

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Piedmont Natural Gas Company,)
)
 Condemnor,)
)
 vs.)
)
 Richeous Smith, et.al.,)
)
 Landowners, Other)
 Condemnees and)
 Unknown Claimants.)
 _____)

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

RECEIVED

SEP 18 2015

SC Court of Appeals

ORDER DETERMINING INTEREST
 DUE ON VERDICT

2015 SEP 10 5 PM 1 00
 PAUL R. WICKENS
 CLERK OF COURT
 GREENVILLE CO. S.C.

THIS MATTER comes before this Court pursuant to Landowners' Motion to Determine Interest Due on Verdict.

Condemnor commenced this action under the South Carolina Eminent Domain Procedure Act (Section 28-2-10, Code of Laws of South Carolina, *et. seq.*) by filing its Condemnation Notice and Tender of Payment on June 22, 2012. At the same time, Condemnor deposited the amount of \$172,200.00 with the Greenville County Clerk of Court, said amount being the amount stated in the Condemnation Notice and Tender of Payment as just compensation for the property, the amount having been determined by the Condemnor pursuant to Section 28-2-70(a), Code of Laws of South Carolina, before initiating the action.

A bench trial on the issue of just compensation was held on May 28, 2015. By Order dated June 23, 2015, and filed on June 25, 2015, this Court found the amount of just compensation to be \$414,752.00.¹ On June 25, 2015, Landowners filed a Motion to Determine Interest Due on Verdict pursuant to Section 28-2-420(A), Code of Laws of South Carolina. A hearing on this Motion was held on July 20, 2015.

Section 28-2-240(A), Code of Laws of South Carolina, provides as follows:

¹ Condemnor filed a Motion to Reconsider, Alter or Amend this Order. A written Order denying said Motion will be entered separately.

A condemnor shall pay interest at the rate of eight percent a year upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict or judgment by the court. Interest accruing on funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest shall not accrue during the twenty day period commencing upon the date of verdict or order of judgment. If the judgment is not paid within the twenty day period, interest at the rate provided by law for interest on judgments must be added to the judgment. Thereafter, the entire judgment shall earn interest at the rate provided by law for interest on judgments.

Landowners contend that the above statute provides that interest shall accrue at the rate of eight percent (8%) a year upon the entire amount of \$414,752.00 awarded as just compensation herein. It is Condemnor's position that interest does not accrue on the amount previously deposited with the Clerk of Court simultaneously with the filing of the Condemnation Notice and Tender of Payment (\$172, 200.00), but rather accrues on the amount representing the difference between the funds previously deposited and the award for just compensation (\$242,552.00). Based upon the applicable Sections of the South Carolina Eminent Domain Procedure Act, and the opinion of the South Carolina Court of Appeals in South Carolina Department of Transportation v. Faulkenberry, 337 S.C. 140, 522 S.E.2d 822 (S.C. App. 1999), I find and conclude that interest accrues at the rate of eight percent (8%) a year on the difference between the amount initially deposited by Condemnor and the award of just compensation in this matter (i.e., the amount of \$242,552.00).

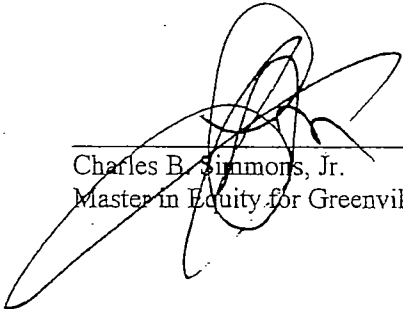
Section 28-2-480, Code of Laws of South Carolina, allows a landowner to "draw down" up to fifty percent (50%) of the funds deposited with the clerk of court by the condemnor. As referenced in the Faulkenberry, the parties may agree for a landowner to draw down one-hundred (100%) of the funds so deposited. The South Carolina Court of Appeals cites numerous authorities from other jurisdictions in its Faulkenberry opinion for the proposition that no interest is allowed on a payment into court by the condemning authority. The Landowners' rights to draw down the funds on deposit are the "fruits of possession" of those funds. Per Faulkenberry, the "fruits of possession" and the full statutory interest are mutually exclusive – there is no right upon the part of either party to both. Because Landowners were the only parties with the right to draw

down the funds on deposit with the clerk of court (the "fruits of possession"), they cannot now also claim a right to the full amount of interest thereon as the two are mutually exclusive.

NOW, THEREFORE, based upon the foregoing,

IT IS ORDERED that, pursuant to Section 28-2-420(A), Code of Laws of South Carolina, interest at the rate of eight percent (8%) a year is assessed on the amount of \$242,552.00, which is the difference between the amount initially deposited by Condemnor and the award of just compensation in this matter. Calculating this amount at \$53.16 per day from June 22, 2012, through June 25, 2015, produces the sum of \$58,371.96. Offsetting the interest accruing on funds on deposit with the clerk of court (\$52.08) yields the sum of \$58,319.88, for the interest assessed pursuant to the aforementioned Code Section.

IT IS SO ORDERED



Charles B. Simmons, Jr.
Master in Equity for Greenville County

Date: _____

8/7/15

Greenville, South Carolina