

ELECTRONICALLY FILED - 2022 Dec 01 3:29 PM - FLORENCE - COMMON PLEAS - CASE#2021CP2100966

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
Dominion Energy South Carolina, Inc.,
Condemnor,
v.
Kathy Andrews a/k/a Gail K. Andrews,
Landowner,
and
Bank of America, NA, National Banking
Association,
Other Condemnee.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2021-CP-21-00966

**ORDER DENYING
MOTION TO DISMISS**

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SC Court of Appeals

This matter came before this Court on November 28, 2022, for a hearing on a Motion to Dismiss filed by Landowner Kathy Andrews a/k/a Gail K. Andrews ("Andrews" or "Landowner") against Condemnor Dominion Energy South Carolina, Inc. ("DESC" or "Condemnor"). Present for the hearing was Jessica C. Crowson, counsel for Condemnor DESC. Neither Andrews, nor any other party, was present for or participated in the hearing. Based on the record before this Court and the arguments presented to me, the Motion to Dismiss is **DENIED.**

Procedural History

Based on the filed Order of Reference, this Court has jurisdiction over the parties and subject matter. This condemnation action was filed by DESC on May 7, 2021 to determine the amount of just compensation to be paid by DESC for the rights it seeks to acquire for public purposes on a parcel of real property in Florence County, as more fully set forth in the filed Condemnation Notice, which is specifically made a part hereof by reference.

A trial on the condemnation was scheduled to be heard on November 28, 2022.¹ However, prior to trial on November 4, 2022, Andrews filed a Motion to Dismiss, seeking an order dismissing the condemnation action based upon her allegations she was never properly served with the condemnation pleadings. DESC filed a Response to the Motion to Dismiss, and Andrews filed several letters and additional responses in support of her Motion.²

Other Condemnee, Bank of America, NA, National Banking Association, did not respond, participate in, or take any position regarding the Motion to Dismiss.

Arguments Presented at the Hearing

a. *Notice of Hearing on the Motion to Dismiss*

At the November 28, 2022 hearing, counsel for DESC first presented documentation evidencing that Andrews was served with proper notice of the scheduled hearing on the Motion to Dismiss, such documentation including proof that the notice of hearing was (i) mailed by certified mail with return receipt requested to Andrews' current mailing address, (ii) electronically sent and delivered to two (2) of Andrews' email addresses, and (iii) personally served on Andrews by a process server at one of her residences. This documentation was all attached as exhibits to DESC's filed Response, presented and marked as additional exhibits during the hearing, and/or already in the Court file.

b. *Service of Process of the Condemnation Pleadings*

Counsel then gave an overview of the applicable dates and steps DESC undertook to fulfill its obligations for service of process of both the unfiled and the filed condemnation

¹ This Court's determination regarding the status of the scheduled condemnation trial which was to be held on this same date is set forth in a separate Order under this same civil action number.

² Andrews' various letters and responses in support of her Motion also include unfounded allegations of nefarious acts by DESC and its counsel related to service of process. I take judicial notice that in DESC's filed Response to the Motion to Dismiss, counsel for DESC denies committing any such acts. As such, these allegations were not the focus of the hearing, and I decline to inquire or make any findings related to these allegations raised by Andrews.

pleadings upon Andrews, as required by the South Carolina Eminent Domain Procedure Act. Counsel presented supporting documentation, including (i) the signed and filed green cards and U.S. postal service tracking information confirming delivery of the unfiled and filed pleadings to Andrews' current mailing address; (ii) multiple letters and envelopes from Andrews listing the same address as Andrews' return address; (iii) a letter from Andrews using the same phrasing for the condemnation that DESC used in the pleadings; (iv) documentation that DESC exceeded the service of process requirements for the filed pleadings by sending those to Andrews by certified mail with return receipt requested, restricted delivery; and (v) portions of a recent deposition in which Andrews, as the deponent testifying under oath and sworn to tell the truth, testified that her address is 2398 Willow Grove Road, Pamplico, SC 29583. I take judicial notice that this address is the same address used by DESC in all its mailings to Andrews in its efforts to effect proper service upon Andrews. This documentation was all attached as exhibits to DESC's filed Response, presented and marked as additional exhibits during the hearing, and/or already in the Court file.

Additionally, counsel presented arguments and cited South Carolina caselaw in support of DESC's contention that service of process for the condemnation pleadings complied with the applicable rules for service of process and that, pursuant to South Carolina caselaw, to defeat the Motion to Dismiss, DESC need only show that it complied with the rules for service of process required by the Eminent Domain Procedure Act. When these rules are followed, there is a presumption of proper service and a motion to dismiss based on insufficiency of service fails. Based upon all of the foregoing, counsel requested the Motion to Dismiss be denied.

Findings of the Court

After having heard from counsel for DESC and having reviewed the filed Motion, filed DESC Response, additional letters and written responses from Andrews, exhibits, and all supporting documents, exhibits, and caselaw presented to me during the hearing and in the court file, I find as follows:

1. Andrews had proper notice and was properly served with the notice of hearing on her Motion to Dismiss. I base this finding upon the documentation presented to me and in the court file evidencing the multiple methods counsel for DESC undertook to provide such notice to Andrews, specifically the Affidavit of personal service on Andrews.
2. DESC met the test and fulfilled its burden by sufficiently showing it complied with the applicable rules for service of process of both the unfiled and filed condemnation pleadings. As such, there is a presumption of proper service. Although Andrews alleges she did not sign the filed green cards and was not properly served with the condemnation pleadings, South Carolina caselaw requires more than mere allegations and raised concerns as to adequacy of service. Upon a showing by a plaintiff of compliance with the rules for service of process, the burden then rests with a defendant to prove service was insufficient and that the receipt was signed by an unauthorized person. Andrews did not meet that burden, and as such, her Motion to Dismiss fails. I find the South Carolina caselaw on this point cited in DESC's filed Response to the Motion to Dismiss particularly instructive, specifically Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995) which, akin to this matter, originates from Florence County. Based upon all of the foregoing,

specifically the presumption of proper service when the rules for service of process are followed, I find that DESC's service of process of the condemnation pleadings upon Andrews was proper and effected service upon Andrews.

IT IS THEREFORE ADJUDGED AND HEREBY ORDERED that the Motion to Dismiss is DENIED.

AND IT IS SO ORDERED.

Florence, South Carolina
_____, 2022.

The Honorable W. Haigh Porter
Master in Equity, Florence County

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Florence Common Pleas

Case Caption: Dominion Energy South Carolina Inc VS Kathy Andrews , defendant,
et al
Case Number: 2021CP2100966
Type: Master/Order/Form 4

So Ordered

s/Haigh Porter, 3082

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