

**RECEIVED**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

DEC 07 2015

**SC Court of Appeals**

Piedmont Natural Gas Company, Inc.,.....Appellant/Respondent,

v.

Richeous Smith, Worthly Smith a/k/a Worley Smith, Pearl Terry, Ethel Butler, Tweety Smith a/k/a Tweety Smith-Harris, Doreth Smith, Fletcher Lee Harris, Alma Williams Smith, James R. Smith, Loree Smith, Gene A. Smith, Adolf Smith, Janie Sue Smith, Samuel Paul Smith, Ruby Smith Mansell, Buford Mansell, Ethel Mae Smith, Wilson Smith, Patrick R. Smith, Reginald Lamont Smith, Eric Smith, Christine Smith Dawkins, William G. Dawkins, Alma Renee Smith Murry, Sharai Smith Brock, Robert Lee Smith, Melissa F. Smith, Rosalyn Annette Steven, Edith Smith Foster, George Waymon Foster, Bridgette Smith Blassingame, Tara Smith, Waymon Odell Smith, Martha Miller Smith, Calvin Lee Smith, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, Dorothy Smith Pearson, Gary Pearson, Jerome Smith, Jaygo Terry, Ida Terry, Mack Terry, Zone Terry, Leola Terry Smith, James Smith, J. P. Terry, David Brayvelle Terry, Ettie Pearl Booker, Tecora O. Terry Mason, Odell Mason, Lenora Holley, Dorothy Terry Sheppard, Orangelee Sheppard, Vernon Sheppard, Kasandra Sheppard Jenkins, Karen Sheppard Spates, Theodore Terry, Sr., Gracie Terry, Kelvin F. Terry, Theodore Terry, Jr., Keith Terry, Leola Terry Daniels, Wilford Daniels, Terrance Leslie, Sr., Derrick McGee, Jr., Fred Smith, Jr., Mannell Terry, Patricia Terry, Sheila Terry, Barbara Evans, Leonard Evans, Linda Evans, Thomas Evans, Johnny R. Williams, Connie Evans, Michael Evans, Iola Terry Cox, William Henry Cox, Johnny F. Cox, Joyce A. Smith, Anthony Cox, Alfred Cox, J. Henry Cox, Charlette J. Cox, Charles J. Cox, Michael Cox, Supearl Terry Gilliam a/k/a Supearl Terry Gilliam Miranda, Eugene Gilliam, Terry Gilliam, Jerry Gilliam, Warren Gilliam, Eugene Gilliam, Jr., Melvin Gilliam, Rodney Gilliam, Cindy Gilliam, Shakima Gilliam, Carmella Cottom, Nina Gilliam, Vermell Gilliam Phillips, Shaynise Alston, John Gilliam, Donald Gilliam, Sr., Leunette Gilliam, Donnette Gilliam Ortchere, Leslie Gilliam Peter, Angela Gilliam, Donald E. Gilliam, Raymond T. Gilliam, Juan Miranda, Carmen Miranda a/k/a Carmen Miranda Glavin, John Glavin, Sr., John Glavin, Jr., Miranda Glavin, Jeffrey Glavin, Yolanda Glavin, Ezell Terry, Magaline Terry, Leroy Terry, Kenneth Terry, James (Jimmy) Terry, Pearlie Mae Terry, Winnie L. Terry Anderson, Furman Anderson, Tommy Anderson, Abigail Dodd, Angela Reid, Sandra McDowell, Harold Anderson, Mary Ann Davis, Charlene Peaks, Albert Anderson, Paul Terry, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Paul A. Terry, Mark G. Terry, Terry Sholer, Jamie Terry, James O.C. Smith, Pauline Smith, Gloria Gore, Paul Smith, Ethel Allen, Desiree Golden, Pauline Workman, Brenda Moulhem, Eric Rogers, Tonya S. Turner, LaTasha D. Terry, and if any of the aforementioned be deceased, then their heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives, and any party claiming by or through them.....Landowners,

and

The United States of America, acting by and through its agency, the Internal Revenue Service, The United States of America, acting by and through its agency the United States Department of Justice, The South Carolina Department of Revenue, The South Carolina Department of Mental Health, The State of South Carolina, Bullhead Investments, LLC, Arrow Financial Services, LLC, Sharonview Federal Credit Union, Discover Bank, Zachery Arnold, GE Commercial Finance Business Property Corporation, Midland Funding, LLC, and Greenville County.....Other Condemnees;

and

John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, said property being identified as a portion of Greenville County Tax Map Numbers 0531010102100 and 0531010102101.....Unknown Claimants,

Of whom Ethel Allen; Shaynise Alston; Harold Anderson; Tommy Anderson; Bridgette Smith Blassingame; Sharai Smith Brock; Carmella Cottom; Alfred Cox; Anthony Cox; Mary Ann Davis; William G. Dawkins; Abigail Dodd; Linda Evans; Michael Evans; Thomas Evans; Chavonte Gilliam; Cindy Gilliam; Derrick Gilliam; Donald E. Gilliam, Jr.; John L. Gilliam; Lakisha Gilliam; Latonya Gilliam; Leunette Gilliam; Mattie M. Gilliam; Nina Gilliam; Raymond T. Gilliam; Rodney Gilliam; Shakima Gilliam; Warren Gilliam; Desiree Golden; Gloria Gore; Lenora Holley; Kasandra Sheppard Jenkins; Terrance Leslie, Sr.; Sandra McDowell; Derrick McGee, Jr.; Brenda Moulhem; Alma Rene Smith Murry; Charlene Peake; Leslie Gilliam Peter; Angela Reid; Orangelee Sheppard; Vernon Lee Sheppard; Charles Terry Sholer; Calvin Smith; Eric Smith; Fred Smith, Jr.; Gene A. Smith; James R. Smith; Joyce A. Smith; Loree Smith; Martha Miller Smith; Patrick Smith; Paul Smith; Reginald Lamont Smith; Tara Smith; Karen Regenia Spates; Rosalyn Annette Steven; Betty Jo Terry; Donald E. Terry; Deloris I. Terry; Gracie Terry; Jamie Terry; Keith Terry; Kelvin F. Terry; Leroy Terry; Mark G. Terry; Paul Terry, Jr.; Theodore Terry, Jr.; Porsha Williams; and Pauline Workman are the .....Respondents/Appellants,

and

Unknown landowners, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, United States of America and the United States of America, acting by and through its agency, the Internal Revenue Service, Midland Funding, LLC, Sharonview Federal Credit Union, SC Department of Revenue, County of Greenville, Arrow Financial Services, LLC, SC Dept. of Mental Health, SC Attorney General, Bullhead Investments, LLC, Zachery Arnold, Ettie Pearl Booker, Ira K. Carroll, Johnny F. Cox, Wilford Daniels, Angela Gilliam,

Bianca S. Gilliam, Demetrius J. Gilliam, Jerry Gilliam, Kehiminnie S. Gilliam, Terry Gilliam, John Glavin, Jr., John Glavin, Sr., Jeffrey Glavin, Miranda Glavin, Yolanda Glavin, Terrance Leslie, Terrell Leslie, Teaira Leslie, Donnette Gilliam Ortchere, Jerome Smith, Melissa F. Smith, Michael Smith, James (Jimmy) Terry, Patricia Terry, Pearlie Mae Terry, and Sheila Terry are the.....Respondents.

Appellate Case No. 2015-001909

The Honorable Charles B. Simmons, Jr.  
Greenville County  
Trial Court Case No. 2012-CP-23-04064

---

**INITIAL BRIEF OF RESPONDENTS/APPELLANTS**

---

Erin Culbertson  
**KEHL CULBERTSON ANDRIGHETTI &  
KORNFELD, LLC**  
114 Manly St.  
Greenville, SC 29601  
864/370-8222 (p) 864/370-8227 (f)  
[erin@palmettolawfirm.com](mailto:erin@palmettolawfirm.com)

David B. Ward  
**HORTON, DRAWDY, WARD, MULLINAX  
& FARRY, P.A.**  
307 Pettigru St.  
Greenville, SC 29601  
[dward@hortonlawfirm.net](mailto:dward@hortonlawfirm.net)

*Attorneys for the Respondents/Appellants*

## TABLE OF CONTENTS

Table of Authorities.....	5
Statement of Issues on Appeal.....	6
Statement of the Case.....	7
Facts.....	8
Arguments.....	9-13
Conclusion.....	14

## TABLE OF AUTHORITIES

### CASES

<u>Busby v. Moore</u> , 330 S.C. 201, 498 S.E.2d 883 (1998).....	10-11
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000).....	11
<u>In re Vincent J.</u> , 333 S.C. 233, 509 S.E.2d 261 (1998).....	10, 11
<u>Roche v. Young Bros., Inc.</u> , 332 S.C. 75, 504 S.E.2d 311 (1998).....	10
<u>South Carolina Dep't of Transportation v. Faulkenberry</u> , 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999).....	9, 10, 11, 12, 13
<u>South Carolina State Highway Dep't v. Southern Ry.</u> , 239 S.C. 1, 121 S.E.2d 236 (1961).....	12
<u>State Roads Comm'n v. G.L. Cornell Co. Sav. &amp; Profit Sharing Trust</u> , 85 Md.App. 765, 584 A.2d 1331 (1991).....	12
<u>TNS Mills, Inc. v. South Carolina Dep't of Revenue</u> , 331 S.C. 611, 503 S.E.2d 471 (1998).....	10
<u>Windham v. Honeycutt</u> , 290 S.C. 60, 348 S.E.2d 185 (Ct. App. 1986).....	12

### STATUTES

S.C. Code Ann. § 28-2-420(A) (2014 Supp.).....	9, 10, 11, 12, 13
S.C. Code Ann. § 28-2-480 (2014 Supp.).....	9, 11, 12, 13

### OTHER AUTHORITIES

82 C.J.S. <u>Statutes</u> § 362 (1953).....	10
Norman J. Singer, <u>Sutherland Statutory Construction</u> § 46.03 at 94 (5 <sup>th</sup> ed. 1992).....	11

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT STATUTORY INTEREST ON AN AWARD OF JUST COMPENSATION IN A CONDEMNATION ACTION ACCRUES ONLY ON THE DIFFERENCE BETWEEN THE TENDER OF PAYMENT AND THE VERDICT AWARDED?

## STATEMENT OF THE CASE

On June 22, 2012, Piedmont Natural Gas Company, Inc. ("PNG") filed a Summons and Notice, Condemnation Notice and Tender of Payment in the amount of \$172,200, and Lis Pendens in this condemnation action, which pleadings were subsequently amended on January 31, 2014. (Condemnation Notice and Tender of Payment and Amended Condemnation Notice and Tender of Payment.) The tender of \$172,200 was deposited with the Clerk of Court as required by S.C. Code Ann. § 28-2-230, and PNG then took possession of the condemned premises. (Id.) The action was referred to the Honorable Charles B. Simmons, Jr., as Greenville County Master-in-Equity, who conducted a trial to determine just compensation for landowners for the taking of a fifty-foot right of way for a natural gas pipeline by PNG. (Order of Reference.) The just compensation trial was held on May 28, 2015. (Transcript, p. 1.)

By Order dated June 23, 2015, filed on June 25, 2015, the Court found the amount of just compensation to be \$414,752. (Order.) On June 25, 2015, certain of the landowners, who are named herein as Respondents/Appellants, filed a Motion to Determine Interest Due on Verdict, pursuant to S.C. Code § 28-2-420(A). (Motion for Interest.) Respondents/Appellants sought statutory interest on the entire award in the amount of \$99,756.12, as required by S.C. Code Ann. § 28-2-420(A).1 (Motion for Interest.) A hearing was held on this Motion on July 20, 2015. (Interest Order.) By Order dated August 7, 2015, filed on August 10, 2015, the Court denied interest on the funds on deposit with the Clerk of Court, only allowing interest on the amount of the verdict in excess of the deposit, in the amount of \$58,319.88.2 (Interest Order.)

Respondents/Appellants filed a Motion to Reconsider, Alter, or Amend the Court's Order dated August 7, 2015, which Motion was denied on August 17, 2015. (Motion to Reconsider, Order dated August 19, 2015.) Respondents/Appellants timely filed and served their Notice of Appeal on PNG on September 15, 2015. (Notice of Appeal.)

---

1 This amount was calculated by multiplying the just compensation award (\$414,752) by the statutory annual interest of 8%, which yields \$33,180.16 per year, or \$90.90 per day. The interest accrued from June 22, 2012, through June 25, 2015, or 1,098 days, for a total of \$99,808.20. Interest earned by the Clerk of Court on Condemnor's Tender of Payment was \$52.08, which was offset against the interest sought for a total of \$99,756.12.

2 This amount represents interest on the difference between the Tender of Payment and the just compensation award ( $\$414,752 - \$172,200 = \$242,552$ ). Annual interest at 8% on this amount is \$19,404.16, or \$53.16 per day for 1,098 days amounts to \$58,371.96. Condemnor's offset of \$52.08 yields the Trial Court's figure of \$58,319.88.

## FACTS

PNG's action was brought pursuant to the South Carolina Eminent Domain Procedure Act (S.C. Code § 28-2-10 *et seq.*). (Condemnation Notice, p. 3.) All parties stipulated at trial that the date of the taking was June 22, 2012. (Order, p. 2.) Specifically, PNG condemned a fifty-foot right of way, under and across which PNG installed a high pressure natural gas transmission pipeline. (*Id.*) The total acreage of the property condemned by PNG amounts to 2.515 acres, as well as a small strip of property totaling 0.747 acre which was severed from the larger parcel by the right of way (the 2.515 acres and the 0.747-acre severed parcel are hereinafter referred to as the "Right of Way" or "ROW"). (*Id.*)

The larger parcel in question consists of a 73.6-acre tract located in the vicinity of Highway 14 and Interstate 85 in Greenville County, at the end of Rock Road (the 73.6-acre tract is hereinafter referred to as the "Subject Property"). (Order, p. 1.) The last recorded instrument conveying title in and to the Subject Property was a deed from Ezell Smith to Landowners Richeous Smith, Worthly Smith, Pearl Terry, Ethel Butler, and Tweety Smith (the "Original Landowners"), dated July 25, 1928, and recorded on July 26, 1928, in the Register of Deeds Office for Greenville County in Deed Book 86, at Page 299. (Condemnation Notice, p. 3.) None of the Original Smith Landowners are currently alive, nor were any of their estates probated in the public records of Greenville County. (*Id.*, pp. 3-8.)

Of the Landowners named in this action, one hundred and one (101) are surviving and have or may claim an interest in the Subject Property (the "Surviving Landowners"). (Condemnation Notice, pp. 3-8.) Certain of the Surviving Landowners are represented by counsel; others are not and have made no appearance in this matter. Specific ownership interests of each of the Surviving Landowners are not known at this time; further, the interests were not known at the time of the filing of the action nor at any point through the pendency of the action.

## ARGUMENTS

I. THE TRIAL COURT ERRED IN FINDING THAT CONDEMNNEES WERE ENTITLED TO AN AWARD OF STATUTORY INTEREST ON ONLY THE FUNDS IN EXCESS OF CONDEMNOR'S INITIAL TENDER OF PAYMENT.

A. THE TRIAL COURT ERRED IN ITS INTERPRETATION OF SOUTH CAROLINA DEP'T OF TRANSP. V. FAULKENBERRY IN FORMULATING ITS OPINION.

In the Order Determining Interest Due on Verdict (the "Interest Order"), the Trial Court ruled that Landowners were not entitled to interest on funds previously deposited with the Clerk of Court by Condemnor. Interest Order, p. 2. The stated bases for this ruling were the applicable sections of the South Carolina Eminent Domain Procedure Act (the "Act"), and the opinion of the Court of Appeals in South Carolina Dep't of Transportation v. Faulkenberry, 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999). Id. Faulkenberry involved a condemnation action in which the entire funds on deposit were drawn down by agreement; therefore, no interest was thereafter allowed on that sum. That ruling is irrelevant to the present circumstances, where no funds were drawn down.

As briefly described above, in Faulkenberry, the condemnee, by agreement of the condemnor, was allowed to access and draw down all the funds deposited by the condemnor with the clerk of court, in the amount of \$863,574, while litigation was pending. Faulkenberry, at 144. Such a draw down is partially sanctioned by Section 28-2-480 of the Act, which allows a condemnee to access fifty percent (50%) of the funds on deposit with the clerk of court upon written application; in Faulkenberry, the remaining fifty percent was only permitted to be accessed by means of an extra-judicial settlement between the parties. South Carolina Code Ann. § 28-2-480.

When the Faulkenberry jury returned a verdict of \$2,396,100 as the award of just compensation, the condemnee sought an award of statutory interest on the whole verdict amount pursuant to Section 28-2-420(A) of the Act. Faulkenberry, at 144. The lower court ruled that the condemnee was only entitled to interest on the difference between the award and one-half of the initial tender amount. Id., at 145. The Court of Appeals disagreed, however, and ruled that the condemnee was not entitled to interest on any funds drawn down from the initial tender. Id., at 147.

Specifically, the Faulkenberry court held that "interest under S.C. Code Ann. § 28-2-420 does not accrue on any amount paid to the condemnee after its receipt." Faulkenberry, at 147. Further, the Court of Appeals went on to clarify:

SCDOT notes Section 28-2-420 does not address the amount of interest to be paid the condemnee when he draws down deposited funds. The statute specifically states, "Interest accruing on funds on deposit with the clerk of court must be

offset against the interest computed pursuant to this section.” We believe this statement implies interest shall accrue only on such funds as “*are on deposit with the clerk of court.*”

Id., at 152 (emphasis in original).

As the Faulkenberry holding is limited to the question of whether interest is allowed on funds drawn down by the condemnee, Faulkenberry is inapposite to the instant matter, as no funds were or could have been drawn down by the Landowners. Faulkenberry even went so far as to establish a formula by which interest awards should be computed:

- (1) Interest at the rate of 8% per year upon the award of just compensation, accruing from the date of filing through the date of judgment;
- (2) Interest accruing on funds tendered to the clerk of court is offset against the interest calculated above; and
- (3) Interest shall abate for a 20-day period following the date of judgment, after which the judgment (if unpaid) accrues interest at the statutory post-judgment rate.

Faulkenberry, at 152. Application of the Faulkenberry calculation would result in a reversal of the Trial Court’s decision in this matter.

Further, a closer reading of Faulkenberry supports Respondents’/Appellants’ position herein. In reciting the history of the case, the opinion reveals that the condemnor conceded that the condemnee was entitled to interest on the entire verdict for the time that funds had not been drawn down.<sup>3</sup> It is therefore clear that the condemnor, the South Carolina Department of Transportation, construes the statute to provide that so long as funds are on deposit with the clerk of court, the statutory 8% interest continues to accrue in favor of the condemnee.

The Faulkenberry court includes the following, regarding statutory instruction:

In interpreting a statute, this court’s primary function is to ascertain the intention of the legislature. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998). Statutes should be construed with regard to the whole system of law of which they form a part. Roche v. Young Bros., Inc., 332 S.C. 75, 504 S.E.2d 311 (1998) (citing 82 C.J.S. Statutes § 362 (1953)). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. TNS Mills, Inc. v. South Carolina Dep’t of Revenue, 331 S.C. 611, 503 S.E.2d

---

<sup>3</sup> “SCDOT asserted that under S.C. Code Ann. § 28-2-420 (1991), Faulkenberry was entitled to interest on the entire verdict for only 64 days: from May 27, 1994, the date of the original condemnation notice, until July 29, 1994, when the one hundred percent drawdown was paid pursuant to the consent order.” Faulkenberry, at 144-45.

471 (1998). In construing a statute, this court will reject any interpretation that leads to an unreasonable result. Busby v. Moore, 330 S.C. 201, 498 S.E.2d 883 (1998). *Further, construction of a statute by an agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.*

Faulkenberry, at 147-48 (emphasis added).

SCDOT falls squarely within the court's definition of an agency charged with the administration of the Act; therefore, SCDOT's construction of the Act, as described in Faulkenberry, should be given great deference and not overruled. In short, because SCDOT construes the Act to require it to pay interest on funds while on deposit with the clerk of court, the court in the instant matter should do the same. The analysis in Faulkenberry addresses the question of what happens if there is a draw-down, and whether interest could be earned thereafter on the funds drawn down. That is not the case before the court here and therefore Faulkenberry is irrelevant to our inquiry.

**B. THE TRIAL COURT ERRED IN FAILING TO APPLY THE CLEAR AND UNAMBIGUOUS LANGUAGE OF SECTION 28-2-420(A).**

Section 28-2-420(A) of the Act reads in full as follows:

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.

S.C. Code Ann. § 28-2-420(A) (2014 Supp.)

The language of the statute is clear and unambiguous; there is no requirement to draw down funds, nor is there any exception to interest accruing on the entire amount where no funds are drawn down. Courts may not interpret or change the meaning of a clear and unambiguous statute. In re Vincent J., at 233. Further, "the courts are bound to give effect to

the expressed intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578 (2000), quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5<sup>th</sup> ed. 1992).

A brief history of the Act can be found in Faulkenberry. Prior to 1986, no statutory provision existed requiring interest on condemnation awards to be paid by the South Carolina highway department; however, during that same period, both the Public Works Eminent Domain Law and the State Authorities Eminent Domain Act provided for the payment of interest. Faulkenberry, at 150. Because two other statutes did include statutory interest, it was not a legislative oversight for the highway department to be excluded from such a requirement. Id.; see also South Carolina State Highway Dep’t v. Southern Ry., 239 S.C. 1, 5, 121 S.E.2d 236, 238 (1961) (“The amount of just compensation to be paid can only be determined under the provisions of an act of the Legislature, by whose authority only procedural legislation may be provided whereby private property may be condemned for public use, together with the means by which just compensation is to be paid for the taking”).

Subsequently, in 1987, the South Carolina Legislature enacted the South Carolina Eminent Domain Procedure Act to establish uniform procedures for the condemnation of property by the state, its political subdivisions, and private entities, so as to minimize the costs of litigation. Faulkenberry, at 150. As quoted above, the Act clearly requires the payment of interest on any award of just compensation; such interest, in fact, is considered an element of just compensation. Id., at 149, citing State Roads Comm’n v. G.L. Cornell Co. Sav. & Profit Sharing Trust, 85 Md. App. 765, 584 A.2d 1331 (1991).

As Section 28-2-420(A) is clear and unambiguous, and history shows a clear intent to require the payment of interest on an award of just compensation, and because the Act contains no carve-out or distinction for funds drawn down pursuant to Section 28-2-480, the Trial Court erred in interpreting the Act to mean that a condemnee is not entitled to interest on funds paid to the Clerk of Court.

### C. THE TRIAL COURT ERRED IN RELYING ON WINDHAM V. HONEYCUTT.

As argued above, it is Respondents’/Appellants’ position that a proper reading and application of the holding in Faulkenberry would result in a reversal of the Trial Court’s Interest Order. Further, however, the Trial Court referenced certain language cited in Faulkenberry, found originally in the case of Windham v. Honeycutt, 290 S.C. 60, 348 S.E.2d 185 (Ct. App. 1986). Specifically, the Trial Court refers to the concept of “fruits of possession,” in holding that the fruits of possession (meaning a party’s right to access funds deposited with the court) and the full statutory interest are mutually exclusive. Interest Order, p. 2. However, the Windham case bears no relation to the instant matter and should not be used as a guide in determining Respondents’/Appellants’ statutory right to interest.

Windham was a contract dispute, involving accounting and specific performance claims – entirely common law in nature and governed by no statutes. Windham v.

Honeycutt, 290 S.C. 60, 348 S.E.2d 185 (Ct. App. 1986). In Windham, the seller of a piece of property breached her contract and refused to convey the property; the buyer was granted specific performance and an award of an accounting of profits that could have been earned during the pendency of litigation. Id., at 62. The Windham court determined that while the buyer was entitled to the fair rental value of the property during the period of dispute (the “fruits of possession”), the seller was entitled to offset interest that could have been earned had the purchase price been timely paid. Id. Such a ruling, according to the Windham court, was “in the nature of an accounting, by which a court of equity seeks to place the parties in the same position as if the conveyance had been made when due.” Id.

The Faulkenberry court cited to Windham as a “close analogy,” holding that “[a]s with an accounting, a condemnor must place the condemnee in the same position pecuniarily as if the taking had not occurred.” Faulkenberry, at 155. The Faulkenberry court then went on to compare its condemnee to the Windham purchaser. Id. In other words, a condemnee drawing down all the funds on deposit with the clerk was analogous to a purchaser retaining the purchase price rather than paying it to his seller. Such situation, although logical, is simply not the situation at hand. The condemnees in the within matter did not draw down *any* funds from the clerk. In fact, the condemnees in the within matter logistically could not have exercised their rights under Section 28-2-480, but even assuming for the sake of argument that they could have, they simply did not. Section 28-2-480 is permissive, not mandatory, and to extrapolate otherwise leads to a punitive result, clearly not intended by the Legislature in Section 28-2-410(A).

D. THE TRIAL COURT ERRED IN ASSUMING THAT THE CONDEMNEDS COULD HAVE ACCESSED THE ENTIRE TENDER OF PAYMENT ON DEPOSIT WITH THE COURT.

As described above, the Trial Court’s ruling in the Interest Order was premised entirely on the fact that the Landowners in this action could have accessed the funds deposited with the clerk of court, whether in part (via Section 28-2-480) or in whole (via settlement/consent of Piedmont Natural Gas). Such a premise ignores the simple fact that with over a hundred surviving Landowners, any draw-down would be impossible. Further, any draw-down is permissive, not mandatory. Most problematic is the fact that the Interest Order punishes Respondents/Appellants for not reaching an extrajudicial settlement by denying them an express statutory benefit. Under the terms of the Interest Order, the condemnor is entitled to credit for all interest earned on all funds on deposit, and the condemnees are not entitled to any interest on any funds on deposit. Such a result is inconsistent with the clear language of the Act.

CONCLUSION

For all the reasons stated herein, the Court should reverse the judgment of the Master-in-Equity and award Respondents/Appellants the full statutory prejudgment interest to which they are entitled, in the amount of \$99,756.12, as well as post-judgment interest accruing through the date of payment.

Respectfully submitted,



Erin Culbertson (SC Bar # 68271)  
**KEHL CULBERTSON ANDRIGHETTI**  
114 Manly St.  
Greenville, SC 29601  
864/370-8222 (p) 864/370-8227 (f)  
[erin@palmettolawfirm.com](mailto:erin@palmettolawfirm.com)

David B. Ward  
**HORTON, DRAWDY, WARD, MULLINAX  
& FARRY, P.A.**  
307 Pettigru St.  
Greenville, SC 29601  
[dward@hortonlawfirm.net](mailto:dward@hortonlawfirm.net)

*Attorneys for Respondents/Appellants*

December 2, 2015

RECEIVED

DEC 07 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Piedmont Natural Gas Company, Inc.,.....Appellant/Respondent,

v.

Richeous Smith, Worthly Smith a/k/a Worley Smith, Pearl Terry, Ethel Butler, Tweety Smith a/k/a Tweety Smith Harris, Doreth Smith, Fletcher Lee Harris, Alma Williams Smith, James R. Smith, Loree Smith, Gene A. Smith, Adolf Smith, Janie Sue Smith, Samuel Paul Smith, Ruby Smith Mansell, Buford Mansell, Ethel Mae Smith, Wilson Smith, Patrick R. Smith, Reginald Lamont Smith, Eric Smith, Christine Smith Dawkins, William G. Dawkins, Alma Renee Smith Murry, Sharai Smith Brock, Robert Lee Smith, Melissa F. Smith, Rosalyn Annette Steven, Edith Smith Foster, George Waymon Foster, Bridgette Smith Blassingame, Tara Smith, Waymon Odell Smith, Martha Miller Smith, Calvin Lee Smith, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, Dorothy Smith Pearson, Gary Pearson, Jerome Smith, Jaygo Terry, Ida Terry, Mack Terry, Zone Terry, Leola Terry Smith, James Smith, J. P. Terry, David Brayvelle Terry, Ettie Pearl Booker, Tecora O. Terry Mason, Odell Mason, Lenora Holley, Dorothy Terry Sheppard, Orangelee Sheppard, Vernon Sheppard, Kasandra Sheppard Jenkins, Karen Sheppard Spates, Theodore Terry, Sr., Gracie Terry, Kelvin F. Terry, Theodore Terry, Jr., Keith Terry, Leola Terry Daniels, Wilford Daniels, Terrance Leslie, Sr., Derrick McGee, Jr., Fred Smith, Jr., Mannell Terry, Patricia Terry, Sheila Terry, Barbara Evans, Leonard Evans, Linda Evans, Thomas Evans, Johnny R. Williams, Connie Evans, Michael Evans, Iola Terry Cox, William Henry Cox, Johnny F. Cox, Joyce A. Smith, Anthony Cox, Alfred Cox, J. Henry Cox, Charlette J. Cox, Charles J. Cox, Michael Cox, Supearl Terry Gilliam a/k/a Supearl Terry Gilliam Miranda, Eugene Gilliam, Terry Gilliam, Jerry Gilliam, Warren Gilliam, Eugene Gilliam, Jr., Melvin Gilliam, Rodney Gilliam, Cindy Gilliam, Shakima Gilliam, Carmella Cottom, Nina Gilliam, Vermell Gilliam Phillips, Shaynise Alston, John Gilliam, Donald Gilliam, Sr., Leunette Gilliam, Donnette Gilliam Ortchere, Leslie Gilliam Peter, Angela Gilliam, Donald E. Gilliam, Raymond T. Gilliam, Juan Miranda, Carmen Miranda a/k/a Carmen Miranda Glavin, John Glavin, Sr., John Glavin, Jr., Miranda Glavin, Jeffrey Glavin, Yolanda Glavin, Ezell Terry, Magaline Terry, Leroy Terry, Kenneth Terry, James (Jimmy) Terry, Pearl Mae Terry, Winnie L. Terry Anderson, Furman Anderson, Tommy Anderson, Abigail Dodd, Angela Reid, Sandra McDowell, Harold Anderson, Mary Ann Davis, Charlene Peaks, Albert Anderson, Paul Terry, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Paul A. Terry, Mark G. Terry, Terry Sholer, Jamie Terry, James O.C. Smith, Pauline Smith, Gloria Gore, Paul Smith, Ethel Allen, Desiree Golden, Pauline Workman, Brenda Moulhem, Eric Rogers, Tonya S. Turner, LaTasha D. Terry, and if any of the aforementioned be deceased, then their heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives, and any party claiming by or through them.....Landowners,

and

The United States of America, acting by and through its agency, the Internal Revenue Service, The United States of America, acting by and through its agency the United States Department of Justice,

The South Carolina Department of Revenue, The South Carolina Department of Mental Health, The State of South Carolina, Bullhead Investments, LLC, Arrow Financial Services, LLC, Sharonview Federal Credit Union, Discover Bank, Zachery Arnold, GE Commercial Finance Business Property Corporation, Midland Funding, LLC, and Greenville County.....Other Condemnees,

and

John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, said property being identified as a portion of Greenville County Tax Map Numbers 0531010102100 and 0531010102101.....Unknown Claimants,

Of whom Ethel Allen; Shaynise Alston; Harold Anderson; Tommy Anderson; Bridgette Smith Blassingame; Sharai Smith Brock; Carmella Cottom; Alfred Cox; Anthony Cox; Mary Ann Davis; William G. Dawkins; Abigail Dodd; Linda Evans; Michael Evans; Thomas Evans; Chavonte Gilliam; Cindy Gilliam; Derrick Gilliam; Donald E. Gilliam, Jr.; John L. Gilliam; Lakisha Gilliam; Latonya Gilliam; Leunette Gilliam; Mattie M. Gilliam; Nina Gilliam; Raymond T. Gilliam; Rodney Gilliam; Shakima Gilliam; Warren Gilliam; Desiree Golden; Gloria Gore; Lenora Holley; Kasandra Sheppard Jenkins; Terrance Leslie, Sr.; Sandra McDowell; Derrick McGee, Jr.; Brenda Moulhem; Alma Rene Smith Murry; Charlene Peake; Leslie Gilliam Peter; Angela Reid; Orangelee Sheppard; Vernon Lee Sheppard; Charles Terry Sholer; Calvin Smith; Eric Smith; Fred Smith, Jr.; Gene A. Smith; James R. Smith; Joyce A. Smith; Loree Smith; Martha Miller Smith; Patrick Smith; Paul Smith; Reginald Lamont Smith; Tara Smith; Karen Regenia Spates; Rosalyn Annette Steven; Betty Jo Terry; Donald E. Terry; Deloris I. Terry; Gracie Terry; Jamie Terry; Keith Terry; Kelvin F. Terry; Leroy Terry; Mark G. Terry; Paul Terry, Jr.; Theodore Terry, Jr.; Porsha Williams; and Pauline Workman are the .....Respondents/Appellants,

and

Unknown landowners, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, United States of America and the United States of America, acting by and through its agency, the Internal Revenue Service, Midland Funding, LLC, Sharonview Federal Credit Union, SC Department of Revenue, County of Greenville, Arrow Financial Services, LLC, SC Dept. of Mental Health, SC Attorney General, Bullhead Investments, LLC, Zachery Arnold, Ettie Pearl Booker, Ira K. Carroll, Johnny F. Cox, Wilford Daniels, Angela Gilliam, Bianca S. Gilliam, Demetrius J. Gilliam, Jerry Gilliam, Kehimonnie S. Gilliam, Terry Gilliam, John Glavin, Jr., John Glavin, Sr., Jeffrey Glavin, Miranda Glavin, Yolanda Glavin, Terrance Leslie, Terrll Leslie, Teaira Leslie, Donnette Gilliam Ortchere, Jerome Smith, Melissa F. Smith, Michael Smith, James (Jimmy) Terry, Patricia Terry, Pearlmae Terry, and Sheila Terry are the.....Respondents.

Appellate Case No. 2015-001909

The Honorable Charles B. Simmons, Jr.  
Greenville County  
Trial Court Case No. 2012-CP-23-04064

**RECEIVED**

DEC 07 2015

---

**CERTIFICATE OF SERVICE**

---

**SC Court of Appeals**

The undersigned hereby certifies that she has served the Initial Brief of Respondents/Appellants on counsel of record and parties in this action by depositing a copy of the same in the United States mail, postage prepaid, on December 3, 2015, addressed as follows:

Kevin Dunlap  
Parker Poe Adams & Bernstein, LLP  
100 Dunbar St., Suite 206  
Spartanburg, SC 29306  
[kevindunlap@parkerpoe.com](mailto:kevindunlap@parkerpoe.com)  
*Attorney for Piedmont Natural Gas Company, Inc.*

US Attorney's Office  
55 Beattie Place, Suite 700  
Greenville, SC 29601  
*Attorney for the United States of America and the United States of America, acting by and through its Agency, the Internal Revenue Service*

Michael S. Chambers  
121 Manly St., Suite B  
Greenville, SC 29601  
*Attorney for Piedmont Natural Gas Company, Inc.*

Wylie W. Clarkson  
PO Box 287  
Columbia, SC 29202  
*Attorney for Midland Funding, LLC*

Paul A. McKee, III  
Hanover Title Agency, Inc.  
PO Box 2196  
Spartanburg, SC 29304  
[pmckee@hanovertitle.com](mailto:pmckee@hanovertitle.com)  
*Attorney for Reece W. Smith, Raymond Eddie Smith, Michael Smith, and Odell Smith*

Charles N. Griffin, III  
PO Box 19806  
Raleigh, NC 27619  
*Attorney for Sharonview Federal Credit Union*

Kelley Y. Woody  
PO Box 6432  
Columbia, SC 29260  
[kwoody@sc.rr.com](mailto:kwoody@sc.rr.com)  
*Guardian ad Litem for unknown Landowners*

Mary E. Campbell  
SC Department of Revenue  
PO Box 12265  
Columbia, SC 29211  
*Attorney for SC Department of Revenue*

A. Lance Crick

Jeffrey D. Wile  
County Attorney's Office  
301 University Ridge, Suite 2400  
Greenville, SC 29601

*Attorney for County of Greenville*

Ettie Pearl Booker  
21 Cotswold Terrace  
Taylors, SC 29687  
*Landowner/Condemnee*

Johnny F. Cox  
6420 Guildford Rd.  
Rockford, IL 61107  
*Landowner/Condemnee*

Terry Gilliam  
47 Myers St.  
Buffalo, NY 14211  
*Landowner/Condemnee*

Jerry Gilliam  
5 Myers St.  
Buffalo, NY 14211  
*Landowner/Condemnee*

Donnette Gilliam Ortchere  
444 Emslie St.  
Buffalo, NY 14212  
*Landowner/Condemnee*

Angela Gilliam  
445 Emslie St.  
Buffalo, NY 14212  
*Landowner/Condemnee*

James (Jimmy) Terry  
105 Bailey Rd.  
Greer, SC 29651  
*Landowner/Condemnee*

Pearlie Mae Terry  
PO Box 6942  
Greenville, SC 29606  
*Landowner/Condemnee*

John Glavin, Sr.  
21 Murray Terrace  
Tonawanda, NY 14150

*Landowner/Condemnee*

Jeffrey Glavin  
21 Murray Terrace  
Tonawanda, NY 14150  
*Landowner/Condemnee*

Yolanda Glavin  
21 Murray Terrace  
Tonawanda, NY 14150  
*Landowner/Condemnee*

Miranda Glavin  
21 Murray Terrace  
Tonawanda, NY 14150  
*Landowner/Condemnee*

John Glavin, Jr.  
196 Moore St.  
Tonawanda, NY 14150  
*Landowner/Condemnee*

Kenneth Terry  
117 Sunnyglen Dr.  
Greer, SC 29561  
*Landowner/Condemnee*

Eric Rogers  
10 Fort Dr.  
Simpsonville, SC 29681  
*Landowner/Condemnee*

Tonya S. Turner  
3494 Pinegate Trail  
Snellville, GA 30039  
*Landowner/Condemnee*

LaTasha D. Terry  
90 Preakness Dr.  
Alpharetta, GA 30022  
*Landowner/Condemnee*

Ira K. Carroll  
1348 Cochran Crossing  
McDonough, GA 30252

*Landowner/Condemnee*

Demetrius J. Gilliam  
4328 Thyme Ave.  
Las Vegas, NV 89910  
*Landowner/Condemnee*

Kehimonnie S. Gilliam  
4328 Thyme Ave.  
Las Vegas, NV 89910  
*Landowner/Condemnee*

Bianca S. Gilliam  
4328 Thyme Ave.  
Las Vegas, NV 89910  
*Landowner/Condemnee*

Terrance Leslie, Jr.  
204 Herman St.  
Buffalo, NY 14211  
*Landowner/Condemnee*

Terrell Leslie, Sr.  
204 Herman St.  
Buffalo, NY 14211  
*Landowner/Condemnee*

Teaira Leslie  
204 Herman St.  
Buffalo, NY 14211  
*Landowner/Condemnee*

Jerome Smith  
232 Sunnyglen Dr.  
Greer, SC 29651  
*Landowner/Condemnee*

Wilford Daniels  
144 Sweet Ave.  
Buffalo, NY 14212  
*Landowner/Condemnee*

Patricia Terry  
211 Eagle St., #701  
Buffalo, NY 14204

*Landowner/Condemnee*

Sheila Terry  
211 Eagle St., #701  
Buffalo, NY 14204  
*Landowner/Condemnee*

Melissa F. Smith  
142 Wilson Creek Rd.  
Iva, SC 29655  
*Landowner/Condemnee*

The Hon. Alan Wilson  
SC Attorney General  
PO Box 11549  
Columbia, SC 29211

John H. Magill  
SC Dep't of Mental Health  
2414 Bull St.  
Columbia, SC 29202

Trace M. Dillon  
Arrow Financial Services, LLC  
1130 Hurricane Shoals Rd., Suite 600  
Lawrenceville, GA 30044

Ahmad S. Washington  
Arrow Financial Services, LLC  
1211 E. Morehead St.  
Charlotte, NC 28204

Richard L. Jackson  
Bullhead Investments, LLC  
1315 Westbrook Plaza Dr., Suite 100  
Winston-Salem, NC 27103


CT Corporation System  
Discover Bank  
2 Office Park Ct., Suite 103  
Columbia, SC 29223

CT Corporation System  
GE Commercial Finance Business Property  
Corporation

2 Office Park Ct., Suite 103  
Columbia, SC 29223

Zachery Arnold  
460 Durham Td.  
Greer, SC 29650

Dated this 3<sup>rd</sup> day of December, 2015.

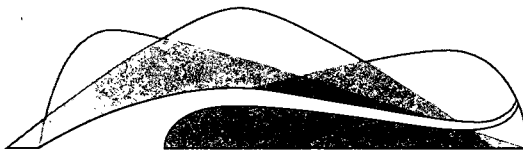


---

Erin Culbertson  
Kehl Culbertson Andrighetti, LLC

John L.B. Kehl  
Erin Culbertson

J.J. Andrighetti  
Alex Kornfeld



KEHL • CULBERTSON • ANDRIGHETTI • KORNFELD  
— ATTORNEYS AT LAW —

December 3, 2015

The Hon. Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RECEIVED  
DEC 07 2015  
SC Court of Appeals

Re: *Piedmont Natural Gas Co., Inc. v. Richeous Smith, et al.*  
*Appellate Case No. 2015-001909*

Ladies/Gentlemen:

Enclosed please find an original and copy of the Initial Brief of Respondents/Appellants and Respondents'/Appellants' Designation of Matter to be Included in the Record on Appeal in the above-captioned matter. I would appreciate if you would file the original and return the copy to me in the enclosed envelope. Should you have any questions or concerns, please don't hesitate to contact me.

With kind regards, I remain,

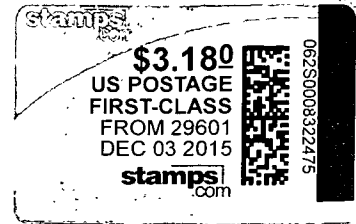
Yours very truly,

Erin Culbertson  
erin@palmettolawfirm.com

enclosures

cc: All counsel and parties as named on the Certificates of Service  
clients  
file

Kehl Culbertson Law Firm  
114 Manly St.  
Greenville, SC 29601



**RECEIVED**  
DEC 07 2015  
SC Court of Appeals



The Hon. Jenny Abbott Kitchings  
South Carolina Court of Appeals  
PO Box 11629  
Columbia SC 29211-1629