

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

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Unpublished Opinion No. 2018-UP-063 (Filed February 7, 2018)  
Appellate Case No. 2018-001013

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Carolina Chloride, Inc., .....Petitioner,

v.

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

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**PETITIONER'S REPLY TO RESPONDENT'S RETURN TO  
PETITION FOR WRIT OF CERTIORARI**

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## LAW/ANALYSIS

### **I. Carolina Chloride's Property Abuts Farrow Road**

Respondent alleges that the definition of “abut” as articulated in Mosteller v. County of Lexington, 366 S.C. 360, 365, 520 S.E.2d 620, 623 (1999) is inapplicable to the facts of this case. Specifically, Respondent maintains the Court’s statement in Mosteller that a landowner may be considered an abutting owner where its land is merely separate by a stream or river references South Carolina common law regarding ownership of lands beneath non-tidal rivers and streams. (Brief of Resp., p. 7). However, it is important to note that the Court makes no formal reference to South Carolina common law in providing its definition of abut and cited exceptions to whether land abuts albeit with some type of barrier. See Mosteller, 366 S.C. 365, 520 S.E.2d 623.

Indeed, there appears to be no South Carolina case law where our courts have reached whether property may still be deemed to “abut” a road when there is an intervening, man-made barrier, i.e. a railroad bed.

Further, Eldridge v. South Carolina Dept. of Transp., 384 S.C. 548, 683 S.E.2d 483 (2009) and Sonoco v. South Carolina Dept. of Transp., 378 S.C. 385, 662 S.E.2d 599 (2008) favorably cites Mosteller for the principal that

“[a]but means to be contiguous . . . [h]owever, abut does not always mean there must be actual contact.” Eldridge, at 552-53, 683 S.E.2d at 485; Sonoco, 378 S.C. at 393, 662 S.E.2d at 603. It is clear the factual distinctions among the case law cited by Carolina Chloride are without a difference as the Court has repeatedly relied upon the definition of “abut” and “contiguous” throughout factually distinguishable cases.

Moreover, Respondent relies on Cherry v. Rock Hill, 48 S.C. 553, 26 S.E. 798 (1897), to support the contention that the alteration of the street—made by the City of Rock Hill and/or its mayor or other officers—at a point where it did not adjoin plaintiff’s property cannot be regarded as the taking of private property for public use. However, Cherry was decided over 100 years prior to this Court’s case law defining “abut” and “contiguous.” Furthermore, the Cherry Court conclusively found that plaintiff Cherry did not sustain any special or peculiar injury different in kind from that which the public generally had sustained. However, the Circuit Court’s order focuses not on whether there is any special or peculiar injury different in kind to the public generally, but whether Carolina Chloride property abuts Farrow Road. For the reasons articulated above, and in Petitioner’s Petition for writ of certiorari, the answer to the question is in the affirmative: Carolina Chloride abuts Farrow Road.

Therefore, according to the definitions of “abut” and “contiguous” as articulated by our courts, Carolina Chloride’s property abuts Farrow Road.

## **II. Carolina Chloride Pursued Administrative Remedies Concerning the Road Closure**

Respondent alleges Carolina Chloride failed to exhaust its administrative remedies to allow Respondent the opportunity to cure the taking. However, Respondent has seemingly ignored 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. (App. pp. 232 - 237). Because Morgan repeatedly efforts pursued administrative remedies regarding the road closure, Carolina Chloride’s suit for inverse condemnation is appropriate.

### **CONCLUSION**

For the reasons stated within the argument of its Petition for Writ of Certiorari and this Reply to Respondent’s Return, Petitioner respectfully requests this Court reverse the Circuit Court.

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**PROOF OF SERVICE**

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I hereby certify that I served Petitioner's Reply to Respondent's Return to Petitioner's Petition for Writ of Certiorari upon all parties, by placing a copy in the United States mail, postage prepaid, to the below listed parties on July 6, 2018, addressed to the following:

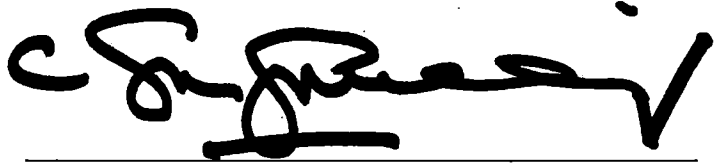
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