



water system facilities ("the Property") at public auction to Mamdouh Sabry Abdelrahman ("Sabry") for the sum of \$526,700. On December 1, 2011, Beaufort County issued a tax deed conveying the Property to Sabry. DIUC did not learn of the auction and of the conveyance to Sabry until early 2012. After learning of the sale and tax deed, DIUC filed a declaratory judgment action against Beaufort County, the Beaufort County Treasurer, and Sabry (*DIUC v. Douglas Henderson, et al.*, Civil Action No. 2012-CP-07-02715) seeking adjudication that the tax sale and tax deed are invalid, void, and unenforceable (hereafter "the Tax Sale Action"). The complaint in the Tax Sale Action alleged the requirements of Title 12, Chapter 51, of the South Carolina Code were not satisfied by the Defendants Beaufort County and Beaufort County Treasurer prior to the issuance of the December 1, 2011, tax deed conveying the Property to Sabry. As such, the purpose of the case was to set aside the tax sale. Via Stipulation of Dismissal filed April 8, 2013, the Tax Sale Action was dismissed pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure.

On September 12, 2013, DIUC filed a Notice of Condemnation and Tender of Payment thereby initiating Civil Action 2013-CP-07-2338, which seeks to condemn the Property (hereafter "the Condemnation Action"). The Condemnation Notice names Sabry as the Landowner-Condemnee and states the Condemnation Action is brought by DIUC pursuant to The South Carolina Eminent Domain Procedure Act and under the authority of S.C. Code §58-7-20 and S.C. Code §58-7-30.

In September of 2012, Mr. Sabry filed this action alleging DIUC does not have authority to condemn the Property. By virtue of The Eminent Domain Procedure Act, the Condemnation Action was automatically stayed pending resolution of this case. DIUC timely answered Sabry's Complaint which alleges seven causes of action. Then, on November 25, 2013, DIUC filed the

instant Motion for Summary Judgment with the Affidavit of John F. Guastella, the manager of DIUC, asserting that there is no triable issue as to any material fact, and that the Defendant DIUC is entitled to a judgment as a matter of law on all causes of action. DIUC also contends this action challenging DIUC's condemnation authority was not raised and litigated in good faith, as that term is used in The Eminent Domain Procedure Act.

On June 3, 2014, the Court held a hearing on DIUC's Motion for Summary Judgment. At the outset of the hearing, the Plaintiff conceded DIUC's Motion for Summary Judgment as to Counts 2 through 7 of the Complaint. The Court then heard oral argument as to the only remaining count, Count 1 of the Complaint, which alleges the Condemnation Action is a second action "for recovery of real property" and is therefore barred by S.C. Code §15-67-20.

#### **STANDARD OF REVIEW FOR SUMMARY JUDGMENT**

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Etheridge v. Richland Sch. Dist. I, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998). According to South Carolina case law, "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

#### **DISCUSSION**

Plaintiff's First Cause of Action alleges that DIUC's condemnation of the Property is barred by S.C. Code §15-67-20, which states "The plaintiff in actions for recovery of real

property or the recovery of the possession of real property is limited to one action for recovery.” Sabry asserts the voluntarily dismissed Tax Sale Action seeking to overturn the tax sale of the Property based on Beaufort County’s failure to comply with mandated procedures bars the Condemnation Action, which seeks to exercise the power of eminent domain afforded to DIUC by The Eminent Domain Procedure Act and S.C. Code of Laws §58-7-20 and §58-7-30.

The Court finds that neither of the two actions filed by DIUC is an action “for the recovery of real property,” as that term is used in §15-67-20; therefore, S.C. Code §15-67-20 does not apply to bar the Condemnation Action.

The Tax Sale Action previously filed by DIUC was an action to overturn a tax sale and it alleged Beaufort County failed to comply with the requirements of Title 12, Chapter 51, of the South Carolina Code. Quite simply, it was not an action “for the recovery of real property,” as that term is used in §15-67-20. The Condemnation Action was filed pursuant to DIUC’s eminent domain authority and pursuant to The South Carolina Eminent Domain Procedure Act. A condemnation action, by clear legislative intent, is not an action “for the recovery of real property,” as that term is used in §15-67-20, for the following reasons.

First, The Eminent Domain Procedure Act, codified at Title 28, Chapter 2, of the South Carolina Code, states that the Act is intended to create uniform procedures “for acquisition of property and ... the exercise of the power of eminent domain.” S.C. Code §28-2-20. Therefore, a condemnation action brought pursuant to the Act is an exercise of the power to condemn and acquire property; such cases are not a debate over title to property or an action to recover property, as that term is used in S.C. Code §15-67-20. Accordingly, the Notice of Condemnation does not dispute title to the Property, it specifically alleges that Mr. Sabry is the owner of the Property by virtue of the tax deed dated December 1, 2011.

Second, by its own mandate The Eminent Domain Procedure Act distinguishes actions to condemn property from all other causes of action affecting real property. See S.C. Code §28-2-60 (“The provisions of this chapter shall constitute *the exclusive procedure whereby condemnation may be undertaken* in this State.”) (Emphasis added.) Clearly the Legislature intended condemnation actions to be distinguished from all other actions, including actions “for the recovery of real property,” as that term is used in §15-67-20. Furthermore, The Eminent Domain Procedure Act states, “A condemnor may commence an action under this chapter for the acquisition of an interest in *any real property* necessary for any public purpose.” S.C. Code §26-2-60. (Emphasis added.) The Act does not limit the type of property that can be condemned and as South Carolina’s exclusive condemnation procedure, the Act does not permit any other statute to limit condemnation procedure or condemnable property.

It is clear to the Court that The Eminent Domain Procedure Act excludes condemnation cases from restriction by any other statute, including S.C. Code §15-67-20. It is also clear to the Court that S.C. Code §15-67-20 is not applicable to and does not operate as a bar to condemnation actions because condemnation actions are, by their nature, not “for the recovery of real property or the recovery of the possession of real property,” as those term are used in §15-67-20. Additionally, if the Court were to apply S.C. Code §15-67-20 to this action as Plaintiff suggests, the statute would be in conflict with The Eminent Domain Procedure Act.

Whenever there is a conflict between a statute and The Eminent Domain Procedure Act, The Eminent Domain Procedure Act controls because S.C. Code §28-2-20 unequivocally states, “In the event of conflict between this Act and *any other law* with respect to *any subject* governed by this Act, this Act shall prevail.” (Emphasis added.) Plaintiff herein suggests the Court apply S.C. Code §15-67-20 to effectively alter DIUC’s authority to condemn and the

procedure for condemnation established by The Eminent Domain Procedure Act. To so apply Section 15-67-20 places the Section in conflict with The Eminent Domain Procedure Act, the plain terms of which require the Act's provisions to prevail.

The Court also finds that DIUC's Motion for Summary Judgment should be granted because the Tax Sale Action and the Condemnation Action are too dissimilar to both constitute actions for the recovery of real property under SC Code §15-67-20. The South Carolina Supreme Court has made it clear that the actions for recovery of real property covered by S.C. Code §15-67-20 (and its predecessor statute prior to amendment) must be for the *same* cause of action. See Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201 (1912). That is not the case here; as the Condemnation Action and Tax Sale Action raise totally unique claims through different procedures. When two separate actions merely bring title to property into issue, as is the case here, the actions are not actions "for the recovery of real property," as that term is used in §15-67-20. Specifically, the Supreme Court held:

To be sure, there are other forms of action by which the title to real property may be brought in issue and determined, as for instance, an action for damages or trespass in the nature of common law action of trespass *quare clausum fregit*, an action for rents and profits, and actions for foreclosure of mortgage or partition in which a defendant sets up an independent legal title in himself, but none of these are actions "for recovery of real property" and therefore they do not fall within the provisions of [the statute].


Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201, 203 (1912); see also Tompkins v. Augusta & K.R. Co., 30 S.C. 479, 9 S.E. 521 (1889) (holding under previous version of statute that actions seeking different relief are not repeated actions "for the recovery of real property") and Frederick v. Chapman, 144 S.C. 137, 142 S.E. 247 (1928) (citing Tompkins v. Augusta & K.R. Co., 30 S.C. 479, 9 S.E. 521 (1889)); Elmore v. Davis, 49 S. C. 1, 26 S. E. 898 (1897); Foster v. Foster, 81 S. C. 311, 62 S. E. 320 (1908). Therefore, even though the Tax Sale Action and the

Condemnation Action both bring title of the Property into issue, the cases are so dissimilar that they are not both actions "for recovery of real property." As such, S.C. Code §15-67-20 does not bar the Condemnation Action.

CONCLUSION

Because the Plaintiff has conceded DIUC's Motion for Summary Judgment as to Counts 2 through 7 of the Complaint and because the aforementioned grounds support granting DIUC's Motion for Summary Judgment as to Count 1 of the Complaint, DIUC's Motion for Summary Judgment is granted as to all causes of action and this action shall be accordingly concluded.

IT IS SO ORDERED.

  
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The Honorable J. Ernest Kinard, Jr.  
Circuit Court Judge

June 12, 2014

 South Carolina