



The South Carolina Court of Appeals

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August 02, 2019

The Honorable Elizabeth P. Folk
PO Drawer 10
Newberry SC 29108

REMITTITUR

Re: West/Hobby, LLC v. County of Newberry
Lower Court Case No. 2012CP3600046
Appellate Case No. 2016-001773

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Patrick John Frawley, Esquire
Benjamin C. Bruner, Esquire
James L. Bruner, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

West/Hobby, LLC, Respondent,

v.

County of Newberry, Appellant.

Appellate Case No. 2016-001773

Appeal From Newberry County
Donald B. Hocker, Circuit Court Judge

Unpublished Opinion No. 2019-UP-257
Heard December 4, 2018 – Filed July 17, 2019

AFFIRMED

Patrick John Frawley, of Davis Frawley, LLC, of
Lexington, for Appellant.

James L. Bruner and Benjamin C. Bruner, both of Bruner
Powell Wall & Mullins, LLC, of Columbia, for
Respondent.

PER CURIAM: In this inverse condemnation action, the County of Newberry (the County) appeals the trial court's rulings that a taking of West/Hobby, LLC's land had occurred and West/Hobby's claim was not barred by the statute of

himself to such an obvious danger with appreciation thereof which resulted in the injury." (quoting *Davenport*, 333 S.C. at 79, 508 S.E.2d at 569)).

3. As to whether West/Hobby established a taking occurred: *Carolina Chloride, Inc. v. S.C. Dep't of Transp.*, 391 S.C. 429, 435, 706 S.E.2d 501, 504 (2011) ("The elements of an action for an inverse condemnation are: (1) affirmative conduct of a government entity; (2) the conduct effects a taking; and (3) the taking is for a public use." (citing *Byrd v. City of Hartsville*, 365 S.C. 650, 657, 620 S.E.2d 76, 79 (2005))); *WRB Ltd. P'ship v. Cty. of Lexington*, 369 S.C. 30, 32, 630 S.E.2d 479, 481 (2006) ("Whether the plaintiff has established a claim for inverse condemnation is a matter for the court to determine." (citing *Cobb v. S.C. Dep't of Transp.*, 365 S.C. 360, 365, 618 S.E.2d 299, 301 (2005))); *id.* ("To prevail in such an action, a plaintiff must prove 'an affirmative, aggressive, and positive act' by the government entity that caused the alleged damage to the plaintiff's property." (quoting *Berry's On Main, Inc. v. City of Columbia*, 277 S.C. 14, 15, 281 S.E.2d 796, 797 (1981); *Kline v. City of Columbia*, 249 S.C. 532, 536, 155 S.E.2d 597, 599 (1967))); *Kline*, 249 S.C. at 536, 155 S.E.2d at 599 ("No logical reason is suggested why the invasion of one's property with a highly inflammable substance, such as gas, should be considered any less a taking of property than an invasion by water."); *WRB Ltd. P'ship*, 369 S.C. at 33, 630 S.E.2d at 481 (holding the capping of a landfill was an "affirmative, aggressive, positive act").

AFFIRMED.

HUFF, SHORT, and WILLIAMS, JJ., concur.