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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case Number 2013-CP-02-02157

Appellant Case Number 2017-001881

John Burke, William Burt, Sr., Thomas Cooper, Mike Ellison, Harold J. Hanson, David McKee,
Plaintiffs,

Of whom John Burke is the Respondent,

v.

The South Carolina Department of Transportation, Appellant.

FINAL BRIEF OF APPELLANT

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-v-

The South Carolina Department of Transportation,Appellant.

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**TABLE OF AUTHORITIES
CASES**

Vick v. South Carolina Department of Transportation, 347S.C.470, 556 S.E.2d 693
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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. (R.pp. 25-30) The SCDOT answered basically denying the Plaintiff’s claims in regard to all causes of actions. (R.pp. 31-34) Burke’s action was tried before a jury beginning on March 27, 2017. (R.pp. 8-9) Inverse Condemnation was the only cause of action presented to the jury. Judgment was entered on March 29, 2017. (R.p. 8) Burke moved the court to award him costs, prejudgment interest, post judgment interest and attorney fees. (R.p. 9) The trial judge issued his order on June 16, 2017 which, among other monetary awards, awarded prejudgment interest of \$37,769.67. (R.pp. 18-19) SCDOT filed a motion for reconsideration pertaining to the award of prejudgment interest dated June 26, 2017. (R.pp. 20-23) The trial judge affirmed the award by his order dated August 11, 2017. (R.pp. 1-7) 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. (R.pp. 25-26)

During the trial the Respondent chose to proceed only on the inverse condemnation cause of action. (R.p. 8) 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. (R.pp. 35, 36 line 1 – p.42 line 10) 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

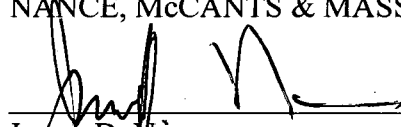
For the reasons state above, this Court should reverse the order of the Trial Judge to the extent that pre-judgment interest was awarded to the Respondent.

Respectfully Submitted,

February 8, 2018

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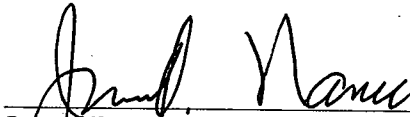
The South Carolina Department of Transportation, Appellant.

CERTIFICATE OF COUNSEL

The Final Brief of Appellant complies with South Carolina Appellant Court, Rule 211(b).

NANCE, McCANTS & MASSEY

February 9, 2018


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