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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

MAY 18 2016

SC Court of Appeals

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-36-00120

Oien Family Investments, LLC.....Appellant

v.

Piedmont Municipal Power Agency.....Respondent

**APPELLANT'S PETITION/MOTION FOR ENFORCEMENT
OF STATUTORY AUTOMATIC STAY, INJUNCTION,
AND/OR SUPERSEDEAS**

The appellant, by and through its undersigned attorneys, does hereby petition and move this Court for an Order enforcing the statutory automatic stay, issuing a stay, enjoining PMPA, and/or issuing a supersedeas against Respondent PMPA from entering plaintiff's property and from commencing any condemnation work or construction thereon based on the following facts:

1. Plaintiff is the owner of a tract of real property in Newberry County consisting of 116 acres.
2. Defendant filed a Notice of Condemnation for a high voltage electric transmission line on February 9, 2015, to cross plaintiff's said property.

3. On March 6, 2015, plaintiff timely filed an action challenging the routing of said taking based on Southern Development v. SC Public Service Authority, 305 S.C. 507, 409 S.E.2d (Ct. App. 1991), aff'd as modified, 311 S.C. 29, 426 S.E.2d 748 (1993).
4. Pursuant to S.C. Code §28-2-470:

“All proceedings under the Condemnation Notice are automatically stayed until the disposition of the action, if any, unless the landowner and the condemnor consent otherwise....”
(emphasis added).
5. A non-jury trial was held on March 28 and 29, 2016. By Amended Order dated May 9, 2016 (filed on May 16, 2016), the trial court denied relief to plaintiff. Plaintiff filed its motion to reconsider and to alter or amend on May 17, 2016, and the trial court issued a Form 4 Order denying the motion to reconsider filed on May 18, 2016.
6. Contemporaneously with the filing of this petition/motion, plaintiff has filed its Notice of Appeal of the Amended Order and the Form 4 Order.
7. Plaintiff's counsel informed PMPA's counsel that plaintiff did not consent for PMPA to enter its property or for the condemnation to commence.
8. PMPA counsel informed the undersigned via email of May 18, 2016, at 11:11 AM that PMPA did not agree that an appeal stayed the condemnation and that PMPA was proceeding with its condemnation construction. See Exhibit A attached herewith.
9. For this reason, time is of the essence.
10. This action challenging PMPA's taking brought pursuant to S.C. Code §28-2-470 is not “disposed of,” as an appeal is pending. The automatic stay of S.C. Code §28-2-470 is therefore still in effect.
11. This Court should issue an Order declaring and enforcing the automatic stay provided by Section 28-2-470 and by Rule 241, SCACR, granting an injunction against PMPA during the pendency of the appeal until this matter is disposed of with finality, and/or granting supersedeas pursuant to Rule 241(c)(1), SCACR.

ARGUMENT

The automatic stay of §28-2-470 is still in effect, as this matter is on appeal and is not disposed of.

A landowner's rights *vis a' vis* the power of eminent domain authorities are established in S. C. Code §28-2-470, as well as in the case law construing it. Our Supreme Court, in Southern Development v. SC Public Service Authority, 305 S.C. 507, 409 S.E.2d (Ct. App. 1991), *aff'd as modified*, 311 S.C. 29, 426 S.E.2d 748 (1993), affirmed the lower court's granting of an injunction where a condemning authority failed to analyze and compare proper factors for alternate routes in its route selection for an electric transmission line.

This is the identical issue in this case. Although the lower court ruled against the landowner-appellant here, the record will show that appellant's expert report and his testimony, which were not contradicted, established that Respondent PMPA did not follow established routing selection methods (used by SCE&G, Central Electric Power Cooperative, and Duke) and that PMPA's route selection was without factual basis and was arbitrary and capricious.

If, at the conclusion of the appeal, if no stay is enforced against PMPA's condemnation, and this Court (or the Supreme Court) reverses the lower court's findings, appellant-landowner will have been irreparably harmed. This is the very reason the statutory automatic stay is provided in the statute and should apply until this case is decided with finality.

While appellant asserts that the statutory automatic stay applies, Rule 241(c), SCACR, also provides that in civil matters the service of a notice of appeal acts to automatically stay the relief ordered in the appealed order. Based on either authority, the Court should enforce a stay of the condemnation proceedings, which will preserve the status quo during the pendency of the appeal.

CONCLUSION

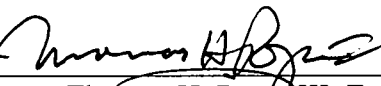
Based on the foregoing, it is requested that the Court of Appeals issue its Order:


- (a) enforcing the automatic stay of §28-2-470 or Rule 241(c), SCACR, during the pendency of all appeals as to Respondent PMPA's condemnation;
- (b) enjoining Respondent PMPA from entering appellant's property or doing any work on the condemnation during the pendency of all appeals in this matter; and/or
- (c) granting supersedeas pursuant to Rule 241(c)(1), SCACR.

Respectfully submitted,

POPE AND HUDGENS, P.A.

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1508 College Street
Newberry, SC 29108
Phone: 803-276-2532; Fax: 803-276-8684

By: 
Thomas H. Pope, III, Esquire

By: 
Kyle B. Parker, Esquire

Attorneys for Oien Family Investments, LLC

May 18, 2016
Newberry, SC

Subject: Orien

Date: Wednesday, May 18, 2016 at 11:11:15 AM Eastern Daylight Time

From: Bill Bannister

To: Tom Pope

CC: Mike Frazier, Luke Burke

I received an e-mail saying the judge had denied your most recent motions to reconsider. I disagree with you on an appeal staying the condemnation. I believe PMPA can go on the property and start installing the line. For that reason I am advising PMPA to go ahead with construction

O. W. Bannister
Bannister, Wyatt & Stalvey, LLC
401 Pettigru Street (29601)
P.O. Box 10007 (29603)
Greenville, South Carolina
Phone: 864-298-0084
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<image001.png>

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Exhibit A

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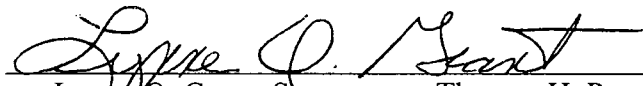
CERTIFICATE OF SERVICE

The undersigned employee of Pope & Hudgens, P.A. does hereby certify that she has this date served one (1) copy of the Appellant’s Petition/Motion for Enforcement of Statutory Automatic Stay, Injunction, and/or Supersedeas in the above-captioned case upon each of the following counsel of record by causing said copies to be deposited with the United States Postal Service, first class postage prepaid, affixed thereto, and addressed as follows:

Bruce Bannister, Esquire
Bannister, Wyatt & Stalvey
P.O. Box 10007
Greenville, SC 29603

O.W. "Bill" Bannister, Esquire
Bannister, Wyatt & Stalvey
P.O. Box 10007
Greenville, SC 29603

Luke Burke, Esquire
Bannister, Wyatt & Stalvey
P.O. Box 10007
Greenville, SC 29603

A handwritten signature in cursive script, reading "Lynne O. Grant", written over a horizontal line.

Lynne O. Grant, Secretary to Thomas H. Pope III
Pope & Hudgens, P.A.
PO Box 190
Newberry, SC 29108

May 18, 2016
Newberry, SC