

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
C.A. No. 2017-CP-42-01180

Road/Route: S-30
Project: 0041116
Tract: 12

South Carolina Department of
Transportation,)

Condemnor,)

vs.)

Geary Thomas Dooly and Eleanor S. Dooly,)

Landowner(s).)

ORDER DENYING
LANDOWNER'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION

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SO Court of Appeals

This matter comes before this court on the Motion of Landowners, Geary Thomas Dooly and Eleanor S. Dooly, to dismiss the above-captioned case for lack of subject matter jurisdiction. A hearing on Landowners' Motion was held on Tuesday, August 22, 2018 in the Spartanburg County Court of Common Pleas. Appearing at the hearing for the South Carolina Department of Transportation was Ryan F. McCarty of the Spartanburg County Bar. Geary Thomas Dooly appeared *Pro Se*. Eleanor S. Dooly was not present at the hearing.

PROCEDURAL HISTORY

The South Carolina Department of Transportation (hereinafter, "Condemnor" or "SCDOT") filed a Summons, Notice of Filing, Condemnation Notice and Tender of Payment, Lis Pendens, and Affidavit with the Court on April 6, 2017 against Geary Thomas Dooly and Eleanor S. Dooly (hereinafter, "Landowners") seeking to acquire 6,929 square feet (0.159 acres) of real property from the Landowners for a public purpose. That public purpose is to improve the

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functionality and safety of and around Clifton Glendale Road and Zion Hill Road in Spartanburg County, South Carolina.

The Landowners were personally served with the aforementioned pleadings on June 6, 2017. However, prior to being served with the condemnation action, Landowners filed an "Affidavit of Nonconsent" with the court on May 4, 2017 in which the Landowners averred that this court has no jurisdiction over the Landowners; that the Landowners do not consent to being parties in this condemnation action; that Landowners are "living [men]" and not "corporate person[s];" and that the Spartanburg County Court of Common Pleas is a military court to which the Landowners do not consent to appearing in a military court.

On March 5, 2018, Landowners filed a Notice of Motion and Motion to Dismiss via Hearing for Lack of Subject Matter Jurisdiction with this Court. On March 23, 2018, the South Carolina Department of Transportation filed a Reply in Opposition to the Landowners' motion. On August 14, 2018, Landowner filed a Memorandum of Law in support of his Petition.

FINDINGS

This case concerns Condemnor's acquisition of real property from the Landowners for a public purpose. Landowners are the owners of a certain piece of real property in Spartanburg County, South Carolina more accurately described below. Landowner Eleanor S. Dooly purchased the subject property fee simple in 1979 and subsequently conveyed to Landowner Geary Thomas Dooly a fee simple joint interest in the property in 2004. Landowners are the fee simple owners of the following real property:

ALL that certain tract or parcel of land in the County of Spartanburg, State of South Carolina being a portion of Lot No. 7 on plat of J.L. Dunagin Estate Lands made by W.N. Willis, date May 6, 1969, recorded in Plat Book 60, Pages 82-84, and more fully described as follows:

BEGINNING at a metal cap at the center of the intersection of two county roads and running thence S. 28 W. 250 feet to a metal cap at the corner with Lot No. 8, thence the line of Lot No. 8 N. 62 W. 275 feet to a point, thence N. 28 E. 250 feet more or less to a point on the county road, thence with the county road S. 62 E. 275 feet to the beginning corner.

THIS BEING the same property conveyed to Geary Thomas Dooly and Eleanor S. Dooly from Eleanor S. Dooly by Deed dated July 30, 2004 and recorded August 18, 2004 with the Spartanburg County Register of Deeds Office in Deed Book 80-Z at Page 635. This being the same property conveyed to Eleanor S. Dooly from Southern Bank and Trust Company by Deed dated November 27, 1979 and recorded November 27, 1979 with the Spartanburg County Register of Deeds Office in Deed Book 47-A at Page 75.

Tax Map: 7-14-00-010.15
Address: 690 Zion Hill Road
Spartanburg, SC 29037

The authority of the State or Federal government to acquire real property from its citizens is rooted in both the State of South Carolina Constitution and the Constitution of the United States of America. Statutory law in the State of South Carolina has been created by the legislature regarding eminent domain, and there is an abundance substantive case law on the many facets of eminent domain law. The South Carolina Eminent Domain Procedure Act was enacted in 1987 to create a uniform procedure for eminent domain in the State of South Carolina. In addition to codifying procedural requirements, the statutes also set forth substantive principles of law. (*see* S.C. Code Ann. §28-2-10, et. seq. (1976, as amended)).

In South Carolina, jurisdiction, or the basic authority of a judge to hear and exercise judgment of a matter, is based upon three considerations: territorial jurisdiction, subject matter jurisdiction, and the amount in controversy. The Circuit Court is the state's court of general jurisdiction. It has a civil court, the Court of Common Pleas, and a criminal court, the Court of General Sessions.

This court has subject-matter jurisdiction over the claims in this condemnation action under Article V § 11 of the South Carolina Constitution and S.C. Code Ann. § 14-5-350. This Court has

personal jurisdiction over the Landowners because they reside and transact business in Spartanburg County, South Carolina. Venue is proper in this circuit under S.C. Code Ann. § 15-7-30 because the Landowners live, reside, or do business in Spartanburg County, South Carolina. Further, Landowners are the fee simple owners of land located in Spartanburg County that is being acquired by the SCDOT which is the subject of the underlying condemnation action now pending in Spartanburg County, South Carolina.

CONCLUSION

Landowners' Motion to Dismiss for lack of subject matter jurisdiction is without merit. The court thus denies Landowners' Motion.

IT IS THEREFORE ORDERED THAT Landowners' March 5, 2018 Motion to Dismiss via Hearing for Lack of Subject Matter Jurisdiction is denied.

IT IS SO ORDERED.

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Spartanburg Common Pleas

Case Caption: South Carolina Department Of Transportation VS Geary Thomas
Dooly , defendant, et al
Case Number: 2017CP4201180
Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

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