

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2017-CP-10-5382

SOUTH CAROLINA DEPARTMENT OF )  
COMMERCE, DIVISION OF PUBLIC )  
RAILWAYS, )

Project: Navy Base Intermodal Facility  
Tract 23S

Condemnor, )

vs. )

**AMENDED ORDER  
ON LANDOWNER'S POST-  
TRIAL MOTION FOR INTEREST AND  
APPLICATION FOR LITIGATION  
EXPENSES**

GATEWAY PROPERTIES OF )  
GREATER CHARLESTON, LLC, )

Landowner, )

and )

NBSC a division of Synovus Bank, VFC )  
PARTNERS 15 LLC, CAPELLA )  
CAROLINAS, LLC, DONIVON )  
GLASSBURN, and THE LOFT PILATE )  
CENTER, LLC, )

Other Condemnees. )

**RECEIVED**  
JUL 11 2019  
SC Court of Appeals

FILED  
2019 JUL -2 PM 4:28  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This matter is before the Court on Gateway Properties of Greater Charleston, LLC's ("Landowner" or "Gateways") Motion for Interest and Application for Litigation Expenses. Based upon the jury verdict in this case, Landowner is entitled to order granting it interest, pursuant to S.C. Code 28-2-420(A) and litigations expenses pursuant to S.C. Code §28-2-510(B) and 28-2-30(14).

**INTEREST**

Section 28-2-420(A) of the South Carolina Code provides as follows:

A condemnor shall pay interest at the rate of eight percent a year upon sums found to be just compensation by the appraisal panel or judgment of a court to the condemnee. This interest shall accrue from the date of filing of the Condemnation Notice through the date of verdict or judgment by the court. Interest accruing on

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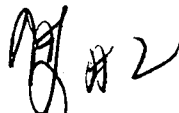
funds on deposit with the clerk of court must be offset against the interest computed pursuant to this section. Interest shall not accrue during the twenty-day period commencing upon the date of verdict or order of judgment. If the judgment is not paid within the twenty-day period, interest at the rate provided by law for interest on judgments must be added to the judgment. Thereafter, the entire judgment shall earn interest at the rate provided by law for interest on judgments.

In this case, the Notice of Condemnation was filed October 19, 2019. At that time, Condemnor deposited \$1,800,000 with the clerk of court. That amount was later withdrawn by the Landowner via consent motion filed December 7, 2017.

The case proceeded to trial on the matter of just compensation. The jury returned a verdict in favor of the Landowner in the amount of \$3,750,000 on March 28, 2019. Therefore, Landowner is entitled to simple interest of eight percent per year from October 19, 2019 to March 28, 2019 on the amount of \$1,950,000 (the difference in the amount drawn down by the Landowner and the final award of just compensation). Based upon the jury verdict, Landowner is entitled to interest in the amount of **\$224,383.56**.

#### **LITIGATION EXPENSES**

South Carolina Code § 28-2-510 (B)(1) provides that “[a] landowner who prevails in the trial of a condemnation action, in addition to his compensation for the property, may recover his reasonable litigation expenses by serving on the condemnor and filing with the clerk of court an application therefor within fifteen days after the entry of the judgment.” To prevail in the context of this statute “means that the compensation awarded [by the jury] . . . is at least as close to the highest valuation of the property that is attested to at trial on behalf of the landowner as it is to the highest valuation of the property that is attested to at trial on behalf of the condemnor.” S.C. Code § 28-2-510 (B)(2). Here, there is no dispute that Landowner prevailed at trial. The highest valuation of the property attested to on behalf of Condemnor was \$1,750,000 testified to by Deborah Haskell, MAI and the highest valuation attested to on behalf of the Landowner was

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\$4,580,000 by Thomas F. Hartnett, GAA. The jury returned a verdict for \$3,750,000, which is closer to the Landowner's highest value than the Condemnor's highest value. Therefore, the Landowner is entitled to an award of litigation expenses as specified in S.C. Code § 28-2-510 (B)(1) and § 28-2-30 (14).

The term litigation expenses include "the reasonable fees, charges, disbursements, and expenses necessarily incurred from and after service of the Condemnation Notice, including, but not limited to, reasonable attorney's fees, appraisal fees, engineering fees, deposition costs, and other expert witness fees necessary for preparation or participation in condemnation actions and the actual cost of transporting the court and jury to view the premises." S.C. Code § 28-2-30 (14) (defining "litigation expenses").

Landowner filed its application for litigation expenses along with affidavits from G. Trenholm Walker and Robert S. Dodds and provided itemized statements showing the fee charged, the basis for the fee charged, the actual time expended, and all actual expenses for which recovery is sought. See S.C. Code § 28-2-510(B) ("... The application shall ... include an itemized statement from an attorney or expert witness representing or appearing at trial in behalf of the landowner stating the fee charged, the basis therefor, the actual time expended, and all actual expenses for which recovery is sought.").

Landowner is entitled to litigation expenses in the amount of **\$135,341.71**, calculated as follows:

Walker Gressette Freeman & Linton, LLC	Attorney's Fees	\$99,423.50
Walker Gressette Freeman & Linton, LLC	Expenses	\$3,557.11
ROBERT S. DODDS ATTORNEY AT LAW	Attorney's Fees	\$17,250.00
ROBERT S. DODDS ATTORNEY AT LAW	Expenses	\$25.00

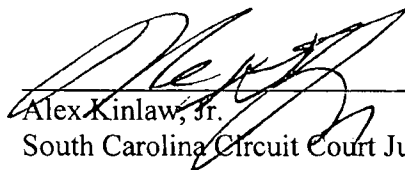
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Thomas F. Hartnett	Expert Witness Fees	\$8,875.00
AWR Trial Solutions	Trial Support Expense	\$6,211.10
<b>TOTAL LITIGATION EXPENSES</b>	<b>\$135,341.71</b>	

**CONCLUSION**

The Court orders that interest in the amount of **\$224,383.56** and litigation expenses in the amount of **\$135,341.71** be added to the judgment in this case.

**AND IT IS SO ORDERED!**

  
\_\_\_\_\_  
Alex Kinlaw, Jr.  
South Carolina Circuit Court Judge

June 25, 2019  
Greenville, South Carolina



State of South Carolina  
The Circuit Court of the Thirteenth Judicial Circuit

Alex Kinlaw, Jr.  
Judge

Greenville County Courthouse  
305 East North Street, Suite 213  
Greenville, SC 29601  
Phone: (864) 467-8043  
Fax: (864) 467-8035  
akinlawj@sccourts.org

June 26, 2019

Charleston County Clerk of Court  
Court of Common Pleas  
100 Broad Street, Suite 106  
Charleston, South Carolina 29401-2258

Re: South Carolina Department of  
Commerce, Division of Public Railways vs.  
Gateway Properties of Greater Charleston,  
LLC and NBSC a division of Synovus Bank  
2017-CP-10-5382

Dear Madam Clerk:

Please find enclosed the original of the order in the above styled matter. Please facilitate a copy to counsel on both sides.

Thanking you I am,

A handwritten signature in black ink, appearing to read "Shannon Thurman".

Shannon Thurman  
Administrative Assistance to Judge Kinlaw, Jr.