

**STATE OF SOUTH CAROLINA**  
**COUNTY OF RICHLAND**

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO.: 2025-CP-40-01666

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SC Court of Appeals

Pallav Desai,

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, SCRCP, 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).

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In accordance with the Act, Defendant SCDOT filed and served a Notice of Condemnation (c/a number 2025-CP-40-01238) on Landowner on or around February 24, 2025 and deposited its estimate of just compensation (\$8,300.00) with the Clerk of Court. SCDOT is acquiring 826 square feet (0.019 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 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-40-01238). 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 376 (the tract referenced in the Project plans), naming Pallav Desai as Landowner. SCDOT seeks to acquire a small strip along

the property frontage on Bush River Road. 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. <sup>1</sup> 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

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<sup>1</sup> 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), SCRPC 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

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The Honorable Daniel M. Coble  
Richland County, South Carolina



Richland Common Pleas

**Case Caption:** Pallav Desai vs S C Department Of Transportation

**Case Number:** 2025CP4001666

**Type:** Order/Summary Judgment

So Ordered

s/ Daniel Coble, 2774

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