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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
MAR 09 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

Clemson University 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.

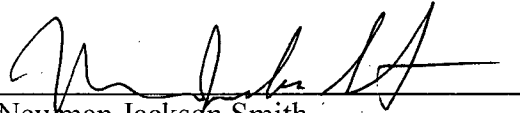
S.C. Code Ann. § 14-11-85. In addition, the Rules of Civil Procedure state:

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), SCRPC.

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.



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and Charleston County School District,

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Of Whom, Charleston County School District is

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PROOF OF SERVICE

I, Cis Ferguson, administrative assistant to the law firm of Nelson Mullins Riley & Scarborough, LLP, hereby certify that I have served **Notice of Appeal** upon opposing counsel and other counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated, to opposing counsel and other counsel of record addressed as follows:

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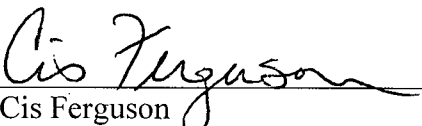
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Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: South Carolina Department of Commerce, Division of Public Railways v.
Clemson University et al.
Civil Action No.: 2010-CP-10-10495
NMRS File No.: 06825/01500


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 in the enclosed envelope. We acknowledge that a Notice of Appeal has been filed for this same case by South Carolina Department of Commerce, Division of Public Railways and was assigned appellate case number 2016-000426, and that this appeal is consolidated with Clemson's earlier Notice of Appeal of the same orders in the lower court's Civil Action No.: 2012-CP-10-5093.

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

With best regards, I am

Very truly yours,



Newman Jackson Smith

NJS:csf

Enclosure

cc: Honorable Julie J. Armstrong
Keith M. Babcock, Esquire
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The Honorable Jenny Abbott Kitchings
March 7, 2016
Page 2

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SC Court of Appeals

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