

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dwayne Deleston,

Plaintiff,

vs.

Town of James Island, Charleston County
Public Works, and Dominion Energy South
Carolina,

Defendants.

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2023-CP-10-04924

**ORDER GRANTING SUMMARY
JUDGMENT**

RECEIVED
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SC Court of Appeals

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	<i>Pro Se</i>
Defendant DESC Attorney:	Krista M. McGuire, Esq.
Defendant Town of James Island Attorney:	Stephen Lynwood, Esq.
Defendant CCPW Attorney:	Graydon Olive, Esq.
Date of Hearing:	April 10, 2025
Court Reporter:	WebEx

THIS MATTER is before the Court on April 10, 2025, on Defendant Dominion Energy South Carolina, Inc.'s ("DESC") Motion for Summary Judgment filed December 23, 2024. The Motion is in the nature of a memorandum. Plaintiff filed a response to Defendant's Motion for Summary Judgment on January 7, 2025.¹ Krista M. McGuire, Esq., appeared on behalf of DESC. Mr. Deleston appeared *pro se*. For the reasons set forth below, the Motion is Granted.

FINDINGS OF FACT

In 2012, the County of Charleston undertook an improvement project to pave Honey Hill Road located on James Island in Charleston County. In connection with this project, the County

¹ The Plaintiff argues that the statute of limitations should be tolled based on equitable tolling. Plaintiff asserts he timely raised his claims mistakenly in the wrong forums, and the defendants have not shown prejudice to its ability to defend. The Plaintiff further asserts that the Defendant's statute of limitations argument is barred by equitable estoppel. The Plaintiff argues he was in communication with all Defendants regarding this matter, and that Defendant Charleston County Public Works misrepresentation caused the Plaintiff to delay filing his complaint for nearly two years.

of Charleston requested that DESC relocate two (2) existing electric poles, which were within the area to be paved. The electric poles were relocated within the Road Right of Way on Honey Hill Road by December 13, 2012.

Pro se Plaintiff, Dwayne Deleston, asserts ownership in two (2) contiguous pieces of property near the intersection of Fort Johnson Road and Honey Hill Road on James Island, South Carolina, TMS # 428-07-00-053 and TMS # 428-07-00-050. Plaintiff filed his Complaint on October 5, 2023, and DESC was properly served on October 30, 2023. In his Complaint, Plaintiff pled two causes of action against DESC: (1) criminal trespass in violation of S.C. Code Ann. §16-11-520(A); and (2) violation of the Broadband Accessibility Act, S.C. Code Ann. §58-9-3040 (A)(2). An Answer to the Complaint was filed November 29, 2023, denying Plaintiff's allegations. On July 24, 2024, Judge Thomas W. McGee III issued an Order dismissing Plaintiff's cause of action for trespass. Thus, Plaintiff's only remaining cause of action is his claim that DESC unlawfully installed and maintains electrical poles on his property in violation of the Broadband Accessibility Act.

LEGAL STANDARD

"The proper standard [under Rule 56(c)] is the genuine issue of material fact standard." Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (internal quotations omitted) (rejecting the "mere scintilla" standard for summary judgment). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 356, 628 S.E.2d 902, 910 (Ct. App. 2006). When factual matters are in dispute, all ambiguities, conclusions, and inferences arising in and from the evidence must be viewed in a light most favorable to the non-moving party. Id. However, when the facts are not in dispute, the question before the court is one of law. Id.

CONCLUSIONS OF LAW

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law.” Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRPC. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, “the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.” Id. “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRPC.

The Broadband Accessibility Act (the “Act”) authorizes a cause of action where “the owner of an interest in real property subject to an electric easement contends that the owner's property has been taken, destroyed, or physically damaged by the construction, installation, use, or enlargement of broadband networks within the electric easement on the owner's property that is not expressly provided for by the terms of the electric easement.” S.C. Code Ann. § 58-9-3040(A)(2024). The Act defines “broadband networks” as “any and all infrastructure, equipment,

materials, or component parts thereof that may be used to provide landline or wireless broadband service....” S.C. Code Ann. § 58-9-3010(4)(2024).

The statute of limitations for a claim under the Act is two (2) years after the later of (a) September 29, 2020, the effective date of the Act, or (b) the date the alleged broadband networks were first constructed or installed within the electric easement on Plaintiff’s property. S.C. Code Ann. § 58-9-3040(A)(1), (2)(2024).

It is uncontested that the electric poles at issue were relocated within the Road Right of Way on Honey Hill Road by December 13, 2012. Therefore, Plaintiff was required to file this action by December 13, 2014, or at the latest, September 29, 2022. Because Plaintiff filed this action on October 5, 2023, his remaining cause of action under the Broadband Accessibility Act is time barred. Accordingly, DESC is entitled to summary judgment as a matter of law.

CONCLUSION

For the reasons set forth above, the Court **GRANTS** DESC’s Motion for Summary Judgment.

IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

July 18, 2025
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Dwayne Deleston VS James Island Town Of , defendant, et al

Case Number: 2023CP1004924

Type: Order/Summary Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128