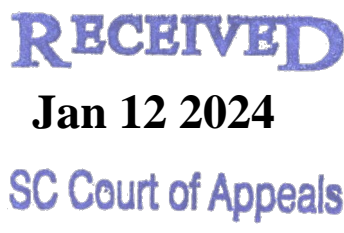


STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Elroy D. Fischer, Jr., CD & F Interests,)
 LLC, Howard Lumber Company and)
 the Robert E. Pentecost Trust,)
)
 Plaintiffs,)
)
 v.)
)
 South Carolina Department of)
 Transportation,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 Civil Action No.: 2018-CP-02-02797

ORDER



This matter came before the Court on September 20 and 21, 2023 for a bench trial to determine if the Defendant inversely condemned the property of Plaintiff. The parties presented testimony and evidence to the Court over the course of two days. At trial, there were two primary issues for the Court to determine. First, a legal issue exists as to whether Plaintiffs released the claims made in this lawsuit by way of a previous release executed in 2006, before the construction complained of in this case occurred. The second issue is whether the facts and testimony prove, by a preponderance of the evidence, that the actions of Defendant constitute a taking under the Constitutions of South Carolina and the United States of America. Each issue will be addressed separately.

Legal Issue

The Court finds that Plaintiffs did not release the claims in this matter in the previous condemnation procedure. The Release in question was executed before any construction or land disturbance began with regards to I-520. More importantly, the Executed Release was in relation to the sale of land from Plaintiff to Defendant. The matter before the Court deals addresses the

remainder of Plaintiffs' land after the sale to Defendant. The language in the Release pertaining to future and unknown claims is confined to the property that changed hands, not the property unaffected by the sale. Plaintiff could not anticipate Defendant would begin directing voluminous runoff onto its remaining property once I-520 was complete. This Court finds that Plaintiff did not waive or release its future claims based on actions that had yet to occur. Therefore, Defendant's motion for directed verdict is denied.

Factual Determination

After reviewing the testimony and evidence submitted at trial, this Court finds that Defendant permanently and inversely condemned the remainder of Plaintiffs' property. The Court finds that the design of the outfall adjacent to Plaintiffs' property is defective and transmits water onto Plaintiffs' property with excessive speed and volume. The pictures and video evidence demonstrate visible damage to Plaintiffs' property. As the statute dictates, this matter should now be submitted to an Aiken County jury to determine the amount of damages due to Plaintiff for this taking.

THEREFORE, this Court finds that Plaintiffs did not release the claims prosecuted in this case and Defendant permanently and inversely condemned the remainder of Plaintiffs property through its actions. This matter should be placed on the next available jury roster to determine the amount of damages to which Plaintiffs are entitled.

IT IS SO ORDERED.

This _____ Day of November, 2023

Judge Courtney Clyburn Pope



Aiken Common Pleas

Case Caption: Elroy D Fischer Jr , plaintiff, et al VS Dept Of Transportation South Carolina
Case Number: 2018CP0202797
Type: Order/Judgment and Form 4

So Ordered

The Honorable Courtney Clyburn Pope