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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Daniel Coble, Circuit Court Judge

Case No. 2025-001903

Bush River C-Store, LLC,..... Appellant,

v.

South Carolina Department of Transportation ..... Respondent.

RESPONDENT'S FINAL BRIEF

Pagliarini Law Firm, LLC
David G. Pagliarini, Esquire
Julia Anne E. McKeachie, Esquire
145 River Landing Drive, Unit 101-B
Daniel Island, South Carolina 29492
(843) 971-8646
David@lawplf.com
Attorneys for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT AS RESPONDENT'S SECOND CHALLENGE ACTION HAD PREVIOUSLY BEEN ADJUDICATED AND THEREFORE IS BARRED UNDER THE DOCTRINES OF RES JUDICATA AND ISSUE PRECLUSION.

2. APPELLANT'S CLAIMS THAT THE SECTION 28-2-470 STATUTORY REQUIREMENT TO COMMENCE A CHALLENGE ACTION WITHIN THIRTY DAYS AFTER SERVICE OF THE CONDEMNATION NOTICE PROVIDES NO MEANINGFUL OPPORTUNITY TO CONDUCT DISCOVERY AND THAT RESPONDENT FAILED TO ESTABLISH PUBLIC NECESSITY FOR THE ACQUISITION ARE NOT PROPERLY BEFORE THIS COURT AND HAVE NO MERIT.
   a. Appellant's claim that the terms and provisions of the South Carolina Eminent Domain Procedure Act prevent the opportunity for discovery are without merit.
   b. Appellant provides no legal or factual basis to show that respondent failed to meet the public necessity requirement when exercising its eminent domain power.
   c. Appellant's argument that the terms and provisions of the South Carolina Eminent Domain Procedure Act violate due process are without merit.

STATEMENT OF THE CASE

This appeal stems from a condemnation action commenced by Respondent South Carolina Department of Transportation ("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. In the underlying condemnation action, SCDOT seeks to acquire a small strip (1,734 square feet or 0.040 acre) of real property along the property frontage on Bush River Road in Richland County.

Appellant brought a statutory challenge action, pursuant to South Carolina Code Section 28-2-470, to the underlying 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 . . ." 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).

The underlying Notice of Condemnation was served, but not filed, in September 2023 in accordance with the provisions of The Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). (R. pp. 28-46). Appellant timely filed and served a statutory challenge action (R. pp. 47-50). By Order dated October 10, 2024, the Honorable Diane Goodstein granted SCDOT's Motion for Summary Judgment (R. pp. 19-27). Appellant appealed Judge Goodstein's Order (Appellate Case No. 2024-001901) and on February 10, 2025, the South Carolina Court of Appeals dismissed the appeal (R. p. 18).

Following dismissal of Appellate Case No. 2024-001901, and in accordance with the provisions of the Act, Respondent SCDOT filed and served the previously served but unfiled 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 (R. pp. 65-80).

Despite the grant of summary judgment and the dismissal of the appeal on the first statutory challenge action, Appellant filed a second challenge action on March 13, 2025 (R. pp. 81-83). In accordance with the Act, the underlying 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.

SCDOT filed a Motion for Summary Judgment, pursuant to Rule 56, SCRCP, on May 8, 2025. (R. pp. 100-103). The motion was based on the grounds that (i) no genuine issues of material fact exist as to Appellant's second challenge action; (ii) Appellant failed to state proper causes of action; and (iii) Appellant's statutory challenge action had 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. (R. pp. 123-132). 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.

By Order dated September 9, 2025, the Honorable Daniel M. Coble, granted SCDOT's motion. (R. pp 1-17). This appeal of the September 9, 2025 Order followed.

STANDARD OF REVIEW

"When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 36, 637 S.E.2d 560, 561-62 (2006). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 354-55, 650 S.E.2d 68, 70 (2007) (quoting Rule 56(c), SCRCP).

Respondent believes that this is the appropriate standard of review. However, Appellant raises issues stemming from the first challenge action and subsequent dismissal of the related appeal and therefore, where applicable, Respondent will provide a separate standard of review for each argument.

ARGUMENTS

I. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT AS RESPONDENT'S SECOND CHALLENGE ACTION HAD PREVIOUSLY BEEN ADJUDICATED AND THEREFORE IS BARRED UNDER THE DOCTRINES OF RES JUDICATA AND ISSUE PRECLUSION.

In the September 9, 2025 Order that is the subject of this appeal, Judge Coble found that the claim (the second challenge action) had been previously adjudicated and that the doctrines of res judicata and issue preclusion precluded the Appellant from relitigating the claims. (R. p. 5, lines 10-22). This is the sole issue to be addressed in this appeal.

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 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)).

The Notice of Condemnation challenged in both the first and second challenge actions is exactly the same. Appellant raised, or had the opportunity to raise, all issues and causes of action

in the first challenge. All claims in the first action have been adjudicated. Judge Goodstein granted SCDOT's Motion for Summary Judgment and that Order was appealed and subsequently dismissed by the South Carolina Court of Appeals.

Appellant does not address Judge Coble's grant of summary judgment which should be the sole basis of this appeal. Appellant fails to establish any specific factual basis on which it can stand; accordingly, Judge Coble's grant of summary judgment should be affirmed.

II. APPELLANT'S CLAIMS THAT THE SECTION 28-2-470 STATUTORY REQUIREMENT TO COMMENCE A CHALLENGE ACTION WITHIN THIRTY DAYS AFTER SERVICE OF THE CONDEMNATION NOTICE PROVIDES NO MEANINGFUL OPPORTUNITY TO CONDUCT DISCOVERY AND THAT RESPONDENT FAILED TO ESTABLISH PUBLIC NECESSITY FOR THE ACQUISITION ARE NOT PROPERLY BEFORE THIS COURT AND HAVE NO MERIT.

Appellant's Statement of Issues on Appeal does not match the arguments raised in the body of its brief, nor does Appellant address the issues raised in Judge Coble's Order that is the sole subject of this appeal. It appears that Appellant's primary arguments relate to the first challenge action and rulings by Judge Goodstein. The six arguments raised in the Argument section of Appellant's brief are:

1. The statutory framework forces Landowners to assert challenges without access to the facts necessary to support them;
2. The statutory scheme raises serious due process concerns;
3. South Carolina law recognizes that the power of eminent domain is not unlimited;
4. The trial court erred in granting summary judgment before discovery could occur;
5. The trial court improperly accepted the condemning authority's assertions without meaningful review; and

6. The trial court's decision effectively nullifies the statutory right to challenge the taking.

These undeveloped arguments are not the subject of this appeal. The arguments appear to relate to Appellant's claimed inability to perform discovery due to restrictions in the Act; that SCDOT did not establish that the acquisition is for a public necessity; and that the Act violates due process (again, due to discovery restrictions). Out of an abundance of caution, Respondent addresses the merits of Appellant's claims which were, or could have been, raised in the first challenge action.

1. Appellant's claim that the terms and provisions of the South Carolina Eminent Domain Procedure Act prevent the opportunity for discovery are without merit.

South Carolina Code section 28-2-470 provides:

> "An action challenging a condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas in the county in which the property or a portion thereof is located. The action must be commenced within thirty days after service of the Condemnation Notice upon the landowner. All proceedings under the Condemnation Notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise. No issues involving the condemnor's right to condemn may be heard in the trial upon the issue of just compensation."

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). Challenge actions are litigated separate and apart from the underlying condemnation case. The Act provides a 30-day limitation on filing challenge actions; if a challenge action is filed all proceedings under the Condemnation Notice are automatically stayed until the challenge is resolved. This time restriction is crucial as project delays could significantly impact public projects and the related costs. The Act provides the exclusive procedural requirements for condemning authorities to acquire real property in South Carolina. S.C. Code Ann. § 28-2-60. There are no provisions in the Act which restrict discovery in a

challenge action and the South Carolina Rules of Civil Procedure, and all of the discovery rules contained therein, remain applicable. However, to the extent that there is a conflict between the South Carolina Rules of Civil Procedure and the Act, the Act prevails: "In the event of a conflict between this act and the South Carolina Rules of Civil Procedure, this act shall prevail." S.C. Code Ann. § 28-2-120.

While unclear, it appears that Appellant argues that it must conduct discovery prior to filing a challenge action. This is unequivocally false and once the challenge action is filed all discovery methods provided in the South Carolina Rules of Civil Procedure are available. In the first challenge action, Judge Goodstein found that "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." (R. p. 24, lines 21-22). Appellant's brief raises no arguments or factual references to overcome the standard of review for grant of summary judgment.

2. Appellant provides no legal or factual basis to show that Respondent failed to meet the public necessity requirement when exercising its eminent domain power.

Appellant argues that the "power of eminent domain is not limited" and that condemning authorities must show that the taking is reasonably necessary (Appellant Brief at 8). Again, the public necessity issue was raised in the first challenge and was addressed by Judge Goodstein.

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, and that is the test on the issue of necessity."

Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); *see 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 found that "[t]here 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" and that "[t]he question of necessity lies with the condemning authority." (R. p. 24, lines 10-11, lines 23-24).

It is presumed that the condemning authority is correct that 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.

Sease at 525-26 (citing *Atkinson v. Carolina Light Co.*, 239 S.C. 150, 121 S.E.2d 743 (1961)). Appellant fails to establish any facts that would indicate that SCDOT has abused its discretion during the first or second challenge action.

3. Appellant's argument that the terms and provisions of the South Carolina Eminent Domain Procedure Act violate due process are without merit.

Appellant appears to raise vague due process concerns, but fails to develop a legitimate and legally cognizable argument; Appellant simply repeats that it was prevented from performing discovery. Statutes are presumed to be constitutional and will not be found to violate the constitution unless their invalidity is proven beyond a reasonable doubt. *See, e.g., Knotts v.*

S.C. Dep't. of Natural Resources, 348 S.C. 1, 6, 558 S.E.2d 511, 513 (2002); *Feldman & Co. v. City of Charleston*, 23 S.C. 57, 1885 WL 3634 (1885). "Determining the proper interpretation of a statute is a question of law, which this Court reviews de novo." *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 339, 762 S.E.2d 561, 565 (2014).

Appellant does not raise any substantive constitutional arguments, cites no supporting case law, and indicates only that the Act "raises serious due process concerns" (Appellant Brief at 7). Appellant appears to argue that all facts must be fully developed at the time the challenge action is filed. This is not true for any pleading in South Carolina.

Rule 8(a), SCRCP provides minimum requirements for pleadings:

> A pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled.

Appellant fails to articulate any reasonable argument that the terms and provisions of the Act violate due process.

CONCLUSION

Based on the arguments provided herein, the trial court's grant of summary judgment should be affirmed.

Respectfully Submitted,

Pagliarini Law Firm, LLC

David G. Pagliarini, Esquire
Julia Anne E. McKeachie, Esquire
145 River Landing Drive, Unit 101-B
Daniel Island, South Carolina 29492
(843) 971-8646
David@lawplf.com
Attorneys for Respondent

September 9, 2026

PAGLIARINI LAW FIRM, LLC
ATTORNEYS AT LAW

David G. Pagliarini, Esquire
david@lawplf.com

145 River Landing Drive, Suite 101 B
Daniel Island, SC 29492
Phone: 843-971-8646
Fax: 843-971-8745

September 9, 2026

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Via U.S Mail and Electronic Mail: ctappfilings@sccourts.org
Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
PO Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Bush River C-Store, LLC v. South Carolina Department of Transportation
Appellate No: 2025-001903

Dear Ms. Kitchings:

Enclosed please find Respondent's Final Brief for electronic filing.

By copy of this letter to the Richland County Clerk of Court and counsel of record, we are serving them with a copy of this notice.

If you have any questions regarding the enclosed, please do not hesitate to contact our office.

Sincerely,

David G. Pagliarini

DGP/tp
Enclosure(s)
cc: (*Respondent's Initial Brief via U.S. Mail*)
S. Jahue Moore, Sr., Esq. (*via electronic mail only*)
Callee Liscusky Jumper, Esq. (*via electronic mail only*)

PAGLIARINI LAW FIRM, LLC
ATTORNEYS AT LAW
145 RIVER LANDING DRIVE, SUITE 101 B
CHARLESTON, SC 29492

RECEIVED
SEP 15 2026
SC Court of Appeals

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
PO Box 11629
Columbia, SC 29211