

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Carolina Chloride, Inc.,

Plaintiff,

vs.

South Carolina Department of Transportation,

Defendant.

In the Court of Common Pleas
Fifth Judicial Circuit

Civil Action Number 2007-CP-40233

RICHLAND COUNTY
FILED
2016 JUN -6 AM 9:59
JEANNETTE M. MCBRIDE
C.C.P. & G.S.

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SC Court of Appeals
Order on Plaintiff's Rule 59 Motion

This matter came before me in open court on May 24, 2016, on Plaintiff's Motion to Reconsider this Court's Order of January 26, 2016, dismissing the Complaint. Counsel for Plaintiff and Defendant appeared and Plaintiff submitted a memorandum in support of its motion.

This case was before the Court on remand from the South Carolina Supreme Court. Carolina Chloride, Inc. v. S.C. Dep't. of Transportation, 391 S.C. 429, 706 S.E.2d 501 (2011). Under the terms of that remand, I was to determine the ownership of the strip of land surrounding the Norfolk Southern railroad tracks lying between Plaintiff's property and Farrow Road. A trial was held in Columbia October 20, 21, and 22, 2014, where plaintiff and defendant presented witness testimony and documentary evidence. As part of that evidence, both parties entered copies of Plaintiff's title to its land and the associated recorded plat. Those instruments clearly show that Plaintiff's land shares a boundary with the lands of the railroad company and not with Farrow Road. Additionally, Plaintiff's counsel stipulated that his client did not own the property beneath the railroad. Trial transcript, page 90.

Plaintiff's present motion argues that the Court overlooked some South Carolina case law regarding the contiguity of purportedly separate tracts for property tax and other regulatory law purposes. These cases are distinguishable from the subject matter of the case at bar. Here, Plaintiff must physically cross the lands of another by laying an asphalt drive for vehicular travel across the land and tracks of the railroad. Absent consent of the railroad, this would be trespass. "Abut," as defined by our Supreme Court in another inverse condemnation access case, Mosteller v. County of Lexington, 336 S.C. 360, 365, 520 S.E.2d 620, 622-23 (1999), means "...to join at a border or boundary; to meet; to touch at the end or side." If Plaintiff abuts Farrow Road, it would have the right to enter the road. However, I find no reason to reverse my decision made on the basis of undisputed evidence that it does not abut.

Finally, Plaintiff objects to the secondary holding in the Order that it did not satisfy the condition precedent to maintain an inverse condemnation case that it make a clear request to the governmental entity sued so that it may correct the alleged taking. Palazzolo v. Rhode Island, 533 U.S. 606, 620, 121 S.Ct. 2448, 2459, 150 L.Ed.2d 592 (2001); Moore v. Sumter County Council, 300 S.C. 270, 272, 387 S.E.2d 455, 457 (1990). The permit system for drive entrances onto State highways is laid out in Article 7 of Chapter 5, Title 57, S.C. Code. Defendant has stated that it has no objection to a drive entrance for the abutting owner at this location. The Defendant was never given the opportunity to find an engineering solution among the parties hereto and the railroad prior to Plaintiff's sale of the property and filing suit for money damages.

For the foregoing reasons, Plaintiff's petition should be and hereby is DENIED.

AND IT IS SO ORDERED.



Joseph M. Strickland, Presiding Judge

Columbia, S.C.
May 25, 2016