

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

S.C. SUPREME COURT

Markley R. Dennis, Jr., Circuit Court Judge

Appellate Case No. 2017-000060

South Carolina Department of Commerce, Division of Public
Railways.....Respondent

v.

Clemson UniversityRespondent

And

Charleston County School DistrictAppellant

APPELLANT CHARLESTON COUNTY SCHOOL DISTRICT'S
PETITION WRIT OF *CERTIORARI*

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CERTIFICATE PURSUANT TO RULE 242(d)(1)

Counsel for Petitioner certifies, pursuant to Rule 242(d)(1), S.C.R.A.P., that it filed a petition for rehearing in the South Carolina Court of Appeals in this matter. The South Carolina Court of Appeals finally ruled upon and denied that petition on December 23, 2020. As a result, Petitioner has timely filed this Petition.

QUESTIONS PRESENTED

The questions presented for review in this Petition are as follows:

1. Should this Court grant a writ of *certiorari* to address the Court of Appeals' denial of the School District's fundamental right to jury trial?

Suggested Answer: Yes.

2. Did the Court of Appeals err in denying the School District's constitutional right to a jury trial where the South Carolina Eminent Domain Procedure Act does not limit the right to a jury trial to only owners and condemners?

Suggested Answer: Yes.

3. Did the Court of Appeals err in refusing to hold the Condemnor to its prior unequivocal jury trial demand?

Suggested Answer: Yes.

4. Did the Court of Appeals err in relying on S.C. Code § 28-2-460 to deny a jury trial in this matter, where the statutory requirements of Section 28-2-460 were not fulfilled?

Suggested Answer: Yes.

5. Did the Court of Appeals err in relying on S.C. Code § 28-2-460 to deny a jury trial in this matter, where the underlying settlement agreement did not constitute a sufficient determination of the value of the property?

Suggested Answer: Yes.

6. Did the Court of Appeals err in denying the School District its right to a jury trial merely because the School District's interest in the underlying property is "equitable"?

Suggested Answer: Yes.

STATEMENT OF JURISDICTION

This Court has jurisdiction over the questions raised in Petitioner's Petition for Certiorari pursuant to Article V, § 5 of the South Carolina Constitution and S.C. Code §§ 14-3-310 & -330.

STATEMENT OF THE CASE

A. Background Facts

On December 23, 2010, Respondent South Carolina Department of Commerce, Division of Public Railways ("Condemnor") commenced this condemnation action pursuant to the South Carolina Eminent Domain Procedure Act ("Act"), S.C. Code. §§ 28-2-10, *et seq.*, condemning 69.93 acres on the former naval base in the City of North Charleston (the "Entire Tract"). (*See generally* R. pp. 063-72). In its Condemnation Notice and Tender of Payment ("Notice"), Condemnor named Clemson University (the "Owner"), the fee owner of the Entire Tract. (*See* R. p. 064 ¶ 2). Condemnor named Appellant Charleston County School District (the "School District" or "CCSD") as an Other Condemnee "by virtue of a possible sublease agreement, as amended, on a portion of the subject property," *i.e.*, the School District Tract (*See* R. p. 066 ¶ 11).

In its Notice, Condemnor offered its appraised value of the Entire Tract to Owner. (*See* R. p. 067 ¶ 19). The Notice further provided that:

[I]f the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. . . . That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has the right to demand a trial by jury.

(*See* R. p. 068 ¶ 23). Condemnor endorsed the caption of the Notice with "(Jury Trial Demanded)." (*See* R. p. 63). It also filed an Affidavit of Keith M. Babcock, Esq. demanding a jury trial. (*See* R. p. 072-73 ¶¶ 2-3 (emphasis added)). On May 23, 2011, Attorney Abigail B. Walsh filed a Notice of Appearance (Jury Trial Demanded) on behalf of the School District, demanding "a jury trial on the issue of just compensation." (*See generally* R. pp. 074-75).

On April 25, 2014, the trial court made a limited reference of specific questions relating to the School District's claims to a Special Referee. (*See* R. pp. 003-21). The Special Referee concluded that "CCSD had an equitable interest in the 3.74 acre AMHS parcel ["School District

Tract")] because of improvements made to that Property during the term of the Sublease and CCSD's use of the property thereafter." (*See* R. pp. 027-28). He also recognized that his limited reference did not authorize him to determine the amount of compensation due for this equitable interest. (*See* R. p. 030 (emphasis added)). After the Special Referee's determinations, the remaining issues for trial are: (a) the value of just compensation for the Entire Tract; and (b) the value of the School District's equitable interest in that total.

B. Procedural History in the Trial Court

On June 2, 2016, Condemnor filed a Motion to Transfer Case to the Non-Jury Docket ("Motion to Transfer"), asserting in relevant part that the School District was not entitled to a jury trial. (*See* R. p. 094). The trial court and the School District learned at the initial hearing on Condemnor's Motion to Transfer that Condemnor and Owner had entered into a settlement agreement ("Settlement Agreement"). (*See* R. pp. 174:18-175:7). Under that Settlement Agreement, the Condemnor and Owner agreed that the Owner would "receive land in exchange for the condemnation of the Property in lieu of financial consideration, and, as a result, [Owner] has agreed to waive its right to any financial compensation from [Condemnor] in this action." (*See* R. p. 211). The Settlement Agreement did not fix a monetary value on either the Entire Tract or the School District Tract. The Settlement Agreement does not set forth a monetary value for the property that those parties "swapped."

The trial court, *per* Judge Dennis, granted Condemnor's Motion to Transfer and entered an October 19, 2016 Order Transferring Case to the Non-Jury Docket. (*See generally* R. pp. 054-60). Judge Dennis concluded that the South Carolina Eminent Domain Procedure Act did not entitle the School District to a jury trial, for three reasons:

- (a) The Act only provides the Owner, as the "landowner," (as opposed to other condemnees) a right to a jury trial.
- (b) The "equitable interest" of the School District, which the Special Referee found exists, requires that this matter be decided by a judge sitting in equity.
- (c) Any compensation owed to the School District should be determined in an equitable proceeding under South Carolina Code Section 28-2-460.

(*See id.*). The trial judge denied the School District's Motion to Reconsider, and this appeal followed.

C. The Court of Appeals' Opinion

On November 18, 2020, the Court of Appeals filed its Opinion affirming the trial judge's denial of the School District's right to a jury trial. The Court first held that the School District was not entitled to a jury trial under the Act: "We conclude the Act provides only the landowner and condemnor—as opposed to other condemnees—the right to a jury trial in a condemnation action." (*See Opin.*, at 7). The Court of Appeals further noted that, because the School District only had an equitable interest in part of the Entire Tract, it was "not a landowner under the Act and is therefore not entitled to participate in trial." (*See id.*, at 8). The Court also stated that "even if the School District were entitled to a jury trial, nothing in the Act entitled it to a jury trial to determine the value of the Entire Tract." (*See id.*). Additionally, the Court held that Condemnor was not bound by its election of a jury trial in its filings with the trial court. (*See id.*, at 8-9).

Second, the Court held that South Carolina Code § 28-2-460 "suggest[s that] the value of the School District's interest in a small portion of the Entire Tract—the issue to be decided in this case—is an equitable, rather than a legal, issue." (*See id.*, at 10). Finally, the Court rejected the School District's argument that "the equitable nature of its interest does not preclude it from having a jury trial." (*See id.*, at 11).

For the reasons that follow, this Court should grant the School District's Petition for Writ of *Certiorari* and reverse the trial judge's transfer of this matter to the nonjury roster.

ARGUMENT

A. Standard of Review

It is well-settled that this Court has considerable discretion in determining whether to grant a Petition for Writ of *Certiorari*:

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's

discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) *Where there are novel questions of law.*
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.
- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

See S.C.R.A.P., Rule 242(b) (emphasis added). The substantive standard of review does not require that the appellate Courts give deference to the trial judge's determination:

Whether a party is entitled to a jury trial is a question of law. *See Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 145, 621 S.E.2d 344, 345-46 (2005). An appellate court may decide questions of law with no particular deference to the trial court. *In re Campbell*, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008) (citation omitted).

See Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010). For the reasons that follow, this Court should grant the School District's Petition for Writ of *Certiorari* and should reverse the denial of the School District's right to a jury trial.

B. This Case Presents Important Issues Involving the Fundamental Right to a Jury Trial

The Court should exercise its discretion to grant a writ of *certiorari* because this case involves an open legal question impacting the fundamental right to a jury trial in condemnation proceedings. "The South Carolina Constitution provides 'the right of trial by jury shall be preserved inviolate.'" *Mims Amusement Co. v. South Carolina Law Enforcement Div.*, 366 S.C. 141, 149, 621 S.E.2d 344, 348 (2005) (quoting S.C. Const. art. I, § 14)). "The right to trial by jury is a fundamental right." *Lane v. Gilbert Const. Co.*, 383 S.C. 590, 600, 681 S.E.2d 879, 884 (2009) (noting that "any abridgement of that right is subject to strict scrutiny"). Chief Justice William Rehnquist wrote that "[t]he founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to

the whim of the sovereign, or, it might be added, to that of the judiciary." *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 (1979). "The jury system is the handmaid of freedom." *See Baldwin v. United States*, 823 F. Supp. 2d 1087, 1092 (D.N.M. I. 2011) (quoting Charles S. May, *Commencement Address to the University of Michigan Law School* (Mar. 1875), in J.W. Donovan, *Modern Jury Trials and Advocates*, 165-90 (2d rev. ed., New York, Banks & Brothers 1882)).

The Court of Appeals' decision in this matter deprived the School District of its statutory right to a jury trial, under an improper construction of the governing statutes. Because such an important constitutional right of the School District — a government entity that taxpayers fund — is at stake, the School District respectfully submits that this Court should grant a writ of *certiorari*, reverse the Court of Appeals, and remand for a jury trial of the remaining issues.

C. The Court of Appeals Erred in Its Opinion

This Court should grant the School District's Petition for Writ of *Certiorari* because it is apparent that the Court of Appeals erred in its Opinion as a matter of law. For the reasons that follow, the Court of Appeals' reasoning and interpretation of the law are fundamentally flawed.

1. The South Carolina Eminent Domain Procedure Act Does Not Limit the Right to a Jury Trial to Only the Owner of a Fee Simple Interest and Condemnor

In its Opinion, the Court of Appeals held that "the Act provides only the landowner and condemnor — as opposed to other condemnees — the right to a jury trial in a condemnation action." (*See Opin.*, at 7). For the reasons that follow, the Court of Appeals erred in finding that the School District does not have a right to a jury trial under the applicable statutes.

South Carolina follows the "undivided fee" rule, under which the court determines just compensation to which all parties are entitled in a single proceeding, as a single award. *See City of Greenwood v. Psomas*, 249 S.C. 519, 155 S.E.2d 310 (1967); *South Carolina State Highway Dep't v. Hammond*, 238 S.C. 317, 120 S.E.2d 21 (1961). All parties to a condemnation action are entitled to present evidence of the *total valuation* of the real property before any apportionment so as to protect each party's respective valuation of its own real property interest. In *Psomas*, the

Court stated that "the jury is concerned with the whole fair market value; the city has no voice in the distribution of the award; the allocation of the funds among the condemnees is for a court of equity." *See Psomas*, 155 S.E.2d at 313. Because the Condemnor settled with the fee Owner with a land swap before the whole fair market value could be determined, the allocation of funds among the condemnees is not an issue in this case. Rather, the issue remaining to be decided is the value of the School District's property interest that has been condemned, which is a jury issue. Both the Condemnor and the School District demanded a jury trial in this case.

The South Carolina Rules of Civil Procedure provide that "[t]he right of a trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived." S.C.R. Civ. P. 38(a).

Once a party demands a jury trial:

as provided in Rule 38, the trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered into the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

See S.C.R. Civ. P. 39(a). The South Carolina constitution will protect the right to a jury trial as to a right of action if such a right when the constitution was adopted in 1868. *Cobb v. South Carolina Dep't of Transp.*, 365 S.C. 360, 364, 618 S.E.2d 299, 301 (2005).

This lawsuit is a condemnation action under the Act, which authorizes an action at law. *See South Carolina Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535,537 (1986). The Act is the "exclusive procedure whereby condemnations may be undertaken in this State." *See* S.C. Code § 28-2-60. The General Assembly passed the Act "to create a uniform procedure for *all exercise* of eminent domain power in this State." *See* S.C. Code §28-2-20 (emphasis added). The Act applies to the condemnation of "property, real property, or land," which the General Assembly has defined as "all lands, including every estate, interest and right, legal or equitable." *See* S.C. Code § 28-2-30.

"Despite the fact there is no constitutional right to a jury in an eminent domain case, such a right is provided by statute." *Cobb*, 365 S.C. at 365, 618 S.E.2d at 301 (*citing* S.C. Code § 28-3-310). Specifically, the Act creates a presumptive right to a jury trial, unless the Condemnor and Owner both demand *not* to have a jury trial:

(A) Upon the filing of the affidavit described in Section 28-2-240(A) or the filing of a Notice of Appeal under Section 28-2-260(B) or (C), the action must be tried as provided in this article.

(B) If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. *Otherwise, the action must be placed on the jury trial roster.*

See S.C. Code § 28-2-310(A)-(B) (emphasis added). *Unless* Condemnor and Owner both demand a *non-jury* trial, there is an automatic mandatory right to a jury trial. The Act plainly states only the condemnor and landowner may demand a *nonjury* trial. However, it is silent as to who may request a jury and does not limit that right to Owners and Condemnors. To the contrary, the Act does not even require that *anyone* affirmatively demand a jury trial; rather, a jury trial is the default. If the Owner and Condemnor do not both initially demand a *non-jury* trial, the Act requires a jury trial.

Nothing in the Act limits the right to a jury trial or excludes the School District from insisting upon a jury trial. The Court of Appeals' Opinion inserts new language into the Act. To the contrary, the Act grants the right to a jury trial in the broadest of terms and limits how that right can be waived. In the wake of Condemnor's land-swap settlement with Owner, the issue remaining for determination is the value of the School District's condemned property interest. Nothing in the Act suggests that valuation of something less than a fee simple interest in property is excluded from the jury's purview. To the contrary – as will be discussed in more detail below – the Act defines “property” to include “every estate, interest and right, legal or equitable” in property. *See* S.C. Code § 28-2-30(17). The Court of Appeals erred in adopting Condemnor's restrictive construction of the Act. As a result, this Court should grant this Petition for Writ of

Certiorari and reverse the trial judge's (and the Court of Appeals') deprivation of the School District's constitutional right to a jury trial.

2. The Condemnor Is Bound by Its Demand for a Jury Trial

The Court of Appeals' Opinion is further in error because Condemnor's prior jury trial demand precludes it from changing its mind after selecting and asking for a jury trial. Under the South Carolina Rules of Civil Procedure, "[a] demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default." *See* S.C.R. Civ. P. 38(d). Once demanded, a jury trial is mandatory:

The trial of all issues so demanded *shall be by jury*, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

See S.C.R. Civ. P. 39(a) (emphasis added). Notwithstanding these clear rules, the Court of Appeals erroneously concluded that Condemnor was allowed to change its mind and rescind its prior jury demand.

The Act requires the Condemnor to file an affidavit with the clerk of court stating whether it demands a trial by jury or court as to the valuation of the property condemned. *See* S.C. Code § 28-2-240. The Condemnor must serve written notice of the condemnation action upon all Condemnees named in the Notice. *See* S.C. Code § 28-2-230. "After filing of the affidavit, the case shall proceed as provided in Article 3" of the Act. S.C. Code § 28-2-240(b). Condemnor's initial filings expressly demanded that this case — naming the School District as an Other Condemnee — be tried to a jury. Condemnor's Notice and Tender of Payment demands a jury trial. (*See* R. p. 063 (endorsed "Jury Trial Demanded")). On December 23, 2010, Condemnor filed an Affidavit of its counsel "demand[ing] a trial by jury." (*See* R. pp. 072-73 ¶ 3). If Condemnor wanted *not* to have a jury trial, the proper time to raise that would have been in that Affidavit. Upon the making of an effective jury demand, the Act requires that the entire case be

tried to a jury. Condemnor could not withdraw its demand without the written consent of *all* parties. Condemnor must honor its election of a jury trial.

As a result of the foregoing, this Court should grant this Petition for Writ of *Certiorari* and should honor the School District's right to a jury trial.

3. The Opinion Erroneously Relies Upon Section 28-2-460 to Deny the School District's Statutory Right to a Jury Trial

The Opinion relied, in part, upon the following provision of the Act to deny the School District its right to a jury trial, concluding that all remaining issues should be tried in equity:

Unless the persons served with the Condemnation Notice agree in writing as to whom just compensation must be made and paid, *the appraisal panel determination, verdict, or judgment must be made jointly to all the parties and may be paid to the clerk of court.* Upon making the payment, the condemnor's obligation to pay interest upon the funds shall terminate. *The payment of the funds so awarded must be held by the clerk of court pending the final order of the court of common pleas in an equity proceeding* to which all persons served with the Condemnation Notice must be necessary parties. From the order of the court of common pleas there may be an appeal as provided for appeals from the court in equity cases.

See S.C. Code § 28-2-460 ("Section 460") (emphasis added). As will be shown, Section 460 does not apply to this case. As a result, the Court should grant this Petition for Writ of *Certiorari* and reverse the trial judge's disregard of the School District's right to a jury trial.

a. The Statutory Prerequisites of Section 28-2-460 Have Not Been Satisfied

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). The South Carolina Supreme Court has held:

Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted)). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the

legislature.” Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Section 460's plain meaning is clear that it does not apply here. First, Section 460 presumes a prior *determination* (whether by appraisal panel or a court) of value of the property in question (*i.e.*, the Entire Tract). There has never been any determination of the Entire Tract's value, nor could there be after Condemnor's land-swap settlement with Owner. Under the Settlement Agreement, Condemnor and Owner swapped properties, without any independent valuation. Second, Section 460 requires that Condemnor pay the determined amount into the Court pending the equitable determination of a claim to a portion of that amount. Condemnor has never deposited any amount into the trial court. In fact, Condemnor strongly opposed the School District's attempt to obtain an order compelling it to deposit the amount of its own initial appraisal. (*See generally* R. pp. 076-91). As a result, the Court of Appeals erred in relying on Section 460.

b. The Settlement Agreement Between Condemnor and Owner Is Not a Sufficient Determination of Value to Support Application of Section 28-2-460

The Court's Opinion incorrectly allows Condemnor and Owner to replace a judicial valuation of the Entire Tract,¹ a necessary condition under Section 28-2-640. The Act recognizes

¹ The Court also erred in concluding that the School District does not have a right to a jury determination of the value of the Entire Tract (as opposed to only its equitable interest):

The School District has only an equitable interest in 3.74 acres of the Entire Tract, informed the circuit court it did not demand a jury trial on the Entire Tract, and admitted on appeal that the only remaining question was "what, if any, just compensation" it should be paid for its equitable interest. Therefore, we conclude that even if the School District were entitled to a jury trial, it would not be entitled to a jury trial as to the value of the Entire Tract.

(*See* Opinion, at 8). Respectfully, this statement is inaccurate under the law and the facts of this case. The School District demanded a jury trial at the outset on the value of the Entire Tract before the parties agreed to refer *limited* issues to the Special Referee. Irrespective of whether the School District demanded a jury trial right to the value of the Entire Tract, the Act requires – and logic dictates – that the value of the entire tract must be determined in a jury trial, because the Condemnor invoked its right to a jury trial under the Act. The School District is entitled to have

the right of "the parties" — meaning all parties to the litigation — to compromise or settle a condemnation action. *See* S.C. Code § 28-2-40 (“[T]he parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief.”) (emphasis added). All relevant parties may agree to resolve disputes under the Act. This does not permit only *some* parties to reach an agreement that impacts the rights of other parties without their involvement. It does not permit some of the parties, through their own deal, to deprive another party of its right to a jury's determination of the value of the undivided fee. In the context of a settlement agreement, the equitable procedure of Section 28-2-460 can only potentially apply where condemnor, landowner *and all other condemnees collectively* agree to a compensation award as to the entire property (the undivided fee). *See South Carolina Dep't of Transp. v. M&T Enterp. of Mt. Pleasant, LLC*, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008) (invoking equitable procedure to allocate condemnation award between landlord and tenant, where all parties agreed to award). The Settlement Agreement — which does not value the Entire Tract and does not include the School District as a party — is not a proper tool for the invocation of Section 460.

There is *no* South Carolina authority permitting Condemnor and Owner to deprive the School District of its right to a jury trial by settling among themselves using an in-kind “land swap.” In fact, the Act does not even provide for non-cash, in-kind settlements and it does not allow other parties to set the value of the total taking without the involvement of other condemnees. Under the "undivided fee" rule, just compensation is determined in a single action, wherein "the jury is concerned with the whole fair market value." *See City of Greenwood v. Psomas*, 249 S.C. 519, 155 S.E.2d 310, 313 (1967).

a jury determine the value of the Entire Tract, even if it might ultimately be achieved by stipulating to the value in a jury trial setting based on the Condemnor's appraisal or the value of the Condemnor's and Landowner's Settlement Agreement in its entirety. The School District never consented to circumventing the Act's requirement of a jury determination of the value of the Entire Tract.

It is undisputed that the School District was not a party to the Settlement Agreement and that the Condemnor and Owner excluded the School District from its negotiation. This should not deny the School District its right to a jury trial for the valuation of the Entire Tract and prevent the School District from presenting evidence on value of the Entire Tract.² The arrangement between Condemnor and Owner, involving only in-kind property transfers (and not valuing the total taking) would allow condemnors to settle around other condemnees and permit evasion of the Act's requirement of a deposit of the appraised value with the clerk. For these reasons, the Court should grant the School District's Petition for Writ of *Certiorari*.

4. **The Court of Appeals' Opinion Mistakenly Suggests That the Fact That the School District's Interest is "Equitable" Deprives It of the Right to a Jury Trial**

In its Opinion, the Court of Appeals states that, because the School District's interest in the property at issue is an "equitable interest," a judge in equity must determine the value of that interest. South Carolina Code section 28-2-30(17) defines the terms "[p]roperty", "real property", or "land" to mean "all lands, including improvements and fixtures thereon, lands under water, easements and hereditaments, corporeal or incorporeal, every estate, interest and right, *legal or equitable*, in lands or water" *See id.* (emphasis added). The Act recognizes that its procedures encompass *equitable* interests as well as legal interests. The mere fact that the School District's interest is equitable does not mandate that its *value* — as opposed to its *existence* — be decided in equity without an initial jury trial on the Entire Tract's value. The Act plainly provides

² The School District did not inform the circuit court it did not demand a jury trial on the Entire Tract. To the contrary, the School District informed the circuit court that it agreed to refer the matter to the Special Referee only to determine what, if any, interest the School District had in a portion of the Entire Tract among other issues. (*See R.*, at pp. 183:21-184:8). The School District never waived or withdrew its demand for a jury trial in the condemnation action or waived its right to a determination of the value of the Entire Tract by jury trial or stipulation in the Order of Reference. The record is clear that none of the issues before the Special Referee dealt with the valuation of the Entire Tract or the School District's interest. The School District advised the circuit court that it did not have an agreement on the value of the Entire Tract or its equitable interest; therefore, "right now by statute by the pleadings we have got to get a verdict on the amount of the 69.8 acres that was condemned and then we will move to the apportionment hearing. And that's the procedure." (*See R.*, at p. 188:2-8).

that the *amount* of just compensation is a jury issue. Condemnor cannot show that the School District is not entitled to a jury trial on the valuation of either the Entire Tract or its equitable interest therein.

CONCLUSION

For the reasons set forth above, this Court should grant the School District's Petition for Writ of *Certiorari* in this matter.

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