

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellant Case No.: 2017-001881

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

RECEIVED
DEC 04 2017
SC Court of Appeals

Case No.: 2013-CP-02-02157

John Burke, Respondent,

-v-

The South Carolina Department of Transportation, Appellant.

INITIAL BRIEF OF APPELLANT

James D. Nance
NANCE, McCANTS & MASSEY
218 Newberry Street, SW
Aiken, SC 29801
(803) 649-6200
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal	2
Statement of the Case	2
Facts	2
Arguments	2
1. IN AN INVERSE CONDEMNATION ACTION PRE-JUDGMENT INTEREST IS AN ELEMENT OF DAMAGES THAT IS INCLUDED IN THE JURY'S DETERMINATION OF THE AMOUNT OF JUST COMPENSATION THEREFORE THE RESPONDENT CANNOT BE AWARDED PRE-JUDGMENT INTERESEST BY THE TRIAL JUDGE.	
Conclusion	3

**TABLE OF AUTHORITIES
CASES**

Vick v. South Carolina Department of Transportation, 347S.C.470, 556 S.E.2d 693
(SC App., 2001) 2

STATEMENT ON ISSUES OF APPEAL

1. DID THE TRIAL COURT ERR IN AWARDING THE RESPONDENT PRE-JUDGMENT INTEREST WHEN THE ISSUE WAS AN ELEMENT OF ‘JUST COMPENSATION’, TO BE DETERMINED BY THE JURY?

STATEMENT OF THE CASE

On December 6, 2013, John Burke and others filed an Amended Complaint alleging nuisance, trespass, negligence and inverse condemnation by the SCDOT. (Amended Complaint p.2-5) The SCDOT answered basically denying the Plaintiff’s claims in regard to all causes of actions. (Answer p.1,2) Burke’s action was tried before a jury beginning on March 27, 2017. (Order of June 16 2017 p.1) Inverse Condemnation was the only cause of action presented to the jury. Judgment was entered on March 29, 2017. (Order of June 16, 2017 p.1) Burke moved the court to award him costs, prejudgment interest, post judgment interest and attorney fees. (Order of June 16, 2017 p.2) The trial judge issued his order on June 16, 2017 which, among other monetary awards, awarded prejudgment interest of \$37,769.67. (Order of June 16, 2017 p.11) SCDOT filed a motion for reconsideration pertaining to the award of prejudgment interest dated June 26, 2017. (Motion to Reconsider of June 26, 2017 and Memorandum of July 21, 2017) The trial judge affirmed the award by his order dated August 11, 2017. (p.2-6) On September 8, 2017 the SCDOT served a Notice of Appeal.

FACTS

SCDOT completed the construction of I-520 during the latter part of 2009. Burke alleged that upon the completion of I-520 the surface water drainage increased in volume to the extent that in heavy rains the water would cross Ascauga Lake Road onto his property thereby resulting in a taking of his property for public use. (Amended Complaint, p.1,2)

During the trial the Respondent chose to proceed only on the inverse condemnation cause of action. (Order of August 11, 2017, p.1) The trial judge did not instruct the jury that pre-judgment interest could be awarded by the jury as part of the Respondent’s damages which was required by law. (Transcript, p.10-16) The trial judge awarded pre-judgment interest by a subsequent order which is not allowed by law. (Order of August 11, 2017, p.2-6)

ARGUMENTS

IN AN INVERSE CONDEMNATION ACTION PRE-JUDGMENT INTEREST IS AN ELEMENT OF DAMAGES THAT IS INCLUDED IN THE JURY’S DETERMINATION OF

THE AMOUNT OF 'JUST COMPENSATION' THEREFORE THE RESPONDENT CANNOT BE AWARDED PRE-JUDGMENT INTERESEST BY THE TRIAL JUDGE.

S.C. Code §28-2-420 indicates that interest may be charged in a condemnation case. This statute does not apply in this action. An inverse condemnation action is a common law action brought by a landowner and differs from a condemnation action brought by a government entity. Although interest may be recovered in an inverse condemnation action, it is an issue which must be charged to the jury to make a determination whether or not interest is appropriate and the amount of interest to be charged. "It is the duty of the respondents (here the Plaintiffs) to call the matter of interest on the award to the attention of the trial judge and request an instruction upon such so that the jury could, by their verdict, determine what was 'just compensation'." Vick v. SCDOT 347 S.C. 470, 556 SE2d 693 (2001).

CONCLUSION

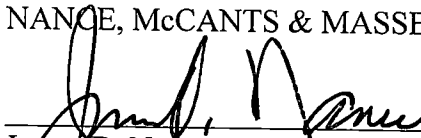
For the reasons state above, this Court should reverse the order of the Trial Judge to the extent that pre-judgment interest was awarded to the Respondent.

Respectfully Submitted,

December 1, 2017

NANCE, McCANTS & MASSEY

By:


James D. Nance
SC Bar No.: 0004171
218 Newberry Street, SW
Aiken, SC 29801
jnance@nancefirm.com
(803) 649-6200

Attorney for Defendant:
South Carolina Department of Transportation

Attorney for Respondent:
John Burke

Tucker S. Player
PLAYER LAW FIRM, LLC
1415 Broad River Road
Columbia, SC 29210

CERTIFICATE OF SERVICE

This is to certify that I have on this day served all the parties in this case a copy of the Initial Brief of Appellant by the United States Postal Service with sufficient postage affixed as follows:

Tucker S. Player, Esquire
PLAYER LAW FIRM, LLC
1415 Broad River Road
Columbia, SC 29210
tucker@playerlawfirm.com

RECEIVED
DEC 04 2017
SC Court of Appeals

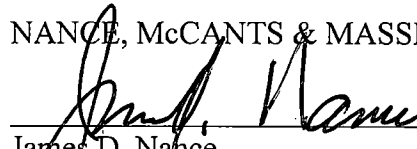
This is to certify that I have on this day served the South Carolina Court of Appeals a copy of the Initial Brief of Appellant by the United States Postal Service with sufficient postage affixed as follows:

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

Submitted this 1 day of December, 2017.

NANCE, McCANTS & MASSEY

By: _____


James D. Nance
SC Bar No.: 004171
218 Newberry Street, SW (29801)
P.O. Box 2881
Aiken, South Carolina 29802-2881
jimnance@nancefirm.com
(803) 649-6200

Attorney for Defendant:
South Carolina Department of Transportation

NANCE, McCANTS & MASSEY

ATTORNEYS & COUNSELORS AT LAW

218 NEWBERRY STREET, S.W.

AIKEN, SOUTH CAROLINA 29801

AIKEN OFFICE

JAMES D. NANCE, LLC*

CLARKE W. McCANTS, III, PC

AMY PATTERSON SHUMPERT

*CIVIL MEDIATOR

EDGEFIELD OFFICE

A. SHANE MASSEY, LLC

BLAIR BALLARD MASSEY *

*Licensed in SC, NC & GA

December 1, 2017

RECEIVED

DEC 04 2017

SC Court of Appeals

Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

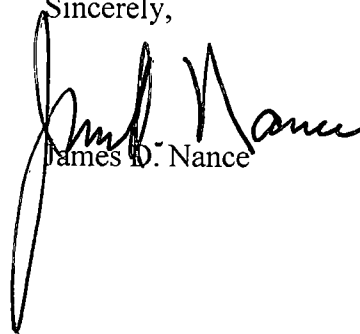
Re: John Burke v. The South Carolina Department of Transportation
Appellant Case No.: 2017-001881
Civil Action No.: 2013-CP-02-02157
Our File No.: N-333

Dear Ms. Kitchings,

Enclosed for filing is the Designation of Matter to be Included in the Record on Appeal and the Initial Brief of Appellant with Certificates of Service for both.

Please return the filed copies to my office in the enclosed envelope.

Sincerely,

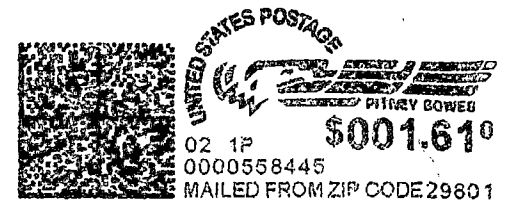
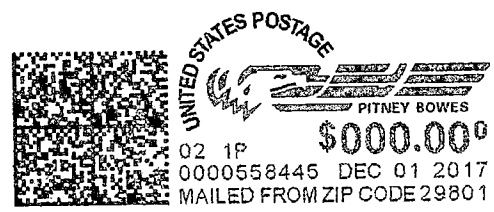


James D. Nance

JDN/cgc
Enclosures

cc: Tucker S. Player, Esquire (with enclosures)

ANCE, MCCANTS & MASSEY
218 Newberry Street, SW
P.O. 2881
Aiken, SC 29802



Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
DEC 04 2017
SC Court of Appeals