

# Exhibit A

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Project: Intermodal Container )  
Transfer Facility )  
Tract: 11 )  
 )  
South Carolina Department of Commerce, )  
Division of Public Railways, )  
 )  
Condemnor, )  
vs. )  
Clemson University, )  
 )  
Landowner, )  
 )  
and Charleston County School District, )  
 )  
Other Condemnee. )

COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 10-CP-10-10495

ORDER TRANSFERRING CASE  
TO THE NON-JURY DOCKET

**RECEIVED**

JAN 11 2017

**SC Court of Appeals**

2016 OCT 21 AM 9:50  
JULIE J. ARMSTRONG  
CLERK OF COURT

**FILED**

This matter is before me by way of a motion by the Condemnor, South Carolina Department of Commerce, Division of Public Railways ("Railways"), to transfer this case to the non-jury roster. This matter was heard by me on August 23, 2016. Keith M. Babcock, Esquire, Stephen A. Spitz, Esquire, and Derek F. Dean, Esquire appeared on behalf of Condemnor Railways. Newman Jackson Smith, Esquire appeared on behalf of Landowner Clemson University ("Clemson"). Abigail B. Walsh, Esquire and Christopher L. Murphy, Esquire appeared on behalf of Other Condemnee Charleston County School District ("District"). After considering the arguments of counsel and the memoranda submitted by them, I have determined that this motion should be granted.

This is a condemnation action. In December of 2010, Railways filed a Notice of Condemnation by which a 70 acre tract of land owned by Clemson was condemned. The District

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was one of several Other Condemnees in this case. The District's interest pertains to a 3.74 acre portion of Clemson's property where the District previously operated its Academic Magnet High School ("School").

The parties agreed that there were certain issues common to this condemnation action and a related case (*Charleston County School District v. Clemson University*, Civil Action No. 2012-CP-10-5093) that should be decided for both cases together.<sup>1</sup> The parties agreed to transfer these cases to a Limited Special Referee, John A. Massalon, Esq., to decide five issues for the cases. (Consent Order of Limited Reference and Scheduling Order filed April 25, 2014). Limited Special Referee Massalon issued two Orders, one dated October 22, 2015, and the other dated February 23, 2016, which ruled upon the five issues.

At the time of the hearing, I was advised that Clemson and Railways had reached an agreement to settle the case between themselves.<sup>2</sup> A Consent Settlement Agreement was submitted to the Court and filed following the hearing. This agreement reflects that Clemson and Railways have agreed that Clemson will receive land in exchange for the condemnation of its property, in lieu of financial consideration, and that Clemson has waived its right to any monetary compensation from Railways in this action. As a result, the Condemnor and the Landowner have now resolved their differences, which would normally result in a conclusion of the condemnation case.

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<sup>1</sup> The parties to the related case (*Charleston County School District v. Clemson University*), filed a Stipulation of Dismissal on August 5, 2016. Therefore, the only case still ongoing between Railways, Clemson, and District is this condemnation case.

<sup>2</sup> Counsel for Clemson advised the Court at the hearing that this Settlement Agreement was in accord with prior correspondence on this issue and merely reduced the agreement of Railways and Clemson to writing.

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It is entirely appropriate for Railways and the Landowner to resolve all issues between them related to the condemnation of the property. The South Carolina Eminent Domain Act specifically permits:

At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief.

S.C. Code Ann. § 28-2-40. There is no legal basis for the District to object to a settlement between the Condemnor and the Landowner.

While Railways and Clemson may have resolved their differences, that resolution does not conclude the action for the District. As set forth in his Orders, the Limited Special Referee determined that the District had “an equitable interest in the 3.74 acre AMHS parcel.” At this time, there are various issues for this Court to determine concerning this “equitable interest,” including but not limited to: whether this “equitable interest” is compensable; whether it has value; and if it has value, what that value is. Therefore, any issue remaining in the case pertains to the “equitable interest.”

It appears to the Court that the three arguments of Railways to transfer this case to the non-jury docket all have merit. First, South Carolina law only gives the Landowner, not an Other Condemnee, a right to a jury trial. Second, the “equitable interest” found by the Limited Special Referee calls for this Court to consider the matter sitting in equity. Finally, any compensation owed to the District should be determined by this Court in an equitable proceeding similar to that provided in S.C. Code Ann. § 28-2-460.

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Although the District argues that it has a right to a jury trial, the applicable statutory procedural section does not support that argument. S.C. Code Ann. § 28-2-310 governs the mode of trial for condemnation actions and provides:

If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.

S.C. Code Ann. § 28-2-310. In this case, the Landowner is Clemson, and Clemson advised the Court that it did not oppose the motion and had settled with the Condemnor. This Code section does not mention Other Condemnees, and there is no statutory basis to support the District's position that an Other Condemnee has a right to a jury trial. It is the Landowner that has the right to the jury trial, which may be exercised or waived. *Richland Cty. v. Lowman*, 307 S.C. 422, 424, 415 S.E.2d 433, 434 (Ct. App. 1992).

The fact that the Notice of Condemnation filed by the Condemnor initially sought a jury trial is not controlling. The initial election by the Condemnor was made almost six years ago. As Railways argues, at that time, it did not know all of the developments that were to occur in the case, and that the only matter outstanding at this point in time would involve an equitable issue of the District. The District relies on Rule 39(a), SCRPC, for its claim that it is entitled to a jury trial because one was initially sought by the Condemnor in the Condemnation Notice. However, Rule 39(a) specifically recognizes that some issues may not be appropriate for a jury trial stating: "the court upon motion or its own initiative [may find] that a right of trial by jury of some of or all of the issues does not exist." Rule 39(a), SCRPC. The issue here --the value of an equitable interest in a portion of the property -- is not a jury issue. I find that there is no

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statutory or case law basis to support the District's objection to the Condemnor now requesting a transfer to the non-jury docket.

Second, it appears to the Court that this Court must determine issues concerning an "equitable interest" issue, which should be decided in equity. As indicated in his first Order, the Limited Special Referee made certain conclusions of equity, including that the School District had an "equitable interest" in the 3.74 acres of land at issue. The Limited Special Referee explicitly noted that he expressed no opinion as to the question as to whether the "CCSD equitable interest has value or what that value may be." (Page 9, October 22, 2015, Order of Limited Special Referee).

It is apparent that questions as to the "equitable interest" must be decided by this Court and should be done so in equity. In that sense, the issues concerning the "equitable interest" to be determined by this Court are no different than other cases involving "equitable interests." In those cases, the Court decided the issues, not a jury. See, e.g., *Kinard v. Hiers*, 3 Rich Eq. 423 (1851 Court of Appeals of Equity in S.C.); *Oskin v. Johnson*, 400 S.C. 390, 735, S.E.2d 459 (2012). Thus, any questions concerning the "equitable interest" of the District in the 3.74 acres should be decided by this Court sitting in equity without a jury.

Third, an equitable proceeding is statutorily mandated to determine the rights of the Landowner and the Other Condemnees when a dispute exists between them concerning dividing condemnation proceeds. S.C. Code Ann. § 28-2-460 provides that:

Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court. Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. The payment of the funds so

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awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding to which all persons served with the Condemnation Notice must be necessary parties. From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

In this case, there is no monetary payment to the Landowner, so this precise procedure cannot be utilized. However, the "equitable interest" of the District should be determined in an equitable proceeding similar to that provided by S.C. Code Ann. § 28-2-460.

The District has argued that there must be a jury trial on the value of the entire 69.963 acres. The District's "equitable interest," however, is limited to just 3.74 acres. Since the Landowner has entered into a Settlement Agreement with the Condemnor, the value of the entire tract is not at issue, and there is no party other than the Landowner that has an interest in the entire tract. Significantly, even if a jury trial was conducted on the value of the entire 69.963 acres, the Court would still have to hold a separate proceeding in equity, pursuant to S.C. Code Ann. § 28-2-460, to determine the value, if any, of the District's "equitable interest" in the 3.74 acre parcel. Therefore, there is no basis for requiring a jury trial on the entire 69.963 acres.

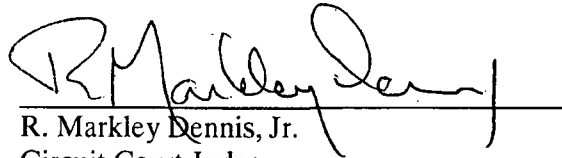
Finally, the Court recognizes that this is a situation in which the only remaining issue in the case involves an "equitable interest" of an Other Condemnee to a small portion of the entire tract. While this is not a frequent condemnation scenario, the issues before this Court are similar to other equitable cases. In that regard, I have concluded that the District does not have a right to a jury trial, and this case should be transferred to the non-jury docket. However, to the extent that this issue is discretionary, I have further

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determined that this case is much better suited to be resolved in a non-jury setting, and not by a jury.

IT IS THEREFORE ORDERED that the Condemnor's motion is granted, and this case is transferred to the non-jury docket.

AND IT IS SO ORDERED this 19<sup>th</sup> day of October, 2016.



R. Markley Dennis, Jr.  
Circuit Court Judge  
Ninth Judicial Circuit

Charleston, South Carolina

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