

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Charles B. Simmons, Jr.

Case No. 2012-CP-23-04064  
Appellate Case No. 2015-001909

**RECEIVED**  
FEB 22 2016  
SC Court of Appeals

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

v.

Richeous Smith, Worthy 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 Brayvell 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 Peake, 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, 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 053101010200 and 0531010102101, Unknown Claimants,.....

Of whom Ethel Allen, Shaynise Alson, Harold Anderson, Tommy Anderson, Bridgette Smith Blassingame, Sharai Smith Brock, Carmella Cottom, Alfred 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 TI 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, and Bullhead Investments, LLC, Zachery Arnold, Ettie Pearl Booker, Ira K. Carol, 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, Terrell Leslie, Tearia Leslie, Donnette Ortchere, Jerome Smith, Melissa F. Smith, Michael Smith, James (Jimmy) Terry, Patricia Terry, Pearlie Mae Terry, and Sheila Terry are the Respondents.

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**RESPONSE BRIEF  
OF APPELLANT/RESPONDENT**

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**STATEMENT OF ISSUE ON APPEAL**

DID THE TRIAL COURT CORRECTLY CONCLUDE THAT CONDEMNNEES WERE NOT ENTITLED TO INTEREST ON THE TENDER OF PAYMENT THAT WAS DEPOSITED WITH CLERK OF COURT AND AVAILABLE FOR DRAW DOWN BY CONDEMNNEES AT THE COMMENCEMENT OF THE CONDEMNATION ACTION?

## STATEMENT OF THE CASE

Piedmont Natural Gas Company, Inc. (“PNG” or “Appellant”) condemned a 2.515-acre strip of property (the “Easement”) on the northern boundary of an approximately 70-acre parent tract (the “Property”) to install an underground, 12-inch natural gas transmission pipeline (the “Pipeline”). Order p. 1-2; Trial Tr. 21:19-20. The condemnees did not challenge Appellant’s right to take under the South Carolina Eminent Domain Procedures Act (the “Act”). The take took place on June 22, 2012 when Appellant filed an initial Condemnation Notice and Tender of Payment with the Clerk of Court for Greenville County. See Order p. 2. The tender of payment deposited with the court was \$172,200 (the “Tender”). Order on Interest p. 1. An Amended Condemnation Notice was filed on January 31, 2014 to include and reflect additional condemnees based on information obtained by Appellant after the initial filing. Am. Notice pp. 1-26.

On Appellant’s motion, the condemnation action was referred to the Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, on January 22, 2015. A trial of the condemnation action was held before Judge Simmons on May 28, 2015. The court entered an Order on June 25, 2015 awarding the condemnees just compensation of \$414,752 (the “Award”). Order p. 12. Appellant timely appealed the June 25, 2015 Order.

Respondents/Appellants (hereinafter “Respondents”) filed a Motion to Determine Interest Due on Verdict on June 25, 2015 seeking pre-judgment interest at the statutory rate of eight percent (8%) a year on the full measure of the Award. A hearing on post-judgment motions was held before Judge Simmons on July 20, 2015. Judge Simmons entered three orders on August 10, 2015, including an order holding that Respondents were only entitled to pre-judgment interest on the difference between the Tender and the Award (hereinafter, the “Third Order”).

Respondents filed a Motion to Reconsider, Alter or Amend the Court's Third Order on August 7, 2015. The Court denied the Motion to Reconsider the Third Order on August 10, 2015. Respondents filed a Notice of Appeal of the Third Order on September 15, 2015.

### **STATEMENT OF THE FACTS**

Appellant condemned the Easement on June 22, 2012 for the public purpose of installing, operating and maintaining the Pipeline. Order p. 2; Trial Tr. 21:19-20; Trial Tr. 27:4-6. The parent tract, located in Greenville County, is 72.6 acres, and it contains one single-family residence and other out buildings. Order p. 1. The Easement is 50 feet wide and totals 2.515 acres, and also cuts off a 0.747-acre area between the Easement and the northern boundary of the Property (the "Severed Area"). Order p. 2.

Both Appellant and Respondents retained appraisers to evaluate and support their claims as to the amount of just compensation for the taking under the Act. The appraisers' estimations of the total value of the Easement and the Severed Area were strikingly similar with Appellant's appraiser arriving at a value of \$172,226 and Respondents' appraiser arriving at a value of \$175,324. Order p. 5.

Without alleging any wrongdoing, Respondents' appraiser also included a measure of damages to the remainder based on the alleged "negative perception in the market" associated with the mere existence of the utility easement on the Property (hereinafter "Stigma Damages"). Appellant's Mot. *in Limine* p. 3; Trial Tr. 94:1-4. The estimated value of the alleged Stigma Damages totaled \$239,428, bringing the total value of Respondents' appraiser's measure of just compensation to \$414,752. Order p. 5. Appellant's appraiser testified that there would be no such Stigma Damages based on a market-based analysis. *See* Trial Tr. 110:14-112:15.

The trial court held in favor of Respondents, setting the amount of just compensation at \$414,752, including the alleged Stigma Damages. Order p. 12. The trial court's award for

Stigma Damages in this eminent domain action is the first of its kind in South Carolina. The difference between the amount of the Tender and the verdict is \$242,552. Appellant timely appealed the June 25, 2015 Order on the grounds that, among other things, stigma damages are not be available in South Carolina as a matter of law, the trial court erred by allowing Respondents' expert to testify about alleged stigma damages despite his admitted lack of training, experience or specialized knowledge or skill and there was insufficient evidence of alleged fear or stigma damages.

### ARGUMENT

#### **I. THE TRIAL COURT CORRECTLY RULED THAT CONDEMNNEES WERE NOT ENTITLED TO INTEREST ON THE TENDER OF PAYMENT THAT WAS DEPOSITED WITH CLERK OF COURT AT THE COMMENCEMENT OF THE CONDEMNATION ACTION.**

##### **A. Pre-Judgment Interest Does Not Accrue on Funds Appellant Deposited with the Court on June 22, 2012.**

Condemnation actions in South Carolina are governed by the Act. *See* S.C. Code Ann. § 28-2-10 *et al.* The Third Order should be affirmed because it is based on, and consistent with, the Act and this Court's holding in *S.C. Dept. of Transportation v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822 (1999). The Act includes so-called "quick take" procedures, which allow the condemnee to take possession of the land upon tendering payment of the estimated just compensation with the court. S.C. Code Ann. § 28-2-90(3). To "compensate the landowner for the delay in the monetary payment" from the date the property is taken, the Act also provides that the condemnee is entitled to pre-judgment interest that accrues from the date the condemnation notice is filed through the date of the judgment. S.C. Code Ann. § 28-2-420.<sup>1</sup>

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<sup>1</sup> Respondents claim that the language of the statute is "clear and unambiguous." This is incorrect. S.C. Code Ann. § 28-2-420 does not address the amount of interest to be paid to the condemnee when funds are tendered with the Court before there is a verdict on the value of just compensation. As noted by this Court in *Faulkenberry*, "sister jurisdictions" have held that deposit of tender with the Court tolls the running of pre-judgment interest. *Faulkenberry*, 337 S.C. at 155, 522 S.E.2d at 829-30.

However, pre-judgement interest does not accrue on the funds tendered to the court. See *Faulkenberry*, 337 S.C. at 153, 522 S.E.2d at 829.

The amount that a condemnor deposits with the court when a condemnation action is commenced available for draw down by the condemnee. Provided the condemnor's right to take is not challenged, the condemnee has a statutory right to receive up to 50% of the funds tendered. S.C. Code Ann. § 28-2-480. The condemnee may receive up to the full value of the amount tendered by agreement of the parties. See *Faulkenberry*, 337 S.C. at 144-45, 522 S.E.2d at 824. Because the tender deposited with the court is available for drawdown by the condemnee, prejudgment interest does not accrue on those funds. *Id.* at 154, 522 S.E.2d at 829.

In this case, it is undisputed that the take occurred when PNG filed the initial condemnation notice and tendered \$172,200 with the Clerk of Court in Greenville County. It is also undisputed that none of the condemnees, including Appellants, challenged PNG's right to condemn the property under the Act. From the date of deposit on June 22, 2012, 50% of the Tender could have been drawn down by Respondents. The Tender was available, regardless of the fact that Respondents did not actually request payment of the funds. Further, during the course of the condemnation action, neither the Respondents nor any other landowner of the Property sought PNG's agreement to actually receive payment of funds in excess of the 50% allowed pursuant to S.C. Code Ann. § 28-2-480. After failing to take any action to draw down the Tender, Respondents cannot not now be allowed to claim for the first time on appeal that the full amount of the Tender was not available when the action was commenced on June 22, 2012.

**B. *Faulkenberry* Applies to this Case Because the Tender Was Available for Drawdown by Respondents.**

Appellants attempt to mislead this Court by arguing that *Faulkenberry* is inapposite to this case because the condemnee in *Faulkenberry* actually withdrew the amount tendered to the Court before the Court reached a verdict on the measure of just compensation. *Faulkenberry*,

337 S.C. at 144-45, 522 S.E.2d at 824. The *Faulkenberry* decision did not limit its holding to instances where the condemnee actually drew down funds. Rather, *Faulkenberry* holds that pre-judgment interest under the Act does not accrue on any funds deposited with the Court that the condemnee may withdraw. *Id.* at 155, 522 S.E.2d at 829.

In construing the Act, this Court relied on the interpretation of eminent domain statutes by other jurisdictions. *Id.* at 152-53, 522 S.E. 2d at 828 (“The federal government and many states statutorily provide that no interest is allowed on a payment into court by the condemning authority.”). It also cited South Carolina case law, for the proposition that the deposit of funds into court prevents accrual of interest. *Id.* at 153, 522 S.E.2d at 828-29. Finally, this Court noted that, under the common law, the accrual of pre-judgment interest is dependent upon the actions of the debtor, and pre-judgment interest only accrues when the “judgment debtor” (or in this case, the condemnor) retains use of the “judgment creditor’s” (or condemnee’s) money. *Id.*, citing *Sears v. Fowler*, 293 S.C. 43, 45-46, 358 S.E.2d 574, 575 (1987). In sum, the authority that this Court relied on in *Faulkenberry* turned on the payment of a judgment “into a court,” and not on when or whether available funds were actually drawn down by the condemnee.

**C. Respondents’ Failure to Draw Down Available Funds from the Court is Irrelevant to the Accrual of Pre-Judgment Interest.**

Respondents’ attempt to narrow the holding to scenarios where available funds on deposit with the Court are actually drawn down by the condemnee is not only contrary to the holding in *Faulkenberry*, it would also unjustly punish PNG for Respondents’ failure to act on their legal right to take possession of such funds. This Court should reject Respondents’ outrageous argument that the Tender was not available because “with over a hundred surviving Landowners, any draw-down would be impossible.” Resps’ Br. p. 13. Simply stated, Respondents’ had a statutory right to draw down 50% of the Tender, and up to 100% of the Tender by the agreement of the parties (which Respondents’ never sought). Respondents should not now be permitted to

use their failure to act on their legal right as a basis to increase the Award. Otherwise, Respondents must also reject the verdict awarded because “with over 100 surviving landowners” any allocation of the verdict amount “would be impossible.” At a minimum, Respondents could have drawn money down and deposited the money in a trust account. PNG deposited the Tender with the Court when the initial condemnation notice was filed on June 22, 2012. Since that time, the Tender has been available to Respondents and PNG has not had use of those funds.

**II. IN THE ALTERNATIVE, CONDEMNNEES WERE ONLY ENTITLED TO INTEREST ON FIFTY PERCENT (50%) OF THE TENDER OF PAYMENT THAT WAS DEPOSITED WITH THE CLERK OF COURT.**

As described above, Respondents are not entitled to pre-judgment interest on any of the Tender because those funds were available for draw down by Respondents. Respondents had a statutory right to draw down up to 50% of the Tender pursuant to the Act (*See* S.C. Code Ann. § 28-2-90(3)), and Respondents could have drawn down up to 100% of those funds with the agreement of the parties. Respondents cannot now argue that the full amount of the Tender was unavailable because: (1) Respondents failed to withdraw any of the Tender, including the 50% of funds allowed by statute; (2) Respondents failed to even request PNG’s agreement to allow the condemnees to draw down funds in excess of their statutory right; and (3) Respondents made no such argument at trial or in the post-judgment motions or hearing.

Even if this Court finds that the full value of the Tender was not available to Respondents, pre-judgment interest did not accrue on the amount of Tender that Respondents had a statutory right to draw down. *Faulkenberry* cites multiple authorities for the proposition that pre-judgment interest does not accrue, so long as funds on deposit with the court are available to the condemnee. For example, Delaware “does not allow interest on any amount the condemnee *could* have withdrawn.” *Faulkenberry*, 337 S.C. at 155, 522 S.E.2d at 830, citing *State ex rel. State Highway Dep’t v. 14.69 Acres of Land*, 245 A.2d 788 (Del. Super. Ct. 1968)

(emphasis in the original). In Texas, the running of interest in condemnation actions is tolled for the amount tendered with the court based on the rationale that “the condemnee may withdraw the deposit and is entitled to use of the money pending a court determination of his damages.” *Id.* at 155, 522 S.E.2d at 829, citing *Lin v. Houston Community College System*, 948 S.W.2d 328 (Tex. Ct. App. 1997). To receive 50% of the Tender, Appellants simply had to request such funds:

Upon written application, in form satisfactory to the clerk of court, by all named condemnees at any time after which the condemnor has taken possession, when the right to take is not contested, the clerk of court shall pay to them the amount applied for up to fifty percent of the funds deposited with the clerk of court by the condemnor in that action.

S.C. Code Ann. § 28-2-420 (emphasis added). Respondents’ failure to act on their statutory right to draw down the Tender should not be used to increase the Award. PNG deposited the Tender when it initiated the condemnation action on June 22, 2012 in accordance with the Act. Since that date, PNG has not had use of any of these funds, and Landowners have had the statutory right to draw down up to \$86,100 (*i.e.*, 50% of the Tender). At the very least, pre-judgment interest should not accrue on this amount, which has been available for Respondents’ use since June 22, 2012.

Respondents argue that this Court should hold that pre-judgment interest accrued on the full value of the Tender because the South Carolina Department of Transportation (“SCDOT”), the condemnor in *Faulkenberry*, “conceded that the condemnee was entitled to interest on the entire verdict....” Resps’ Br. p. 10. SCDOT’s purported “concession” has absolutely no bearing on the outcome of this case. First, statutory interpretation is a matter of law and is within the exclusive province of this Court. *Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005). Only facts may be conceded by a party. *See McDuffie v. McDuffie*, 308 S.C. 401, 410, 418 S.E.2d 331, 336 (Ct. App. 1992) (a party’s stipulation concerning a question of law is not binding on the court).

Respondents also argue that SCDOT's construction of the Act "should be given great deference and not overruled" because SCDOT is an "administrator" of the Act. *See Resps' Br.* p. 11. Absolutely not. The fact that SCDOT may condemn property for a public purpose does not make SCDOT an "administrator" of the Act.<sup>2</sup> Indeed, by Respondents' own reasoning, PNG (which may also condemn property under the Act) would also be an "administrator." This simply does not make sense. Statutory construction falls to this Court, which is not bound to give deference to SCDOT's purported interpretation of the Act in *Faulkenberry*.

Following the precedent in *Faulkenberry*, this Court should affirm the trial court's holding that Respondents are not entitled to pre-judgment interest on the Tender.

### **III. RESPONDENTS' ARGUMENT THAT THIS COURT IMPROPERLY RELIED ON *WINDHAM V. HONEYCUTT* IN *FAULKENBERRY* IS INCORRECT.**

Respondents' argue that the trial court improperly relied on *Windham v. Honeycutt*, 290 S.C. 60, 348 S.E.2d 185 (Ct. App. 1986), which this Court cited in *Faulkenberry* to support its holding that pre-judgment interest did not accrue on the Tender. *Resps' Br.* pp. 12-13. Specifically, Respondents argue that *Windham* "bears no relation" to condemnation actions because it was a contract dispute involving an accounting and specific performance and governed by the common law. However, this Court made clear in the *Faulkenberry* order that the "close analogy" in *Windham* is based on the similar purposes of the awards in the two actions – *i.e.*, to make the person(s) seeking pecuniary relief whole. *Faulkenberry*, 337 S.C. at 154-55, 522 S.E.2d at 829.

The purpose of the pre-judgment interest provision in the Act "is to compensate the landowner for the delay in the monetary payment that occur(s) after the property has been taken"

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<sup>2</sup> The South Carolina Code identifies the "administrators" of certain Acts. For example: the "Administrator" of the Uniform Unclaimed Property Act is the State Treasurer, his agents, or representatives (S.C. Code. Ann. § 27-18-20); the "Administrator" of the Uniform Securities Act of 2005 is the Attorney General (S.C. Code. Ann. § 35-1-102); the "Administrator" of the Consumer Protection Code is the South Carolina Department of Consumer Affairs (S.C. Code. Ann. § 37-17-20); and the "Administrator" of the State Commodity Code is the South Carolina Secretary of State (S.C. Code. Ann. § 39-73-10). No administrator is identified in the Eminent Domain Procedures Act.

when the condemnor utilizes the “quick-take” procedures in the Act. *Faulkenberry*, 337 S.C. at 149, 522 S.E.2d at 826. The Act “put[s] the owners in as good position pecuniary as if the use of their property had not been taken.” *Id.* at 148, 522 S.E.2d at 826, quoting *Phelps v. United States*, 274 U.S. 341, 344 (1927). This Court accurately identified the similarity in the purpose of the award for the breach of contract to sell land in *Wyndham*, which was “to place the parties in the same position as if the conveyances had been made when due.” *Id.* at 154, 522 S.E.2d at 829 (emphasis added). The purpose of the just compensation provisions in the Act (including the interest provisions that apply to “quick-take” proceedings) and awards for breaches of contract to sell land are the same; the awards restore the party seeking payment to the same position as if the underlying condemnation or breach had not occurred. This Court properly relied on *Wyndham* to construe the Act to achieve this purpose. *See Moran*, 365 S.C. at 275, 617 S.E.2d at 138 (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”).


*Faulkenberry*, supported by this Court’s decision in *Wyndham*, holds that prejudgment interest does not accrue on funds deposited with the Court in a condemnation action under the Act because the condemnee may withdraw the deposit and is entitled to use of the money pending the Court’s determination of just compensation. Under *Faulkenberry*, this Court should affirm the Third Order denying pre-judgment interest on the Tender.

### **CONCLUSION**

For all of the foregoing reasons, and any others that are contained in the Record, Appellant requests that this Court hold that pre-judgment interest did not accrue on the \$172,200 tender of payment that was deposited with the court at the commencement of this condemnation action. Appellant further requests that this Court reverse the judgment of the trial court and find

that Stigma Damages are not recoverable as a matter of law and reduce the verdict by the amount of \$239,428, which represents the part of the Award for stigma damage.

Respectfully submitted this the 22nd day of February, 2016.

  
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