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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No.: 2017-CP-10-4820 (Consolidated Case Number)

Other case numbers:

2017-CP-10-4821
2017-CP-10-4822
2017-CP-10-4823
2017-CP-10-4824
2017-CP-10-4825
2017-CP-10-4826
2017-CP-10-4827
2017-CP-10-4835
2017-CP-10-4836
2017-CP-10-4837
2017-CP-10-4838
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2017-CP-10-4840
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2017-CP-10-4842
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2017-CP-10-4891
2017-CP-10-4892
2017-CP-10-4893
2017-CP-10-4894
2017-CP-10-4895
2017-CP-10-4896
2017-CP-10-4897
2017-CP-10-4898
2017-CP-10-4899
2017-CP-10-4900
2017-CP-10-4901
2017-CP-10-4903
2017-CP-10-4904
2017-CP-10-4905

2017-CP-10-4906
2017-CP-10-4907
2017-CP-10-4923

Appellate Case Number: 2021-000053

SARAH SHARPER, ET AL..... Appellants,

v.

CITY OF NORTH CHARLESTON, COUNTY OF CHARLESTON,
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SOUTH
CAROLINA DEPARTMENT OF TRANSPORTATION, BANKS
CONSTRUCTION COMPANY, UNITED CONTRACTORS, INC,
BANKS/UNITED JOINT VENTURE AND HLA, INC, COLEMAN-SNOW
CONSULTANTS, LLC AND ICA ENGINEERING, INC. F/K/A FLORENCE &
HUTCHESON, INC.....Respondents.

INITIAL BRIEF OF APPELLANTS

Jarrel L. Wigger
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(843) 553-9800
Attorney for the Appellants

TABLE OF CONTENTS

Table of Authorities..... 1
Statement of Issues on Appeal.....2
Statement of the Case.....2
Facts.....4
Arguments.....5
 1. BECAUSE DISCOVERY HAD NOT YET CONCLUDED,
 THE TRIAL COURT IMPROPERLY GRANTED DEFENDANT
 SCDOT’S MOTION FOR SUMMARY JUDGMENT.
Conclusion..... 8

TABLE OF AUTHORITIES

CASES

B & B Liquors, Inc. v. O’Neil, 361 S.C. 267, 270 S.E.2d 629, 631 (Ct.App.2004).. 6
Baughman v. American Tel. and Tel., Co., 306 S.C. 101, 410 S.E.2d 537
 (S.C. 1990)..... 6
Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991)..... 7
Cel Products LLC v. Rozelle, 357 S.C. 125, 591 S.E.2d 643 (S.C. App. 2004)..... 6
Doe v. Batson, 338 S.C. 291, 525 S.E.2d 909 (S.C. App. 1999).....6
Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct.App. 1987)..... 7
Froneberger v. Kirkland Dale Smith, Janel Elizabeth Smith, Euro Mortg.
 Bankers, Inc., 406 S.C. 37, 748 S.E.2d 625 (S.C. App. 2013)..... 7
Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801,
 803 (2009)..... 7
Knox v. Greenville Hosp. Sys., 362 S.C. 566, 569-70, 608 S.E.2d 459, 461
 (Ct.App. 2005)..... 6
Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).. 6
Scott v. Greenville Hous. Auth., 353 S.C. 639, 652, 579 S.E.2d 151, 158
 (Ct.App.2003)..... 6
Smith v. Jones (In re Estate of Smith), 419 S.C. 111, 796 D.E.2d 158
 (S.C. App. 2016)..... 6
Tupper v. Dorchester County, 326 S.E. 318, 487 S.E.2d 187 (1997).....7

STATUTES

S.C. Code §5-31-450..... 5

OTHER AUTHORITIES

S.C.R.C.P. 56(c).....6

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE TRIAL COURT ERRED IN GRANTING DEFENDANT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (“SCDOT”)’S MOTION FOR SUMMARY JUDGMENT BY LOOKING AT SOME, BUT NOT ALL OF THE DOCUMENTS RELATED TO SCDOT’S INVOLVEMENT AND IN DOING SO PRIOR TO THE CLOSE OF DISCOVERY.

STATEMENT OF THE CASE

This appeal results from Defendant South Carolina Department of Transportation (SCDOT)’s Motion for Summary Judgment which was granted by the Honorable Bentley D. Price, on September 22, 2020, in the Charleston County Court of Common Pleas, Consolidated Case No. 2017-CP-10-4820.

Full and Fair Opportunity to Complete Discovery

The Appellants retained an expert witness, Mr. Allan Abbata, who prepared an Affidavit that was submitted to the trial court in response to SCDOT’s Motion. This Affidavit was prepared solely based on Mr. Abbata’s review of documents obtained in response to a Freedom of Information Act (“FOIA”) request and yet still identifies failures of SCDOT.¹ Mr. Abbata remains willing and able to render further opinions about the Defendant’s negligent construction; however, SCDOT has failed to provide any discovery to date despite being served with those requests since February 1, 2018.² Because Appellants have not been given a full and fair opportunity to conduct discovery and because what little evidence does exist shows negligence on the part of SCDOT, the trial court erred in granting Defendant SCDOT’s Motion for Summary Judgment.

¹ See Exhibit A.

² Exhibit B.

No undue delay on the part of the Appellants

Initially, Appellants' counsel filed the present matter and one other case – Stortz v. State of South Carolina, et. al. (Case No.: 2017-CP-10-4947) - which involved the same flooding event and the same defendants.³ Because the Stortz case was one singular matter but involved the same issues and proof as the present case, counsel for the parties agreed it would be prudent to focus on discovery and potential resolution of that matter and then proceed with experts' depositions and mediation in the present case.

Once the Stortz case settled, the parties moved onto pushing forward in the present case. However, this case involved 45 Plaintiffs, which makes scheduling, and the matter as whole, far more complicated. Because of the time and resources it would take for Defendants to depose all 45 Plaintiffs, the parties agreed that the deposition of the Plaintiffs' expert should occur first. Unfortunately, due to the COVID-19 pandemic, the Plaintiffs' expert deposition has been rescheduled several times – most recently on January 27 and January 28, 2021.

If any delays in the discovery process have occurred, they were either due to the COVID-19 pandemic or the conduct of the SCDOT and other defendants in failing to participate and cooperate in discovery efforts. The Appellants have, in no way, contributed to the lack of discovery in this case.

Dismissal of SCDOT was improper

Considering this case has had minimal discovery turned over by the Respondents and there has not been one deposition taken, SCDOT's Motion was premature, and the grant of that Motion was improper.

³ Once it was determined that the Stortz property lied within Dorchester County, the case was transferred and then subsequently settled.

FACTS

In or about the Spring of 2016, the Respondents conceived and began construction of a four-lane highway which is now known as the Palmetto Commerce Parkway (hereinafter “the Parkway”). The alleged purpose of the Parkway was to alleviate traffic around the Boeing Plant and to create attractive commercial space for business interests. A major portion of the Parkway was designed to run through wetlands behind the Pepperhill Subdivision (hereinafter “Pepperhill”) where the Appellants’ homes are located.

Prior to the construction, public hearings were held wherein affected residents could hear the plans and voice concerns. At these hearings (and with representatives of the Respondents in attendance), the Appellants and many of their neighbors objected to the construction, warning that flooding would occur in their neighborhood if the Parkway was developed. The Respondents ignored such objections and repeatedly assured the Appellants no such flooding would occur, despite having access to pertinent information showing such objections were justified.

As part of the Respondents’ due diligence, they were required to perform studies regarding the impact of constructing a Parkway through and around wetlands, including but not limited to how it would impact neighboring properties. Despite residents’ concerns and the requirement that Respondents perform their due diligence, Respondents constructed the Parkway by creating a berm through the wetlands which acts as a dam, preventing water from flowing from one area of wetlands to the other and effectively funnels water toward Pepperhill. The Respondents refused to elevate the roadway or build appropriate culverts which would allow for free flow or drainage of water throughout the dissected wetlands, and instead chose to funnel water toward Pepperhill.

Pursuant to S.C. Code Ann. §5-31-450, the Appellants requested that the Respondents take corrective action by providing adequate and sufficient drainage and by restoring the natural condition of the subject land. To date, the Respondents have failed to take any corrective action in response. As a result of the Respondents' concerted actions and failure to correct the condition they created, the Appellants' properties continually flood during water events. The flooding is so severe that the Appellants are forced to vacate their homes for substantial periods of time, replace their personal belongings and make extensive and costly repairs to their structures. The condition that Respondents have created continues to interfere with the Appellants' right to peaceful use and enjoyment of their respective properties.

ARGUMENTS

BECAUSE DISCOVERY HAD NOT YET CONCLUDED, THE TRIAL COURT IMPROPERLY GRANTED DEFENDANT SCDOT'S MOTION FOR SUMMARY JUDGMENT.

SCDOT is a proper party

In moving for Summary Judgment, SCDOT argues that it does not own or maintain the Palmetto Commerce Parkway and therefore, should be dismissed. However, on February 28, 2020, counsel for SCDOT wrote an e-mail stating as follows: "SCDOT was not involved in the project and asserts no jurisdiction or responsibility over the parkway *except at the tie in at Ashley Phosphate and Ladson Road* as detailed by the attached affidavit."⁴ Both the e-mail and the attached Affidavit contain an admission of responsibility on the part of Respondent SCDOT. Further, at the hearing on SCDOT's Motion for Summary Judgment, its counsel again confirmed

⁴ Said e-mail is attached as Exhibit C.

SCDOT is responsible for “140 feet of road” at issue in this case.⁵ By admitting a portion of the Parkway was under its responsibility and control, SCDOT also admits it was responsible for discovering and preventing the flooding that has damaged the Appellants.

The grant of SCDOT's Motion is premature

“Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Doe v. Batson*, 338 S.C. 291, 525 S.E.2d 909 (S.C. App. 1999) quoting *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). “The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party.” *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 652, 579 S.E.2d 151, 158 (Ct.App. 2003). Summary Judgment may only be granted where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003); *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 569-70, 608 S.E.2d 459, 461 (Ct.App. 2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 270 S.E.2d 629, 631 (Ct.App.2004); *Smith v. Jones (In re Estate of Smith)*, 419 S.C. 111, 796 S.E.2d 158 (S.C. App. 2016). “The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial. Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice, reversal is required.” *Cel Products, LLC v. Rozelle*, 357

⁵ See “Transcript of Record” attached at Exhibit D.

S.C. 125, 591 S.E.2d 643 (S.C. App. 2004) quoting *Downey v. Dixon* 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct.App. 1987).

In this case, SCDOT has only provided pleadings. It has answered no interrogatories nor requests for production and none of its witnesses have been deposed. Additionally, Counsel for SCDOT presented evidence during oral argument on its Motion for Summary Judgment that was never previously presented to Appellants or their counsel.⁶ Because its Motion was granted without further discovery, Appellants' counsel has not had the opportunity to cross-examine witnesses on the validity of these documents and has not been afforded the opportunity to review other requested documents that may contradict or otherwise undermine the accuracy of the same. Therefore, it clear, based on well-founded law, that the trial court erred in granting SCDOT's Motion for Summary Judgment.

The grant of SCDOT's Motion is improper

"To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Froneberger v. Kirkland Dale Smith, Janel Elizabeth Smith, Euro Mortg. Bankers, Inc.*, 406 S.C. 37, 748 S.E.2d 625 (S.C. App. 2013) quoting *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Tupper v. Dorchester County*, 326 S.E. 318, 487 S.E.2d 187 (1997); *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991).

Although much of the information needed to determine this case on the merits has not yet been discovered, the little evidence that does exist creates at least a scintilla of evidence in favor of denying SCDOT's Motion for Summary Judgment. Specifically, the Affidavit of Appellants'

⁶ See Exhibit D at 9.

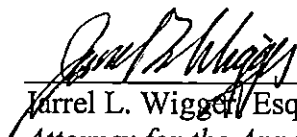
expert, Mr. Allan Abbata,⁷ states not only that he already has been able to find fault on the part of SCDOT, but also that he will be able to expound on his opinion and draw further conclusions once there is further discovery.⁸ This opinion, coupled with the admissions by SCDOT that it did in fact maintain the Parkway's "tie in" creates more than enough evidence for a reasonable jury to find fault on the part of Respondent SCDOT.

CONCLUSION

SCDOT is a proper party to this case, failed to participate in discovery, and then unfairly sought dismissal. The trial court erred by improperly and prematurely granting its Motion for Summary Judgment, as far more discovery is required to make an informed determination on the merits. Based on the above, the trial judge's misunderstanding of the case and facts resulting in the dismissal of SCDOT constitutes clear error and should be reversed.

Respectfully submitted,

WIGGER LAW FIRM, INC.


Jarrel L. Wigger Esquire
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April 6, 2021

⁷ Exhibit A.

⁸ "It would be helpful to have the benefit of depositions to see who did what before I could render more opinions,"
Ex. A.

EXHIBIT A

STATEMENT OF ALLAN ABBATA, P.E.

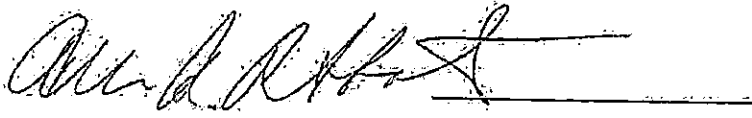
I, Allan Abbata, P.E. hereby state as follows:

I have been retained by the Wigger Law Firm, Inc. as an expert witness for the Plaintiffs in the Sarah Sharper-v. SCDOT, et al (Consolidated Pepperhill Matters: 2017-CP-10-04820).

It is my understanding that the SCDOT is responsible for some areas of the Palmetto Parkway and water would have come through those areas. Also, SCDOT is in charge of approval and permitting and there were shortcuts in the process.

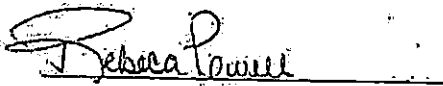
It would be helpful to have the benefit of depositions to see who did what before I could render more opinions.

SWORN TO THIS 18th DAY OF September, 2020.



Allan Abbata, P.E.

SWORN TO BEFORE ME THIS
18th DAY OF September, 2020.



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: March 16, 2027

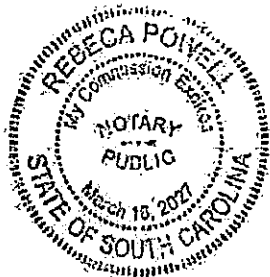


EXHIBIT B

Wigger Law Firm, Inc.

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February 1, 2018.

VIA REGULAR MAIL AND EMAIL

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37 1/2 Broad Street
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Charleston, SC 29413

RE: Plaintiffs Discovery Requests; Pepperhill Actions

Dear Counsel:

Enclosed, please find for service upon the Defendants Plaintiff's Interrogatories, Request for Production and Request for Admissions for the following actions filed in the Charleston County Court of Common Pleas:

2017-CP-10-4931	Darryl Beech v. City of North Charleston, et al.
2017-CP-10-5108	Henry and Anjette Bennett v. City of North Charleston, et al.
2017-CP-10-4924	Diane Blazer as Guardian of Charles Eichmann v. City of North Charleston, et al.
2017-CP-10-4897	Elizabeth Bright v. City of North Charleston, et al.
2017-CP-10-4835	Kaye Brown v. City of North Charleston, et al.
2017-CP-10-4930	Kevin Drayton v. City of North Charleston, et al.

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2017-CP-10-4892	Tanya Driggers v. City of North Charleston, et al.
2017-CP-10-4929	Renobia Fludd v. City of North Charleston, et al.
2017-CP-10-4907	Roberta Frasier v. City of North Charleston, et al.
2017-CP-10-4841	Bob Frederick v. City of North Charleston, et al.
2017-CP-10-4827	Latosha Gadsden v. City of North Charleston, et al.
2017-CP-10-4839	Clair Gallagher v. City of North Charleston, et al.
2017-CP-10-4823	Jason Gardner v. City of North Charleston, et al.
2017-CP-10-4903	Oglivia Gibson v. City of North Charleston, et al.
2017-CP-10-4842	Milton and Myrtle Green v. City of North Charleston, et al.
2017-CP-10-4901	Otis and Angela Green v. City of North Charleston et al.
2017-CP-10-4893	Franklin and Delores Griffin v. City of North Charleston, et al.
2017-CP-10-4826	Jesse and Patricia Frazier v. City of North Charleston, et al.
2017-CP-10-4925	Leigh Hemingway v. City of North Charleston, et al.
2017-CP-10-4837	Ismael and Anjencette Hernandez v. City of North Charleston, et al.
2017-CP-10-4822	Gail Holmes v. City of North Charleston, et al.
2017-CP-10-4847	Virginia and Lonnie Ivory v. City of North Charleston, et al.
2017-CP-10-4899	Kelvin Jackson v. City of North Charleston, et al.
2017-CP-10-4891	Alex and Virginia James v. City of North Charleston, et al.
2017-CP-10-4825	Maczell Jefferson v. City of North Charleston, et al.
2017-CP-10-4824	Theresa Jenkins v. City of North Charleston, et al.
2017-CP-10-4927	Rebecca Kapperman-Brown v. City of North Charleston, et al.
2017-CP-10-4906	Tuan Le v. City North Charleston, et al.
2017-CP-10-4845	Mabel Livingston v. City of North Charleston, et al.
2017-CP-10-4905	Tammy McCall v. City of North Charleston, et al.
2017-CP-10-4838	James and Katie Miller v. City of North Charleston, et al.
2017-CP-10-4900	Robert Mixon and Mixon Rental Properties, LLC v. City of North Charleston, et al.
2017-CP-10-4840	Willie Moore v. City of North Charleston, et al.
2017-CP-10-4928	Valetie Pearson v. City of North Charleston, et al.
2017-CP-10-4898	Geneva Ravenel v. City of North Charleston, et al.
2017-CP-10-4923	Mellany Robinson v. City of North Charleston, et al.
2017-CP-10-4836	Sullay Sesay v. City of North Charleston, et al.
2017-CP-10-4820	Sarah Sharper v. City of North Charleston, et al.
2017-CP-10-4904	Darlene Taylor-William v. City of North Charleston, et al.
2017-CP-10-4894	Kevin Thompson v. City of North Charleston, et al.
2017-CP-10-4895	Constance Verge v. City of North Charleston, et al.
2017-CP-10-4821	Melissa Washington v. City of North Charleston, et al.

2017-CP-10-4926	Allison Wells v. City of North Charleston, et al.
2017-CP-10-4896	Brenda Wrighton v. City of North Charleston, et al.

I would propose the cases be consolidated for discovery. If anyone objects, please give me a call, if not we will prepare a consent order.

Respectfully yours,



Jarrel L. Wigger, Esq.

TO: THE ABOVE NAMED DEFENDANTS:

The Plaintiffs hereby require the Defendants, within thirty (45) days after service hereof, to answer the Interrogatories hereinafter set forth in accordance with the Federal Rules of Civil Procedure Rule 33(b). These Interrogatories shall be deemed to continue until time of the trial of this case pursuant to Rule 33(b).

ONE: List the names and addresses of the persons known to the party or counsel to be a witness concerning the facts of this case and indicate whether or not written or recorded statements have been taken. If so, indicate who has possession of such statements.

TWO: Set forth a list of photographs, plans, sketches and other prepared documents in the possession of the party that relate to the claim of the defense in this case.

THREE: List the names and addresses of all insurance companies, which have liability insurance coverage relating to the claim. Give the number(s) of the policy or policies involved and the amount(s) of the liability coverage provided in each policy.

FOUR: List the names and addresses of any expert witnesses the party proposes as a witness at the trial of this case.

FIVE: For each person known to the parties or counsel to be a witness concerning the facts of this case, set forth a summary sufficient to inform the other party of the important facts known or observed. Such witness shall provide a copy of any written or recorded statements taken from such witness.

SIX: List the names and addresses of all contractors, sub-contractors, employees and/or former employees of the Defendants who participated in the storm water runoff analysis for this matter, including companies and individuals.

SEVEN: List the names and addresses of all contractors, sub-contractors, employees and/or former employees of the Defendants who participated in the construction in the wetlands related to the Palmetto Commerce Parkway.

EIGHT: List any and all State, Federal and Municipal rules, regulations, or guidelines the Defendant is required to adhere to during construction with regard to water drainage, run-off, storm water drainage, etc. in performing business as a builder, contractor, subcontractor, or other employee involved in the aforementioned construction.


NINE: List all required steps taken to ensure that the Plaintiffs' property would not be affected by water drainage, before pumping, redirecting, or otherwise from the construction by the Defendants.

TEN: A list of the specific tasks that the Defendants are/were responsible for in the development of the property at or adjacent to the Palmetto Commerce Parkway.

ELEVEN: A complete description of the types of soil and/or water testing performed on the Palmetto Commerce Parkway development site prior to the beginning of construction.

TWELVE: Please state whether there were any delays in the project once construction started, and state the reasons for the delays.

THIRTEEN: On behalf of the Defendants, list the name, address and title of the person present at the public hearing meetings before the project began.



Janet L. Wigger, Esquire
Attorney for the Plaintiff
8086 Rivers Avenue, Suite A
N. Charleston, S.C. 29406
(843) 553-9800

North Charleston, South Carolina
This 2nd day of February, 2018.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon

OFF: ARMS by mailing a copy properly addressed with sufficient postage affixed thereto

this 2nd day of February, 2018.



WIGGER LAW FIRM

TO THE ABOVE NAMED DEFENDANTS:

The Plaintiff, by and through her undersigned attorney, request the Defendants to Produce for inspection a copy of the following described documents and items in possession, custody and/or control of the Defendants, their attorneys and/or other representatives or agents pursuant to South Carolina Rules of Civil Procedure:

ONE: All statements, whether written, recorded or transcribed, taken of any parties or witnesses of the facts of this case.

TWO: Any and all reports prepared by experts in this case.

THREE: Copies of all insurance policies owned by the Defendants that relate to this matter or in the alternative the front page of such policies showing the amount and type of coverage.

FOUR: Copies of all photographs relating in any way to the matters referred to in the Complaint and Amended Complaint.

FIVE: Copies of any and all records, notes, electrical transmissions, files, memos, regarding the Palmetto Commerce Parkway project.

SIX: Copies of any and all documents which show the actions taken by the Defendants to comply with all required State, Federal and Municipal regulations, policies, procedures required with regard to the storm water runoff and construction of the wetlands surrounding the Palmetto Commerce Parkway, which was under construction by the Defendants.

SEVEN: Copies of any and all survey reports performed on the storm water runoff and construction of the wetlands surrounding the Palmetto Commerce Parkway, which was under construction by the Defendants.

EIGHT: Copies of any and all agreements, contracts, etc. between the Defendants.

NINE: Copies of any partnership agreements between the government and any entity involved in the construction development on the storm water runoff and construction surrounding the Palmetto Commerce Parkway.

TEN: Copies of any and all regulations, rules, code, and/or ordinances that regulate the construction development on the storm water runoff and construction in the wetlands surrounding the Palmetto Commerce Parkway.

ELEVEN: Certified copies of any and all test results regarding the soil and/or water testing performed on the wetlands for the Palmetto Commerce Parkway site prior to the beginning of construction.

TWELVE: Copies of photographs of any pumps or mechanical devices used to extract and/or disburse the water and/or other substances from said site.

THIRTEEN: Copies of photographs of the holding pond and any and all documents used to determine the size of the pond.

FOURTEEN: Copies of all logs recording water extraction and/or disbursement of water

from the construction site.

FIFTEEN: Copies of any and all environmental impact studies.

SIXTEEN: Copies of any and all elevation maps for the construction site and any and all adjacent properties.

SEVENTEEN: Copies of all statements, photographs, reports, etc. regarding the investigation of the Plaintiff's complaints.

EIGHTEEN: A detailed description of the area where the water was extracted from and a detailed description of the area where the water was disbursed throughout construction.

NINETEEN: Copies of all licenses and permits pulled prior to the project in question.

TWENTY: Copies of the entire job file, non privileged documents and field notes regarding this project.


TWENTY-ONE: Copies of any and all documents received due to any FOIA requests regarding this matter.

TWENTY-TWO: Copies of the daily progress logs of the construction.

TWENTY-THREE: Copies of any and all weather analysis reports in addition to the storm water analysis performed.

TWENTY-FOUR: Copies of any and all reports prepared as a result of the public hearings on the proposed construction of the Palmetto Commerce Parkway.

WIGGER LAW FIRM, INC.

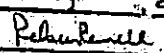

Janet L. Wigger, Esquire
Attorney for the Plaintiff
8086 Rivers Avenue, Suite A
N. Charleston, S.C. 29406
(843) 553-9800

North Charleston, South Carolina
This 2nd day of February, 2018.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon, OPP. ATTYS. by mailing a copy properly addressed with sufficient postage affixed thereto

this 2nd day of February, 2018.


REBECCA BELL
WIGGER LAW FIRM

TO THE ABOVE NAMED DEFENDANTS:

The Plaintiff hereby request that the Defendants admit the following:

ONE: Admit that the wetlands that existed prevented water flowing onto the Pepperhill subdivision prior to the storm event in October 2015.

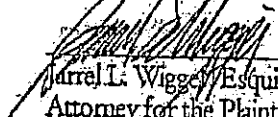
TWO: Admit that the parkway created by the Defendants funnels water towards the Pepperhill Subdivision.

THREE: Admit the Defendants were notified of the flooding issue by the residents of Pepperhill subdivision prior to beginning construction.

FOUR: Admit that city had received requests to clear the drainage ditch labeled as Pepperdam Creek, prior to October 2015.

FIVE: Admit that the city had received requests to clear the drainage ditch labeled Pepperdam Creek, prior to October 2015.

WIGGER LAW FIRM, INC.


Jarrel L. Wiggy, Esquire,
Attorney for the Plaintiff
8086 Rivers Avenue, Suite A
N. Charleston, S.C. 29406
(843) 553-9800

North Charleston, South Carolina
This 2nd day of February, 2018.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon OPR Atty. by mailing a copy properly addressed with sufficient postage affixed thereto this 2nd day of February, 2018.

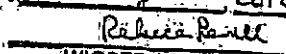

REBECCA POWELL
WIGGER LAW FIRM

EXHIBIT C

From: J. Anderson <janderson@arslawsc.com>
Sent: Friday, February 28, 2020 4:07 PM
To: keith mccarty <kkeithmccarty@gmail.com>; Jerry Wigger <jwigger@wiggerlawfirm.com>
Cc: Felicity J. Moore <fmoore@arslawsc.com>; Cole Lawrimore <clawrimore@arslawsc.com>
Subject: Pepperhill v. SCDOT

Gentlemen: I hope this e-mail finds you well. Attached is a proposed stipulation of dismissal for SCDOT and a supporting affidavit from the District 6 Engineer concerning the jurisdiction and responsibility that SCDOT has over Palmetto Commerce Parkway. As I am sure you know that the construction was a County of Charleston project under the penny tax program a/k/a pennywise program. SCDOT was not involved in the project and asserts no jurisdiction or responsibility over the parkway except at the tie in at Ashley Phosphate and Ladson Road as detailed by the attached affidavit. It is requested that you voluntarily dismiss SCDOT without prejudice from these lawsuits and save us all the time and trouble of a motion for summary judgment. Please let me know if you are willing to sign the stipulation of dismissal. If you do not like the language of the stipulation please make your desired changes and return it to me for consideration. Thank you and have a great weekend.

J. J. Anderson



Anderson Reynolds & Stephens, LLC

37 1/2 BROAD STREET, POST OFFICE BOX 87, CHARLESTON, SOUTH CAROLINA 29402
E-MAIL: janderson@arslawsc.com | TEL 843-723-0185 | DIRECT 843-576-2070 | CELL 843-324-8604

Confidentiality Notice:

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify our office immediately either by phone (843-723-0185) or reply to this e-mail and delete all copies of this message.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Sarah Sharper
Plaintiff,

vs.

The State of South Carolina, City of North
Charleston, County of Charleston,
Department of Health and Environmental
Control, South Carolina Department of
Transportation and John Doe (engineering
firm/engineer),
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CONSOLIDATED CASE
NUMBER FOR AFFIDAVIT OF ARNOLD
BLANDING
2017-CP-10-4820

OTHER INCLUDED CASE NUMBERS:

- 2017-CP-10-4821
- 2017-CP-10-4822
- 2017-CP-10-4823
- 2017-CP-10-4824
- 2017-CP-10-4825
- 2017-CP-10-4826
- 2017-CP-10-4827
- 2017-CP-10-4835
- 2017-CP-10-4836
- 2017-CP-10-4837
- 2017-CP-10-4838
- 2017-CP-10-4839
- 2017-CP-10-4840
- 2017-CP-10-4841
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- 2017-CP-10-4927
- 2017-CP-10-4928
- 2017-CP-10-4929
- 2017-CP-10-4930
- 2017-CP-10-4931
- 2017-CP-10-5108

PERSONALLY APPEARED BEFORE ME the undersigned Arnold Blanding, who first being duly sworn, deposes and states as follows:

1. I am South Carolina Department of Transportation's (hereinafter "SCDOT") District Six, Resident Maintenance Engineer for Charleston County. District Six includes Beaufort, Berkeley, Charleston, Colleton, Dorchester, and Jasper Counties. I have held this position since May of 2017.

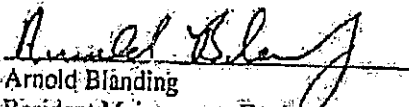
2. Incident to my position, I oversee the inspection and maintenance of all SCDOT maintained roads in Charleston County.

3. The Palmetto Commerce Parkway that is the subject of this action is situated in both Charleston and Berkeley Counties. If the portion of the Parkway situated in Charleston County was maintained by SCDOT, it would fall under my authority; however, this is not the case.

4. SCDOT's only interaction with the Parkway is with regard to where the Parkway terminates at or "ties into" SCDOT owned and maintained roads at Ladson Road to the North and Ashley Phosphate Road to the South. The "tie-in" extends 60 feet from the centerline of Ashley Phosphate Road onto Palmetto Commerce Parkway, and 24.38 meters from the centerline of Ladson Road onto Palmetto Commerce Parkway.

5. It is my understanding that the locations where the Parkway "ties into" Ladson Road and Ashley Phosphate Road are not at issue in this matter.

FURTHER AFFIANT SAYETH NAUGHT!


Arnold Blanding
Resident Maintenance Engineer
SCDOT District Six
Affiant

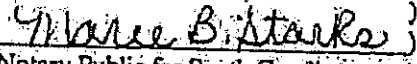
SWORN TO BEFORE ME)
UNDER PENALTY OF PERJURY)
this 29th day of October, 2019)
)
Notary Public for South Carolina)
My Commission Expires: 04-17-2024

EXHIBIT D

RECEIVED

Mar 23 2021

SC Court of Appeals

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) COURT OF COMMON PLEAS NONJURY

3
4 SARAH SHARPER, ET AL) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 THE STATE OF SOUTH CAROLINA, ET AL,)
8 DEFENDANT.) 2017-CP-10-4820

9
10 September 21st, 2020.
11 Charleston, South Carolina

12 B E F O R E:

13 THE HONORABLE BENTLEY PRICE, JUDGE.

14 A P P E A R A N C E S:

15 JARREL L. WIGGER
16 ESQ.
17 Attorney for the Plaintiff

18 W. COLEMAN LAWRIKORE
19 ESQ.
20 Attorney for the Defendant SCDOT

21 KRISTA N. CARNEY
22 Circuit Court Reporter

23
24 Transcribed by Pamela E. Green, Circuit Court Reporter
25

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I N D E X O F W I T N E S S E S

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

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PROCEEDINGS

THE COURT: All right. So, my understanding is that this is a damages hearing.

Is that correct?

MR. LAWRYMORE: No, sir.

THE COURT: All right. Well, it's all on the -- on the -- it's on there.

All right. What is it then?

MR. LAWRYMORE: Judge, Cole Lawrymore here on behalf of SCDOT. This is DOT's motion for summary judgment.

THE COURT: Oh, this---

MR. LAWRYMORE: There may be a damages hearing on it but --.

THE COURT: Oh, okay.

All right. I'll be happy to hear from you.

MR. LAWRYMORE: Thank you, Your Honor.

Again, Cole Lawrymore and J.J. Anderson here for SCDOT here before the court on our motion for summary judgment.

Your Honor knows the summary judgment standards. So, I'm not gonna give you a string cite to belabor that issue.

The project at issue is the Palmetto Commerce Parkway, which is not a DOT owned and maintained road. It runs in-between Blaston Road and Ashley Phosphate around the City of North Charleston. We've submitted Arnold Blanding's

1 affidavit in support of our motion. Arnold Blanding's a
2 resident maintenance engineer for Charleston County.

3 That affidavit boiled down -- it just says this isn't
4 DOT's road. We don't own it. We don't maintain it. We've
5 never owned it, and we've never maintained it. DOT's
6 responsibility is, as to that road, extend to the portions
7 of the Commerce Parkway that are within DOT's right of way.

8 As to this intersection with Blaston Road, that's about
9 50 feet. As to intersecting with Ashley Phosphate Road,
10 it's about 80 feet. Both of those distances measures from
11 the center line of Ashley Phosphate and Blaston Road. All
12 together that accounts for about 140 feet of a five and a
13 half mile long road. By my extremely suspect math, that's
14 about half of 1 percent.

15 There have been no allegations or evidence submitted in
16 this case thus far tending to indicate that that 140 feet of
17 road is in any way contributing to the flooding that serves
18 as the basis of the Plaintiff's complaint.

19 We've received an affidavit from Alan Obata about two
20 and a half hours ago. We would contend that that affidavit
21 is untimely per the two day requirement set forth in Rule
22 56(c) to the Rules of Procedure. Don't believe that
23 affidavit is timely, don't believe it should be considered
24 by the court today, and it just further emphasized the point
25 that there have been no allegations as to DOT's 140 feet of

1 right of way contributing to any of the problems that the
2 Plaintiffs are experiencing.

3 We just believe that, quite frankly, there's no
4 evidence whatsoever, after about a year and a half of
5 litigation, that DOT has any responsibilities whatsoever to
6 the Palmetto Commerce Parkway. On those grounds, we believe
7 that they're not a proper party to this action and should be
8 dismissed.

9 THE COURT: All right. Who's gonna be arguing for the
10 Plaintiff?

11 MR. WIGGER: Jarrel Wigger.

12 THE COURT: All right. Be happy to hear from you.

13 MR. WIGGER: May it please the Court.

14 We've talked a little bit about the history of the
15 case. Basically the Palmetto Parkway was designed and it
16 was, it was put up literally via Boeing and Knights Road to
17 have a shortcut to trade on board their, their goods, and
18 there were hearings before the road was put up. And the
19 sub -- the people that lived in that separate little
20 subdivision presented at those hearings and indicated that,
21 if this roadway went through, then they knew it was gonna
22 flood their neighborhood, and the hearings were on the
23 record, and we've submitted those documents that, that
24 indicate that.

25 So, when we -- when the bad storm happened in 2016, a

1 lot of the people got flooded out. Bad storm happened again
2 in 2017. People got reflooded, flooded out again. Whenever
3 bad rains were happening, they would get flooded out.

4 So, following that, we brought a lawsuit and initially
5 there were 46 plaintiffs that were involved in the lawsuit.
6 Not long after we brought the lawsuit we found out that one
7 of the plaintiffs actually lived over the line in Dorchester
8 County, and that case was removed to Dorchester County.
9 That was the Storts case.

10 Literally everybody kind of focused on that case for a
11 bit, and there were motions and appeals and things happened
12 in that case. That case settled not too long ago.

13 After we settled that case, then everybody's attention
14 refocused back on this case, and it was our understanding
15 that the Defendants were going to take our experts
16 deposition, Alan Obata, who's a construction engineer
17 expert, and then we were gonna sit down and, and try to
18 resolve this case and mediate it.

19 So, his deposition was set, canceled, set, canceled,
20 set, canceled. The last time it was set was gonna be
21 August 26th and 27th or 27th and 28th, somewhere
22 around in there, and basically, when that happened, we said
23 look, we're coming up on the docket. We, we can't rely on
24 y'all doing this deposition and setting a mediation. We're
25 gonna get the case moving.

1 There are a number of people that have not submitted
2 discovery including the DOT. We do not have their
3 discovery. We've sent a Rule 11 letter that says we're
4 gonna come in and say that litigation's been going on all
5 this time. They haven't participated in, in the -- in
6 discovery at all. No depositions have been taken.

7 We have set a bunch of 30(b)(6) depositions because,
8 frankly, since it never -- their plan is gonna work, we're
9 gonna have to get moving and getting our case set and ready.
10 But our allegation is that the entire Palmetto Parkway
11 construction project, the (indiscernible), the drainage
12 system, all that is contributing to the flooding in our
13 neighborhood.

14 For the DOT to say there've been no allegations, that's
15 just not accurate. Our Complaint, our Complaint indicates
16 that the entire Palmetto Commerce Parkway is contributing to
17 the flooding.

18 There isn't a way to set out and say some parts of it
19 are exempt because it's movement and water. Even if it is
20 only half of one percent, that movement of water is part of
21 the flooding that is going right in our neighborhood and
22 right in our client's houses. So, it isn't accurate to say
23 that we haven't made those allegations. We have.

24 As far as Mr. Obata's affidavit, that's -- we got
25 Mr. Blanding's affidavit, and frankly Mr. Blanding admits

1 that the DOT is responsible for a portion of the Palmetto
2 Parkway. So even on their exhibit it indicates they are in
3 trouble by certain portions, and you can't tell water where
4 to go. Water just flows and it flows across the areas that
5 they have maintained and control.

6 It also -- I would point out that Mr. Obata says that
7 the permitting was very shortened and all the permitting was
8 waived. There were a lot of things that happened with the
9 permitting for this project, and the DOT is one of the
10 groups that controls that permitting.

11 So, it's not just the construction. It was the
12 permitting that was also a problem, and all of that has
13 contributed to the math regarding this (indiscernible) and
14 the situation. A lot of our people are not even able to --
15 have not been able to return to their homes after all this
16 time.

17 So, we would argue that discovery is -- its emphases,
18 despite the age of the case, that we're moving and getting
19 discovery done, and it would be premature at this point to
20 make a ruling because we don't even have DOT's answers to
21 our interrogatories or request to produce. So, without
22 that, it would be improper to dismiss them from the case
23 based on affidavits where they admit they are in charge of
24 part of the roadway that has caused the flooding, and part
25 of the project that's caused the flooding.

1 So, that would be our position. We'd ask the Judge to
2 deny the motion at this time. If the Defendants want to
3 complete discovery and come back, obviously they would have
4 that option. But, at this point, it's not -- they shouldn't
5 be able to not participate in discovery and then come back
6 and try to get dismissed based on their lack of cooperation
7 and not participating in discovery.

8 THE COURT: All right. Mr. Lawrimore.

9 MR. LAWRI-MORE: Your Honor, to that end, no amount of
10 discovery is gonna change the fact that this isn't a DOT
11 owned roadway. The only portion they would have any
12 maintenance responsibility are the portions of the Parkway
13 that fall in SCDOT's right of way or they're integrated into
14 SCDOT on the roads.

15 Looking at the portions of the roadway using the all-
16 mighty, all powerful Google street view, it actually appears
17 as though the Palmetto Commerce Parkway, it flows downward
18 towards the SCDOT owned roadways.

19 My understanding of water doing what it does is that it
20 flows downhill. There'd be no way for water to flow uphill
21 from DOT's road onto the Palmetto Commerce Parkway.

22 I'm gonna try to share my screen with everybody to give
23 you a feed portion of the roadway we're talking about.

24 Can everybody see what I hope is the intersection of
25 Blaston Road and the Palmetto Commerce Parkway?

1 THE COURT: Yes.

2 MR. LAWRYMORE: Okay. Your Honor, if you'll look at
3 that line that I've drawn right there in the middle, that
4 shows the area that SCDOT would have some maintenance
5 responsibility for from the center line of Blaston Road onto
6 the Palmetto Commerce Parkway. There's two dots there also
7 for your reference that I'm trying to highlight those with
8 my mouse. Notably absent from the satellite images is any
9 wetlands for water whatsoever.

10 Now we're looking at -- now we're looking at the
11 intersection of Ashley Phosphate Road where Ashley
12 Phosphate, the Palmetto Commerce Parkway line right here
13 that shows the 60 feet SCDOT would be responsible for
14 maintaining. Looks like it goes to the stop line. Again,
15 notably absent are any waterways. Again, it's kind of like
16 the Parkway flows downhill towards DOT's roads.

17 THE COURT: All right.

18 MR. LAWRYMORE: Your Honor, the discovery issue, it
19 appears to us that this case has somewhat of a tortured
20 procedural history. There were multiple motions to dismiss
21 as to our client based on improper service. Looks like the
22 discovery responses were issued about a year for -- the
23 request for that were issued about a year before with any
24 ruling on that. Somewhat up in the air as to whether those
25 responses or requests rather have been properly served on

1 DOT.

2 But, in any event, we did answer HLA's properly served
3 discovery responses. Counsel for Plaintiffs were obviously
4 served with a copy of that. DOT doesn't have any records
5 cause nobody at DOT was involved.

6 THE COURT: All right.

7 MR. LAWRYMORE: Again, this just isn't our road, and we
8 don't think we're a proper party.

9 THE COURT: All right. Anything further?

10 MR. WIGGER: Yes, Your Honor.

11 I'll -- in response, I understand Mr. Lawrymore would
12 like to testify. I would like to testify too.

13 I use to work at this intersection in regard to that
14 that was up on the, the screen, and it got flooded every
15 time it rained 30 years ago. So, I would say that if DOT is
16 out, then, as the Court is probably aware, whenever you have
17 a Tort Claims Act case, one of the things that the -- any
18 government entity gets is an automatic instruction as to the
19 responsibility and liability of anybody else that could be
20 involved in the case whether they're a party or not.

21 This is a case where the other defendants would
22 definitely get the instruction against the DOT because, as
23 they've admitted on the record today, they control half of
24 one percent of the, of the area, and if they can get an
25 instruction as to their liability, then they definitely

1 share the responsibility.

2 So, it would be extremely prejudicial for us not to be
3 able to have them included, and yet they would be able to
4 turn around and get an instruction from the Court as to
5 their liability on this issue down the road.

6 So, again, for all these reasons, we don't agree
7 that -- with Mr. Lawrimore that that portion would not
8 contribute to the water.

9 The flooding then, you can actually go out to the area.
10 There is a hill on one side of the road and looks to be half
11 a mile up the road on the other side there's a hill where
12 the floor plan is, and that whole tile basically transports
13 water including the intersection they're talking about. You
14 can stand and see it when you're at the site.

15 So, for them to say it doesn't contribute is just not
16 accurate because all the water's flowing from both sides
17 down into the sloped area and into the neighborhood.

18 So, if---

19 THE COURT: All right.

20 MR. WIGGER: It is a small percentage but it is a
21 percentage.

22 THE COURT: All right. Anything further?

23 MR. WIGGER: Not from the Plaintiff.

24 MR. LAWIMORE: No, sir.

25 THE COURT: All right. I'll take it under advisement,

1 but, as usual, you'll have my answer by the end of the day.

2 MR. WIGGER: Sir, thank you.

3 THE COURT: All right.

4 MR. LAWRI-MORE: Thank you, Your Honor.

5

6

7 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Charleston County, South Carolina, on the 21st day of September, 2020.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 12th, 2021

Pamela E. Green

PAMELA E. GREEN, Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 08 2021

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Bentley D. Price, Circuit Court Judge

Case No.: 2017-CP-10-4820 (Consolidated Case Number)

Other case numbers:

2017-CP-10-4821
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2017-CP-10-4906
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2017-CP-10-4923

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 08 2021

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Bentley D. Price, Circuit Court Judge

Case No.: 2017-CP-10-4820 (Consolidated Case Number)

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2017-CP-10-4827	2017-CP-10-4898
2017-CP-10-4835	2017-CP-10-4899
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2017-CP-10-4842	2017-CP-10-4907
2017-CP-10-4845	2017-CP-10-4923
2017-CP-10-4847	

Appellate Case Number: 2021-000053

SARAH SHARPER, ET AL..... Appellants,


v.

CITY OF NORTH CHARLESTON, COUNTY OF CHARLESTON,
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SOUTH
CAROLINA DEPARTMENT OF TRANSPORTATION, BANKS
CONSTRUCTION COMPANY, UNITED CONTRACTORS, INC,
BANKS/UNITED JOINT VENTURE AND HLA, INC, COLEMAN-SNOW
CONSULTANTS, LLC AND ICA ENGINEERING, INC. F/K/A FLORENCE &
HUTCHESON, INC.....Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the **Initial Brief and Designation of Matter** on Defendant ICA ENGINEERING, INC. F/K/A FLORENCE & HUTCHESON, INC, by depositing a copy of it in the United States Mail, postage prepaid, on April 6, 2021, addressed to their attorneys of record Courtney E. Walsh and Jonathan Knicely at Nelson Mullins.

April 6, 2021



Janel L. Wigger, Esquire
8086 Rivers Avenue, Suite A
North Charleston, South Carolina 29406
(843) 553-9800
Attorney for Appellants

Wigger Law Firm, Inc.

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West Ashley
(843) 203-1500

*Board Certified Civil Trial Specialist
By National Board of Trial Advocacy

RECEIVED

APR 08 2021

SC Court of Appeals

April 6, 2021

VIA REGULAR MAIL

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: SARAH SHARPER, ET AL. V. CITY OF NORTH CHARLESTON, COUNTY OF CHARLESTON, DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, BANKS CONSTRUCTION COMPANY, UNITED CONTRACTORS, INC, BANKS/UNITED JOINT VENTURE AND HLA, INC, COLEMAN-SNOW CONSULTANTS, LLC AND ICA ENGINEERING, INC. F/K/A FLORENCE & HUTCHESON, INC
Consolidated Case No.: 2017-CP-10-4820
Appellate Case Number: 2021-000053

Dear South Carolina Court of Appeals:

Enclosed you will find an original and one copy of the following documents:

1. Initial Brief;
2. Designation of Matter; and
3. Proof of Services to Defendants for service of Initial Brief and Designation of Matter.

I would appreciate you filing the originals and returning the filed copy of each to me in the self-addressed stamped envelope provided.

With kindest regards, I am

Yours Very Truly,



Rebeca Powell
Paralegal to Jarrel L. Wigger, Esq.

JLW/rbp
Enclosures

cc:

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