

2018-CP-10-323

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
ELIZABETH LOFTON,)
)
Plaintiff,)
)
vs.)
)
BERKELEY ELECTRIC COOPERATIVE,)
INC. AND JOHN LUCAS TREE EXPERT,)
CO.,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2018-CP-10-00323

**ORDER GRANTING SUMMARY
JUDGMENT**

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT

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SC Court of Appeals

This matter is currently before the Court on motions for summary judgment filed by both Defendants. A hearing on the motions was held before the undersigned on November 26, 2018. After consideration of the pleadings, discovery, deposition testimony, applicable South Carolina common law and statutory law, as well as the evidence in the record, Defendants' motions for summary judgment are granted for the reasons set out below.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Elizabeth Lofton, solely in an individual capacity, filed her First Amended Complaint on January 19, 2016. The case was later removed from the General Docket per Rule 40(j) of the SCRCP and restored by consent order on January 16, 2018.

In her Complaint, Plaintiff claims she owns a tract of land in Charleston County that has been damaged by acts of both defendants, Berkeley Electric Cooperative, Inc. ("Berkeley") and John Lucas Tree Expert Company ("Lucas Tree"). Plaintiff asserts the following causes of action against Lucas Tree: trespass, conversion, negligence/gross negligence, and violation of South Carolina Timber statute. Plaintiff further alleges Berkeley coerced her into signing a right of way

1/1

easement and Berkeley and/or Lucas Tree cut trees on her personal property outside of the easement.

Lucas Tree filed a motion for summary judgment on August 31, 2018. Berkeley filed their motion for summary judgment on September 19, 2018. Both Defendants argued, in part, that the true owner of the property at issue is the Irene N. Lofton Revocable Living Trust (“the Trust”).

LEGAL STANDARD

Under Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c) SCRPC. “In determining whether summary judgment is appropriate, the evidence and its reasonable inference must be viewed in a light most favorable to the non-moving party.” *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E. 2d 537, 545 (1991).

Although facts and inferences to be drawn must be viewed in the light most favorable to the non-moving party, the non-moving party must still produce some evidence to support each element of each claim against the moving party; and show a material issue as to the contested elements. *See e.g., Bd of Trs. For the Fairfield County School Dist. v. State of South Carolina*, 409 S.C. 119, 761 S.E.2d 241 (2014); *Eadie v. Krause*, 381 S.C. 55, 671 S.E.2d 389 (S.C. Ct. App. 2008); *McLaughlin v. Williams*, 379 S.C. 451, 665 S.E.2d 667 (S.C. Ct. App. 2008).

ANALYSIS

“To have standing, one must have a personal stake in the subject matter of the lawsuit, i.e., one must be a real party in interest.” *Charleston County Sch. Dist. v. Charleston County*

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Election Comm'n, 336 S.C. 174, 519 S.E.2d 567 (1999) (internal citation omitted). "A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Id.* at 181, 519 S.E.2d at 571 (quoting *Anchor Point, Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992)).

For a plaintiff to possess standing, three elements must be satisfied. *Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 550 S.E.2d 287 (2001). First, the plaintiff must have suffered an injury-in-fact, or a particularized harm. *Id.* at 345 S.C. 601, 550 S.E.2d 291. Second, a causal connection must exist between the injury and the challenged conduct. *Id.* Third, it must be likely that a favorable decision will redress the injury. *Id.* A party seeking to establish standing carries the burden of demonstrating each of the three elements. *Id.*

Plaintiff filed suit individually and not on behalf of the Trust. The deed to the property reflects the Trust is the sole owner of the property.

Plaintiff admits the owner of the property in question is the Trust. Plaintiff Lofton is the trustee and a member of the Trust benefitting herself, Sandy Lofton and Wayne Lofton. The Trust does not specifically spell out any portion of the land that the Plaintiff owns in an individual capacity; instead, it merely states that the proceeds should be "divided equally or as [the beneficiaries] see fit." Plaintiff has never personally paid property taxes on the tracts of land in question and the Trust makes all such payments. Furthermore, the Trust has a 100% interest in the property.

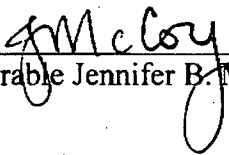
As a result, Plaintiff lacks standing under the first element of the test articulated in *Sea Pines*. Moreover, Plaintiff herself has not suffered an injury-in-fact. Rather, it is the Trust's property that allegedly has been damaged. Plaintiff does not own the property that is the subject

of this action, Plaintiff has not suffered any damages, and Plaintiff therefore lacks standing to lawfully make these claims.

CONCLUSION

Plaintiff lacks standing to bring the claims asserted in her Amended Complaint. Thus, the motions for summary judgment filed by both Defendants should be granted and Plaintiff's claims should be dismissed.

IT IS SO ORDERED.



The Honorable Jennifer B. McCoy