

**Order Denying PNG's Motion to Alter or Amend
that Judgment (August 10, 2015)**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Piedmont Natural Gas Company,)
)
 Condemnor,)
)
 vs.)
)
 Richeous Smith, et al.,)
)
 Condemnees.)

IN THE COURT OF COMMON PLEAS
 CA No. 2012-CP-23-4064

**ORDER DENYING CONDEMNOR'S
 MOTION TO RECONSIDER**

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SEP 10 2015

SC Court of Appeals

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENSIMMER
 2015 AUG 10 3 PM 00

This issue is before me on Condemnor's Motion to Reconsider, Alter, or Amend Judgment (the "Motion"), related to this Court's Order dated June 23, 2015 (the "Order"). At a hearing on the Motion held before this Court on July 20, 2015¹, counsel for the parties were given the opportunity to argue their respective positions, all of which were more fully stated and argued in their written Memoranda.

After a thorough review of Condemnor's Motion, Condemnee's Memorandum in Opposition, common and statutory law, and oral arguments presented by counsel at the hearing, I find that Condemnor's Motion, based upon Rules 52, 59, and 60, SCRPC, is denied.

RULE 52

Under the terms of Rule 52(a), in all non-jury actions, the Court's order must contain findings of fact and conclusions of law. South Carolina has determined that the language of Rule 52(a) is "directory and that noncompliance would not form the basis for invalidating a judgment." Noisette v. Ismail, 304 S.C. 56, 56, 403 S.E.2d 122 (1991). The Noisette Court further held that an order in substantial compliance with Rule 52(a),

¹ The Court also conducted a conference call with all counsel of record on July 24, 2015, to further discuss and to announce its ruling on this matter.

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which "adequately states the basis for the result it reaches" is sufficient to withstand appellate scrutiny. Id. The Order herein contains clear findings of fact and conclusions of law; therefore, Condemnor has failed to articulate a basis upon which the Order should be altered or amended pursuant to Rule 52(a).

Rule 52(b) permits the court, upon motion of a party, to amend or add to its findings of fact. Rule 52(b), SCRPC. Condemnor's Motion raises no new issues sufficient to warrant an amendment or addition to the Order. South Carolina courts are highly deferential to the finders of fact. See e.g., Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773 (1976) ("findings of fact will not be disturbed on appeal unless found to be without evidentiary support or against the clear preponderance of the evidence"). Condemnor has not shown the Court's findings of fact to be lacking in evidentiary support; therefore, the Court declines to alter or supplement its Order pursuant to Rule 52(b).

RULE 59

Rule 59(e), SCRPC, requires litigants to bring a motion to alter or amend a court order, if at all, within ten days of receipt of the order. Condemnor's Motion seeks review and reconsideration of a large number of factual and legal issues; however, Condemnor has presented no new issues or arguments to persuade the Court that an alteration or amendment to the Order is necessary. Condemnor's Rule 52(b) Motion is hereby denied.

RULE 60

Pursuant to Rule 60(b), SCRPC, "[u]pon motion and upon such terms as are just, the court may relieve a party...from a final judgment, order, or proceeding" for any of five categories of reasons. Condemnor has failed to articulate any of the 60(b) reasons;



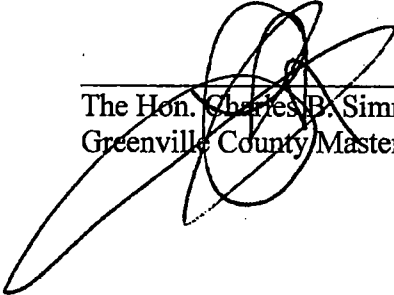
instead, Condemnor merely references the rule by number in its opening and concluding paragraphs and seeks relief thereunder by invocation. Because Condemnor has failed to present evidence sufficient to entitle it to the requested relief, the Court hereby declines to grant Condemnor 60(b) relief from the Order, in part or in whole.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

(A) Condemnor's Motion to Reconsider, Alter, or Amend Judgment is hereby denied.

(B) The Court's Order dated June 23, 2015, shall stand as written.

IT IS SO ORDERED.


The Hon. Charles B. Simmons, Jr.
Greenville County Master-In-Equity

Greenville, SC
8/7, 2015

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2012CP2304064

IN THE COURT OF COMMON PLEAS

Piedmont Natural Gas Company vs. Richeous Smith

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 AUG 10 PPM 1 00

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Denying Condemnor's Motion to Reconsider in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnoblitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 10th day of August, 2015.

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PRESIDING JUDGE -

SEP 10 2015
SC Court of Appeals

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