

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2026-001589
Case No. 2024-CP-10-04474

Exchange Club Fair of Charleston, Inc. Appellant,

v.

Charleston Area Regional Transportation Authority, Respondent.

**REPLY MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL**

The Appellant Exchange Club Fair of Charleston, Inc. has filed a return to the Motion to Dismiss Appeal in which the Appellant insists that it is an “aggrieved party” because the orders on appeal have “permanent consequences.” In making that argument, the Appellant overlooks the clear authority of what constitutes an “aggrieved party” under South Carolina jurisprudence and the fact that the trial court dismissed this action *without prejudice*.

As the Respondent Charleston Area Regional Transportation Authority (“CARTA”) argued in its motion, the Appellant is not an aggrieved party who can appeal under Rule 201, SCACR, which provides that “[o]nly a party aggrieved by an order, judgment, or sentence may appeal.” Rule 201(b), SCACR. The appellate courts have consistently explained that “[a] party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears

directly on his or her interest.” *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530, 532 (Ct. App. 2002). “The word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” *Id.*

Whether the Appellant is an “aggrieved party” and the existence of appellate jurisdiction turn ultimately on whether the orders issued by Judge Marvin Dukes, including the final order filed June 18, 2026, and the interlocutory form order filed October 24, 2024, have preclusive or binding effect. Notably, the final order filed June 18, 2026, did not make any rulings *with prejudice*. Judge Dukes specifically dismissed the “underlying condemnation action” stating 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.” Thus, the entire action was dismissed without prejudice. Additionally, the form order filed October 24, 2024, never states that the dismissal of the First Cause of Action was *with prejudice*.

As indicated, the appealability of the orders at issue turns on whether those orders have any preclusive effect. South Carolina law is clear that “a dismissal of a claim without prejudice is not an adjudication of the merits of the controversy and has no preclusive effect as a matter of law.” *International Fidelity Ins. Co. v. China Construction America (SC) Inc.*, 375 S.C. 175, 650 S.E.2d 677, 680 (Ct. App. 2007). Likewise, in *McEachern v. Black*, 329 S.C. 642, 496 S.E.2d 659 (Ct. App. 1998), the Court of Appeals held that “a dismissal of a case ‘without prejudice’ means that the plaintiff can reassert the same cause(s) of action by curing the defects that led to dismissal.” 496 S.E.2d at 663. In that case, the Court of Appeals noted that the first element of a res judicata defense requires that the earlier judgment “must be final, valid, and on the merits.” *Id.* The Court then concluded that “because the dismissal was made without prejudice to either party, res judicata does not apply.” *Id.*

The same is true with collateral estoppel. Under the doctrine of collateral estoppel, once final judgment on the merits has been reached in a prior action, relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded in any subsequent action based upon a different claim. *Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164, 165 (1986). Just as with res judicata, because a dismissal without prejudice is not an adjudication of the merits, it has no preclusive effect pursuant to collateral estoppel either.

To argue otherwise, the Appellant misstates the Respondent's position in its Motion to Dismiss Appeal. The Appellant also relies on United States Supreme Court case law that is inapposite to the circumstances in the case at bar and which, at any rate, did not permit for an appeal as to the *merits* of any findings adjudicated adversely to the prevailing party. What is most telling about the Appellant's arguments is the absence of any analysis showing that the orders on appeal do have preclusive effect under the doctrines of res judicata or collateral estoppel.

As to the first point, the Appellant insists that the Respondent has taken the position that Judge Dukes' interlocutory ruling that that CARTA has the power of eminent domain under Section 58-25-50(d) is entitled to preclusive effect in future litigation. The Respondent did not take that position, and even if it had, the parties may not confer subject matter jurisdiction or appellate jurisdiction by estoppel, consent, or acquiescence. *See, West v. West*, 263 S.C. 146, 208 S.E.2d 530, 533 (1974) ("the parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment"); *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897, 900 (1989) ("[t]he jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court"). In the Motion to Dismiss Appeal, the Respondent explained only that, had the

Appellant prevailed on its First Cause of Action (with no mention of the Respondent prevailing), that would have both been dispositive of the entire challenge action and “would have had a permanent and prejudicial effect on the relative position of the parties.” *See*, Motion to Dismiss Appeal, p. 6. The Appellant conveniently disregards the use of the words “would have” and the fact that the discussion focused on the circumstances had the Appellant prevailed on the issue. The Appellant, however, did not succeed on that cause of action. Moreover, with the action being ultimately dismissed without prejudice, any interlocutory rulings by Judge Dukes have no preclusive effect for the reasons discussed above.

As to the second point, the Appellant’s reliance on United States Supreme Court case law is misplaced. In its summary decision in *Electrical Fittings Corp. v. Thomas & Betts Co.*, 307 U.S. 241 (1939), the Supreme Court held that “[a] party may not appeal from a judgment or decree in his favor, for the purpose of obtaining a review of findings he deems erroneous which are not necessary to support the decree.” 307 U.S. at 242. While noting that “the adjudication was immaterial to the disposition of the cause,” the Supreme Court nonetheless allowed for an appeal to proceed for the sole purpose of seeking “reformation of the decree” and “not for the purpose of passing on the merits.” *Id.* However, *Electrical Fittings* is readily distinguishable from this case on two primary points. First, the final adjudication in that case was *with prejudice* rather than, as in the case at bar, without prejudice. That allowed that decision to potentially have preclusive effect in future litigation. Second, the Supreme Court in *Electrical Fittings* only permitted a reformation of the final judgment and did not permit an appeal on merits of the adverse ruling made in the district court. Here, the Appellant is seeking with its appeal to address the *merits* of Judge Dukes’ interlocutory ruling rather than any reformation of that ruling to render it without prejudice. Of course, reformation is actually not even necessary in this case

because Judge Dukes' rulings were made without prejudice and were not a final adjudication on the merits to which res judicata or collateral estoppel may attach.

The Appellant's reliance on *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326 (1980), is also misplaced. The issue in that case was whether the appellants could appeal the denial of class certification after the entry of final judgment on the merits in favor of the putative class representatives. The United States Supreme Court ruled "the denial of class certification as an example of a procedural ruling, collateral to the merits of a litigation, that is appealable after the entry of final judgment." 445 U.S. at 336. The Supreme Court found appellate jurisdiction existed "only to review the asserted procedural error, not for the purpose of passing on the merits of the substantive controversy." *Id.* Thus, *Deposit Guaranty* is distinguishable from the case at bar. The Appellant is not seeking to appeal from a collateral procedural error, such as a denial of class certification, and instead is seeking a ruling on the merits of the controversy, which the Supreme Court did not permit. Moreover, *Deposit Guaranty* involved a final judgment rendered with prejudice. The case at bar does not.

CONCLUSION

Based on the foregoing discussion, the Respondent Charleston Area Regional Transportation Authority respectfully renews its request that the Court dismiss the Appellant's appeal which seeks to adjudicate an issue having no preclusive or binding effect and for which the Appellant is not an "aggrieved party." This Court lacks appellate jurisdiction. Further, the Appellant has initiated this appeal only to improperly perpetuate the stay that has been in effect by operation of Section 28-2-470 to cause detrimental impact to the transportation project at issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of the Lindemann Law Firm, P.A., counsel for the Respondent Charleston Area Regional Transportation Authority, does hereby certify that service of the **Reply Memorandum in Support of Motion to Dismiss Appeal** was made upon all counsel of record by email only this the 17th day of August 2026, as follows:

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