THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson

Case No. 2013-CP-10-4511

County of Charleston, Respondent,
v.
Walter G. McAdory, Landowner, and Branch Banking and Trust Company and South Carolina Electric & Gas Company, Other Condemnees,
Of Whom Walter G. McAdory is the Appellant.

FINAL BRIEF OF APPELLANT

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ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN PROHIBITING THE LANDOWNER FROM EXPLAINING HIS OPINION ON THE VALUE OF AND DAMAGES TO HIS PROPERTY TO SUPPORT HIS CONCLUSION ON JUST COMPENSATION DUE FROM CONDEMNOR?

II. DID THE TRIAL COURT ERR BY PREVENTING THE JURY FROM ENTERING THE PROPERTY DURING A SITE VISIT PURSUANT TO S.C. CODE ANN. §28-2-340(B)?

STATEMENT OF THE CASE

Respondent Charleston County ("Respondent") filed a condemnation action on July 11, 2012, against Appellant/Landowner Walter G. McAdory ("Mr. McAdory"). The parties tried the condemnation action to conclusion before a jury on October 16 and 17, 2013. The jury issued a judgment in favor of landowner in the amount of Sixty-Three Thousand, One Hundred and Fifty-Eight ($63,158.00) Dollars. The Court issued a Judgment in a Civil Case Form 4 Order dated October 18, 2013, which Appellant received via U.S. Mail on October 24, 2013. Appellant timely served the Notice of Appeal on Respondent on November 12, 2013.

STATEMENT OF FACTS

Mr. McAdory began working as an automotive technician at the age of twelve for his uncle's salvage yard and garage. (R. p. 0141, lines 7-12). At the age of seventeen he began working as an auto technician for Hoover Chrysler Plymouth in Charleston, S.C. (R. p. 0141, lines 13-24). In 1988, he went to work as an automotive technician with Gene Reed in Charleston, S.C. and ultimately rose to the rank of shop foreman and team leader in Gene Reed's Toyota and Lexus automotive service facilities. (R. p.0142, lines 2-25; R. p. 0143, lines 1-22). In 2006, Mr. McAdory left Gene Reed to form a sole member LLC called LexTech Automotive ("LexTech"). (R. p. 0143, lines 23-25; R. p. 0144, lines 1-2). LexTech continues to operate as

an auto repair and maintenance facility for Lexis and Toyota manufactured vehicles. (R. p. 0139, lines 16-18).

When Mr. McAdory first opened LexTech, he operated the business on rented property. (R. p. 0145, lines 5-13). In 2010, the LexTech became profitable and Mr. McAdory began looking for commercial property to purchase. (R. p. 0145, lines 14-22). In late 2010, he found a 0.254 acre piece of commercial property located at 873 Folly Road in Charleston County where an Auto Title Money Loan business operated at the time. (R. p. 0119, lines 23-25; p. 0120, lines 1-2; p. 0147, lines 3-19; Defendant's Ex. 17, R. p. 0455; R. p. 0149, lines 13-16; Defendant's Ex. 1, R. p. 0439).

The property at 873 Folly Road had everything Mr. McAdory needed for his auto repair and maintenance facility: it was located in the commercial core of James Island, S.C. with a high traffic volume; a billboard sign with existing frame; exposure, and signage visible to traffic heading in both the east and west directions on Folly Road; building originally built to suit an automotive repair business; parking in front of and to the rear of the building; and six parking spaces in the front of the building. (R. p. 0145, lines 23-25; R. pp. 0146-0147; Defendant's Ex. 17, R. p. 0455; R. p. 0196, lines 12-17; R. p. 0209, lines 1-10). Mr. McAdory eventually purchased the property for $375,000.00 in an arms-length transaction from the seller which represented the fair market value of 873 Folly Road in January of 2011. (R. p. 0150, lines 11-23).

As stated, at the time of purchase, the property at 873 Folly Road housed an auto title loan business. (R. p. 0149, lines 13-16; Defendant's Ex. 1, R. p. 0439). In order to convert the property at 873 Folly Road from an office to a fully operational automotive repair and maintenance facility, Mr. McAdory undertook extensive renovations and improvements from

January 2011 to July 11, 2012, which cost him approximately $75,412.00. (R. p. 0090, lines 13-14; Defendant's Ex. 21, R. p. 0460; R. p. 0154, lines 3-25 *(in camera)*; R. p. 0155, lines 18-25 *(in camera)*; R. p. 0156 *(in camera)*; R. p. 0157, lines 1-7 *(in camera)*; R. p. 0176, lines 9-25; R. p. 0177; R. p. 0178). The improvements added by Mr. McAdory included the following: reconfiguring and remodeling the front offices; installing three car lifts; extensive lighting to the interior of the building including the automotive repair facility work area; extensive electrical rewiring and overhaul; replaced existing rear bay door and installed a second rear bay door for more vehicle access to repair shop and car lifts; exterior and interior painting; conversion of an office area to a storage area for automotive parts; clear debris and trees in order to remove and reinstall rear fence further back on property to allot for another row of vehicle storage; and, filling rear parking lot with crushed concrete. (R. p. 0176, lines 9-25; R. p. 0177; R. p. 0178; R. p. 0197, lines 11-25; R. p. 0198, lines 1-2).

As discussed, prior to Mr. McAdory's renovations, the highest and best use of the property was for office-based business operations. After the addition of the improvements, the highest and best use of the property changed to an automotive maintenance and repair facility (R. p. 0198, ll 3-6), which benefitted Mr. McAdory as a landowner and added to the fair market value of the property. (R. p. 0178, lines 23-25; R. p. 0179, lines 1-3).

On July 11, 2012, the Respondent acquired a 0.03 acre strip take of the property on Folly Road in Charleston, South Carolina, (R. p. 0117, lines 10-14; Plaintiff's Oversized Ex. 2), with the right-of-way coming within six feet of building's front door where Mr. McAdory – as owner and operator of LexTech – welcomed customers in need of automotive maintenance and repairs. (R. p. 0118, lines 24-25; R. p. 0119, line 1; Plaintiff's Oversized Ex. 2). Mr. McAdory testified

that the taking changed the highest and best use of his commercial property from an automotive maintenance and repair facility back to an office-based business given the restrictions the condemnation caused on the function and operation of Lex-Tech for the following reasons: elimination of customer parking spaces in front of building; necessary relocation of sign and loss of visibility of sign from roadway; need for more parking in rear for customer vehicles resulting in less parking in rear for employees and customer vehicle storage; decrease space in rear of property to safely maneuver vehicles in and out of automotive service department due rear serving as only parking location for customers, employees, and customer vehicle storage; imposition of safety hazards on customers since parking only available in the rear of the property and only access to front of property where office located is either through the auto service department where cars are repaired or along the 14.2 foot wide side driveway where cars enter the property; and, lack of space for customers to drop off vehicles after business hours given parking no longer available in front and rear parking access blocked after hours by a locked security gate to protect customers' vehicles and repair facility (among other reasons). (R. pp. 0198–0209, lines 1-10; R. p. 0218; R. p. 0219, lines 1-3). For all of these reasons, Mr. McAdory's property could no longer safely and feasibly accommodate an automotive maintenance and repair facility that the property was specifically retrofitted for with permanent improvements. As a result of the County's taking, Mr. McAdory was forced to relocate his business LexTech and purchase another piece of commercial property. (R. p. 0209, lines 16-18).

Mr. McAdory believed the property located at 873 Folly Road was worth more than his purchase price of $375,000.00 prior to the acquisition given the extensive amount of investment in and improvements to the property from January 2011 to July 11, 2012, that cost approximately

$75,412. (R. p. 0176, lines 18-21; R. p. 0238, lines 4-12, lines 17-25; R. p. 0239; R. p. 0240, lines 1-6, 12-25; R. p. 0241, lines 1-2; Defendant's Ex. No. 21, R. p. 0460). However, the Court denied Mr. McAdory the opportunity to testify as to his opinion of the fair market value of the property at the time Respondent condemned the property and damages thereto after the condemnation. (R. p. 0063, lines 12-25; R. pp. 0064-0066; R. p. 0071, lines 10-17; R. p. 0072, lines 20-25; R. p. 0073, lines 20-30; R. p. 0077, lines 19-25; R. p. 0081, lines 8-25; R. p. 0082; R. p. 0083, lines 9-25; R. p. 0085; R. p. 0086, lines 1-8; R. p. 0157-0161; R. p. 0163, lines 19-25; R. pp. 0164-0165; R. p. 0166, lines 23-25; R. p. 00167, lines 1-17; R. p. 0171, lines 20-25; R. p. 0172; R. p. 0173, lines 1-12). Mr. McAdory's opinion of the fair market value of the property at the time of the condemnation was supported by the fair market value purchase price of $375,000.00 plus the monetary investment into the property for the improvements to the land and the building. (R. p. 0063, lines 12-25; R. pp. 0064-0066; R. p. 0071, lines 10-17; R. p. 0072, lines 1-4, 0063-0068; R. p. 0073, line 1). The Court placed emphasis on who actually spent the money to make permanent improvements to the property – LexTech or Mr. McAdory – rather than acknowledging that improvements to property can increase the fair market monetary value of property in the opinion of a Landowner. (R. p. 0071, lines 10-25; R. p. 0072, lines 1-19; R. p. 0074, lines 5-14; R. p. 0167, lines 20-25; R. p. 0168, lines 1-9; R. p. 0169, lines 14-25; R. p. 0170).

The Court claimed the denial of such testimony was a matter of law and not a question of fact for the trier of fact to weigh and attribute evidentiary value. (R. p. 0080, lines 3-7; R. pp 0164-0165). As a result, Mr. McAdory's opinion as landowner to the amount of just compensation due from Respondent for the taking of his property and damages to the remainder

was limited to the difference in the $375,000 fair market value purchase price of his property before the condemnation and no more, and the $225,000 fair market value attributed to the property by Respondent's appraiser after the taking. (R. p. 0226, lines 11-25) In turn, Mr. McAdory testified he sought $150,000 in just compensation. (R. p. 0227, lines 1-4). On cross-examination, the trial court's ruling prohibiting any testimony about the cost of permanent improvements to the land and building prevented Mr. McAdory from explaining to the trier of fact which portion of the $150,000 in just compensation he sought was attributable to damages to the land versus damages to the building in his opinion. (R. p. 0236, lines 16-25; R. pp 0237-0240). The trial court prohibited Mr. McAdory from offering a numerical and practical explanation regarding damages to land versus damages to the building. Thus, Mr. McAdory testified that the building no longer had any value given the change in the highest and best use since the building was retrofitted and renovated with permanent improvements for an automotive maintenance and repair facility. (R. p. 0237, lines 12-23).

At trial, Respondent presented appraiser Charles Crider as an expert who offered his opinion of just compensation for the taking. Mr. Crider testified his opinion of the value of the property before the condemnation was $276,600 and represented only the fair market value of the land and did not include the fair market value of the building. (R. p. 0266, lines 1-4). He further testified that the fair market value of the land after the condemnation was $244,430 and, again, did not include the fair market value of the building. (R. p. 0266, lines 8-20). Mr. Crider neglected to appraise the building on the property in arriving at his opinion of the fair market value of the property before and after the condemnation since the right of way did not literally go through the middle of the building. (R. p. 0267, lines 11-23). Mr. Crider assigned a value of

$19,500.00 as a cost to cure the elimination of the parking spaces and the sign relocation, and added this value to the difference between the before and after values of only the land. (R. p. 0267, lines 3-9). Mr. Crider testified he ultimately determined just compensation to Mr. McAdory equaled $51,670.00. (R. p. 0265, lines 18-25). He further testified that "**[f]air market value is a term what appraisers recognize ... what a willing buyer and willing seller would buy or sell a property for in the open market each being knowledgeable and prudent, each acting in their own best interest and ultimately determining what the value of the property is.**" (emphasis added). (R. 0257, lines 16-24).

LEGAL ARGUMENT

I. DID THE TRIAL COURT ERR IN PROHIBITING THE LANDOWNER FROM EXPLAINING HIS OPINION ON THE VALUE OF AND DAMAGES TO HIS PROPERTY TO SUPPORT HIS CONCLUSION ON JUST COMPENSATION DUE FROM CONDEMNOR?

The admission of evidence in a trial court is within the sound discretion of the judge and will not be reversed by the Appellate court absent a clear abuse of discretion. Hartfield v. Getaway Lounge & Grill, Inc., 388 S.C. 407, 413, 697 S.E. 2d 558, 561 (2010)(citing Hofer v. St. Clair, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989)). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support" that resulted in prejudice to the rights of appellant. *Id.* (citing Connor v. City of Forest Acres, 362 S.C. 460, 467, 611 S.E.2d 905, 908 (2005)). *See also* Bridges v. Wyandotte Worsted Co., 239 S.C. 37, 40, 121 S.E. 2d 300, 302 (1961).

The Fifth Amendment to the United States Constitution and Article 1, Section 13 of the South Carolina Constitution mandate that private property shall not be taken by the federal or

state government without payment of just compensation to persons whose property rights are apprehended. U.S. Const. amend. V; S.C. Const. art. I, §13. "The purpose of payment of just compensation is to put the landowner in as good a position pecuniarily as he would have been had his property not been taken." Blue Ridge Elec. Co-op. v. Combined Utility System of City of Easley, 279 S.C. 135, 139, 303 S.E.2d 91, 93 (1983).

In South Carolina, a landowner is permitted to testify as to the value of his property. Abercrombie v. Abercrombie, 372 S.C. 643, 647, 643 S.E.2d 697, 699 (Ct. App. 2007) (recognizing general rule in South Carolina that a property owner is competent to offer testimony as to the value of his property)(citing Cooper v. Cooper, 289 S.C. 377, 378, 346 S.E.2d 325, 327 (Ct. App. 1986)); Barton v. Superior Motors, Inc., 309 S.C. 491, 494, 424 S.E.2d 524, 526 (Ct. App. 1992); Seaboard Coast Line R.R. v. Harrelson, 262 S.C. 43, 46, 202 S.E.2d 4, 5 (1974), South Carolina State Hwy. Dep't v. Wilson, 254 S.C. 360, 370, 175 S.E.2d 391, 397 (1970). A landowner is not required to be qualified as an expert on real estate valuation and damages principles. Wilson, 175 S.E.2d at 395-397.

Under the law, a landowner can testify and offer an opinion to the trier of fact of the value of his property, damages thereto, and just compensation owed from condemnor since a landowner should not be deprived of his/her property in a condemnation action without the opportunity to express his/her own view as to the property's value and/or damages thereto given the landowner's knowledge, experience, and familiarity with the property. *Id.* A landowner may testify as his/her opinion on just compensation in a condemnation action based upon his/her opinion as to the value of his property taken and the value of the damages to his/her remaining property including improvements. *Id. See also*, S.C. Code Ann. §28-2-370, §28-2-30(17) and

§28-2-30(11).

Under the law, a landowner is permitted to base his opinion as to the fair market value of his property and/or damages thereto on hearsay and such testimony is admissible. *Id.* ("Where the witness bases his opinion entirely or chiefly on incompetent or inadmissible matters, it has been held that his testimony must be rejected; but the fact that the witness's knowledge as to market value is largely hearsay will not exclude his opinion, provided the witness gives to such information the sanction of his own general experience and knowledge."). A jury determines the weight to be accorded to the landowner's testimony and opinion as to the fair market value of his property and/or damages thereto, and either accepts or rejects the valuations expressed and attributes evidentiary weight accordingly in ultimately determining the amount of just compensation due for the taking of a property right. South Carolina State Highway Dep't v. Grant, 265 S.C. 28, 32, 216 S.E.2d 758, 759–760 (1975).

In the instant case, Mr. McAdory is entitled to a new trial. The trial court abused its discretion when it erroneously ruled as a matter of law that Mr. McAdory could not testify as to and explain (1) his opinion of the fair market value of the property at the time Respondent condemned the property which he based upon the fair market value purchase price of $375,000 plus the monetary investment into the property for the improvements to the land and the building thereon, and (2) his opinion ultimately on just compensation for damages suffered to his land and his building as a result of the condemnation. (R. p. 0063, lines 12-25; R. pp. 0064-0066; R. p. 0071, lines 10-17; R. p. 0072, lines 20-25; R. p. 0073, lines 20-30; R. p. 0077, lines 19-25; R. p. 0081, lines 8-25; R. p. 0082; R. p. 0083, lines 9-25; R. p. 0085; R. p. 0086, lines 1-8; R. p. 0157-0161; R. p. 0163, lines 19-25; R. pp. 0164-0165; R. p. 0166, lines 23-25; R. p. 00167, lines

1-17; R. p. 0171, lines 20-25; R. p. 0172; R. p. 0173, lines 1-12). The trial court further abused its discretion when it improperly stepped into the fact finding role of the jury by drawing its own factual conclusions without evidentiary support to further limit Mr. McAdory's testimony in violation of the law. The trial court's abuse of discretion blatantly prejudiced Mr. McAdory's constitutional right to a fair determination of the "just" compensation owed to him for the taking of his property rights and damages to the remainder of his property.

The trial court fundamentally misunderstood and misapplied the law pertaining to a landowner's right to testify as to his/her opinion on the fair market value of his/her property and/or damages thereto even though (1) the landowner is not an expert on real estate valuation principles, and (2) the landowner's opinion on value and/or damages to property is based on hearsay that comports with the landowner's general experience and knowledge. Moreover, the trial court improperly stepped into the fact finding role of the jury by drawing its own factual conclusions as to what improvements were absolutely necessary for the operation of an automotive maintenance and repair facility without evidentiary support to further limit Mr. McAdory's testimony. The extent of the trial court's reversible errors of law and resulting prejudice to Mr. McAdory is evidenced in the following ways:

First, the trial court clearly placed undue emphasis on a real estate expert's testimony as to the fair market value of property and/or damages thereto to the prejudice of Mr. McAdory and thereby stepped into the jury's fact-finding role. This is demonstrated in the following statements (among others) of the trial court in support of its rulings during the trial of this case limiting Mr. McAdory's testimony:

- In response to Petitioner's argument that improvements to property add value to the property in the before, the trial court responded

stating "[b]ut that is not how you calculate just compensation. You have real estate experts do appraisals ... Usually it is battling experts who do evaluations of the property." (R. p. 0064, lines 2-24).

- In response to Petitioner's argument that a landowner can testify as to the amount of money spent on permanent improvements to the property to support his opinion on the fair market value of the property before and after the condemnation, the trial court responded stating "[h]e is entitled to testify within a layperson's parameters pursuant to Rule 701 based on his rational perception. But he can't go into areas beyond his expertise. I can say what I think my value of my property is worth. But it is different when I start adding on additional things to justify that opinion (R. p. 0065, lines 12-25; R. p. 0066, lines 1-17) .... Probably more prudent to have a real estate person say that in some level of expertise based on comparables. That that is generally how it is done." (R. p. 0073, lines 7-13).

- In response to Petitioner's argument that photographs of improvements to the building demonstrate the landowner's investment and go to support an increase in his opinion as to the fair market value of the property, the trial court responded "[a]re you going to have any expert testify that somehow this has increased the fair market value of the property or that there was any dimunition in value as a result?" (R. p. 0181, lines 17-20; R. p. 0180; R. p. 0181 lines 1-16, 17-20).

Although during the motion in limine stage of the trial, the trial court advised counsel it would not permit landowner to testify and explain his how he arrived at his opinion on the fair market value of and/or damages to his property as a result of the condemnation and concluded "[s]o you are going to have to figure out how you are going to prove your diminution of value." (R. p. 0086, lines 5-6).

The trial court erroneously ruled as a matter of law that the landowner could not testify and explain his opinion on fair market value of his property before the condemnation and resulting damages to the same after the condemnation. The trial court's obvious preference for

a real estate expert to testify as to property valuation and damages in a condemnation action improperly interfered with the jury's role and function as the trier of fact to the prejudice of Mr. McAdory. It is up to the jury as the finder of fact, not the trial court, "to judge the credibility of the witnesses and to resolve any conflicts in their testimony." McDill v. Mark's Auto Sales, Inc., 367 S.C. 486, 492, 626 S.E.2d 52, 56 (Ct. App. 2006).

Second, the trial court demonstrated a clear fundamental misunderstanding of South Carolina law permitting a landowner to testify as to his opinion of fair market value and/or damages thereto even if based in part on hearsay on matters that would fall within the landowner's general experience and knowledge with regard to the property, its uses, and improvements etc. Such misunderstanding clearly prejudiced Mr. McAdory as is demonstrated in the following statements of the trial court in support of its rulings during the trial of this case:

> In response to Petitioner's argument that a landowner could testify as to how much an architect/contractor estimated it would cost to reconfigure his property after the condemnation in order to continue to operate Lex-Tech to support his opinion it was not financially feasible and thus the condemnation changed the highest and best use, the trial court responded "[h]e is not going to be able to testify as to what the architect told him. He is not going to be able to testify what improvements the architect suggested ... It is not based on his personal knowledge. He does not have the expertise to say ... what needs to be done to his property." (R. p. 0067, lines 7-17).

The court even went so far as to state that Mr. McAdory would not testify about the cost of improvements to the land and building because he did not have any "proof" of the monies spent on improvements other than his "word" and his expense spreadsheets, stating:

> "But he is not going to be able to testify that I spent this or I spent that. The other problem you have is that I don't have any independent proof other than his word that he spent this money ... you need to have something extrinsic, some canceled checks,

something ..." (R. p. 0167, lines 3-17).

The court prohibited Mr. McAdory not only from testifying from personal knowledge to the amount of money actually spent on permanent improvements in support of his opinion on the fair market value of his property before the condemnation, but also from testifying as the prohibitive cost he would incur to reconfigure his property to make it suitable for the continued safe and practical operation of his automotive facility in support of his opinion on the change in highest and best use and ultimately to his opinion on just compensation. *See* S.C.R.E. Rule 602 (A witness may testify as to matters he/she has personal knowledge of). *See also*, S.C.R.E. Rule 603 ("Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so"). The trial court ruled Mr. McAdory could not testify as to his personal knowledge of the costs of the improvements to the land and the building which Respondent could cross-examine him on.[1] Regardless, a landowner can testify as to the value improvements on his property no matter who pays for the improvements. *See* South Carolina State Highway Dep't v. Rural Land Co., 250 S.C. 12, 25, 156 S.E.2d 333, 339 (1967)("Generally, the best available proof of what land is worth is the opinion of those who know enough of the factors, which must be a basis of the opinion, to express their judgment about it.").

[1] 32 S.C. Jur. Witnesses §39 ("Under the South Carolina Rules of Evidence, a witness may be cross-examined on any matter relevant to any issue in the case, including credibility. A witness may be asked questions concerning irrelevant matter, prior statements that contradict the witness' testimony, or relevant matter that does not contradict his or her testimony. Considerable latitude is allowed, including the testing of the accuracy of a witness's memory, bias, prejudice, or interest, subject to the limitation that the inquiry must relate to matters pertinent to the issue or to specific acts which tend to discredit the witness or impeach his or her moral character.").

Third, the Court clearly demonstrated a lack of understanding of fair market valuation of property and/or damages thereto under the law to the prejudice of Mr. McAdory. As testified to by Respondent's expert appraiser, fair market value is "what a willing buyer and willing seller would buy or sell a property for in the open market each being knowledgeable and prudent, acting in their own best interest and ultimately determining what the value of the property is." (R. p. 0257, lines 19-24). Respondent's expert appraiser even noted the inherent questions of fact in fair market valuation when he further testified that appraisers render opinions since "sometimes buyers and sometimes sellers make mistakes. And that's why we ... look at the market to determine if in fact that is the right price. Sometimes sellers sell too cheap. Sometimes buyers pay too much for property." (R. p. 0258, lines 1-6).

When determining fair market valuations if the sales price or otherwise is called into question, Respondent's expert appraiser testified that appraisers consider numerous factors to ultimately determine the fair market value of a piece of property and/or damages thereto such as the condition of the property and improvements thereon, the acreage, highest and best use, comparable sales and/or rentals of other properties, etc. (R. p. 0256, lines 9-16). It is apparent from the testimony of Respondent's expert appraiser that fair market valuation of property and/or damages thereto is an inexact science and clarifying testimony is not only permitted, it is necessary to enhance the trier-of-facts understanding of one's opinion on fair market value of and/or damages to property.

However, it became apparent to Appellant during the trial of this case that the trial court incorrectly assumed Mr. McAdory sought a dollar-for-dollar return when, in fact, Mr. McAdory's testimony regarding the amount of money invested into his property – land and

building – would have supported his ultimate opinion on the value of his property, damages thereto, and just compensation. (R. p. 0063, lines 12-25; R. pp. 0064-0066; R. p. 0071, lines 10-17; R. p. 0072, lines 20-25; R. p. 0073, lines 20-30; R. p. 0077, lines 19-25; R. p. 0081, lines 8-25; R. p. 0082; R. p. 0083, lines 9-25; R. p. 0085; R. p. 0086, lines 1-8; R. p. 0157-0161; R. p. 0163, lines 19-25; R. pp. 0164-0165; R. p. 0166, lines 23-25; R. p. 00167, lines 1-17; R. p. 0171, lines 20-25; R. p. 0172; R. p. 0173, lines 1-12). Clearly, permanent improvements to property can add value and the value of improvements can decrease and result in damages to which a landowner can testify to. *See* Texaco, Inc. v. Warrington, 264 S.C. 18, 20, 212 S.E.2d 59, 60 (1975)(Damages based on loss of, or injury to improvements or fixtures are allowable). If South Carolina law permits a landowner to testify and explain his/her opinion on fair market value of and/or damages to property then a landowner is also permitted to testify as to his/her opinion on the money spent on improvements and the loss in value of the same as a result of the condemnation in support of his/her opinion on just compensation due from condemnor.

Yet, the trial court the trial court's rulings and statements in support thereof demonstrate the court's misunderstanding, confusion, and blurring of questions of fact for the trier of fact to consider and matters of law for the trial court to consider pertaining to the determination of fair market value of property and/or damages thereto as follows:

- In response to Appellant's argument that as a result of the court's limitation on Mr. McAdory's testimony, Mr. McAdory sought the difference between the purchase price he paid for the property and the Respondent's appraiser's value of the property after the condemnation, the trial court responded "[w]hat you pay for property is not fair market value (R. p. 0159, lines 19-20) .... fair market value is something that is calculable. It is something that is refined down to a science and a formula. (R. p. 0160, lines 1-3).

- In response to Appellant's argument that Mr. McAdory could testify as to the type of improvements to his property, the money spent on the improvements, and how the improvements benefitted him as the landowner and in support of his opinion on value, damages and ultimately just compensation, the trial court responded:

    - "How he upfitted it really does not become relevant because he cannot be compensated for it." (R. p. 0158, lines 9-10).

    - "...[Y]ou don't get dollar for dollar value for everything you did to the property to increase its value." (R. p. 0158, lines 14-15).

    - "But what he spent, it is not germane to anything. H can't be compensated for it." (R. p. 0159, line 10).

    - "He is entitled to whatever the fair market value is of the property at the time he purchased it and any dimunition in value as a result of what the County did to it, less any improvements that resulted to him as a result of what the County did to it." (R. p. 0160, lines 11-15).

    - "But it becomes almost like a red herring when you start saying well I paid this much for that and I paid this much for that." (R. p. 0160, lines 19-21).

The trial court's statements are simply incorrect. A number of factors affect both a landowner's and appraiser's opinion of fair market value of and/or damages to property. The determination of fair market value of and/or damages to property is subject to huge discrepancies which result in questions of fact for a jury to consider and attribute evidentiary weight accordingly.

Finally, the trial court again stepped into the role of the trier-of-fact when it went on to make factual findings as to what constituted upfitting versus deferred maintenance. In response to Appellant's question to the court as to whether Mr. McAdory could testify as to the type of

improvements to the property even though the court ruled he could not testify to the cost of the improvements, the trial court responded

> "Yes ... but ... not what it cost him ... And some of those things are not upfitting. A leaky skylight is not upfitting. That is deferred maintenance ... a new roof, I don't know ... But when we start talking about upfitting that is when you start putting lifts in a property, you start reorienting openings, you put in new offices ... not ordinary deferred maintenance ... so to the extent that you look at that list ... I have no idea of knowing whether that is essential to operating a car business ..." (R. p. 0173, lines 6-25; R. p. 0174, lines 1-3).

The trial court not only neglected to "factually" define what it considered upfitting versus deferred maintenance, but also failed to recognize as a matter of law that improvements to a property could affect the fair market value and result in monetary damages to the landowner if negatively affected by condemnation. (R. p. 0173, lines 6-25; R. p. 0174). *See* Texaco, 264 S.C. at 20 (Damages based on loss of, or injury to improvements or fixtures are allowable). The trial court further limited Mr. McAdory's testimony to only describing what improvements to the property he made that the trial court, not the landowner, deemed "actually necessary." (R. p. 0173, lines 6-25; R. pp. 0174-0175).

The trial court's statements and ultimate rulings as to what improvements the landowner could testify to are not supported by South Carolina law. Improvements can add to the market value, which is a question of fact for the jury to determine. Replacing damaged skylights would be but one aspect to be considered in the determination of the fair market value of the property for the trier-of-fact to consider. Such a statement assumes that a person would pay the same price for the property with properly functioning skylights as he would for a property with faulty skylights in need of repair or replacement. The same could be said for each of the

improvements invested into Mr. McAdory's property.

Overall, in Wilson, the trial court and Supreme Court ruled the landowner not only could testify as to his opinion on fair market value of his property and ultimately just compensation, but also explain how he arrived at his opinion of the same based on real estate comparables over a period of 9 years. Wilson, 175 S.E.2d at 395-397. In the instant case, the trial court prejudiced Mr. McAdory by (1) depriving him the opportunity as landowner to testify to and explain his opinion on fair market value of his property and damages thereto as a result of the condemnation as based upon his knowledge, experience and familiarity with his property; (2) depriving him the opportunity as landowner to testify as to his opinion of just compensation which was based on the difference between the fair market purchase price of his property plus the monetary investment into the land versus into the building, and the after value of his property as determined by landowner even if based in part on hearsay and in reliance on Respondent's own appraiser; (3) depriving him the opportunity to testify as to the total cost of the improvements to the property as between the land and building during Respondent's counsel's cross-examination about which portion of his opinion on just compensation was attributable to damages to the land versus damages to the building; and, (4) prohibiting the jury as trier of fact to consider crucial evidence which would aid in their determination of the credibility of Mr. McAdory as a witness and the evidentiary weight to attribute to his testimony and explanation of his opinion on the fair market value of his property at the time of the condemnation as to his land and building and the and damages thereto. In direct contrast to the logic and holding of *Wilson*, the trial court prohibited Mr. McAdory from providing the jury with any rational basis for his ultimate opinion as to fair market value of and damages to his property as landowner to his

prejudice. The trial court clearly abused its discretion when it based its rulings limiting Mr. McAdory's testimony as landowner on errors law and when it improperly stepped into the fact finding role of the jury by drawing its own factual conclusions without evidentiary support to further limit Mr. McAdory's testimony. Accordingly, Mr. McAdory is entitled to a new trial.

II. DID THE TRIAL COURT ERR IN PREVENTING THE JURY FROM ENTERING THE PROPERTY DURING A SITE VISIT PURSUANT TO S.C. CODE ANN. §28-2-340(B)?

As noted herein above, the admission of evidence in a trial court is within the sound discretion of the judge and will not be reversed by the Appellate court absent a clear abuse of discretion. Hartfield, 388 S.C. at 413. "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Id.*

A basic rule of statutory construction is that "words in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand a statute's operation." Eldridge v. City of Greenwood, 331 S.C. 398, 420, 503 S.E.2d 191, 202 (Ct. App. 1998)(citing Wortman v. City of Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (1992)). The use of the word "shall" in a statute imposes "an imperative duty whenever it is employed in a statute to delegate power, the exercise of which is important for the protection of a public or private interest." T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 402, 450 S.E.2d 87, 95 (Ct. App. 1994). A trial court is not entitled to any deference from a reviewing court in its interpretation of a statute as the legislature's use of the word "shall" imposes a duty that is not open to liberal interpretation. T.W. Morton Builders, 316 S.C. at 400-402. A trial court's interpretation otherwise is an error at law and a clear abuse of discretion mandating a new trial.

The South Carolina Eminent Domain Procedure Act governs South Carolina law "relating to procedures for acquisitions of property and to the exercise of the power of eminent domain" over a private person or entities property interests. S.C. Code Ann. §28-2-10 *et seq.* Section 28-2-340 of the South Carolina Eminent Domain Procedure Act ("Act") governs the admission of certain types of evidence for the purpose of determining the value of land sought and just condemnation and the inspection of property subject to condemnation. S.C. Code Ann. §28-2-340. Section 28-2-340(B) holds that "[u]pon motion of either party, the court shall permit the jury to inspect the property which is the subject of the action, and if the trial is without a jury, the court shall make the inspection." The Act defines property, real property, or land for purposes of a condemnation action as "all lands, including improvements and fixtures thereon." S.C. Code Ann. §28-2-30(17); §28-2-30(11). The Act further defines an improvement as including "any building or structure, and any facility, machinery, or equipment that cannot be removed from the real property on which it is situated without substantial damage to the real property or other substantial economic loss." S.C. Code Ann. §28-2-30(17).

As noted herein above, the trial court limited Mr. McAdory's testimony to only describing what improvements to the property he made that the trial court alone deemed "actually necessary." (R. p. 0173, lines 6-25; R. pp. 0174-0175). Within the limitations imposed by the trial court, Mr. McAdory testified as to making the following improvements, among others: reconfiguring and remodeling the front offices; installing three car lifts; extensive lighting to the interior of the building including the automotive repair facility work area; extensive electrical rewiring and overhaul; replaced existing rear bay door and installed a second rear bay door for more vehicle access to repair shop and car lifts; exterior and interior painting;

conversion of an office area to a storage area for automotive parts, etc. (R. p. 0176, lines 9-25; R. p. 0177; R. p. 0178; R. p. 0197, lines 11-25; R. p. 0198, lines 1-2). All these improvements to his property supported his opinion of the fair market value of his property at the time of condemnation, the damages thereto after the condemnation, and ultimately just compensation. However, the trial court inexplicably restricted the jury views of interior of the building on the property subject to condemnation holding:

> They are conducting business in there, and we are not going to parade through it. We will look at the front, we will look at the back. We will look at the periphery. There will be no discussion." (R. p. 0334, lines 22-25).

The court further stated, "I am being liberal in visiting. Because there is really no necessity to visit." (R. p. 0335, lines 12-13).

Section 28-2-340 of the Act mandates a trial court to permit the trier of fact to inspect the property subject to condemnation upon motion of either party given the private interest inherently affected in a condemnation action for which the Act is designed to protect. Yet, the trial court did not permit the jury to view the interior permanent improvements to the property. An inspection of the interior of the building would have aided the jury's understanding of Mr. McAdory's testimony as to his ultimate opinion on just compensation. In conclusion, the court denied Mr. McAdory the statutory right to have the jurors fully view his property especially given the trial court's restrictions on his testimony as noted throughout herein. As such, Mr. McAdory is entitled to a new trial.

CONCLUSION

The trial court abused its discretion when it issued rulings based on errors of law that prejudiced Mr. McAdory's fundamental right to a fair determination of the just compensation

owed to him for the taking of his property and the remaining damages thereto. The trial court erred as a matter of law in prohibiting Mr. McAdory to present testimony and explain as landowner how he arrived at his opinion of just compensation for the taking of his property in accordance with federal and state constitutional principles on takings. Moreover, the trial court further erred as a matter of law when it limited the jury's inspection of the property by ruling the jury could not view the interior permanent improvements of Mr. McAdory's property. For all the reasons stated herein and throughout, Mr. McAdory is entitled to a new trial.

Respectfully submitted,

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