ORIGINAL

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GEORGETOWN	
Georgetown County, Plaintiff, v. Davis & Floyd, Inc., Republic Contracting Corporation, S&ME, Inc., the South Carolina Department of Transportation and the City of Georgetown, Defendants.	C/A #: 13-CP-22-01062 **ORDER DENYING GEORGETOWN COUNTY'S SCRCP 59(e) MOTION TO RECONSIDER**

This matter is before the Court upon the Plaintiff's SCRCP 59(e) motion to reconsider the Court's Order of November 4, 2015. In that Order, the Court struck Plaintiff's inverse condemnation cause of action against the City of Georgetown and the South Carolina Department of Transportation. The Court has carefully reviewed the Plaintiff's motion and arguments in support and heard oral arguments on August 5, 2016. After due consideration, Georgetown County's motion to reconsider is **DENIED.**

The County sets out three separate grounds for reconsideration in its motion. First, the County simply requests the Court to reconsider its ruling on the merits and find that the Takings Clause of the South Carolina Constitution protects the County's public property from inverse condemnation. The Takings Clause specifically protects "private" property only. The Court declines to reconsider its ruling for the reasons set out in the original Order.

Second, the County claims that the Court failed to specifically address certain arguments it asserted. The Court considered all arguments presented by the County and determined that those arguments were unfounded even if they were not specifically addressed in the Court's written order. The County asserts that the Eminent Domain Procedure Act demonstrates a legislative intent to allow the County to be a condemnee for purposes of eminent domain.

However, the Court finds that the Act is a procedural act that does not change the substantive law. S.C. Code Ann. § 28-2-20 is entitled "Legislative Intent" and specifically states:

> This act amends the law of this State relating to procedures for acquisitions of property and to the exercise of the power of eminent domain. It is the intention of the General Assembly that this act is designed to create a uniform procedure for all exercise of eminent domain power in this State. It is not intended by the creation of this act to alter the substantive law of condemnation....

S.C. Code Ann. § 28-2-20.

As that Act is procedural only and does not change the substantive law, it does not change the Court's analysis of the Takings Clause of the S.C. Constitution.

The County also claims that the State Authorities Eminent Domain Act also requires the conclusion that the County can bring an inverse condemnation action. "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). The Act does not govern inverse condemnation claims.

Moreover, the State Authorities Eminent Domain Act codifies the grant of eminent domain authority to certain state authorities. The Act does not change the clear limitations of the Constitution. It does not re-define "private" property to include "public" property. The law presumes that the legislature did not intend to change the common law by a statutory enactment unless the language employed clearly indicates such an intention. The rules of the common law are not to be changed by doubtful implication or overturned except by clear and unambiguous language. See, *Nuckolls v. Great Atlantic & Pacific Tea Co.*, 192, S.C. 156, 5 S.E.2d 862 (1939); *Coakley v. Tidewater Const. Corp.*, 194 S.C. 284, 9 S.E.2d 724 (1940); *Branchville Motor Co. V. Adden*, 158 S.C. 90, 155 S.E. 277 (1930). There is no such clear indication in the language of State Authorities Eminent Domain Act.

Further, the Plaintiff is not arguing for a change to the common law. Instead, the Plaintiff is arguing for a change to the Constitution. The Constitution cannot be amended by statute. *See,* S.C. Constitution, Art. XVI. Clearly, the State Authorities Eminent Domain Act did not change the Constitution by implication and has no application here. The Act does not change the

constitutional limitation applying to "private" property only. The Act does not change the constitutional analysis.

The County circularly argues that public policy requires that the Court read the Constitution and the Eminent Domain Procedures Act together to require payment for the taking of public property. The Court finds no merit in the public policy argument and declines to read the word "private" out of the constitution on the basis of public policy.

Last, the County contends that the Court failed to consider that its ruling would work an absurdity. In support of that position, the County recites that the purpose of the Takings Clause is to prevent the government from forcing some people alone to bear public burdens which in all fairness should be borne by the public as a whole. Plaintiff relies upon *Sea Cabins on Ocean IV Homeowners Ass'n v. City of N. Myrtle Beach*, 345 S.C. 418, 429, 548 S.E.2d 595, 601 (2001) for authority. However, in *Sea Cabins*, the reference to "some people" is in fact referring to the ***private*** property owner Plaintiffs. *Sea Cabins* demonstrates only that one purpose of inverse condemnation is to prevent private property owners from bearing public burdens. *Id.* That does not support the County's position. *Sea Cabins* merely involved the taking of "private" property. There was no issue before the Court in Sea Cabins dealing with the taking of public property. There was no ruling by the Court that the taking of public property is proscribed by the Takings Clause. The Court does not believe that the clumsy use of the word "some" was intended to rule on an issue of this magnitude, especially when that issue was not before the Court.

The County claims that the Court's ruling results in the citizens of Georgetown County bearing a burden which should be borne by the State of South Carolina, and alleges that is an absurd result. The Court disagrees. However, the County also argues that the burden should be shifted from the citizens of Georgetown County to the citizens of a subset of Georgetown County, those County residents who happen to reside within the City limits of the City of Georgetown. That result is completely inconsistent with the County's absurdity argument. The County recognizes that the Framer's intention should control if an absurdity would result. The Court has previously found that the Framer's intent included the word "private" which necessarily excludes application of the Takings Clause to public property. The Court finds no merit in the County's argument regarding absurdity.

For the reasons stated above, the Court **DENIES** Georgetown County's motion to reconsider.

AND IT IS SO ORDERED.

Judge Larry B. Hyman, Jr.
Presiding Judge, Fifteenth Circuit

Georgetown, South Carolina

1-3, 2017