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SC Court of Appeals

ELECTRONICALLY FILED - 2025 Sep 09 11:18 AM - RICHLAND - COMMON PLEAS - CASE#2025CP4001667

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2025-CP-40-01667

Bush River C-Store, LLC,

Plaintiff/Landowner

vs

South Carolina Department of Transportation,

Defendant/Condemnor.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Defendant South Carolina Department of Transportation ("SCDOT") filed a Motion for Summary Judgment, pursuant to Rule 56, SCRPC, on May 8, 2025. Defendant's Motion is based on the grounds that (i) no genuine issues of material fact exist as to Plaintiff's challenge action; (ii) Plaintiff has failed to state proper causes of action; and (iii) Plaintiff's statutory challenge action has previously been decided and is barred by the doctrine of res judicata. A hearing on SCDOT's Motion was noticed and held on August 6, 2025 at the Richland County Courthouse. David G. Pagliarini, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq., attorney for the Plaintiff, did not appear following receipt of proper notice.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge, brought pursuant to South Carolina Code Section 28-2-470, to a condemnation action. The challenge statute provides that "[a]n action challenging the condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas . . ." The Eminent Domain Procedure Act ("the Act"), S.C. Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

In accordance with the Act, Defendant SCDOT filed and served a Notice of Condemnation (c/a number 2025-CP-40-01239) on Landowner on or around February 24, 2025 and deposited its estimate of just compensation (\$115,000.00) with the Clerk of Court. SCDOT is acquiring 1,734 square feet (0.040 acre) of right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation case was originally served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). Landowner filed a statutory challenge action to the case (2023-CP-40-05117) which was ultimately decided by an October 10, 2024 Order granting summary judgment in favor of Condemnor/SCDOT. Landowner appealed the lower court's grant of summary judgment; however, the appeal was dismissed by Order of the South Carolina Court of Appeals dated February 10, 2025. The Court of Appeals remitted the challenge action to the trial court where SCDOT maintains motions for recovery of fees and costs. Upon dismissal of the appeal, SCDOT filed and served the condemnation action now pending (c/a number 2025-CP-40-01239). Despite the grant of summary judgment and the dismissal of the appeal on the first statutory challenge action, Landowner filed this second challenge action on March 13, 2025. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and moving forward with Project construction.

The underlying condemnation action is referenced as Tract 377 (the tract reference in the Project plans), naming Bush River C-Store, LLC as Landowner. SCDOT seeks to acquire a strip

along the property frontage. SCDOT appraised the value of the acquisition, and has deposited its estimate of just compensation based on the appraisal.

Plaintiff/Landowner based the challenge action on an unsubstantiated claim that SCDOT lacks the right to condemn (despite SCDOT providing the statutory codes for its authority in the February 24, 2025 Condemnation Notice, paragraph 4).

Defendant SCDOT primarily argues that Judge Goodstein has previously addressed these issues and granted summary judgment by Order dated October 10, 2024 in case 2023-CP-40-05117. SCDOT further argues that the acquisition is for public use and is necessary to properly and safely design the Project.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP. Summary judgment is appropriate when “plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiff’s March 13, 2025 Complaint contends that SCDOT’s right to condemn does not exist and the Plaintiff is entitled to discovery as to whether or not the right to condemn exists.” Summons and Complaint, p. 2.¹ In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable, but it is not required to be absolute; the “use must be clearly appropriate and

¹ In the instant challenge action, Plaintiff has only filed a Complaint that provides limited basis for its challenge of the condemnation.

fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963). Judge Goodstein’s October 10, 2024 Order Granting SCDOT’s Motion for Summary Judgment clearly addresses and rules on SCDOT’s authority to condemn and SCDOT’s responsiveness to discovery.

The principle of res judicata provides that “final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action.” Venture Eng’g. Inc. v. Tishman Constr. Corp. of S.C., 360, S.C. 156, 600 S.E.2d 547, 550 (2004) (citing In re S.N.A. Nut Co., 215 B.R. 1004, 1008 (1997) (internal quotations omitted)). The parties in the instant case are the same as in case number 2023-CP-40-05117; the Plaintiff’s claim is the same in the instant case as in case number 2023-CP-40-05117; and the claim in the instant case has been adjudicated – an October 10, 2024 Order granting SCDOT’s motion for summary judgment is attached hereto as **Exhibit A**.

The principle of issue preclusion provides that “when an issue has been actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.” S.C. Prop. & Cas. Ins. Guaranty Ass’n v. Walm-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625, 627 (1991) (see Restatement (Second) of Judgments, § 27 (1982)).

Ultimately, Plaintiff’s complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCF summary judgment is mandated.

The Defendant has moved for fees and costs and may pursue the same by separate motion.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED and that Defendant may pursue recovery of fees and costs, in accordance with The Act, by separate motion.

IT IS SO ORDERED.

September _____, 2025

The Honorable Daniel M. Coble
Richland County, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc vs S C Department Of Transportation
Case Number: 2025CP4001667
Type: Order/Summary Judgment

So Ordered

s/ Daniel Coble, 2774

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Bush River C-Store, LLC and Pallav Desai,

Plaintiffs,

vs

South Carolina Department of Transportation,

Defendant.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-40-05117

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SC Court of Appeals

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

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Defendant South Carolina Department of Transportation (“SCDOT”) filed a Motion for Summary Judgment, pursuant to Rule 56, SCRCP, on April 30, 2024 and a Motion to Dismiss, pursuant to Rule 12(b)(6), SCRCP, on October 10, 2023 (collectively referred to hereafter as “Motions”). Defendant’s Motions are based on the grounds that (i) no genuine issues of material fact exist as to Plaintiffs’ challenge action; and (ii) Plaintiffs have failed to state proper causes of action. A hearing on SCDOT’s Motions was noticed and held on June 18, 2024 via Zoom. David G. Pagliarini, Esq. and Julia Anne E. McKeachie, Esq. appeared on behalf of Defendant SCDOT. S. Jahue Moore, Esq. appeared on behalf of the Plaintiffs. SCDOT has conceded that the Rule 12(b)(6) motion has been superseded by the Rule 56 motion and, therefore, only the latter is addressed.

BACKGROUND AND FACTUAL CONCLUSIONS

The instant case is a statutory challenge action, brought pursuant to South Carolina Code Section 28-2-470, regarding two (2) separate condemnation actions. The challenge statute provides that “[a]n action challenging the condemnor’s right to condemn must be commenced in separate proceedings filed in the court of common pleas . . .” The Eminent Domain Procedure Act, S.C.

Code Ann. § 28-2-470 (1976). Challenges to condemnations are cases in equity. *See Ga. Dep't of Transp. v. Jasper Cty.*, 355 S.C. 631, 586 S.E.2d 853 (2003).

This case stems from two (2) separate condemnation cases commenced by SCDOT to acquire right-of-way necessary to complete a road project known as Carolina Crossroads (the "Project") in Richland and Lexington Counties. Specifically, the Project involves the re-design and expansion of interchanges and secondary roads near I-20/I-26/I-126 and is one of the largest in South Carolina history. The Project will be completed in phases over a period of several years.

The underlying condemnation cases were served, but not filed, in September 2023 in accordance with the provisions of the South Carolina Eminent Domain Procedure Act (the "Act"). S.C. Code Ann. § 28-2-220(C). As such, the underlying condemnation actions have not been assigned case numbers. In accordance with the Act, the condemnation cases are stayed pending disposition of this challenge action. S.C. Code Ann. § 28-2-470. Therefore, SCDOT is barred from entering the property and from moving forward with Project construction.

The underlying condemnation actions are referenced as Tract 376 (the tract reference in the Project plans), naming Pallav Desai as Landowner, and as Tract 377, naming Bush River C-Store as Landowner. The term Landowner is defined as "one or more condemnees having a record fee simple interest in the property condemned or any part thereof." S.C. Code Ann. § 28-2-30(12). Tracts 376 and 377 are adjacent and, although there are common ownership interests, they are separately titled.

For Tract 376 (Pallav Desai), SCDOT seeks to acquire a small strip (826 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$8,300.00) once the condemnation action is permitted to proceed.

For Tract 377 (Bush River C-Store, LLC), SCDOT seeks to acquire a small strip (1,734 square feet) along the property frontage on Bush River Road. SCDOT appraised the value of the acquisition and is prepared to deposit its estimate of just compensation (\$115,000.00) once the condemnation action is permitted to proceed.

Plaintiffs/Landowners elected to file one statutory challenge action to address the condemnation actions, basing the challenge action on the following:

1. That the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions;
2. That the SCDOT does not have to take these properties and that there are "other ways the properties can be taken;"
3. All damages to the property remainders have not been considered by SCDOT; and
4. The Plaintiffs are filing this action out of "an abundance of caution" and "are obligated to file this action."

Defendant SCDOT filed its Motions arguing that the SCDOT acquisitions, which are the subjects of the challenge action, are for public use and are necessary to properly and safely design the Project.

Written discovery has been sent and responses have been provided by both parties.

SUMMARY JUDGMENT STANDARD

Motions for summary judgment should be granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. Summary judgment is appropriate when "plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Thompkins v. Festival Ctr. Grp. I, 306 S.C. 193, 410 S.E. 2d 593 (S.C. Ct. App. 1991); Priest v. Brown, 302 S.C. 405, 396 S.E. 2d 638 (S.C. Ct. App. 1990); Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact:

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.

See George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

Furthermore, “[a]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth *specific facts* showing there is a genuine issue for trial.” Cunningham v. Anderson Cty., 402 S.C. 434, 741 S.E.2d 545, 549 (Ct. App. 2013) (reversed in part on other grounds by Cunningham v. Anderson County, 414 S.C. 298, 778 S.E.2d 884 (2015) (citations omitted) (emphasis added)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 626 S.E.2d 1, 5 (2006).

LEGAL ANALYSIS AND CONCLUSIONS

The South Carolina Constitution provides: “Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property.” S.C. CONST. art. I, § 13 (1895). “The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies.” Ga. Dep’t of Transp. v. Jasper Cty., 355 S.C. 631, 586 S.E.2d 853, 856 (2003) (citing Edens v. City of Columbia, 228 S.C. at 573, 91 S.E.2d 280 (1956)).

Plaintiffs allege that acquisitions of small portions of the subject properties are not necessary. In South Carolina, a condemning authority must have a public necessity to exercise eminent domain power. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); White v. Johnson, 148 S.C. 488, 146 S.E. 411 (1929). The public necessity must be reasonable,

but it is not required to be absolute; the “use must be clearly appropriate and fitting for the purposes for which the land is being condemned.” Timmons v. S.C. Tricentennial Comm’n, 254 S.C. 378, 175 S.E.2d 805, 811 (1970); Groce v. Greenville S. & A. Ry. Co., 94 S.C. 199, 78 S.E. 888 (1913). A reasonable necessity combines the “greatest benefit to the public with the least inconvenience and expense to the condemning” authority. White, 146 S.E. at 412. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See* Sease v. Spartanburg, 242 S.C. 520, 131 S.E.2d 683 (1963).

SCDOT argues that Plaintiffs have produced no evidence that SCDOT has abused its discretion or that alterations to Bush River Road are not necessary to the larger project. SCDOT further contends that Plaintiffs/Landowners, after approximately nine (9) months, have failed to produce any facts, opinions, or witnesses that would lead to any discoverable evidence to support the contention that there are “other ways the properties can be taken.”

SCDOT Assistant Director of Rights of Way, Mega Projects, William C. Johnston, prepared an affidavit, filed with the court, which provides details as to the reasoning and necessity of the acquisitions, as well as to public use.

SCDOT argues that Plaintiffs’ claim that SCDOT has not properly addressed damages to the remainder may not be addressed in the instant challenge action pursuant to the Act, and that the issue of just compensation is the sole issue for determination in the underlying condemnation cases. S.C. Code Ann. § 28-2-340.

Finally, during the June 18, 2024 hearing in front of the Honorable Judge Goodstein, Plaintiffs argued that SCDOT failed to respond to its discovery requests and that it had no knowledge of who William C. Johnston was in relation to the underlying condemnation actions. SCDOT countered that these claims are false, as SCDOT responded to Plaintiffs’ discovery requests on March 14, 2024 and in those responses Mr. Johnston was named as a witness.

The court first addresses the Plaintiffs' claim that the SCDOT is barred by the doctrines of res judicata and collateral estoppel from pursuing the acquisitions. Plaintiffs have provided no evidence or made any tenable argument showing that the underlying condemnation actions have been litigated or are barred in any manner.

Plaintiffs further argue that the SCDOT does not have to take these properties and that there are "other ways the properties can be taken." This argument appears to be based on the public necessity doctrine previously cited in this Order. The question of necessity lies with the condemning authority, but a court can overturn that determination if there is clear abuse of discretion. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d 683 (1963).

There is no doubt that the Carolina Crossroads project is a public highway project both financed by and designed and constructed for the benefit of the public. SCDOT representative William C. Johnston provided an affidavit supporting these conclusions and Plaintiffs have not seriously challenged the public use aspect. Rather, Plaintiffs argue, without factual basis, that the proposed acquisitions from Tracts 376 and 377 are unnecessary as the project could have been designed in a manner that would allow the acquisitions to be avoided.

SCDOT is charged with maintaining South Carolina highways. S.C. Code Ann. § 57-5-10. SCDOT engineers and consultants designed and approved project plans for this section of the Project. The subject properties are situated along Bush River Road, an existing public right-of-way, and have direct access to and from the road.

In approximately nine (9) months of litigation, Plaintiffs have named no witnesses who hold qualifications to address any deficiency or problem with the SCDOT plans. Plaintiffs have failed to provide affidavits from any witnesses that would create a question of fact. Moreover, even if Plaintiffs provided an alternative to the SCDOT plans, that alone is insufficient: The question of necessity lies with the condemning authority. *See Sease v. Spartanburg*, 242 S.C. 520, 131 S.E.2d

The Landowner is in no way obligated to file a separate challenge action; rather, the above language is intended to put the Landowner on notice that failure to file a challenge action results in the waiver of the right to do so.

Finally, Plaintiffs argue that sufficient discovery has not been completed and that the Rule 56 motion, therefore, is premature. Specifically, Plaintiffs assert that SCDOT has not responded to written discovery requests. SCDOT counsel indicated that responses were provided on March 14, 2024. Plaintiffs filed this case on September 28, 2023. Plaintiffs have provided no affidavits to support this challenge action despite ample time to do so. There has been sufficient opportunity for discovery in this case and there are no genuine issues of material fact pertaining to Plaintiffs' claims or Defendant's defenses thereto as discussed herein. Ultimately, Plaintiffs' complaint fails to establish any specific factual basis on which it can stand; accordingly, and pursuant to Rule 56(c), SCRCP summary judgment is mandated.

NOW, THEREFORE,

IT IS ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

October 10, 2024

The Honorable Diane Goodstein
Orangeburg, South Carolina



Richland Common Pleas

Case Caption: Bush River C Store Llc , plaintiff, et al vs South Carolina Department
Of Transportation
Case Number: 2023CP4005117
Type: Order/Summary Judgment

It is so Ordered!

s/Diane S. Goodstein

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