

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 CITY OF COLUMBIA'S MOTION FOR SUMMARY JUDGMENT

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SC Court of Appeals

This matter comes before the Court upon Motion for Summary Judgment by Defendant City of Columbia, which was filed on October 20, 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 City of Columbia'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. The easement grants to the City the right "to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size..."

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. After an inspection of those sewer lines revealed that "slip lining" maintenance was needed, Defendant North American Pipeline Management ("NAPM") began clearing the easements of obstructions, including vegetation, shrubbery and trees that had grown over the easements since the sewer lines were installed in the early 1980's. It is also undisputed that the entire portion of the properties upon which NAPM was working was a wooded, overgrown portion of the property without improvements.

The City hired various contractors (including the other defendants in this action) 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. 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), SCRPC. 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. 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, Defendant City of Columbia is entitled to judgment as a matter of law as to Plaintiff Pamela Collins' claims.

II. Plaintiffs' Claims for Violation of S.C. Code Ann. §16-11-780 are Dismissed.

In their Second Amended Complaint Plaintiffs also seek damages for the City's alleged violation of S.C. Code Ann. §16-11-780. Specifically, Plaintiffs contend that Defendants' maintenance of the subject sewer line disturbed two historic bridge abutments.

By Order filed on May 16, 2018, this Court determined that the statute upon which Plaintiffs rely for this claim is wholly inapplicable to this case. Specifically, the Court finds that there is no governing preservation or conservation authority which recognizes the alleged archeological structures as either archeological resources or historic structures. Additionally, a plain reading of S.C. Code Ann. §16-11-780(K)(3) would exempt the parties in this action from any liability under this statute. The remainder of the conclusions of law contained in the Court's May 16, 2018, are hereby incorporated by reference; and Defendant City of Columbia is entitled to judgment as a matter of law as to Plaintiffs' claims for damages to and destruction of archaeological structures.

IT IS THEREFORE ORDERED that Defendant City of Columbia's Motion for Summary Judgment is GRANTED IN PART.

IT IS FURTHER ORDERED that Plaintiff Pamela Collins is DISMISSED as a party to this action.

IT IS FURTHER ORDERED that Plaintiffs' claims for violation of S.C. Code Ann. §16-11-780 are DISMISSED as to Defendant City of Columbia.

IT IS FURTHER ORDERED that the remainder of Defendant City of Columbia's Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.

May 22, 2018
Columbia, South Carolina.

Jocelyn Newman
Circuit Court Judge



Richland Common Pleas

Case Caption: Modesta Brinkman , plaintiff, et al vs Weston And Sampson Inc ,
defendant, et al
Case Number: 2015CP4005598
Type: Order/Summary Judgment

So Ordered

Jocelyn Newman

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