

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Dana Stortz and John Stortz, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 The State of South Carolina, City of North )  
 Charleston, County of Charleston, )  
 Department of Health and Environmental )  
 Control, South Carolina Department of )  
 Transportation, John Doe (Engineering )  
 Firm/Engineer), Coosaw Creek Owners' )  
 Association, Inc., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 C.A. NO.: 2017-CP-10-4947

2018 DEC -7 PM 12:02  
 JUDGE JAMES HARRINGTON  
 BY \_\_\_\_\_

**ORDER ON PLAINTIFF'S MOTION TO CONSOLIDATE, ALL MOTIONS TO DISMISS, AND DEFENDANT COOSAW CREEK OWNERS' ASSOCIATION, INC.'S MOTION FOR PROTECTIVE ORDER**

**RECEIVED**  
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 SC Court of Appeals

THIS MATTER COMES BEFORE THE COURT on Plaintiffs' Motion to Consolidate for Discovery Purposes, motions by all Defendants to dismiss the Complaint, and Defendant Coosaw Creek Owners' Association, Inc's Motion for Protective Order. For the reasons set forth below, Plaintiff's motion is denied and all motions to dismiss are granted. Further, because Defendant Coosaw Creek Owners' Association, Inc.'s Motion to Dismiss is granted, it is no longer a part of the case or any further discovery proceedings and its Motion for Protective Order is moot.

**A. Plaintiffs' Motion to Consolidate is denied.**

This is a negligent construction action in which the Plaintiffs allege that the construction of the Palmetto Commerce Parkway caused flooding damage to their home. The Plaintiffs assert that there are 44 other cases similar to this action and request that this action be consolidated with those cases for discovery purposes only. With the consent of the parties, these 44 cases have previously been consolidated under case number 2017-CP-10-4820 by Order of Judge Harrington filed June 1, 2018. The cases consolidated under this case are:

2017-CP-10-4821; 2017-CP-10-4822; 2017-CP-10-4823; 2017-CP-10-4824;  
2017-CP-10-4825; 2017-CP-10-4826; 2017-CP-10-4827; 2017-CP-10-4835;  
2017-CP-10-4836; 2017-CP-10-4837; 2017-CP-10-4838; 2017-CP-10-4839;  
2017-CP-10-4840; 2017-CP-10-4841; 2017-CP-10-4842; 2017-CP-10-4845;  
2017-CP-10-4847; 2017-CP-10-4891; 2017-CP-10-4892; 2017-CP-10-4893;  
2017-CP-10-4894; 2017-CP-10-4895; 2017-CP-10-4896; 2017-CP-10-4897;  
2017-CP-10-4898; 2017-CP-10-4899; 2017-CP-10-4900; 2017-CP-10-4901;  
2017-CP-10-4903; 2017-CP-10-4904; 2017-CP-10-4905; 2017-CP-10-4906;  
2017-CP-10-4907; 2017-CP-10-4923; 2017-CP-10-4924; 2017-CP-10-4925;  
2017-CP-10-4927; 2017-CP-10-4928; 2017-CP-10-4929; 2017-CP-10-4930;  
2017-CP-10-4931; and 2017-CP-10-5108.

As for this action, however, the Defendants have not consented to consolidation and have raised several objections. First, the Defendants argue that this case is not similar because it does not involve the same neighborhood. The previously consolidated cases all involve residents of the Pepperhill Subdivision. This action involves flooding as it relates to property located within the Coosaw Creek Subdivision. Second, Defendant Coosaw Creek Owners' Association asserts that this case should not be consolidated with the cases involving the Pepperhill Subdivision because it is not a defendant in any of those actions and should not be forced to participate in, or at the very least monitor, the discovery proceedings of 44 cases in which it is not involved.

Consolidation may be ordered whenever actions involving a common question of law or fact. Keels v. Pierce, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993). This Court has broad discretion in deciding whether to order consolidation, and the moving party has the burden of persuading this Court that consolidation is desirable. Id. Although each action is based on the allegation that construction of the Palmetto Commerce Parkway caused flooding damage, the Plaintiffs in this action live in an entirely separate neighborhood than the plaintiffs in the previously consolidated actions. The facts of this action will be different than the cases involving the Pepperhill Subdivision and thus the required proof will be different. Therefore, Plaintiffs' Motion to Consolidate is denied.

**B. All Motions to Dismiss are granted.**

As evidenced by the procedural history of this action, there have been several issues concerning naming and service of the proper parties. The Department of Health and Environmental Control and the South Carolina Department of Transportation each filed Motions to Dismiss on the basis that the Plaintiff had failed to properly serve the Defendants. Defendant Coosaw Creek Owners' Association, which had not been named in the original pleading, filed a Motion to Dismiss the Amended Complaint. Before this motion could be heard, the Plaintiffs filed a Second Amended Complaint which removed all reference to Coosaw Creek as a party. In addition to removing Coosaw Creek from the action, Plaintiffs' Second Amended Complaint further removed John Doe (Engineering Firm/Engineer) and named Banks Construction Company; United Contractors, Inc.; Banks/United Joint Venture; and HLA, Inc., as Defendants. To correct issues with service of process and incorrectly named parties, the Plaintiffs then filed a new action, Case No.: 2018-CP-10-4691, naming all the proper Defendants in the Second Amended Complaint in this action. In light of the new action, which is nearly identical to this action, all of the Defendants in this action are to be dismissed and this action is dismissed without prejudice; NOW, THEREFORE,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Consolidate is DENIED.

IT IS FURTHER ORDERED that this action is dismissed without prejudice as to all Defendants.

AND IT IS SO ORDERED.



The Honorable Edward W. Miller  
Presiding Judge

Dated this 30<sup>th</sup> day of November, 2018