

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS  
TENTH JUDICIAL CIRCUIT

Rosemary W. Jones,  
Plaintiff,  
vs.

Anderson County, South Carolina,  
Defendants.

**RECEIVED**  
JUN 04 2020  
SC Court of Appeals

C.A. No.: 2019-CP-04-02738

**ORDER TO DISMISS**

Plaintiff, Rosemary W. Jones, instituted the above captioned action by filing a Summons and Complaint on December 23, 2019 and properly serving the Defendant, Anderson County, South Carolina. On January 16, 2020, the Defendant timely filed its Answer and also filed a Motion to Dismiss the Complaint as untimely filed pursuant to S.C. Code Section 28-2-470. A hearing was held on the Defendant’s Motion to Dismiss on Wednesday, April 9. The hearing was held via teleconference via Webex as prescribed by Order of the Supreme Court of South Carolina entitled Operation of Trial Courts During the Coronavirus Emergency (Order No.: 2020-000447). Each of the parties hereto waived their right to have this hearing held in person.

Present for the hearing was Westley P. Cox, Esq., Attorney for the Defendant, and Leon Harmon, Esq., County Attorney for the Defendant, and Daniel Draisen, Esq., Attorney for the Plaintiff.

From the testimony and evidence, I find and conclude as follows:

**FINDINGS OF FACT:**

1. This is an action to challenge a condemnation action pursuant to S.C. Code Section 28-2-470 (1976, as amended) in response to two (2) separate condemnation actions brought by Anderson County, South Carolina (hereinafter “Anderson County”) in the Court of Common Pleas for Anderson County, South Carolina. The two separate condemnation actions bear Anderson County Civil Action No.: 2019-CP-04-02407 and 2019-CP-04-02409.

2. The real property which is the subject matter of this action is situate and located in Anderson County, South Carolina therefore, the Court has jurisdiction of this action and venue is proper.

3. All exhibits offered at the hearing were offered without objection by the opposing party and were therefore admitted.

4. Anderson County served a Notice of Condemnation and Tender of Payment on the Plaintiff, Rosemary W. Jones, along with the other landowners of record of the two subject real properties, on August 8, 2019. The Notice of Condemnation and Tender of Payment were signed for, and therefore properly served, on August 9, 2019. Anderson County offered Certificates of Service of each Notice of Condemnation and Tender of Payment as evidence of service at the hearing.

5. Anderson County served a Revised Notice of Condemnation and Tender of Payment on the Plaintiff, Rosemary W. Jones, along with the other landowners of record of the two subject real properties, on October 2, 2019. The Revised Notice of Condemnation and Tender of Payment were signed for, and therefore properly served on October 4, 2019. Anderson County offered Certificates of Service of each Revised Notice of Condemnation and Tender of Payment as evidence of service at the hearing.

6. Each of the aforementioned Notice of Condemnation and Tender of Payment and Revised Notice of Condemnation and Tender of Payment were served, via certified mail with return receipt requested.

7. The Court finds that the Plaintiff, Rosemary W. Jones, was properly served with the Notice of Condemnation and Tender of Payment on August 9, 2019.

8. The Court finds that the Plaintiff, Rosemary W. Jones, was properly served with the Revised Notice of Condemnation and Tender of Payment on October 4, 2019.

9. The Court finds that the Revised Notice of Condemnation and Tender of Payment sent by Anderson County strictly complies with S. C. Code Section 28-2-280 (1976, as amended).

10. The Court finds that the Revised Notice of Condemnation and Tender of Payment served on the Plaintiff, Rosemary W. Jones, stated that she had thirty (30) days to institute a separate action challenging Anderson County's right to condemn the subject real properties.

11. The Court finds that the Revised Notices of Condemnation and Tender of Payment contained the following language regarding challenges to the public use:

An action challenging the condemnor's right to acquire the property and rights described herein must be commenced in a separate proceeding in the Court of Common Pleas within 30 days of this Condemnation Notice, or the Landowners will be considered to have waived the challenged.

12. The Plaintiff, Rosemary W. Jones, initiated this challenge action on December 23, 2019 by filing a Summons and Complaint in a separate action as required under S.C. Code Section 28-2-470 (1976, as amended).

13. However, S.C. Code Section 28-2-470 (1976, as amended) further requires that all challenge actions must be commenced within 30 days after service of a Condemnation Notice on a Landowner or the Landowner will be considered to have waived the challenge.

14. The Court finds that the Plaintiff's Complaint initiating its challenge action was filed On December 23, 2019, which is more than thirty (30) days after the date of service of October 4, 2019 of the Revised Condemnation Notices and Tenders of Payments served upon the Landowner and Plaintiff, Rosemary W. Jones. Therefore, the Court finds that the Plaintiff's challenge action was untimely filed.

15. Because the Court finds that the challenge action initiated by the Plaintiff was untimely filed pursuant to the statutory time limit set forth in S.C. Code Section 28-2-470 (1976, as amended), the Defendant, Anderson County's, Motion to Dismiss is granted. Therefore, this action shall be dismissed with prejudice.

16. The Court finds that all of the current landowners of the subject properties, by their failure to timely file a challenge action pursuant to S.C. Code Section 28-2-470 (1976, as amended) are therefore barred from filing any such action challenging Anderson County's right to condemn the subject real properties as set forth and more fully described in the Condemnation Actions filed by Anderson County in those certain actions bearing Anderson County Civil Action Nos.: 2019-CP-04-02407 and 2019-CP-04-02409.

17. Plaintiff asserted that in order for Anderson County to properly notify the Plaintiff of its intent to condemn the subject real properties, make proper Notice of Condemnation and Tender of Payment, and to trigger the statutory time limit contained in S.C. Code Section 28-2-470 (1976, as amended), that Anderson County was required to pay the tender amount contained in the Notices to the Clerk of Court for Anderson County. At the hearing, Plaintiff offered an email exchange with the Honorable Richard A. Shirley, Anderson County Clerk of Court, as to evidence of the deposit of the tender of payment with the Court.

18. The Court finds that this interpretation asserted by the Plaintiff is contrary to the Eminent Domain Procedure Act and applicable case law.

19. S.C. Code Section 28-2-230(A) 91976, as amended) states if the landowner rejects or does not accept the amount tendered as just compensation within the 30 day period, then the Condemnor may file the Condemnation Notice with the clerk of court and deposit with the clerk the amount of just compensation stated in the Notice. Anderson County did this on November 26, 2019 by filing its action and depositing the amount with the Clerk of Court by hand delivering the amounts to the office of the Clerk of Court, who then deposited the amounts on November 27, 2019.

20. The Court relies upon the findings and holdings set forth in *Kiriakides vs. School District of Greenville* (675 S.E.2d 439, 382 S.C. 8 (S.C.2009)) which addresses the procedure for commencing a condemnation action in issuing its decision.

21. Anderson County, in its Motion to Dismiss, also requested the payment of attorney's fees and litigation expenses under the theory that the Plaintiff did not file her challenge action in good faith.

22. The Court finds that the Plaintiff, Rosemary W. Jones, filed the challenge action in good faith, therefore Anderson County's request for the payment of attorney's fees and litigations expenses is denied.

23. The Court finds that the Defendant, Anderson County, South Carolina, is entitled to an Order dismissing the challenge action filed by the Plaintiff, Rosemary W. Jones.

### CONCLUSION OF LAW

(1) "An action challenging a condemnor's right to condemn must be commenced in separate proceedings filed in the court of common pleas in the county in which the property or a portion thereof is located. The action must be commenced within thirty days after service of the Condemnation Notice upon the landowner." S.C. Code of Laws § 28-2-470 (1976, as amended)

"The provisions of the South Carolina Eminent Domain Procedure Act, however, constitute the exclusive procedure for condemnation in this state. S.C.Code Ann. § 28-2-210 (2007). Moreover, these provisions control over the South Carolina Rules of Civil Procedure. *Id.* § 28-2-120 ("In the event of conflict between this act and the South Carolina Rules of Civil Procedure, this act shall prevail.>"). *Kiriakides vs. School District of Greenville* (675 S.E.2d 439, 382 S.C. 8 (S.C.2009))

"The provisions of the Act are unique and thus the commencement of the condemnation action cannot be measured in terms of regular civil proceedings: The Act does not require the issuance of a summons and complaint and the filing of responsive pleadings. *Rather, the procedure*

*begins with service of a condemnation notice.* The condemnation notice may be served in any manner allowed for serving a summons and complaint in a civil action. 18 S.C. Juris. *Eminent Domain* § 38 (1993) (emphasis added) (footnotes omitted). Although there are references to filing in the Act, we hold service marks the time for commencement of the action as defined in the Act.” *Kiriakides vs. School District of Greenville* (675 S.E.2d 439, 382 S.C. 8 (S.C.2009))

I, therefore, conclude that the challenge action instituted by the Plaintiff, Rosemary W. Jones, was not timely filed and therefore the Defendant, Anderson County, is entitled to a judgment of the Court dismissing the challenge action filed by the Plaintiff.

(2) “If the court determines the right to take issue was not raised and litigated in good faith by the landowner, the court must award the condemnor the reasonable costs and litigation expenses incurred therein.” S.C. Code Section 28-2-510(A) (1976, as amended).

I, therefore, conclude that the challenge action was instituted by the Plaintiff, Rosemary W. Jones, in good faith and therefore the Defendant, Anderson County, is not entitled to an award of attorney’s fees and litigation expenses in this matter.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

(1) This action be dismissed with prejudice to the Plaintiff.

**AND IT IS SO ORDERED.**

**SEE ELECTRONIC SIGNATURE OF  
JUDGE ATTACHED  
HERETO**

April \_\_\_\_, 2020  
Anderson, South Carolina

\_\_\_\_\_  
The Honorable R. Lawton McIntosh  
Circuit Court Judge, Anderson County



Anderson Common Pleas

**Case Caption:** Rosemary W Jones VS Anderson County, South Carolina

**Case Number:** 2019CP0402738

**Type:** Order/Dismissal

S/R. LAWTON McINTOSH

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