

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
In the Court of Common Pleas for the Ninth Circuit

Markley R. Dennis, Jr., Circuit Court Judge

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Appellate Case No. 2017-000060

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APR 05 2017

SC Court of Appeals

Project: Intermodal Container Transfer Facility

Tract: 11

South Carolina Department of Commerce, Division of Public  
Railways.....Respondent

v.

Clemson University .....Respondent

and

Charleston County School District .....Appellant

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APPELLANT CHARLESTON COUNTY SCHOOL DISTRICT'S  
INITIAL APPELLANT'S REPLY BRIEF

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## ARGUMENTS

For the reasons set forth herein (and in its Appellant's Brief), Appellant, the Charleston County School District ("School District"), respectfully requests that this Court reverse the trial court's denial of its right to a jury trial. The School District submits this Reply to address certain issues argued in the brief of Respondent South Carolina Department of Commerce, Division of Public Railways ("Condemnor"), which was joined in by Clemson University ("Landowner").

**I. Contrary to Condemnor's Argument, S.C. Code § 28-2-310 Does Not Limit the Right to a Jury Trial to Condemnors and Landowners**

Condemnor first argues that S.C. Code § 28-2-310 of the South Carolina Eminent Domain Procedure Act (the "Act") does not confer upon "other condemnees" (such as the School District) the right to a jury trial. Section 28-2-310(B) provides (emphasis added):

If the condemner 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.

Condemnor posits that this statute does not grant the School District a right to a jury trial because: "[t]here is no mention of 'other condemnees' in that section, nor does any other section address the mode of trial afforded to 'other condemnees.'" (See Condemnor's Br., at 5). For the reasons that follow, Condemnor's argument misses the mark.

As an initial observation, the rules governing statutory construction favor the interpretation of statutes according to their plain meaning:

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "As such, a court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation." *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (internal citations omitted). But "[w]here the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

*See Grimsley v. S.C. Law Enft Div.*, 396 S.C. 276, 281–82, 721 S.E.2d 423, 426 (2012). Applying these general rules, the plain language of the Act creates a right to a jury trial inuring to the benefit of, *inter alia*, the School District.

Contrary to Condemnor's argument, Section 28-2-310(B) does not limit the right to demand a jury trial to only landowners and condemners. To the contrary, that provision of the Act says that landowners and condemners may waive a jury trial, if they both expressly "demand[] trial by the court without a jury." The Article containing this section is generically entitled "Trial of Condemnation Actions," without any limitation to landowners and condemners. In *all* other cases under the Act, the action is to be placed on the jury roster. The *first* sentence of Section 28-2-310(B) states how the right to a jury trial may be waived. The *second* sentence of Section 28-2-310(B) unambiguously creates the right to a jury trial unless it is waived in accordance with the first sentence; moreover, the second sentence uses neither the term "condemn[o]r" nor "landowner."

Plaintiff makes no showing or argument that Section 28-2-310(B) is limited to only disputes between landowners and condemners. In fact, at page 5 of its Brief, Condemnor concedes that Section 28-2-310 broadly "governs the mode of trial for condemnation actions." The only sentence using those terms describes how the right to a jury trial might be *rejected* under the Act. If the legislature had intended to give Section 28-2-310 the meaning suggested by Condemnor, it would have stated: "The condemner and the landowner are entitled to a jury trial, unless both demand a trial by the court without a jury." However, nothing in Section 28-2-310(B) indicates that only the landowner and condemner may try issues to a jury.

In its argument, Condemnor cites *Richland County v. Lowman*, 307 S.C. 422, 424, 415 S.E.2d 433, 434 (Ct. App. 1992), and *Cobb v. South Carolina Department of Transportation*, 365 S.C. 360, 365, 618 S.E.2d 299, 301 (2005), for the proposition that only a landowner or condemner may demand a jury trial. However, the cited language from both cases mention the right of the landowner and condemner to "demand" or "elect" a jury trial. (*See* Condemnor's Br., at 5-6). Those cases do not state or imply that *only* the landowner or condemner may demand a

jury. In a sense, the landowner and condemnor control the right to a jury trial, to the extent that they (and only they) can jointly demand a *non-jury* trial. The School District does not contest that, had both the Landowner and Condemnor both properly demanded a *nonjury trial*, it would be forced to accept that choice (notwithstanding its own jury demand). However, as discussed herein, there is no evidence in the record that both Landowner and Condemnor demanded a nonjury trial. In doing so, they implicitly elected a jury trial and have not subsequently both withdrawn that election in accordance with the Rules of Civil Procedure and the Act.

For the reasons set forth above, the School District respectfully requests that this Court reverse the orders of the trial court depriving it of its statutory right to a jury trial.

**II. Condemnor Has Not Refuted That Rules 38 and 39 Prohibit It From Changing Its Mind Regarding Its Prior Demand for a Jury Trial**

The School District argued in its opening brief that Condemnor and Landowner had previously demanded a jury trial and have not shown an effective withdrawal of that demand under S.C.R.C.P., Rules 38 and 39(a). Condemnor counters in its Brief of Respondent that the trial judge's deprivation of the School District's right to a jury trial was appropriate because Rule 39 provides that, even if a party requests a jury trial, such request will be disregarded "the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues *does not exist*." See S.C.R.C.P., Rule 39(a)(2). For the following reasons, Condemnor's reliance on Rule 39(a)(2) is unavailing because — as discussed herein and in the School District's opening brief — the trial court erred to the extent it determined that a right to a jury trial "does not exist" under the Act. Therefore, this Court should reverse the trial judge's denial of the School District's statutory right to a jury trial.

Rule 38(d) provides that "[a] demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a)." Rule 39(a) states that "[t]he trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court

sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist."

It is undisputed that Condemnor (and Landowner) have never filed a written stipulation of all parties evidencing consent to a non-jury trial, as required by Rule 39(a)(1). Therefore, Condemnor relies upon Rule 39(a)(2), arguing that the trial judge's order satisfied that Rule.

As Condemnor correctly observes, a court's finding under this provision of Rule 39(a)(2) applies only where a right to a jury trial "never existed." (*See* Condemnor's Br., at 7). It does not permit the judge to disregard a jury demand because the demanding party changed its mind or no longer finds a jury trial desirable. As set forth above, the School District has shown that the Act provides all parties with a right to a jury trial, unless certain specific requirements for waiver (which have not been met here) are satisfied. This is not a circumstance where the right to a jury trial as to the School District "never existed." Because, as argued *supra*, the Act does create a right to a jury trial for the benefit of the School District, Rule 39(a)(2) did not permit the trial court to take away the School District's right to a trial by jury.

For the reasons set forth above, the School District respectfully requests that this Court reverse the orders of the trial court depriving it of its statutory right to a jury trial.

**III. Condemnor's (and the Trial Court's) Citation to S.C. Code § 28-2-460 Does Not Deprive the School District of Its Right to a Jury Trial**

In its Brief, Condemnor also argues that the School District is not entitled to a jury trial because this case is similar to the situation envisioned by S.C. Code § 28-2-460. However, as discussed below, this Court should not look to Section 28-2-460 for guidance or support to deny the School District's right to a jury trial. If anything, the differences between this case and the situation envisioned in Section 28-2-460 makes clear why the trial court erred in depriving the School District of a jury trial.

To refresh the Court's recollection, Section 28-2-460 provides for an equity hearing in very limited circumstances:

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 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.

*See* S.C. Code § 28-2-460. Under this statute, there are three important prerequisites to an equitable proceeding: (a) the absence of a written agreement between all served parties regarding all of the persons entitled to just compensation; (b) a "determination, verdict or judgment" of the total value of just compensation for the entire taking; and (c) "payment" by the condemnor of that total amount to the clerk of court. *See id.* If those three requirements are satisfied, Section 28-2-460 may apply. However, *none* of those prerequisites is present in this case. As a result, Condemnor's suggestion that Section 28-2-460 lends it any support must fail.

In essence, Section 28-2-460 permits the condemnor to pay a judicially-determined "total" just compensation into the court; in exchange, the condemnor will not be required to make any further payments, and the court will determine how, in equity, the total should be apportioned among competing interests. This is akin to an interpleader situation, which would normally be tried in equity: "[t]he remedy by interpleader *is an equitable one*, based on the theory that conflicting claimants should litigate the matter among themselves without involving the stakeholder in their dispute." *Symmes v. Graham*, 167 S.C. 290, 166 S.E. 269, 270 (1932) (emphasis added) (citation omitted). In this case, however, there is no fixed *corpus* that is within the jurisdiction of the Court for distribution to competing parties. In such a case, the School District does not disagree that the only determination is how, in fairness and equity, that fixed amount should be distributed. Here, the trial court is not seeking to dole out a fixed amount to a number of entities. Rather, the amount of just compensation due to the School District must be determined *ab initio*, which is plainly within the Act's broad grant of a right to jury trial. Section

28-2-460 provides no justification for the trial court or this Court to take away the School District's right to a jury trial.

For the reasons set forth above, the School District respectfully requests that this Court reverse the orders of the trial court depriving it of its statutory right to a jury trial.

**IV. Condemnor Misapprehends the School District's Arguments Regarding Its Right to Settle Its Claims Against the Landowner**

Condemnor next suggests that the School District has wrongfully argued that it cannot settle its dispute with the Landowner, without the School District's consent. However, this misapprehends the School District's argument.

Under the Act, “[a]t any time before or after commencement of a condemnation 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.” *See* S.C. Code §28-2-40 (emphasis added). The School District does not argue that Condemnor and Landowner cannot settle their disagreement. The Act recognizes that they can do so. However, the School District respectfully urges that the Condemnor and Landowner are not free to use a settlement of part of an overall dispute to deprive the School District of its rights under the Act, including the right to a jury trial. There is nothing in the Act allowing the Condemnor and Landowner to take away the School District's rights under the Act. To the contrary, while those parties are free to settle their disputes, the School District should retain its same rights under the Act. In other words, while the School District did not need to approve the Condemnor-Landowner settlement, that settlement may not negatively impact the School District's statutory rights. Where, as here, the settling parties attempt to use a settlement to bind an "other condemnee" and diminish its rights under the Act, then that "other condemnee" should obviously be a party to that agreement.

Condemnor criticizes the School District's citation to *South Carolina Department of Transportation. v. M&T Enterprises of Mt. Pleasant, LLC*, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008). However, the School District only cites *M&T* as an example or illustration of the proper application of the equitable procedure of Section 28-2-460 in the circumstance of an amicable

settlement of the overall condemnation claim. In that case, *all* parties consented to a settlement valuing the entire property. The *only* issue of dispute remaining in that case was the apportionment of the agreed-upon \$100,000.00 valuation of the entire property. The facts of *M&T* reflect an example of when an equitable determination *might be* appropriate. In *M&T*, the only remaining issue was how to equitably apportion a fixed, agreed-upon sum. In other words, the settlement in *M&T* satisfied the three prerequisites to the invocation of Section 28-2-460 (discussed *supra*): (a) the parties did not agree as to the distribution of the total just compensation; (b) there was a "determination" of just compensation for the entire taking, via the agreement of *all* parties; and (c) the condemnor paid the entire amount of the agreed-upon "determination" to the clerk. Plainly, this is not the case in the instant appeal.

For the reasons set forth above, the School District respectfully requests that this Court reverse the orders of the trial court depriving it of its statutory right to a jury trial.

**V. Condemnor Misapprehends the Significance of the Fact That the School District's Interest in the Property at Issue is Equitable in Nature**

In the remainder of its Brief, Condemnor argues that the School District — notwithstanding the plain language of the Act — is not entitled to a jury trial because its interest in the property at issue happens to be equitable. However, the School District respectfully posits that, irrespective of the source of its interest, it is entitled to a jury trial as to the just compensation for that interest.

While the School District's interest in the property at issue might have its source in equity, the existence of that right has already been decided by the Special Referee. At this time, the *existence* of the School District's equitable interest is not in dispute in this court or in the trial court. The issue in this case is not whether the School District had a right to a jury trial with respect to the issue of whether it had an equitable interest in the first instance. Rather, the only remaining question is what, if any, just compensation should be paid to the School District to compensate it for the equitable interest.

As the School District has previously noted, under the Act, "property," "real property," and "land" all include, in addition to other interests, any interests "legal or equitable." *See* S.C. Code § 28-2-30(17). This is important, as the Act provides that "[a] condemnor may commence an action under this chapter for the acquisition of an interest in any *real property* necessary for any public purpose." *See* S.C. Code § 28-2-60 (emphasis added); *accord* S.C. Code § 28-2-210. In fact, the entirety of the Act — including the provisions governing trial (and trial by jury) — revolve around the concepts of "property," "real property," and "land." Nothing in the Act suggests that a jury trial is available to determine the amount of just compensation due, *unless* the property interest happens to be equitable in nature. Thus, even if the *source* of the School District's interest in the property at issue is equitable, nothing in the Act prohibits it from having a jury determine the amount of just compensation for that interest.

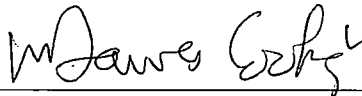
For the reasons set forth above, the School District respectfully requests that this Court reverse the orders of the trial court depriving it of its statutory right to a jury trial.

**CONCLUSION**

For the reasons set forth above and in Appellant's opening brief, this Court should reverse the trial court's transfer of this matter to the non-jury roster and should determine that the School District is entitled to a jury trial on all remaining issues in this case.

April \_\_, 2017

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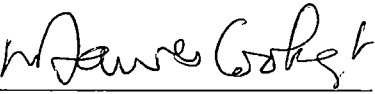
PROOF OF SERVICE

I certify that I have served the Respondent Charleston County School District's Initial Appellant's Reply Brief on the above-referenced Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April \_\_, 2017, addressed to their attorneys of record:

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SC Court of Appeals

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RE: South Carolina Department of Commerce, Division of Public Railways, Respondent  
vs. Clemson University, Respondent, and Charleston County School District, Appellant  
Appellate Case No. 2017-000060  
BWPH File No.: 5236.001

Dear Ms. Kitchings,

Enclosed for filing please find the original and one (1) copy of Appellant Charleston County School District's Initial Appellant's Reply Brief in the above-referenced matter. We would appreciate if you would file the original and return a filed, stamped copy to us in the self-addressed, stamped envelope provided.

By copy of this letter, we are serving a copy of the Reply Brief upon counsel of record.

Sincerely,

A handwritten signature in cursive script that reads "Dawe Cooke".

M. Dawes Cooke, Jr.  
John W. Fletcher

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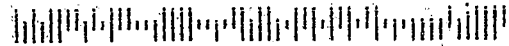
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