THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Case No. 2016-001440

Carolina Chloride, Inc., ...Appellant,

v.

South Carolina Department of Transportation,.....Respondent.

APPELLANT'S PETITION FOR REHEARING

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules, Appellant Carolina Chloride, Inc. respectfully petitions this Court for rehearing in the instant matter. The opinion of this Court, which affirmed the

Master-in-Equity's Order of Dismissal, and is the catalyst of this petition, was filed on February 7, 2018.[1]

FACTUAL/PROCEDURAL BACKGROUND

Appellant Carolina Chloride, Inc. ("Carolina Chloride") commenced the instant action against Respondent South Carolina Department of Transportation ("SCDOT") to recover just compensation for the taking of its vested property right. (R. p. 41). Carolina Chloride's inverse condemnation claim arises from SCDOT's closure of the grade crossing at Killian Road and Farrow Road in Richland County, which substantially reduced access to Carolina Chloride's property.

From November 1996 until November 2006, Carolina Chloride owned a 7.67 acre tract of land located at 600 Killian Road in Richland County (the "Property"). (R. p. 75). Carolina Chloride's use of the property was initially for storing and distributing calcium chloride, a chemical used to control dust and ice on road, as well as to treat drinking water. Carolina Chloride later expanded its operations to include commercial storage units, which it rented out to the public. Robert Morgan, former owner and president of Carolina

[1] Appellant timely filed a motion for extension of time to file this Petition for Hearing. The motion was granted pursuant to Order filed February 23, 2018.

Chloride, invested substantial sums in acquiring the subject property and developing the various operations on it.

The Property is located at the southeastern corner of the intersection of Killian Road and Farrow Road, abutting both roads. (R. p. 77). A railroad track runs parallel to Farrow Road adjacent to the property. (Id.). Carolina Chloride enjoyed an easement allowing it access to and from the Property via Killian Road and Farrow Road.

SCDOT entered into an agreement dated July 20, 2004 with Norfolk Southern Railway Company, a Virginia corporation (the "Railroad"), whereby SCDOT would eliminate the grade crossing at Killian Road and Farrow Road (identified as Mile Post R-95.89). The elimination of the grade crossing was made in exchange for the Railroad paying approximately $116,000 toward construction (5% of the estimated total of $2,313,152.80) of an overpass structure further up the railway line (Mile Post R-95.65) near the Town of Killian in Richland County. (R. p. 19).

In January 2006, SCDOT began blocking and did close the access to the Property from Farrow Road. Furthermore, it eliminated access to the Property from the portion of Killian Road west of Farrow Road. As a result of the elimination of the grade crossing, Carolina Chloride lost access to the

Property in three of four directions. (R. p. 75). The only remaining way to access the property was via Killian Road west of the intersection with Farrow Road. Specifically, Carolina Chloride no longer had access to Farrow Road by turning left onto Killian Road from the subject property and crossing the Railroad's tacks. Instead, Carolina Chloride was compelled to take a circuitous and lengthier route, by turning right onto Killian Road, then right onto Longtown Road, and travel around the back of the property to the point where Longtown Road intersects Farrow Road.

The purpose of SCDOT's actions was to close the railroad crossing in accordance with the aforementioned agreement with the Railroad. Carolina Chloride contends this closing resulted in the taking of its easement.

Following closure of the railroad grade, Carolina Chloride sold the property for much less than what it was worth due to, inter alia, the lack of direct access to Farrow Road, a main thoroughfare in that part of the county. (R. p. 76).

Carolina Chloride subsequently brought this inverse condemnation action against SCDOT, seeking damages for the taking of the easement. (R. pp. 39, 48). After engaging in discovery, Carolina Chloride moved for

summary judgment, arguing the closing of the grade crossing constituted a taking of its property as a matter of law. (R. pp. 60, 63).

The Circuit Court granted summary judgment in favor of Carolina Chloride. The Circuit Court initially held Hardin v. South Carolina Department of Transportation, 371 S.C. 598, 641 S.E.2d 437 (2007), which was decided after the closing, did not apply to the case at hand, but should have only prospective application because the decision created a new right. According to the Circuit Court, Carolina Chloride suffered a taking under the pre-Hardin special injury test.

In the alternative, the Circuit Court held Carolina Chloride prevailed even if Hardin did apply to the instant case. The Circuit Court reasoned the Property abutted both Killian Road and Farrow Road, and Carolina Chloride, therefore, possessed an easement for access to both roads. Because the grade closing resulted in Carolina Chloride's inability to access Farrow Road, the Circuit Court held Carolina Chloride suffered a taking of its property as a matter of law. (R. p. 18).

The Supreme Court reversed the Circuit Court. Carolina Chloride v. South Carolina Dept. of Transp., 391 S.C. 429, 706 S.E.2d 501 (2011) (R. p. 12). As an initial matter, the Circuit Court held that Hardin applies

retrospectively because Hardin did not create a "new right or cause of action, but, rather restated the focus in determining whether a road re-configuration amounts to a taking." Id. at 433, 706 S.E.2d at 503 (R. p. 14).

The Court further held that the Circuit Court erred in granting summary judgment in favor of Carolina Chloride. The Court noted that there was no question that SCDOT's closing of Killian Road was an affirmative conduct of a government entity. However, the Court held that "there remains a genuine issue of material fact whether SCDOT's action constituted a taking. Specifically, there is a question whether respondent had an easement of access as an abutting landowner to Farrow Road." Id. at 435, 706 S.E.2d at 504 (R. p. 15). The Court concluded: "Because further inquiry into the facts of this case is desirable to clarify the application of the law, we find summary judgment was not appropriate." Id. at 436, 706 S.E.2d at 504 (R. p. 15).

On remand, the Court held a three-day hearing on the merits. (R. pp. 93-308). Robert Morgan, former president and owner of Carolina Chloride testified at the hearing. (R. p. 117, line 11). Morgan testified he bought the 7.68 acres near Killian Road. The Property was situated at the corner of Killian Road and Farrow Road. (R. p. 124, lines 5-7). A railroad ran parallel with Farrow Road. (R. p. 124, lines 8-10). Morgan testified of the

importance of the railroad to his business, stating that the product used in the processing of calcium chloride was brought to the Property by rail from Louisiana. (R. p. 124, lines 19-25). Morgan testified he had permission to use the rail siding of his property to "transport" the product from the rail cars to the Property. (R. p. 159, lines 9-20).

Morgan testified regarding his substantial improvements to the Property, including clearing big trees and old parts of equipment that was used by another manufacturing company, grading the property, and hauling in dirt, costing nearly $20,000. He also poured concrete for the tank cars Carolina Chloride stored calcium chloride. Morgan testified estimated his investments in excess of $200,000. (R. p. 126, line 24 – p. 129, line 6).

Once the product was produced, tractor-trailer tankers, owed by Carolina Chloride, would transport the product to customers. (R. p. 129, line 7 – p. 132, line 8). Most of the product was transported via I-77, and would exit the Property onto Killian Road, turn left, cross the rail crossing and Farrow Road, and continued up on Killian Road to I-77. (R. p. 132, lines 5-20). Morgan admitted there were other avenues to get to I-77 from the Property; however, the alternative route would take 18-wheelers hauling

tanks of chemicals through a residential neighborhood. (R. p. 133, line 10 – p. 134, line 13).

Morgan further testified that he used part of the Property as "mini warehouses" or storage units that he rented. (R. p. 131, lines 9-15). Customers of the warehouse business would access the warehouses by coming "down Farrow Road and cross – turn left on Killian Road and then turn right into Carolina Chloride and go to the warehouses just inside." (R. p. 135, lines 8-11). Therefore, the access from Farrow Road was essential to Carolina Chloride's warehouse business. (R. p. 135, lines 12-16).

Morgan testified that upon learning of a prospect for the rail grade at Killian Road to be close, he met with Brian Keys, an official at the Department of Transportation, where Morgan expressed his concerns about the Killian Road closing. (R. p. 137, line 15 – p. 138, line 22). At the time, there was no mention by Keys regarding an agreement of a private encroachment in order to continue accessing Farrow Road to Killian Road. (R. p. 138, line 23 – p. 139, line 4).

In early 2006, SCDOT closed the railroad grade, putting up barricades and tearing the timbers out against the rails. (R. p. 146, lines 7-19). Morgan was never provided any written notice of SCDOT's closure of the road, nor

was any compensation provided in relation to SCDOT's activities in conjunction with Carolina Chloride. (R. p. 146, line 20 – p. 147, line 1; p. 150, lines 3-14).

Almost immediately upon the railroad closing, fifty percent (50%) of the renters of the warehouse units moved out. (R. p. 150, lines 15-24). Eventually, Carolina Chloride, due to lost profits, sold the business for an estimated $400,000. (R. p. 151, lines 4-21). Morgan had a previous offer, prior to the railroad closing/Farrow Road closing, for $1,100,000. (R. p. 155, lines 7-24).

On cross-examination, counsel for SCDOT presented a plat reflecting the Property when Carolina Chloride purchased the property. Counsel for SCDOT differentiated Morgan's testimony regarding the right to use the rail siding, but not that Carolina Chloride owned the land. (R. p. 173, lines 11-13). Counsel for SCDOT alleged that the statute from 1846, allowing the Railroad to take land in fee simple controlled. (R. p. 178, lines 22 – p. 179, line 3). Counsel for Carolina Chloride concurred that the technical property line for the Property at Killian and Farrow Road did not include the railway. However, whether the Railroad actually owns the property in fee simply is

not dispositive of the case, because Carolina Chloride abutted Farrow Road. (R. p. 177, line 17 – p. 178, line 8; p. 182, lines 1-5).

Morgan clarified that the right to the railroad siding that lies on the Railroad property, was by agreement. (R. p. 188, lines 4-13).

Also testifying at trial was Billy Way, Jr., a commercial real estate agent in Columbia. (R. p. 190, lines 4-23). Way was qualified as an expert in commercial real estate brokerage in Richland County. (R. p. 191, lines 4-11). Way testified that it was his opinion that the closing of the Killian Road access affected the value of the property. He testified that access and convenience are factors that are used in valuing a property, and that sellers and buyers use this factor in their valuation, as well. (R. p. 194, line 6 – p. 195, line 22). Way clarified that the loss of value was a result of the diversion of traffic to another access point of the property due to the closure of the Killian Road access. (R. p. 197, lines 21-23).

Brian Keys, director of Rights of Way for the South Carolina Department of Transportation testified that he participated in the projected involving the widening and location of Clemson Road from US Route 1 to I-77. (R. p. 205, line 16 – p. 208, line 7). The project was split into two parts. (R. p. 209, line 8-9). The second phase of the project occurred in January

2006. (R. p. 210, lines 4-13). During this phase, Keys was program manager and was responsible for the project from its inception through its construction, including the budget and timeframes. (R. p. 210, lines 14-20). Keys confirmed that SCDOT and the Railway had a written contract for purposes of constructing an overpass on Clemson Road where the railway runes underneath the overpass. (R. p. 213, line 13 – p. 214, line 7). Keys testified that the project was estimated at $2.3 million, $115,000 of which was contributed by the Railway. (R. p. 215, lines 11-15).

Keys recalled that the intersection of Killian Road and Farrow Road, specifically the rail grade, was closed to facilitate the construction of the overpass at Clemson Road at the request of the Railway, though Keys did not know why the Railroad petitioned for the rail grade to be closed. (R. p. 215, line 16 – p. 216, line 10).

Keys testified there were plans for a high speed railway between Columbia and Charlotte, North Carolina since the early 2000s and that these plans may have precipitated the rail grade closing. (R. p. 219, line 19 – p. 220, line 16). Keys further testified that there were safety concerns of the rail crossing at Killian Road and Farrow Road and noted that an individual was killed at the location in 1989. (R. p. 221, lines 3-20).

Keys did not recall meeting with Morgan regarding his property and the subject closing rail grade, though he admitted the same during his deposition. Keys admitted a second rail crossing at Longstown Road remained opened and operating during the time period that the subject rail grade was closed (at the intersection of Killian Road and Farrow Road). (R. p. 226, line 17 – p. 228, line 10). When asked why the railroad crossed at Longstown Road remained open, while the crossing at Killian Road was closed, Keys testified the Railroad was essentially calling the shots. (R. p. 228, lines 3-14).

Keys disputed that Carolina Chloride's property abutted Farrow Road. (R. p. 228, line 15-17). However, Keys agreed that a property owner would have an easement to any public highway that the property abuts. (R. p. 229, lines 20-25).

Keys testified SCDOT had a number of public hearings regarding the subject project, though Keys could not confirm that Morgan received notices of the public hearings personally. (R. p. 230, line 16 – p. 231, line 3).

There were right-of-ways affected by virtue of the alterations done to Farrow Road and the landowners received notice of the alterations from the Right-of-Way Office. (R. p. 231, lines 16-22). Keys was not aware of any

notice Morgan received from SCDOT regarding the closure of the railroad crossing at Killian Road. (R. p. 231, line 23 – p. 232, line 14).

The Railroad was responsible for removing the crossing; SCDOT removed anything up to the right-of-way. (R. p. 232, line 18 – p. 234, line 3). Keys believed that a railroad can unilaterally tear up tracks and create a break in the road regardless of any permission granted by the highway department who owns the adjoining roads. (R. p. 234, line 4-22). However, Keys confirmed that in this instance, there was a bilateral agreement between the Railroad and SCDOT. (R. p. 234, lines 1-16). Keys agreed that the concurrence of the Railroads petition to remove the rail crossing was affirmative conduct of the government. (R. p. 235, lines 18-23).

Keys testified that according to statute, he did not take it upon himself or SCDOT, unilaterally, to close the rail grade crossings, nor did SCDOT have any role in building a high-speed rail line. (R. p. 238, line 8 - p. 240, line 16). Keys acknowledged SCDOT's right-of-way provided by agreement with the Railroad. (R. p. 242, line 20 - p. 244, line 2). Keys testified that to his knowledge, the agreement represented SCDOT"s only interest in the crossing at Killian Road and Farrow Road. (R. p. 244, lines 3-6).

Keys testified that the state typically acquires land for highways by purchasing the land in fee simple interest. (R. p. 260, lines 1-4). With regard to the subject land, the state had taken fee simple interest and not just right-of-way since the 1990s. (R. p. 260, lines 5-9). Keys testified it was his understanding that the agreement between the Railway and state was not an easement or fee simple acquisition, but rather was permission, and that the Railway did not purchase title because it was an active railroad. (R. p. 260, line 10 - p. 261, line 13).

Keys did not recall whether he told Morgan that his property interest ran to Farrow Road in the way of an easement or a right-of-way. (R. p. 264, lines 2-5).

On questioning by the Court, Keys agreed that the definition of "abut" means the sharing a common boundary. Keys opined that Carolina Chloride's property did not abut Farrow Road because the Railroad has title property in between Farrow Road and Carolina Chloride. (R. p. 281, lines 8-13).

The Circuit Court held that Carolina Chloride's property did not abut or share a common boundary with the right-of-way of Farrow Road and, therefore, it had no right to a drive entrance onto that road which can be taken

by SCDOT. (R. pp. 6-7). The Circuit Court further found Carolina Chloride failed to exhaust its administrative remedies. (R. p. 7). The Court also noted that testimony was presented that SCDOT would have no object to permitting a drive entrance onto Farrow Road to Carolina Chloride. (R. pp. 7-8).

In its Motion to Reconsider, Carolina Chloride contended the Circuit Court overlooked or misapprehended the true aegis of the term "abut," as it has been defined and implemented by our appellate entities. Stated succinctly, Plaintiff maintains its property abutted Farrow Road and possessed the right of ingress or egress, which was terminated by the closure of the railroad crossing at the intersection of Killian and Farrow Roads. (R. p. 89). Carolina Chloride further alleged it utilized the administrative process to not avoid. It was not until shortly before trial that the Department advised Carolina Chloride that it had no objection to opening a private drive at the subject location for Carolina Chloride to utilize. (R. p. 90).

The Circuit Court denied Carolina Chloride's Motion to Reconsider, stating that it found no reasons to reverse its decision based on "undisputed evidence that it does not abut." (R. p. 1-2). The Circuit Court further stated that SCDOT has no object to permit a drive entrance to the subject property. (Id.). The Circuit Court found SCDOT was never given an opportunity to

find an engineering solution among the parties and the Railroad prior to the sale of the property. Accordingly, the Circuit Court denied Carolina Chloride's petition. (Id.)

In a Rule 220(b) opinion, this Court affirmed the Circuit Court's order of dismissal, ostensibly holding that evidence supported the Master-in-Equity's findings that Carolina Chloride's property did not abut Farrow Road. This Court did not reach the issue of exhaustion of administrative remedies.

LAW/ANALYSIS

I. Carolina Chloride's Property Abutted Farrow Road

In affirming the Circuit Court's ruling on the issue of whether Carolina Chloride's property abutted Farrow Road, this Court cited Mosteller v. Cnty. Of Lexington, 336 S.C. 360, 365, 520 S.E.2d 620, 623 (1999) for the proposition that "'[a]but' means to be contiguous, or border on; to bound upon; to end at, or terminate, to join at a border or boundary; to meet; to touch at the end of side." While Appellant acknowledges the definition cited in Mosteller, South Carolina courts have also held "abut" does not always mean there must be actual contact. See id. For example, property may still be deemed to abut a road when there is some intervening, natural barrier like

a stream or river. Id. (citing Anderson v. Town of Albemarle, 182 N.C. 434, 109 S.E. 262 (1921)).

Not only does Appellant contend that the Court overlooked the additional analysis in Mosteller regarding barriers, but there have been holdings by our appellate courts—ostensibly ignored by this Court in its analysis of the case *sub judice*—in analogous disputes involving annexation, which have held that man-made conditions, such as roadways, do not destroy contiguousness and thus should aid in this Court's disposition in the case at bar. See, e.g., St. Andrews Pub. Serv. Dist. V. City Council of City of Charleston, 339 S.C. 320, 529 S.E.2d 64 (Ct. App. 2002), rev'd on other grounds by 342 S.C. 602, 564 S.E.2d 647 (2002); see also Eldridge v. South Carolina Dept. of Transp., 384 S.C. 548, 552-53, 683 S.E.2d 483, 485 (2009); [2] Sonoco v. South Carolina Dept. of Rev., 378 S.C. 385, 662 S.E.2d 599 (2008).

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[2] At issue in Eldridge v. South Carolina Dep't of Transp., 384 S.C. 548, 683 S.E.2d 483 (2009), was whether "on premises" signs for private businesses on a median on a public highway running through the town of Greenwood were actually "on premises." The median was situated upon an abandoned railroad right-of-way. A county ordinance defining "on premises" signs was interpreted by a special referee to be to be located on the actual property where the business is located. The Department of Transportation also concluded that such signs were not in fact "on premises" because they were

not contiguous with, adjacent to, or adjoining the businesses on either side of the road the signs were advertising and thus there would be no taking if the signs were taken down. The Supreme Court, applying, inter alia, its holding in Sonoco v. South Carolina Department of Revenue, 378 S.C. 385, 662 S.E.2d 599 (2008), held these signs were in fact "on premises" notwithstanding the physical separation between the subject businesses and their signs due to the intervening state-owned highway. The Eldridge Court held contiguousness is to be broadly interpreted and that an intervening land owner does not necessarily destroy contiguousness in South Carolina.

> [T]his Court [has] acknowledged that the term "contiguous" has been broadly interpreted. Sonoco v. SC Dep't of Revenue, 378 S.C. 385, 662 S.E.2d 599 (2008), citing Kizer v. Clark, 360 S.C. 86, 90–91, 600 S.E.2d 529, 532 (2004) (recognizing that marshlands and creeks do not defeat town's contiguity for annexation purposes); Mosteller v. County of Lexington, 336 S.C. 360, 364–65, 520 S.E.2d 620, 623 (1999) (explaining the term "contiguous" and stating " '[a]but' means to be contiguous ... [h]owever, abut does not always mean there must be actual contact").
>
> In Sonoco, we went further and distinguished between "contiguous" in a lay or secondary sense, versus in legal contemplation, stating, "In the legal field, it has been defined as: '[i]n close proximity; neighboring; adjoining; near in succession; in actual close contact; touching at a point or along a boundary; bounded by or traversed by.' Black's Law Dictionary 290 (5th ed.1979)." 378 S.C. at 391, 662 S.E.2d at 602. Significantly, S.C. Code Ann. § 5–3–305 is also cited in Sonoco; it states, in part:
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> > For purposes of this chapter, "contiguous" means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line

In St. Andrews Public Service District, a public service district brought a declaratory judgment action, challenging city of Charleston ordinances that

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> which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.
>
> **In *Sonoco*, we ultimately held a taxpayer's office buildings were subject to property tax because the public road and railroad tracks did not defeat contiguity of the plant and office buildings**. We find the issue presented here is squarely controlled by our opinion in Sonoco; we find the contiguity requirement is met here such that for purposes of the applicable ordinance, the signs may be considered "on premises."
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> Further support for this result is found in the definition of "adjacent." Black's Law Dictionary, 38 (5th Ed.1979) defines it adjacent as "lying near or close to; sometimes, contiguous, neighboring. Adjacent implies that the two objects are not widely separated, though they may not actually touch."
>
> We find the Court of Appeals and Referee unduly restricted the definition of "on premises." Given the liberal construction afforded the definition of "contiguity" in Sonoco, we find the Property between the Road's separation by the roadway does not defeat contiguity, such that the signs may be considered "on premises" for purposes of the ordinance. Accordingly, the Court of Appeals opinion is reversed, and the case is remanded to the Referee for calculation of damages.

Id. at 552-53, 683 S.E.2d at 485 (emphasis added).

annexed property into the city. An issue extant in the dispute was whether the annexation ordinances were unauthorized by law because the properties annexed were not contiguous to the city's existing boundaries. Specifically, the public service district alleged the city illegally annexed roads to achieve contiguity to properties that were not otherwise contiguous to the city. In its analysis, the Court stated:

> Courts have generally held that contiguous is synonymous with the terms "adjacent to" or "adjoining." Erwin S. Barbre, Annotation, What Land is Contiguous or Adjacent to Municipality so as to be Subject to Annexation, 49 A.L.R.3d 589, 599 (1973. Our Supreme Court explained, "The statutory word 'contiguous' must be afforded its ordinary meaning of 'touching.' Bryant v. City of Charleston, 295 S.C. 408, 410, 368 S.E.2d 899, 901 (1988). To achieve contiguity, **actual physical touching of the properties is not required**. The Supreme Court has rejected an argument that the annexed parcels must have the additional qualifications of unity, substantial physical touching, or a common boundary.

Id. at 324-25, 529 S.E.2d at 66 (Ct. App. 2000).

The St. Andrews Public Service District Court held there was no contiguousness:

> In the present case, the Charleston City Council attempts to establish contiguity, not by merely crossing a roadway to annex an adjacent property, but by annexing the length of a road to establish a common boundary. In essence, it argues that because the City's current property abuts a roadway, any parcel that

> abuts the same roadway is necessarily contiguous if the roadway is also annexed.
>
> ...
>
> That kind of annexation is not authorized by the law of this state.

Id. at 326, 529 S.E.2d at 67.

However, in its review, the Supreme Court did find contiguousness via extension of the annexation of the bordering roadways. St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston, 349 S.C. 602, 606, 564 S.E.2d 647, 649 (2002).

After the opinion in St. Andrews was filed, the General Assembly enacted South Carolina Code § 5-3-305, which defines "contiguous" as the term applies to annexation and further states:

> Contiguity is not establish by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; **whoever, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destoy continuity.**

S.C. Code Ann. § 5-3-305 (2015) (emphasis added).

The Master in Equity, as well as this Court in its Rule 220(b) opinion, erroneously applied a rigid definition of "abut." Rather, under Mosteller,

Sonoco, and Eldridge, it is abundantly clear that Carolina Chloride's property and Farrow Road need not touch in order to be continuous (i.e., abut). Moreover, but for the intervening railroad grade, Carolina Chloride's property and Farrow Road would be directly adjacent and share a continuous border. By analogy of Mosteller, Sonoco, and Eldridge, the Railroad's railway bed does not destroy contiguity.

Accordingly, this Court, in misapprehending the law and definitions of "abut," erred in affirming the Master in Equity's order of dismissal.

II. Appellant Did Not Fail to Exhaust Administrative Remedies

This Court did not reach the issue of exhaustion of administrative remedies pursuant to Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal). Appellant maintains that this Court erred in holding the Master in Equity did not commit reversible error in finding that Carolina Chloride's property did not abut Farrow Road. Accordingly, the Court should address the alternative ground for dismissal. Appellant avers the Master in Equity erred in holding Carolina Chloride failed to exhaust its administrative remedies.

In its Order, the Master determined that Carolina Chloride did not make a meaningful request to allow SCDOT to exercise its discretion concerning the road closure. This finding apparently was an additional basis for dismissal. Respectfully, the Master in Equity overlooked or misapprehended 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. (R. p. 137, line 15 – p. 142, line 9). As detailed by Morgan, he made it clear to SCDOT's engineering representative that he was aggrieved by the Department's apparent consideration of closing the crossing. (R. p. 137, line 15 – p. 142, line 9).

Moreover, at no point prior to the road closure did SCDOT advise Morgan that SCDOT would have no objection to permitting a drive entrance onto Farrow Road. It was only shortly before the trial of this case and long after Carolina Chloride sold its operations and land at the subject parcel did SCODT advise Morgan of the right to apply for a drive entrance. In the April 8, 2014, letter from counsel to SCDOT, it was represented: "[T]his Department never argues that an abutting owner to a State Highway does not have the right to enter that highway as long as the land affords a safe and

suitable point for entry. The question, therefore, is who is the abutting owner vis-à-vis the plaintiff and the railroad. Our engineers have investigated this location and would have no objection to the opening of a private drive at this location." (R. p. 309). This offer, of course, was too little, too late.

Carolina Chloride pursued administrative remedies concerning the road closure; however, SCDOT disregarded Carolina Chloride's position. Carolina Chloride's suit for inverse condemnation was therefore appropriate. Accordingly, the Master in Equity erred in finding Carolina Chloride failed to utilize the administrative process to resolve its claim.

CONCLUSION

Based on the foregoing, Carolina Chloride avers this Court misapprehended the definition of "abut" and its application of "abut" to the instant case. Furthermore, because this Court erred in affirming the Master's ruling on the term "abut," this Court must address the alternative ground for dismissal. Carolina Chloride maintains it exhausted its administrative remedies in resolving its claim against SCDOT. Accordingly, Carolina Chloride respectfully requests the Court reverse the Master-in-Equity's order of dismissal.

Respectfully submitted,

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APPELLANT'S PETITION FOR REHEARING

Columbia, South Carolina
March 9, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Case No. 2016-001440

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South Carolina Department of Transportation, ...Respondent.

PROOF OF SERVICE

I hereby certify that I served Appellant's Petition for Rehearing upon all parties, by placing a copy in the United States mail, postage prepaid, to the below listed parties on March 9, 2018, addressed to the following:

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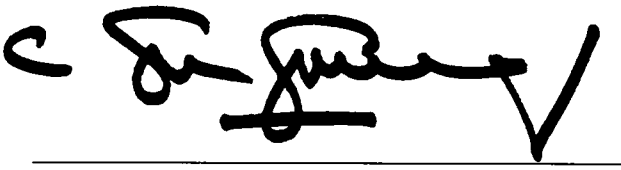
Respectfully submitted,

COLLINS & LACY, P.C.

By: 

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PROOF OF SERVICE – APPELLANT'S PETITION FOR REHEARING

Columbia, South Carolina
March 9, 2018

Collins Lacy
ATTORNEYS AT LAW

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March 9, 2018

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

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

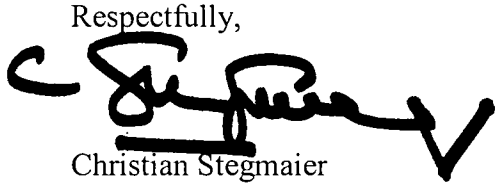
Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Appellant's Petition for Rehearing in the above-referenced matter. Also enclosed is our firm's check in the amount of $25.00, representing the filing fee of same. Please file the original and return a clocked copy with our courier.

By copy of this letter and enclosure, we are serving same upon counsel for Respondent.

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

Respectfully,



Christian Stegmaier

CS/mmm
Enclosures
cc: Beacham O. Brooker, Jr., Esquire
Edward D Sullivan
Ryan Morgan