

78815

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

John A. Massalon, Esquire, Limited Special Referee

Case No. 2010-CP-10-10495

RECEIVED

FEB 29 2016

SC Court of Appeals

Project: Intermodal Container Transfer Facility
Tract: 11

South Carolina Department of Commerce, Division of Public Railways,

Appellant,

v.

Clemson University,

Landowner,

And Charleston Naval Complex Redevelopment Authority,
City of North Charleston, Commissioners of Public Works of the City
of Charleston, North Charleston Sewer District, BellSouth Telecommunications,
Inc., Business Telecom, Incorporated, South Carolina Electric & Gas Company,
and Charleston County School District,

Other Condemnees,

Of Whom, Charleston County School District is

Respondent.

NOTICE OF APPEAL

South Carolina Department of Commerce, Division of Public Railways appeals the Orders of John A. Massalon, Esquire, Limited Special Referee dated October 22, 2015 and February 23, 2016. Appellant received written notice of the Order denying the Motion to Alter or Amend on February 23, 2016. The orders are attached. Mr. Massalon was appointed as Limited Special Referee pursuant to a Consent Order of Limited Reference and Scheduling Order dated April 23, 2014. A copy of this order is also attached.

While the Consent Order of Limited Reference and Scheduling Order in this case provided that “any Order of the Limited Special Referee deciding those issues would not be appealable until the entire actions themselves are resolved by the Circuit Court,” that language conflicts with the statutory provisions on appeals from special referees. The South Carolina Code provides that:

[w]hen some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action, and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules. A matter may not be referred to a master or referee for the purpose of making a report to the circuit court.

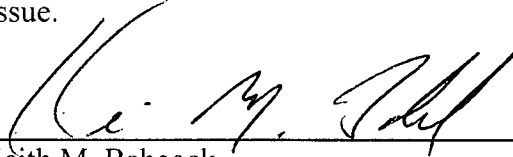
S.C. Code Ann. § 14-11-85: In addition, the Rules of Civil Procedure state:

When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Rule 53(e), SCRCP.

Because it is unclear as to whether the language of the Limited Order of Reference or the South Carolina state law and court rules control, Appellant has filed this Notice of Appeal to

insure that no right of appeal is lost as to any issue.



Keith M. Babcock
Ariail E. King
LEWIS BABCOCK L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Karen Blair Manning
South Carolina Department of Commerce
Division of Public Railways
1201 Main Street, Suite 1600
Columbia, South Carolina 29201
(803)737-1603

Derek F. Dean
SIMONS & DEAN
147 Wappoo Creek Drive, Suite 604
Charleston, South Carolina 29412
(843) 762-9132

Stephen A. Spitz
STEVENS & LEE
151 Meeting Street, Suite 350
Charleston, SC 29401
(843) 414-5080

Attorneys for the Appellant

February 29, 2016

Other Counsel of Record:

Newman Jackson Smith
NELSON MULLINS RILEY & SCARBOROUGH, LLP
151 Meeting Street, Suite 600
Charleston, South Carolina 29401-2239
(843)534-4309
Attorneys for Landowner Clemson University

Abigail B. Walsh
WILLIAMS & WALSH, LLC
125-A Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
(843)711-0157
Attorneys for Other Condemnee/Respondent Charleston County School District

Richard D. Bybee
SMITH, BUNDY, BYBEE & BARNETT, PC
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
(843)881-1623
Attorneys for Other Condemnee City of North Charleston

Jeffrey L. Payne
TURNER PADGET GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502
(843)662-9008
Attorneys for Other Condemnee Business Telecom, Incorporated

David G. Jennings
James A. Bruerton, IV
ROSEN ROSEN AND HAGOOD, LLC
Post Office Box 893
Charleston, South Carolina 29402
(843)577-6726
Attorneys for Other Condemnee North Charleston Sewer District

Lucas C. Padgett, Jr.
Donald Williams
MCNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, South Carolina 29402
(843)723-7831
Attorneys for Other Condemnee Commissioners of Public Works of the City of Charleston

Wilbur E. Johnson
YOUNG CLEMENT RIVERS, L.L.P.
Post Office Box 993
Charleston, South Carolina 29402
(843)577-4000
Attorneys for Other Condemnee Charleston Naval Complex Redevelopment Authority

M. Dawes Cooke, Jr.
BARNWELL WHALEY PATTERSON & HELMS, LLC
Post Office Drawer H
Charleston South Carolina 29402-0197
(843)577-7700
Attorneys for Other Condemnee BellSouth Telecommunications, Inc.

Jay Evan Bressler
Senior General Counsel
SCANA SERVICES, INC.
220 Operation Way, Mail Code C222
Cayce, South Carolina 29033
(803)217-9816
Attorneys for Other Condemnee South Carolina Electric & Gas Company

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

John A. Massalon, Esquire, Limited Special Referee

Case No. 2010-CP-10-10495

RECEIVED
FEB 29 2016
SC Court of Appeals

Project: Intermodal Container Transfer Facility

Tract: 11

South Carolina Department of Commerce, Division of Public Railways,

Appellant,

v.

Clemson University,

Landowner,

And Charleston Naval Complex Redevelopment Authority,
City of North Charleston, Commissioners of Public Works of the City
of Charleston, North Charleston Sewer District, BellSouth Telecommunications,
Inc., Business Telecom, Incorporated, South Carolina Electric & Gas Company,
and Charleston County School District,

Other Condemnees,

Of Whom, Charleston County School District is

Respondent.

PROOF OF SERVICE

I, Connie W. Grugan, legal assistant to the law firm of Lewis Babcock L.L.P., hereby certify that I have served **Notice of Appeal** upon opposing counsel and counsel for Other Condemnees by mailing a copy of same, postage prepaid and return address clearly indicated, to opposing counsel and counsel for Other Condemnees addressed as follows:

Newman Jackson Smith, Esquire
NELSON MULLINS RILEY & SCARBOROUGH, LLP
151 Meeting Street, Suite 600
Charleston, South Carolina 29401-2239
Attorneys for Landowner Clemson University

Abigail B. Walsh, Esquire
WILLIAMS & WALSH, LLC
125-A Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Attorneys for Other Condemnee/Respondent Charleston County School District

Richard D. Bybee, Esquire
SMITH, BUNDY, BYBEE & BARNETT, PC
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Attorneys for Other Condemnee City of North Charleston

Jeffrey L. Payne, Esquire
TURNER PADGET GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, South Carolina 29502
Attorneys for Other Condemnee Business Telecom, Incorporated

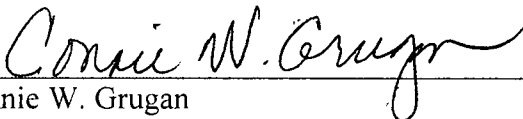
David G. Jennings, Esquire
James A. Bruorton, IV, Esquire
ROSEN ROSEN AND HAGOOD, LLC
Post Office Box 893
Charleston, South Carolina 29402
Attorneys for Other Condemnee North Charleston Sewer District

Lucas C. Padgett, Jr., Esquire
Donald Williams, Esquire
MCNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, South Carolina 29402
Attorneys for Other Condemnee Commissioners of Public Works of the City of Charleston

Wilbur E. Johnson, Esquire
YOUNG CLEMENT RIVERS, L.L.P.
Post Office Box 993
Charleston, South Carolina 29402
Attorneys for Other Condemnee Charleston Naval Complex Redevelopment Authority

M. Dawes Cooke, Jr., Esquire
BARNWELL WHALEY PATTERSON & HELMS, LLC
Post Office Drawer H
Charleston South Carolina 29402-0197
Attorneys for Other Condemnee BellSouth Telecommunications, Inc.

Jay Evan Bressler, Esquire
Senior General Counsel
SCANA SERVICES, INC.
220 Operation Way, Mail Code C222
Cayce, South Carolina 29033
Attorneys for Other Condemnee South Carolina Electric & Gas Company



Connie W. Grugan

This 29th day of February, 2016.



LAW OFFICES OF
**LEWIS
BABCOCK**
L.L.P.

KEITH M. BABCOCK
ATTORNEY AT LAW

Post Office Box 11208
Columbia, South Carolina 29211
o. 803-771-8000 f. 803-733-3534
KMB@lewisbabcock.com

February 29, 2016

RECEIVED

FEB 29 2016

SC Court of Appeals

HAND DELIVERED

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: South Carolina Department of Commerce, Division of Public Railways v.
Clemson University, et al., Civil Action No. 2010-CP-10-10495
Our File No. 10-171

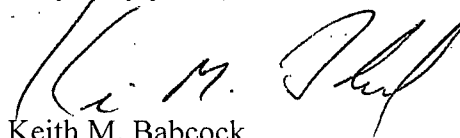
Dear Ms. Kitchings:

Enclosed please find a Notice of Appeal in regard to the above-referenced matter for filing with your office, along with a \$100.00 filing fee. Please return a clocked copy via our courier.

By copy of this letter, we are hereby serving a copy of same upon opposing counsel.

With best regards, I am

Very truly yours,



Keith M. Babcock

KMB:cg

Enclosure

cc: Honorable Julie J. Armstrong
Newman Jackson Smith, Esquire
Abigail B. Walsh, Esquire
Richard D. Bybee, Esquire
Jeffrey L. Payne, Esquire
David G. Jennings, Esquire
James A. Bruorton, IV, Esquire
Lucas C. Padgett, Jr., Esquire
Donald Williams, Esquire
Wilbur E. Johnson, Esquire
M. Dawes Cooke, Jr., Esquire
Jay Evan Bressler, Esquire