electrical Fittings* Court directed reformation of the decree rather than review of the merits, but that limitation reflected the nature of the ruling at issue rather than a ceiling on the relief available to a prevailing appellant. The offending adjudication there was surplusage—a gratuitous finding of validity in a decree that dismissed the complaint on other grounds. Striking it gave the appellants everything they needed; as *Roper* explained, their interest “was satisfied fully when the petitioners secured an appellate decision eliminating the erroneous ruling from the decree.” 445 U.S. at 337.

Where excision will not suffice, review follows. *Roper* itself so holds. The Court identified the governing principle—“[a]lthough the Court limited the appellate function to reformation of the decree, the holding relevant to the instant case was that the federal courts retained jurisdiction over the controversy notwithstanding the District Court’s entry of judgment in favor of petitioners” — and then held that the prevailing plaintiffs, “[a]s in *Electrical Fittings*, ... were entitled to have this portion of the District Court’s judgment reviewed.” *Id.* at 335, 336. The Court of Appeals in *Roper* had reversed the certification ruling on the merits, and this Court affirmed that disposition. *Id.* at 331, 340.

The distinction disposes of any suggestion that ECFC is confined to having the § 58-25-50(d) language struck from the June 18, 2026 Order. The ruling ECFC challenges is not surplusage appended to a disposition resting on other grounds. It is a disposition: it dismissed ECFC’s First Cause of Action. Excising the language would not restore the claim. Only review and reversal can.

Applying the framework *Roper* distilled from *Electrical Fittings*, appeal lies where “there had been an adverse decision on a litigated issue,” the appellant “continue[s] to assert an interest in the outcome of that issue,” and the question is of sufficient importance, 445 U.S. at 335 n.7.

Each element is satisfied here, and more strongly than in either federal case. The October 24, 2024 Order was an adverse decision on a fully litigated issue, briefed and argued and then re-affirmed in the final Order. ECFC’s interest in that issue is immediate: CARTA has announced a renewed condemnation of the same property, to which the ruling will apply. And CARTA does not merely leave the ruling’s future effect uncertain, as the record left it in *Electrical Fittings*; CARTA affirmatively asserts that effect. Mot. at 6.

ECFC does not suggest these federal decisions bind this Court, and the Article III considerations that framed them have no counterpart in Rule 201(b), SCACR. They are offered because they address the same question this Motion presents: whether a litigant who prevailed overall may obtain review of a discrete ruling that went against it. Their reasoning illuminates why the answer is yes.

C. ECFC’s Appeal is Properly Limited to Only the Ruling and Re-Affirmance that Aggrieved It.

CARTA repeatedly characterizes this appeal as ECFC “appeal[ing] the lower court’s June 18, 2026 Order granting summary judgment in favor of the Appellant.” Mot. 2. That is not what the Notice of Appeal states, as CARTA acknowledges two paragraphs later when it quotes the Notice accurately. Mot. 2–3. ECFC appeals the adverse ruling on its claim concerning S.C. Code § 58-25-50(d), first entered October 24, 2024 and expressly re-affirmed within the June 18, 2026 Order.

South Carolina law requires nothing more. In *Link v. School District of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990), the appellant appealed only the intermediate order and advanced no argument concerning the final judgment. The *Link* Court overruled *Huyler v. Kohn*, 156 S.C. 437, 153 S.E. 460 (1930), and held that a party contesting an intermediate order need not

also attack the final judgment, because that rule would compel litigants to advance arguments “no matter how frivolous.” 302 S.C. at 7, 393 S.E.2d at 179.

Nor is another route available. An additional sustaining ground under Rule 220(c), SCACR, serves only to sustain the result reached below; it affords no affirmative relief from an adverse ruling.

III. THE APPEAL IS TIMELY.

A. *Link* Holds That a Party Is Entitled to Wait Until Final Judgment to Appeal an Intermediate Order Dismissing a Cause of Action.

In *Link*, the trial court granted summary judgment against the plaintiff on his breach of contract claim. He did not immediately appeal. The case proceeded to a jury verdict against him on his remaining claim, and only then did he appeal the earlier ruling. The defendant argued, as CARTA argues here, that the appeal came too late. 302 S.C. at 3–4, 393 S.E.2d at 177–78.

The Supreme Court rejected that argument without qualification: “A summary judgment ruling, as well as a 12(b)(6) dismissal, fits within this definition. Section 14-3-330(1) allows a party to wait until final judgment to appeal intermediate orders ‘necessarily affecting the judgment not before appealed from.’ ... Hence, *Link* was entitled here, under § 14-3-330(1), to **wait until final judgment to appeal the summary judgment ruling** against him.” 302 S.C. at 6, 393 S.E.2d at 178–79 (emphasis added).

The Court likewise rejected the structural premise underlying CARTA’s Motion. The defendant in *Link* argued that because the order fell within § 14-3-330(2), it had to be appealed immediately. The Court responded: “Implicit in the School District’s contention is the idea that § 14-3-330(1) and (2) are exclusive provisions, and that a given ruling may not fall within the confines of both. We reject this argument.” 302 S.C. at 6, 393 S.E.2d at 178 (emphasis added).

B. The South Carolina Decision Holding that a Partial Rule 12(b)(6) Dismissal Must Be Appealed Immediately Has Been Overruled.

The development of the law has run in the opposite direction from the one CARTA describes. In *Plaza Development Services v. Joe Harden Builder, Inc.*, 296 S.C. 115, 370 S.E.2d 893 (Ct. App. 1988), this Court held that an order granting a Rule 12(b)(6) motion as to some but not all claims was not immediately appealable, and dismissed the appeal as premature. 296 S.C. at 118, 370 S.E.2d at 895. This Court instructed that “[o]nce final judgment is entered, Plaza may appeal the issues raised by the Rule 12(b)(6) motion as part of any appeal from final judgment.” *Id.* at 118–19, 370 S.E.2d at 895.

Two years later, the Supreme Court overruled *Plaza Development* — but only “to the extent it holds that one **may not** appeal the granting of a 12(b)(6) motion under § 14-3-330 if the ruling affects some but not all of a party’s causes of action.” *Link*, 302 S.C. at 4 n.2, 393 S.E.2d at 178 n.2 (emphasis added). *Link* thus **enlarged** the options available to a litigant in ECFC’s position: such a party may appeal immediately, or it may await final judgment.

On the precise question CARTA raises—whether a party may appeal such an order after final judgment—*Plaza Development* and *Link* agree that ECFC’s appeal is timely. *Plaza Development* held the party must wait. *Link* holds the party may wait. Neither ever suggested that waiting to appeal until after final judgment forfeits the right. CARTA asks this Court to adopt a rule that no South Carolina decision has announced or supported, one which was rejected by the controlling *Link* opinion, as well as the *Plaza Development* decision that it overruled.

C. CARTA’s Attempted Distinction Establishes ECFC’S Entitlement Rather than Defeating It.

CARTA acknowledges the holding of *Link*: “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...” but CARTA then asserts that “the facts and law of this case are distinguishable” because ECFC’s first cause of action is uniquely consequential. Mot. at 5-6.³

The distinction is self-defeating. An order “involves the merits” under § 14-3-330(1) precisely when it “finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense.” *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (other citations omitted). The more forcefully CARTA insists that the October 24, 2024 Order was substantial and dispositive, the more securely that Order falls within subsection (1), the provision that expressly permits a party to “wait until final judgment to appeal.” *Link*, 302 S.C. at 6, 393 S.E.2d at 178-79.

CARTA’s rule would also invert the statute and its underlying policy: the more important the dismissed claim, the more readily appellate review would be forfeited by a party that elected to litigate its remaining claims to judgment rather than fragment the case into successive appeals.

D. Rule 72, SCRCP, and Its Official Note Reserve Rulings on Motions Addressed to the Pleadings for an Appeal from Final Judgment.

ECFC does not contend that Rule 72, SCRCP, is a source of appellate jurisdiction. Jurisdiction is conferred by statute. See Rule 82(a), SCRCP; *N.C. Fed. Sav. & Loan Ass’n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986). The Rule and its official Note are relevant for a different reason: they state the policy of South Carolina practice concerning appeals from interlocutory orders, and that policy is directly contrary to the rule CARTA asks this Court to impose.

³ Contrary to CARTA’s Motion, ECFC’s Complaint did not contain “one single cause of action.” Mot. at 6. The Complaint, which the October 24, 2024 and January 14, 2025 orders ruled on (Notice of Appeal Exs. A, B), asserted six (6) causes of action. The Amended Complaint contained five causes of action, including the challenge of the statutory right under S.C. Code § 58-25-50(d).

Rule 72 provides that “[a]ppeal may be taken, as provided by law, from any final judgment or appealable order.” The official Note explains:

This Rule 72 parallels, in part, S.C. Code § 14-3-330, but is designed to reduce appeals from interlocutory or intermediate orders in an action. It accords with the modern decisions of the Supreme Court narrowing “dilatory appeals” from such interlocutory orders as grant or deny motions addressed to the pleadings, motions at trial, and the like. All such questions are left to the appeal from final judgment or order of dismissal. There is no conflict with the Supreme Court jurisdictional statutes and all statutory rights to appeal are preserved specifically by subdivision (6).

Rule 72, SCRPC, Note. The motion the lower court ruled on to dismiss ECFC’s first cause of action was CARTA’s Rule 12(b)(6) motion (*e.g.*, Mot. at 2), which is addressed to the pleadings. The Note states that orders granting such motions are among the interlocutory rulings from which appeals are to be reduced, and that “[a]ll such questions are left to the appeal from final judgment or order of dismissal.” That is the course ECFC followed.

The Note also answers CARTA’s rhetoric. CARTA faults ECFC for having “intentionally elected to engage in drawn out litigation rather than immediately appeal.” Mot. 6. But it is the immediate interlocutory appeal that the drafters of the South Carolina Rules of Civil Procedure characterized as “dilatory,” and that Rule 72 was designed to discourage. CARTA asks this Court to compel the very practice our Rules disfavor, and to penalize ECFC for declining to pursue it.

E. CARTA’s Remaining Authorities Address Whether an Appeal May Be Taken, Not Whether One Must Be.

CARTA’s string citation collects cases holding that the denial of a motion is not immediately appealable. *See* Mot. at 5 (citing *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995); *Mid-State Distribs.*, 310 S.C. 330, 426 S.E.2d 777; *Moyd v. Johnson*, 289 S.C. 482, 347 S.E.2d 97 (1986)). None addresses the consequence of declining to take an available,

permissible immediate appeal from a granted motion. As CARTA’s own parentheticals reflect, each holds only that a particular order was not immediately appealable.

F. CARTA’s Rule Could Have Produced Two Appeals Instead of One and Substantially Increased the Time to Obtain a Final Appellate Decision.

Appellate review of a question of statutory construction consumes the same time whenever it is undertaken. Had ECFC appealed the October 24, 2024 Order immediately, this Court would have been asked to decide the identical § 58-25-50(d) question that is now posed, on the identical record, while five remaining causes of action proceeded in the circuit court—with the prospect of a second appeal to follow. ECFC’s course produced one appellate proceeding rather than two, and presents this Court with a single legal question in a case now concluded below. That is the economy that the final-judgment rule exists to promote.

Nor did ECFC’s election affect the statutory stay. The stay arises by operation of S.C. Code Ann. § 28-2-470 upon the timely filing of a challenge action and continues until that action is resolved. It would have operated identically had ECFC noticed an interlocutory appeal in 2024, because an interlocutory appeal would not have disposed of the challenge (and thus could have resulted in a stay of equal or greater duration). CARTA’s objection to the duration of the stay is an objection to the statute that the General Assembly enacted, not to any choice ECFC made.

G. CARTA’s Characterization of the Action as Equitable Does Not Supply the Forfeiture Rule It Needs.

CARTA argues that this is “an action in equity.” Mot. at 5. The characterization does not carry the weight CARTA places upon it, for two reasons.

First, the question presented by this appeal is the construction of S.C. Code Ann. § 58-25-50(d). Whatever the character of the action in which it arose, a question of statutory interpretation is a question of law. *Oien Family Invs., LLC v. Piedmont Mun. Power Agency*, 424 S.C. 168, 175,

817 S.E.2d 647, 651 (Ct. App. 2018) (where a decision is based upon statutory interpretation, “this presents a question of law”) (quoting *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 8, 760 S.E.2d 785, 788 (2014)). The equitable overlay described in *Georgia Department of Transportation v. Jasper County*, 355 S.C. 631, 636 n.3, 586 S.E.2d 853, 855 n.3 (2003), governs how an appellate court reviews findings of fact. It has no application to the purely legal question ECFC presents.

Second, the equitable characterization does not remove this appeal from § 14-3-330. Our Supreme Court has applied that section to determine the appealability of an interlocutory order entered in a mortgage foreclosure action—an action equitable in nature—without any suggestion that the statute was inapplicable on that account. *Twin States*, 289 S.C. at 481, 347 S.E.2d at 97 (“The jurisdiction of appellate courts is prescribed by S.C. Code Ann. § 14-3-330 (1976) The jurisdictional rights of appeal continue to be controlled by S.C. Code § 14-3-330.”). Section 14-3-330 therefore governs, subsection (1) supplies the rule, and *Link* resolves the question: ECFC was entitled to await final judgment.

Third, if CARTA means instead that the statutory words “in a law case” withdraw this action from subsection (1) altogether, its argument defeats itself. Appellate jurisdiction in equitable matters is addressed by S.C. Code Ann. § 14-3-320. *See* Rule 72, SCRCPP, Note (“Some of the relevant statutes are § 14-3-320 (equitable matters); § 14-3-330 (matters of law)”). Section 14-3-320 provides that the court “shall have appellate jurisdiction only in cases of chancery, and in such appeals, they shall review the findings of fact as well as the law.” It addresses the scope of appellate review. It says nothing about intermediate or interlocutory orders, prescribes no time within which such an order must be appealed, and creates no forfeiture.

The proviso on which this entire question turns—“provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any

intermediate order or decree necessarily affecting the judgment not before appealed from”—appears in § 14-3-330(1) and nowhere else in either statute. On CARTA’s own premise, then, no statute speaks to the timing of an appeal from the October 24, 2024 Order at all, and its forfeiture theory is left without a textual source of any kind.

Either way, CARTA loses. If Section 14-3-330 governs this action, as *Twin States* indicates, *Link* entitled ECFC to wait. If it does not, nothing imposes the forfeiture CARTA urges.

CONCLUSION

By CARTA’s own description, this appeal presents the only issue in the case with permanent consequences for the parties’ rights in the subject property—an issue that CARTA admits will govern the renewed condemnation it has announced it intends to bring. ECFC was aggrieved by the dismissal of that claim, and *Link* entitles ECFC to await final judgment before seeking review. ECFC respectfully requests that the Motion to Dismiss be denied.

Respectfully submitted,

s/ Jeffrey S. Tibbals

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

1100 Queensborough Boulevard, Suite 202

Mt. Pleasant, SC 29464

843.881.1623

*Attorneys for Appellant Exchange Club
Fair of Charleston, Inc.*

August 3, 2026

Exhibit A

Letter from Exchange Club Counsel to Judge Dukes dated
July 16, 2026

Appellant's Return to Respondent's Motion to Dismiss

Exchange Club Fair of Charleston, Inc., v. Charleston Area Regional Transportation Authority
Appellate Case No. 2026-001589

BYBEE & TIBBALS

1100 Queensborough Blvd., Suite 202
Mount Pleasant, SC 29464

843.881.1623

bybeetibbals.com

Jeffrey S. Tibbals
jst@bybeetibbals.com
843.513.1032

July 16, 2026

**VIA E-MAIL CORRESPONDENCE,
AND E-FILING**

The Honorable Marvin H. Dukes, III
P.O. Drawer 1128
Beaufort, SC 29901
mdukessc@sccourts.org

**Re: *Exchange Club Fair of Charleston, Inc. vs. Charleston Area Regional
Transportation Authority — Civil Action No. 2024-CP-10-04474***

Dear Judge Dukes:

I write on behalf of Plaintiff/Landowner Exchange Club Fair of Charleston, Inc. (“ECFC”), with a copy to counsel for Defendant/Condemnor Charleston Area Regional Transportation Authority (“CARTA”), to advise the Court, as a matter of courtesy, that ECFC intends to seek appellate review of one discrete legal issue decided earlier in this case, and also to address two related matters that remain pending before the Court.

At the outset, ECFC is grateful for the careful attention the Court devoted to the parties’ summary judgment briefing and argument, and it does not seek reconsideration of the Court’s findings and rulings in its June 18, 2026 Order (the “Order”) granting ECFC’s Motion for Summary Judgment. To the contrary, ECFC prevailed on that Motion and respectfully submits that the Court’s ruling on the questions contained in the Motion was correct in all respects.

The Scope and Purpose of the Anticipated Appeal. ECFC’s anticipated appeal is directed solely towards the Court’s interlocutory ruling, first set forth in the Form 4 Order dated October 24, 2024 and expressly re-affirmed in the June 18, 2026 Order. Specifically, the decision that S.C. Code Ann. § 58-25-50(d) confers upon CARTA the statutory authority to exercise the power of eminent domain as attempted in the condemnation action that preceded and gave rise to this Challenge Action. ECFC respectfully preserved its objection to that ruling through its November 1, 2024 motion to reconsider and by re-pleading the issue in its Amended Complaint, and it now seeks the appellate review to which it believes it is entitled on that purely legal question.

The decision to seek appellate review at this juncture arose, in part, from the parties’ exchange regarding the form of the proposed Order. Certain revisions proposed by CARTA’s counsel appeared to reflect an intention to argue, in any subsequent challenge action involving the same

property, that the Court's statutory-authority ruling is *res judicata* or otherwise preclusive. If that position were correct, ECFC could be deprived of any opportunity for appellate review of the statutory-authority issue, notwithstanding that the issue remains live and consequential to the parties.

That concern is not hypothetical. CARTA has advised ECFC that it intends to serve a new Notice of Condemnation with respect to the same property — which is, of course, CARTA's prerogative under governing law and as expressly contemplated by the Court's June 18, 2026 Order. Indeed, an appraiser retained by CARTA has already contacted the undersigned to request access to the property for a new appraisal. The statutory-authority question decided by the Court will therefore govern any renewed condemnation, and its resolution on appeal will materially affect the parties' rights going forward.

ECFC recognizes that CARTA might be willing to stipulate that it will not assert *res judicata* or collateral estoppel against the statutory-authority claim in a subsequent challenge action. Even with such a stipulation, however, ECFC respectfully submits that seeking appellate review now is the most orderly and expeditious means of obtaining a definitive resolution of the issue, sparing the parties and the courts the burden of relitigating the same legal question in a second proceeding.

Matters Remaining Before the Court. ECFC wishes to bring related points to the Court's attention.

ECFC's motion for costs remains pending, and ECFC anticipates filing its application for attorneys' fees within the next several days, consistent with the Court's express reservation of jurisdiction over such matters in the June 18, 2026 Order. ECFC respectfully submits that these matters are ripe and remain within the Court's jurisdiction, and that the anticipated appeal of the discrete statutory-authority issue does not divest the Court of authority to determine ECFC's entitlement to and the amount of any recoverable costs and fees. ECFC would welcome the opportunity to be heard on these matters at the Court's convenience.

ECFC is providing this letter to the Court in the interest of transparency and judicial economy, and is serving it simultaneously upon counsel for CARTA. ECFC does not, by this letter, seek any ruling or relief; it seeks only to keep the Court apprised of the anticipated appeal and the status of the matters that remain pending. Counsel for ECFC is, of course, available at the Court's convenience should the Court wish to schedule a status conference or address any of the foregoing.

Thank you for the Court's continued attention to this matter.

Very Respectfully Yours,

BYBEE & TIBBALS, LLC



Jeffrey S. Tibbals

cc: (via email only): T. Jarrett Bouchette, Esq.
R. Stewart Miller, Jr., Esq.

Exhibit B

June and July 2026 Emails between ECFC Counsel and
Appraiser Scott Johnstone

Appellant's Return to Respondent's Motion to Dismiss

Exchange Club Fair of Charleston, Inc., v. Charleston Area Regional Transportation Authority
Appellate Case No. 2026-001589

From: Scott Johnstone <sjohnstone@irr.com>
Sent: Monday, July 20, 2026 3:55 PM
To: Jeff Tibbals <jst@bybeetibbals.com>
Cc: Richard Bybee <rdb@bybeetibbals.com>
Subject: FW: Exchange Park Fairgrounds - Appraisal for CARTA

Jeff:

I hope you're having a great Monday.

Just wanted to let you know that I just got word that the appraisal has been cancelled. I won't need to inspect the property.

Scott B. Johnstone, MAI
Managing Director
Integra Realty Resources
11-C Isabella Street, Charleston, SC 29403
T 843.718.2125 ext. 3 | C 843.442.0286
sjohnstone@irr.com | www.irr.com/charleston | [IRR Viewpoint](#)

From: Scott Johnstone
Sent: Tuesday, July 14, 2026 3:59 PM
To: 'Jeff Tibbals' <jst@bybeetibbals.com>
Cc: Richard Bybee <rdb@bybeetibbals.com>
Subject: RE: Exchange Park Fairgrounds - Appraisal for CARTA

Jeff:

I hope you're having a great day.

My client asked me to check back with you about the inspection of the Exchange Park Fairgrounds.

Scott B. Johnstone, MAI
Managing Director
Integra Realty Resources
11-C Isabella Street, Charleston, SC 29403
T 843.718.2125 ext. 3 | F 843.718.2025
sjohnstone@irr.com | www.irr.com/charleston | [IRR Viewpoint](#)

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From: Jeff Tibbals <jst@bybeetibbals.com>
Sent: Thursday, June 18, 2026 3:45 PM
To: Scott Johnstone <sjohnstone@irr.com>
Cc: Richard Bybee <rdb@bybeetibbals.com>
Subject: Re: Exchange Park Fairgrounds - Appraisal for CARTA

Scott,

Thanks for reaching out. Although summary judgment was granted in favor of the Exchange Club in its challenge action against CARTA today, there are certain upcoming deadlines that will need to pass before the decision is final. Therefore, we believe that your request for an inspection is premature at this time. I will be happy to notify you once all of the deadlines have passed and we have a final decision that is not still subject to appeal.

Thanks again.

Jeff

Jeffrey S. Tibbals



BYBEE & TIBBALS
EMINENT DOMAIN & PROPERTY
RIGHTS LITIGATION

1100 Queensborough Blvd., Suite 202, Mt. Pleasant, SC 29464

O: 843-881-1623 D: 843-513-1032 E: jst@bybeetibbals.com

*** CONFIDENTIAL COMMUNICATION *** The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and permanently delete the e-mail.

From: Scott Johnstone <sjohnstone@irr.com>
Sent: Tuesday, June 16, 2026 4:14 PM
To: Jeff Tibbals <jst@bybeetibbals.com>
Subject: Exchange Park Fairgrounds - Appraisal for CARTA

Jeff:

I hope you are well.

I have been asked CARTA to again appraise the Exchange Park Fairgrounds in Ladson. I am reaching out to you about setting up a potential property inspection. Based on my recent appraisal of the property for SCDOT in April that an on-site physical inspection is unlikely given the controversy surrounding the project. I still wanted to reach out just in case.

Please advise.

Scott B. Johnstone, MAI

Managing Director

Integra Realty Resources

11-C Isabella Street, Charleston, SC 29403

T 843.718.2125 ext. 3 | F 843.718.2025

sjohnstone@irr.com | www.irr.com/charleston | [IRR Viewpoint](#)

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Aug 03 2026
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Marvin H. Dukes III, Circuit Court Judge
Circuit Court 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 have served Appellant's Return to Respondent's Motion to Dismiss, including its exhibits, on the other party to this matter via email (see attached email) to their respective counsel of record on August 3, 2026, containing the above-referenced document as an attachment in .pdf, sent to the addresses shown below.

R. Stewart Miller, Jr. (S.C. Bar No. 101313)
rsmiller@burr.com
T. Jarrett Bouchette (S.C. Bar No. 101122)
jbouchette@burr.com
BURR & FORMAN LLP
2411 N. Oak St., Suite 206
Myrtle Beach, SC 29577
Post Office Box 336 (29578)

Respectfully submitted,

s/ Jeffrey S. Tibbals

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

1100 Queensborough Boulevard, Suite 202

Mt. Pleasant, SC 29464

843.881.1623

*Attorneys for Appellant Exchange Club
Fair of Charleston, Inc.*

August 3, 2026

Exchange Club Fair of Charleston Inc. v. Charleston Area Regional Transportation Authority (2026-001589)

From Jeff Tibbals <jst@bybeetibbals.com>

Date Mon 8/3/2026 04:18 PM

To Miller, Jr., Stewart <rsmiller@burr.com>; Bouchette, Jarrett <jbouchette@burr.com>

Cc Jeff Tibbals <jst@bybeetibbals.com>; Richard Bybee <rdb@bybeetibbals.com>; Evan Williams <ewilliams@bybeetibbals.com>

 1 attachment (248 KB)

2026.08.03_ECFC.Return.MTD.w.Exs.pdf;

RECEIVED
Aug 03 2026
SC Court of Appeals

Good afternoon,

Attached please find, for service upon you, Appellant's Return to Respondent's Motion to Dismiss.

Thank you,

Whitney B. Moore

Paralegal

BYBEE & TIBBALS
EMINENT DOMAIN & PROPERTY
RIGHTS LITIGATION

1100 Queensborough Blvd., Suite 202, Mt. Pleasant, SC 29464

O: 843-881-1623 **E:** wmoore@bybeetibbals.com

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