

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

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DEC 07 2016

SC Court of Appeals

Case No. 2016-001440

Carolina Chloride, Inc.,Appellant,

v.

South Carolina Department of Transportation,Respondent.

APPELLANT'S INITIAL REPLY BRIEF

CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com
KELSEY J. BRUDVIG
kbrudvig@collinsandlacy.com
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

And:

SULLIVAN LAW FIRM, PC
EDWARD D. SULLIVAN
esullivan@esullivanlaw.com
Post Office Box 11714
Columbia, South Carolina 29211
(803) 451-2775 (Voice)
(803) 451-2770 (Facsimile)

ATTORNEYS FOR APPELLANT
CAROLINA CHLORIDE

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<i>Eldridge v. South Carolina Dept. of Transp.</i> , 384 S.C. 548, 683 S.E.2d 483 (2009).....	1, 2
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LAW/ANALYSIS

I. Carolina Chloride's Property Abuts Farrow Road

Respondent alleges that the definition of “abut” as articulated in Mosteller v. County of Lexington, 366 S.C. 360, 365, 520 S.E.2d 620, 623 (1999) is inapplicable to the facts of this case. Specifically, Respondent maintains the Court’s statement in Mosteller that a landowner may be considered an abutting owner where its land is merely separate by a stream or river references South Carolina common law regarding ownership of lands beneath non-tidal rivers and streams. (Brief of Resp., p. 7). However, it is important to note that the Court makes no formal reference to South Carolina common law in providing its definition of abut and cited exceptions to whether land abuts albeit with some type of barrier. See Mosteller, 366 S.C. 365, 520 S.E.2d 623.

Indeed, there appears to be no South Carolina case law where our courts have reached whether property may still be deemed to “abut” a road when there is an intervening, man-made barrier, i.e. a railroad bed.

Furthermore, Eldridge v. South Carolina Dept. of Transp., 384 S.C. 548, 683 S.E.2d 483 (2009) and Sonoco v. South Carolina Dept. of Transp., 378 S.C. 385, 662 S.E.2d 599 (2008) favorably cites Mosteller for the

principal that “[a]but means to be contiguous ... [h]owever, abut does not always mean there must be actual contact.” Eldridge, at 552-53, 683 S.E.2d at 485; Sonoco, 378 S.C. at 393, 662 S.E.2d at 603. It is clear the factual distinctions among the case law cited by Carolina Chloride are without a difference as the Court has repeatedly relied upon the definition of “abut” and “contiguous” throughout factually distinguishable cases.

Therefore, according to the definitions of “abut” and “contiguous” as articulated by our courts, Carolina Chloride’s property abuts Farrow Road.

II. Carolina Chloride Pursued Administrative Remedies Concerning the Road Closure

Respondent alleges Carolina Chloride failed to exhaust its administrative remedies to allow Respondent the opportunity to cure the taking. However, Respondent has seemingly ignored the testimony of Robert Morgan, who detailed several meetings and other efforts he undertook prior to the road closure with the express purpose of being able to continue using the access to Farrow Road. (Transcript of Hearing, p. 45, line 15 – p. 50, line 9). Because Morgan repeatedly efforts pursued administrative remedies regarding the road closure, Carolina Chloride’s suit for inverse condemnation is appropriate.

CONCLUSION

For the reasons stated within the argument of Appellant's Brief and Reply Brief, Appellant respectfully requests this Court reverse the Circuit Court.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.

By:



CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com

KELSEY J. BRUDVIG
kbrudvig@collinsandlacy.com

1330 Lady Street, Sixth Floor (29201)

Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

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esullivan@esullivanlaw.com

Post Office Box 11714

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(803) 451-2770 (Facsimile)

ATTORNEYS FOR APPELLANT

APPELLANT'S INITIAL REPLY
BRIEF

Columbia, South Carolina
December 6, 2016

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Case No. 2016-001440

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PROOF OF SERVICE

I hereby certify that I served Appellant's Initial Reply Brief upon all parties, by placing a copy in the United States mail, postage prepaid, to the below listed parties on December 6, 2016, addressed to the following:

Beacham O. Brooker, Jr., Esquire
754 Kilbourne Road
Columbia, SC 29205

Counsel for Respondent

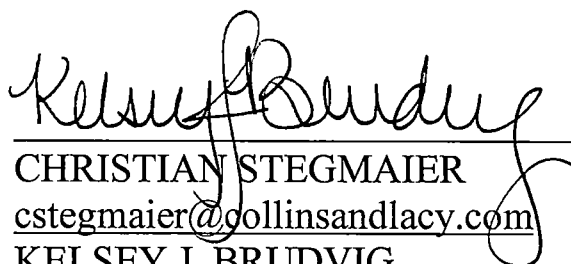
Edward D. Sullivan
SULLIVAN LAW FIRM, PC
Post Office Box 11714
Columbia, South Carolina 29211

Co-counsel for Appellant

Respectfully submitted,

COLLINS & LACY, P.C.

By:



CHRISTIAN STEGMAIER
cstegmaier@collinsandlacy.com

KELSEY J. BRUDVIG

kbrudvig@collinsandlacy.com

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Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

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EDWARD D. SULLIVAN

esullivan@esullivanlaw.com

Post Office Box 11714

Columbia, South Carolina 29211

(803) 451-2775 (Voice)

(803) 451-2770 (Facsimile)

ATTORNEYS FOR APPELLANT

PROOF OF SERVICE-APPELLANT'S
INITIAL REPLY BRIEF

Columbia, South Carolina
December 6, 2016



Christian Stegmaier | D: 803.255.0454 | E: cstegmaier@collinsandlacy.com

December 6, 2016

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

Re: Carolina Chloride, Inc. v. South Carolina Department of Transportation
Civil Action No. 2016-001440
C&L File No. 001114-00102

Dear Ms. Kitchings:

Please find enclosed the original and seven copies of Appellant's Motion to file its Initial Reply Brief out of time in connection with the above referenced matter. Also, enclosed are the original and one copy of Appellant's Initial Reply Brief and Proof of Service in connection with the above referenced matter. Lastly, we have also enclosed our firm's check in the amount of \$25.00, representing the filing fee of the motion. Please file the originals and return a clocked copy of each to us via our courier.

By copy of this letter to counsel of record, we are serving same on him.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,

Christian Stegmaier

CS/mmm

Enclosures

cc: Beacham O. Brooker, Jr., Esquire
Edward D Sullivan, Esquire
Christian Stegmaier, Esquire