

**Exhibit "A"**

**Order**

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AUSTIN ADAMS BRUNER  
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N CHARLESTON SC 29405-7464

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCF**

**Order/deny plntff's mot for sum judg, grant defnt's cr/mot**

**CASE NO: 2014CP1006613**

**Charleston South Carolina County of VS South Carolina Department of Transportation**

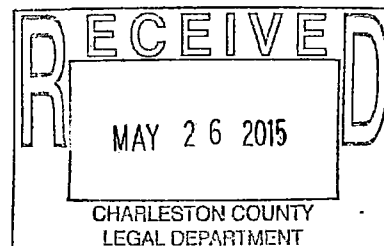
This judgment was entered on the 19th day of May, 2015, and notice mailed first class on Wednesday, May 20, 2015, to all counsel of record and/or all parties entitled to receive notice.

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**JUN 19 2015**

**SC Court of Appeals**



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

County of Charleston, South Carolina,

Plaintiff,

vs.

South Carolina Department of Transportation,

Defendant.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-6613

Order

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JUN 19 2015

SC Court of Appeals

FILED  
2015 MAY 19 PM 2:50  
JULIE J. ARMSTRONG  
CLERK OF COURT

The parties have submitted this matter to me on cross-motions for summary judgment agreeing that there are no disputes as to the material facts and that the case may be decided on the law alone.

On or about July 18, 2012, the County sent the Department a Notice of Tree Violation for removing three "Grand Trees" in connection with work on the on Maybank Highway (S.C. Route 700). The Notice required SCDOT to either replace the trees or donate money to the Charleston County Tree Fund. The Department responded by letter dated August 31, 2012, refusing to comply with the demands of the letter and the Ordinance on the grounds that zoning ordinances that conflict with a State agency's authority are void under the Constitution. The County filed its Complaint herein on October 27, 2014 seeking a Declaratory Judgment under S.C. Code Ann. §15-53-10 *et seq.* asking the Court to declare the rights, status, and legal relationships of the parties under the relevant statutes and ordinances.

The provision the County seeks to enforce is Article 9.4, Tree Protection and Preservation, of the Charleston County Zoning and Land Development Regulation Ordinance, Ordinance No. 1201, which provides in its relevant parts that a permit is required for the removal of trees. Permits are issued only after a "tree plan" is approved by the Planning

R.M.D. 11

Director. To obtain the permit, an applicant may be caused to replace trees "in the same general area" as the trees removed. Alternately, the landowner may be fined and caused to contribute money to the Tree Fund in an amount to be determined by the Planning Director. As support for its authority to impose the ordinance on SCDOT, the County cites S.C. Code Ann. §6-29-770(A) (Rev. 2004) stating that,

"Agencies, departments and subdivisions of this State that use real property, as owner or tenant, in any county or municipality in this State are subject to the zoning ordinances."

The Department does not contest that, as a department of the State government, it is subject to all local zoning ordinances as owner or tenant of real property. In fact, it fully complies with all such ordinances with respect to section sheds, district headquarters, equipment depots, and other non-highway uses of real property. However, with respect to the State Highway System, it is entitled to the exemption contained in article 8, section 14 of the Constitution as governmental service or function, responsibility for which rests with the State government or requires statewide uniformity.<sup>1</sup> It argues that compliance with local ordinances affecting the design and planning of highway projects may conflict with other federal or State regulations causing possible loss of funding or project delays. I agree with the Department's analysis of the law.

SCDOT has exclusive authority over the State Highway System and zoning ordinances which conflict with this State agency authority are void. Law v. City of Spartanburg, 148 S.C.

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<sup>1</sup> Article VIII, section 14 of the South Carolina Constitution, S.C. Code Ann. Constitution, art. 8, §14 (Rev.2009) provides that, "General law provisions not to be set aside. In enacting provisions required or authorized by this article, general provisions applicable to the following matters shall not be set aside:

\*\*\* (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or requires statewide uniformity."

RMB/2

299, 146 S.E. 12 (1928); Colyer v. Thomas, 268 S.C. 455, 234 S.E.2d 862 (1977). Under section 14, article 8 of the Constitution, in enacting ordinances, provisions applicable to the administration of a governmental service or function, responsibility for which rests with State government or which requires statewide uniformity, shall not be set aside. The exclusivity of SCDOT's authority in this area is set forth in express terms where the General Assembly has conferred upon it the "exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges." S.C. Code Ann. §57-3-110 (1).

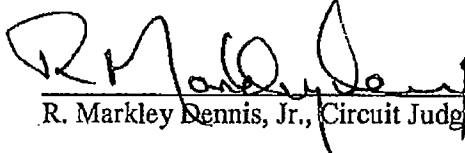
That the planning, construction, and maintenance of the State Highway System is a responsibility that rests with the State government and withdrawn from the field of local control has been firmly established by our Supreme Court. In Town of Hilton Head v. Coalition of Expressway Opponents, 307 S.C. 449, 456, 415 S.E.2d 801, 805 (1992), the Court said, "The planning, construction, and financing of state roads is a governmental service which requires statewide uniformity." This principle was affirmed in Brashier v. South Carolina Department of Transportation, et al., 327 S.C. 179, 185, 490 S.E.2d 8, 11 (1997), where the Court stated, "When construing Article VIII, section 14, we have consistently held that a subject requiring statewide uniformity is effectively withdrawn from the field of local concern." Further, "We have already held that '[t]he planning, construction, and financing of state roads is a governmental service which requires statewide uniformity.'" [Citing Hilton Head, supra.] The Brashier opinion further holds that the validity of a local law purporting to impose regulation on the State Highway System may not be decided on the facts case-by-case but must be declared unconstitutional on its face. Brashier, supra, 327 S.C. at 186, 490 S.E.2d at 12 (1997).

RMDJ/3

The Department argues alternatively that the Ordinance is an unconstitutional tax on a State function. I agree. As set forth above, the scheme of Article 9.4 of the Charleston ordinance is to require a permit to remove trees. If violated, the Planning Director may impose a fine to be deposited into the "Tree Fund." ZLDR, Subsection 9.4.6 E. Because the removal of trees from highway travel lanes and clear zones is unavoidable and inescapable<sup>2</sup>, the Ordinance applied to the Department is not regulation, rather a tax on the State-Highway System even if referred to as a "contribution" to the Tree Fund. Under article X, section 3 of our constitution, property of the State is exempt from *ad valorem* taxation. Thus, to the extent the Ordinance may be held to apply to the highway system at all, this exaction and the ordinance imposing it is unconstitutional.

The operation of the State Highway System is a service of the State under the exclusive control of the S.C. Department of Transportation, and its design, construction, and maintenance are functions that are withdrawn from the field of local concern per the State Constitution. Alternatively, the Ordinance as applied to the State Highway System is an unconstitutional tax. For these reasons, I declare the County's tree ordinance unconstitutional as applied to the State Highway System, deny Plaintiff's Motion for Summary Judgment, grant Defendant's Cross-Motion, and DISMISS the Complaint.

AND IT IS HEREBY ORDERED.

  
\_\_\_\_\_  
R. Markley Dennis, Jr., Circuit Judge

Charleston, S.C.

May 14, 2015

<sup>2</sup> S.C. Code Ann. § 57-5-10 mandates that the Department maintain its highways in a safe and serviceable condition.

*RMD/4*