STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster, Robert Collins, and Pamela Collins, Plaintiffs, v. Weston & Sampson, Inc.; Weston & Sampson Engineers, Inc.; Weston & Sampson Services, Inc.; Weston & Sampson CMR, Inc.; City of Columbia, SC; North American Pipeline Management; and Layne Inliner, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2015-CP-40-05598 **ORDER ON DEFENDANT WESTON & SAMPSON ENGINEERS, INC.'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court upon Motion for Summary Judgment by Defendant Weston & Sampson Engineers, Inc., which was filed on October 30, 2017. A hearing was conducted at the Richland County Judicial Center on January 3, 2018. Plaintiffs were represented by John Hodge, Esquire and Geoffrey Chambers, Esquire; Defendant Weston and Sampson Engineers Inc. was represented by Amy H. Wooten, esquire; Defendant City of Columbia was represented by Jeanne Lisowski, Esquire; Defendant North American Pipeline Management was represented by R. Trippett Boineau, III, Esquire; and Defendant Layne Inliner was represented by Rett Kendall, Esquire and Brandon Gottschall, Esquire.

For the reasons set forth below, Defendant Weston & Sampson Engineers, Inc.'s Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART.

FINDINGS OF FACT

Plaintiffs are landowners and residents of parcels of real property located on Castle Road in the City of Columbia, South Carolina ("the City"). The City owns and operates the sewer lines that run beneath a portion of the Plaintiffs' properties. Each parcel of land has a sewer easement held by the City, running across a back portion of each of the properties between Castle Road and approximately fifty feet from the banks of the Broad River.

Pursuant to a Consent Decree with the U.S. Environmental Protection Agency, the City is engaged in a comprehensive inspection, remediation and maintenance program for its sewer lines, including the sewer line running across the Plaintiffs' properties. The City hired various contractors to perform services specific to this effort, such as clearing of sewer easements, smoke testing, and visual inspections of the lines, construction repairs and remediation of the property after the completion of the project. The City did not contract with Defendants Weston & Sampson, Inc.; Weston & Sampson Services, Inc.; or Weston & Sampson CMR, Inc. in connection with the sewer project.

Specifically, the City entered a contract for engineering services with Weston & Sampson Engineers, Inc. ("Defendant Weston") dated March 18, 2014. The contract specifies the rights and obligations of the City and Defendant Weston but also indicates that it is not intended to benefit anyone other than those parties. In addition to contracting with Defendant Weston, the City contracted with Defendant Layne Inliner as the general contractor; and Defendant Layne Inliner, in turn, subcontracted with NAPM to perform certain construction services on the project.

During the project, it was determined that portions of the sewer line along the Broad River, including portions located on some of the Plaintiffs' properties along Castle Road, were inaccessible and that it would be necessary to perform clearing and grading work to gain access to

those sections of the sewer line in order to service those sections. NAPM proposed clearing the City's sewer easement along the inaccessible sections to provide the needed access. Defendant Layne Inliner presented an estimate and proposed quantities for this additional work. Defendant Weston concurred with the pricing and quantities identified by Layne Inliner and recommended to the City that the access be added to the project. Defendant Weston initialed a memorandum containing its recommendation that the access be added to Layne Inliner's contract with the City.

However, before the project's completion, Plaintiffs objected to the work and demanded all work cease; and Defendants complied. Defendants were, therefore, unable to complete the slip lining or post-project remediation of the area. To date, this work remains incomplete.

Plaintiffs filed their Complaint on September 11, 2015, an Amended Complaint on December 16, 2015, and a Second Amended Complaint on January 13, 2016. The seven plaintiffs sued eight defendants, asserting causes of action for trespass, gross negligence, nuisance, violation of S.C. Code Ann. §16-11-780 for "destruction of archaeological structures," "taking," negligence, and negligence *per se*.

Six of the plaintiffs are the owners of real property on Castle Road: Plaintiffs Modesta and David Brinkman own the property and reside at 154 Castle Road; Plaintiff James Coleman owns the property and resides at 150 Castle Road; Plaintiffs Carl and Karen Foster own the property and reside at 142 Castle Road; and Plaintiff Robert Collins owns the real property located at 156 Castle Road, which is undeveloped, but do not reside there. It is also undisputed that Plaintiff Pamela Collins is not a record owner of the property at 156 Castle Road.

CONCLUSIONS OF LAW

Summary judgment is appropriate "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." Rule 56(c), SCRCP. The party moving for summary judgment bears the initial burden of pointing to the absence of a genuine issue of material fact. *Richardson v. State Record Co., Inc.*, 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998). The burden then shifts to the non-moving party to respond with specific facts to show that there is a triable issue of fact. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994). The Court must view the facts and inferences therefrom in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998).

I. Defendants Weston & Sampson, Inc.; Weston & Sampson Services, Inc.; and Weston & Sampson CMR, Inc. are Entitled to Judgment as a Matter of Law.

Counsel for the Plaintiffs conceded and represented to the Court during oral argument that Plaintiffs possess no viable claims against these defendants and agree they should be dismissed. In light of the Plaintiffs' representations to this Court regarding these defendants and the dearth of evidence to support Plaintiffs' claims against these defendants, the Court finds that Defendants Weston & Sampson, Inc.; Weston & Sampson Services, Inc.; and Weston & Sampson CMR, Inc. are entitled to judgment as a matter of law as to all claims against them.

II. Plaintiff Pamela Collins is Dismissed as a Plaintiff.

Plaintiff Pamela Collins has failed to present evidence that she is an owner of record of the real property located at 156 Castle Road as alleged in the Plaintiffs' Second Amended Complaint or that she otherwise has a legally recognized and protectable interest in that property.

South Carolina courts have long adhered to the requirement of standing to institute and prosecute an action. *See, e.g., Joytime Distrib. & Amusement v. State*, 338 S.C. 634, 639, 528 S.E.2d 647 (1999) ("Standing to sue is a fundamental requirement in instituting an action.") In assessing whether a party has standing, the State adheres to the stringent standing test set forth in

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). *Id.* The *Lujan* test requires the Plaintiff to demonstrate the following:

> First, the plaintiff must have suffered an 'injury in fact' – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.' Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'

Id. (citing *Lujan*, 504 U.S. at 559-61).

The uncontroverted evidence before the Court as to Mrs. Collins' standing confirms that she is not identified as an owner on the real property records for 156 Castle Road. Further, no evidence of any other legal interest that would confer upon her standing to maintain suit to recover for alleged property damage has been presented. Put simply, Mrs. Collins has failed to establish any element of the *Lujan* test for standing. Accordingly, Weston & Sampson Engineers, Inc. is entitled to judgment as a matter of law as to Plaintiff Pamela Collins' claims.

III. Defendant Weston Owed No Duty of Care to Plaintiffs.

Plaintiffs have failed to present evidence of a duty of care owed to them by Defendant Weston to support their negligence-based claims. To have actionable negligence – ordinary or gross – there must exist a legal duty of care owed by the defendant to the plaintiff. *Platt v. CSX Transp., Inc.*, 665 S.E.2d 631, 635, 379 S.C. 249 (S.C. App. 2008) (citation omitted); *Rogers v. S.C. Dep't of Parole and Cmty. Corr.*, 320 S.C. 253, 255, 464 S.E.2d 330, 332 (1995). To prevail on a negligence claim – ordinary or gross – a plaintiff must demonstrate "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Id.* (citations omitted). Whether a duty is owed

is not a matter of fact; it is a matter of law for the Court to determine. *See id.* (citation omitted). As a general rule, there is no common law duty to act; rather, a duty may be created by statute, contractual relationship, status, property interest, or some other special circumstance. *Id.* (citations omitted); *see also 16 Jade St., LLC v. R. Design Constr. Co.*, 405 S.C. 384, 747 S.E.2d 770 (2013).

Further, to have an actionable claim of professional negligence, it is well settled that allegations of professional negligence need to be supported by a standard of care expert who can establish what the duty is (i.e., what the applicable standard of care is) and whether that duty or standard was met. *Griffin Plumbing v. Jordan, Jones & Goulding*, 351 S.C. 459, 474, 570 S.E.2d 197 (S.C. App. 2002) (finding expert testimony required to establish the standard of care applicable to defendant engineering firm and a breach of that standard of care by said firm); *City of York v. Turner-Murphy Co., Inc.*, 317 S.C. 194, 452 S.E.2d 615 (Ct. App. 1994); *see also Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 758 S.E.2d 501 (2014).

Here, Plaintiffs seek to maintain their claims of professional negligence by asserting that Defendant Weston owed a duty of care to Plaintiffs to design the access, secure permits, ensure Defendant Layne Inliner's contractor stayed within the easement boundaries, and supervise the company's employees working on the project. However, Plaintiffs have failed to adduce evidence demonstrating that Defendant Weston owed Plaintiffs these purported duties of care. Plaintiffs rely on Defendant Weston's contract with the City and the statutes regulating the licensure of professional engineers found at S.C. Code Ann. § 40-22-10 *et seq.* as bases for their contention that Defendant Weston owed them a duty or duties of care.

Plaintiffs' reliance on Defendant Weston's contract with the City as creating these purported duties is misplaced. As an initial matter, Plaintiffs do not contend and have presented no evidence that they have a contractual relationship with Defendant Weston. Further, Plaintiffs

do not dispute they are not beneficiaries of the contract, and the contract makes clear they are not such. Plaintiffs have presented no evidence, including no expert testimony, contradicting the plain language of the contract or establishing that the contract, by its terms, creates duties to anyone beyond the parties to it.

Plaintiffs' reliance on S.C. Code Ann. § 40-22-10 *et seq.* as the basis for their contention that Defendant Weston owed them a duty of care is likewise misplaced. Plaintiffs cite to *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (S.C. App. 1997) in support of their proposition that S.C. Code Ann. § 40-22-10 et seq. imposes a duty of care upon Weston & Sampson Engineers, Inc. to the Plaintiffs to "safeguard life, health, and property and to promote the public welfare." However, *Hurst* defeats the Plaintiffs' argument here.

In *Hurst*, the Court of Appeals states that the essential purpose of Chapter 22 is "the regulation of the practice of a profession, rather than the imposition of civil liability to private individuals." *Hurst*, 329 S.C. at 479, 494 S.E.2d at 851 (referencing *Dorman v. Aiken Commc'ns., Inc.*, 303 S.C. 63, 398 S.E.2d 687 (1990); *Whitworth v. Fast Fare Mkts. of S.C. Inc.*, 289 S.C. 418, 338 S.E.2d 155 (1985); 4 S.C. Juris. Action § 14 (1991) (stating that in the determination of private rights, the court has applied as a general rule that a statute that does not purport to establish civil liability, but merely makes provision to secure the safety or welfare of the public as an entity, is not subject to a construction establishing civil liability). Accordingly, the Court of Appeals disagreed with the plaintiff that state statutes setting standards for engineers may be the foundation for a negligence claim and affirmed the trial court's granting of summary judgment as to the negligence per se claim predicated upon Chapter 22.

Moreover, Plaintiffs have adduced no evidence, including no expert testimony, to demonstrate that some other statute obligated or created a duty on the part of Defendant Weston

to design the access, secure permits, ensure that Defendant Layne Inliner's contractor stayed within the easement boundaries, or to supervise the company's employees working on the project, nor have Plaintiffs presented any evidence demonstrating that Defendant Weston had a common law obligation to Plaintiffs to do those things. Further, Plaintiffs have not presented evidence that matters of design, permitting, or supervision of a licensed employee's work fall within the ambit of common knowledge or experience such that expert testimony establishing the standard of care and a breach thereof is not required.

As Plaintiffs have failed to demonstrate a duty of care owed by Defendant Weston to them, Defendant Weston & Sampson Engineers, Inc. is entitled to judgment as a matter of law on Plaintiffs' claims of negligence, gross negligence, and negligence *per se*.[1]

IT IS THEREFORE ORDERED that Defendant Weston & Sampson Engineers, Inc.'s Motion for Summary Judgment is GRANTED IN PART.

IT IS FURTHER ORDERED that Pamela Collins, Weston & Sampson, Inc., Weston & Sampson Services, Inc., and Weston & Sampson CMR, Inc. are DISMISSED as parties to this action.

IT IS FURTHER ORDERED that Plaintiffs' claims Plaintiffs' claims for negligence, gross negligence, and negligence *per se* are DISMISSED as to Defendant Weston & Sampson Engineers, Inc..

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[1] Even if Plaintiffs had presented evidence to demonstrate the existence of a duty of care, Defendant Weston would still be entitled to judgment as a matter of law as to Plaintiffs' professional negligence claims due to Plaintiffs' failure to adduce expert testimony establishing a breach of the applicable standard of care. *See Griffin*, 351 S.C. at 474, 570 S.E.2d 197; *City of York*, 317 S.C. 194, 452 S.E.2d 615; and *Dawkins*, 408 S.C. 171, 758 S.E.2d 501 (2014).

IT IS FURTHER ORDERED that the remainder of Defendant Weston & Sampson Engineers, Inc.'s Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.

Jocelyn Newman
Circuit Court Judge

May 22, 2018
Columbia, South Carolina.

Richland Common Pleas

Case Caption: Modesta Brinkman , plaintiff, et al vs Weston And Sampson Inc , defendant, et al

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So Ordered

Jocelyn Newman