STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GEORGETOWN	)	
Georgetown County,	)	C/A #: 13-CP-22-01062
Plaintiff,	)	
v.	)	**ORDER**
Davis & Floyd, Inc., Republic Contracting Corporation, S&ME, Inc., the South Carolina Department of Transportation and the City of Georgetown,	)	
Defendants.	)	

This matter came before the Court upon the motion of the Plaintiff, Georgetown County, for summary judgment as to its inverse condemnation cause of action against Defendants South Carolina Department of Transportation (hereinafter "SCDOT") and the City of Georgetown (hereinafter "City"). The Court does not reach the merits of the County's summary judgment motion because the Court rules as a matter of law that Georgetown County cannot maintain an inverse condemnation cause of action because the Takings Clause of the South Carolina Constitution applies only to the taking of private property. The Court only rules that as a matter of law the County cannot maintain an inverse condemnation cause of action against the SCDOT and City. Therefore, the Court hereby strikes Plaintiff Georgetown County's Inverse Condemnation cause of action.

Georgetown County (the "County") brought this action seeking recovery for property damage allegedly caused by a public works project allegedly constructed by SCDOT and/or the City. The County asserted various claims against SCDOT and City including an inverse condemnation cause of action. The County moved for summary judgment on its inverse condemnation claim. The County's summary judgment motion was initially heard on August 7, 2014, at which time both SCDOT and City argued the County could not maintain its inverse condemnation claim because the subject property was public property, not private property. The SCDOT raised its Rule 12(b)(6) defense in response to the County's Summary Judgment

Motion. The Court requested additional briefs as to whether a public entity can assert a cause of action for inverse condemnation. After the submission of supplemental briefs by all parties, the matter was argued again on April 30, 2015. For the reasons set forth below, I conclude the County cannot maintain its inverse condemnation claim and therefore strike that cause of action from County's complaint.

The South Carolina Constitution, Art. I, § 13 provides:

> (A) 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. Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use.
> ***Emphasis added.***

South Carolina has long recognized a cause of action for inverse condemnation grounded upon this Takings Clause. The elements of an action for an inverse condemnation are: (1) affirmative conduct of a government entity; (2) the conduct effects a taking; and (3) the taking is for a public use. *Carolina Chloride v. South Carolina Dept. of Transportation*, 391 S.C. 429, 706 S.E.2d 501, (2011); *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005). "Inverse condemnation is based on the constitutional prohibition against taking of private property for public use without the payment of just compensation." *Mowrer v Charleston County Party and Recreation Com'n*, 361. S.C. 476, 480, 605 S.E.2d 563 (Ct. App. 2004). "The term 'inverse condemnation' describes an action grounded, not on the statutory condemnation power, but on the constitutional proscription against the taking or damaging of property for public use without just compensation." *Vick v. South Carolina Dept. of Transp.*, 347 S.C. 470, 480, 556 S.E.2d 693, 698 (Ct. App. 2001); *Horry County v. Insurance Reserve Fund,* 344 S.C. 493, 44 S.E.2d 637 (Ct. App. 2001). Inverse condemnation may result from the government's physical appropriation of private property, or it may result from the government-imposed limitations on the use of private property. *Carolina Convenience Stores, Inc. v. City of Spartanburg,* 398 S.C. 27, 30, 727 S.E.2d 28 (Ct. App. 2012).

The power to take private property for public use without an owner's consent is one of the powers inherent in the concept of sovereignty. The Takings Clause, like the corresponding clause of the Fifth Amendment of the U.S Constitution which provides for just compensation for private property taken, is merely a limitation on the use of the power. It is not part of the power

itself, but a condition upon which the power may be exercised. *United States v. Jones*, 109 U.S. 513, 3 S.Ct. 346 (1883).

The Takings Clause applies only to "private" property by its terms. When the language of a statutory or constitutional provision is clear and unambiguous, that clear meaning must be applied.

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The term "private property" is clear and unambiguous. The inclusion of the word "private" is a limiting term which specifically excludes "public" property. As such, the takings clause of the constitution can only be interpreted to prohibit the taking of private, not public, property.

Our court considered a similar issue many years earlier. *Edgefield Cnty. v. Georgia-Carolina Power Co.*, 104 S.C. 311, 88 S.E. 801, 807 (1916). One of the issues presented was whether the constitution required just compensation for the taking by flooding of a public highway. The Court concluded that where public property is flooded by the legislatively authorized erection of a dam, the constitutional protection against the taking of private property does not apply. In dicta and referring to a road, the *Edgefield* Court stated, "[b]ut public property, we think, does not fall within the protection of the Constitution. *Leitzsey v. Power Co.*, 47 S. C. 479, 25 S. E. 744, 34 L. R. A. 215; Elliott on Roads and Streets, 484." 88 S.E. 801, 807 (1916).

Other courts have similarly considered this issue. The United States Fifth Circuit Court of Appeals held that a state agency may not sue the state under the Fifth and Fourteenth Amendments. *Board of Levee Com'rs of the Orleans Levee Bd. v. Huls,* 852 F.2d 140 (5th Cir.

1988). The United States District Court for the Western District of Texas held that a political subdivision may not bring a claim pursuant to a statute written to protect individual rights such as freedom of speech. *City of Alpine, et. al. v. Greg Abbot,* 730 F.Supp.2d 630 (W.D.Tx 2010). The Supreme Court of Mississippi held that the legislature may take or devote public land to an additional public use without paying any compensation. *Board of Supervisors of Covington County v. State Highway Commission,* 194 So. 743 (Miss. 1940).

The New Mexico Supreme Court found that a county hospital and county courthouse were public property and not private property within the constitutional provision against the taking of private property for public use without just compensation. *State ex. rel. State Highway Commission v. Board of County Com'rs of Dona Ana County*, 72 N.M. 86, 380 P.2d 830 (1963). That court determined:

> We think it is established that absent statutory authority, property of one public body being used for public purposes cannot be condemned by another public body. *City of Albuquerque v. Garcia*, 17 N.M. 445, 130 P. 118.
>
> ....
>
> We recognize the rule to be as stated in 2 Nichols, Eminent Domain 223, § 5.9, that:
>
> 'Over the property which a municipal corporation acquires as an agency of the state for the performance of the strictly public duties devolved upon it by law, the legislature may exercise a control to the extent of requiring the municipal corporation, *without receiving compensation therefor,* to transfer such property to some other agency of the government to be devoted to similar public uses or to other strictly public purposes.
>
> In *The School District of the Speers Borough School District v. Commonwealth,* 383 Pa. 205, 117 A.2d 702, 703, the rule is stated as follows:
>
> '**Constitutional prohibitions against the taking of property without compensation apply only to privately owned property.** Article I, Section 10 of the Constitution of Pennsylvania, P.S. Therefore it has always been held that the Commonwealth may take property of a political subdivision or agency without payment therefor, Chester County Institution Dist. v. Commonwealth, 341 Pa. 49, 57, 17 A.2d 212, the right to compensation in such cases being only a matter of grace or allowance by the Legislature.'
> (emphasis added).

Id. 72 N.M. at 88-89, 380 P.2d at 832.

The same reasoning applies when property is allegedly taken or damaged by one political subdivision of the state from another political subdivision of the state. In the *City of Evanston v.*

Regional Transportation Authority, 559 N.E.2d 899 (Ill. 1990), a city brought an action seeking injunctive relief against the RTA. The RTA counterclaimed alleging a taking and damaging of their property in violation of both the state and federal constitutions. The court phrased the issues as:

> (1) "[I]s a political subdivision of the state such as the RTA and PACE protected under the Illinois and United States constitutions from the taking of its property by another political subdivision; and
> (2) does such a political subdivision have the rights to due process and equal protection under the Illinois and United States constitutions?
> 559 N.E.2d at 905.

Answering those issues, the court said:

> [T]here is no authority that private property within the meaning of the Fifth Amendment includes public property of a political subdivision taken by another political subdivision of the same state. RTA's and PACE's property was public property that was not protected by the United States Constitution just compensation clause ... [and] it was nevertheless public property that was not protected by the Illinois Constitution's just compensation clause.

Id.

The County correctly argues that some states have reached a different result. However, the Court finds that public property is not within the protection of the Takings Clause. Further, South Carolina jurisprudence on statutory interpretation requires that appropriate meaning be given to the clear and unambiguous term "private property".

Since Georgetown County's property is public property, the takings clause has no application. The Takings Clause is limited to private property by its clear and unambiguous terms. The purposes and intent of the enactment of the Takings Clause do not support an application to public property. South Carolina has previously addressed in dicta this issue, stating that public property does not fall within the protection of the Takings Clause. Other states have similarly addressed this issue and determined that public property is not protected by the Takings Clause of the constitution.

For the reasons stated above, the Court finds that Georgetown County cannot maintain an inverse condemnation action against SCDOT and City because the Takings Clause applies only to private property and not to public property. Therefore, because the Court finds as a matter of law that Georgetown County cannot maintain an inverse condemnation cause of action that claim

is stricken and the Court grants the SCDOT Rule 12(b)(6) motion[1]. In so ruling, the Court notes that this is a novel question of law in South Carolina, and it is this Court's intent by striking the County's inverse condemnation cause of action to affect the County's substantial right to proceed with this cause of action and that this Order be immediately appealable.

AND IT IS SO ORDERED.

Larry B. Hyman, Jr.
Presiding Circuit Judge

Conway, South Carolina
~~October~~ Nov 4, 2015

[1] The Court notes that this defense was raised not only in the Answer of the SCDOT, but was also referenced in "Defendant SCDOT's Supplemental Memorandum in Opposition to Plaintiff's Motion for Summary Judgment," dated September 5, 2014.