STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CIVIL ACTION NO. 2020-CP-22-00930
	)	
M. Baron Stanton,	)	
Plaintiff,	)	**ORDER**
v.	)	**OF DISMISSAL**
Town of Pawleys Island,	)	
Defendant.	)	

PRESIDING JUDGE:	The Honorable Benjamin H. Culbertson
DATE OF HEARING:	April 1, 2021
TIME OF HEARING:	1:30 p.m.
PLACE OF HEARING:	Georgetown County Judicial Center
PLAINTIFF'S ATTORNEY:	M. Baron Stanton
DEFENDANTS' ATTORNEY:	William C. Dillard, Jr.
COURT REPORTER:	Cynthia Weaver

This matter came before the Court upon the Defendant Town of Pawleys Island ("Town")'s Motion to Dismiss and Motion for Protective Order Regarding Discovery. Upon due consideration of the pleadings, the arguments and submissions of the parties, and the applicable legal authorities, the Court grants Town's motions in the respects set forth hereinbelow.

This matter is related to two sets of condemnation challenge actions involving three properties, sometimes referred to informally by counsel for the parties as the "first set" of cases and "second set" of cases. The following general chronology appears in the pleadings in the respective actions:

a. In or around June 2020, Town undertook to serve on the plaintiff a Condemnation Notice through which it sought to acquire a beach renourishment easement (referred to in the pleadings herein as the "Existing Notice"). (Amended Complaint, ¶ 81, et seq.).

b. On July 21, 2020, the plaintiff and two nearby property owners parties filed separate challenge actions (*Franklin D. Beattie v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0601; *Sunset Lodge, LLC v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0600; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0602) (referred to in the pleadings herein as the "Existing Actions"). (Amended Complaint, ¶ 180, et seq.).

c. In or around October 2020, Town undertook to deliver to plaintiff's counsel for service a separate, new Condemnation Notice through which it sought to acquire a similar beach renourishment easement (referred to in the pleadings herein as the "New Notice"). (Amended Complaint, ¶ 352, et seq.).

d. On November 12, 2020, the plaintiff and the same two nearby property owners filed new challenge actions, including this action, challenging the "New Notices" (*Franklin D. Beattie v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0931; *Sunset Lodge, LLC v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0932; and *M. Baron Stanton v. Town of Pawleys Island*, Civil Action No. 2020-CP-22-0930) (referred to in the pleadings herein as the "New Actions").

e. On January 20, 2021, Judge Michael Nettles issued orders granting plaintiffs' motions for summary judgment in the first set of cases. Amended Orders granting summary judgment were issued on April 5, 2021.

f. On February 10, 2021, the Town filed a Notice of Abandonment of Condemnation Action in this and the other "New Actions" (i.e., the second set of cases). (Answer to Amended Complaint, Exh.A).

g. On March 5, 2021, Town filed its Motion to Dismiss and Motion for Protective Order in this action.

Conclusions of Law

1.) **The plaintiff's sole cause of action is moot based on Town's abandonment of the subject condemnation notice and is dismissed without prejudice pursuant to Rule 12(c), SCRCP**

"Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor." Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009). As the Court of Appeals has further explained,

> When considering such motion, the court must regard all properly pleaded factual allegations as admitted. . . . On review of the motion, the court may not consider matters outside the pleadings.
>
> ["]A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment.... When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties.["]

Falk v. Sadler, 341 S.C. 281, 286–87, 533 S.E.2d 350, 353 (Ct. App. 2000) (citing Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct.App.1990)) (internal citation omitted).

In this action, treating all properly pleaded allegations as admitted and regarding any inference of law or conclusions of fact that may properly arise therefrom to be embraced therein, the single cause of action asserted by the Plaintiff, a challenge to a condemnation action pursuant to S.C. Code Ann. § 28-2-470, has been rendered moot by Town's filing of the *Notice of Abandonment of Condemnation Action*, which is also attached as an exhibit to Town's *Answer to the Amended Complaint*. Plaintiff alleges on page 58, Paragraph 372 of the Amended Complaint that "[t]he Court should quash, strike and dismiss the New Notice forthwith, thus allowing the dismissal of the instant

challenge action after awarding litigation expenses to Plaintiff." The S.C. Eminent Domain Procedure Act specifically contemplates the power of a condemnor to abandon a condemnation. *See, e.g.,* S.C. Code Ann. §§ 28-2-230(B), -510(C). The New Notice has now been formally abandoned and withdrawn. Any condemnation action the New Notice initiated has therefore been extinguished and warrants no further challenge. *See, e.g.*, S.C. Code Ann. §§ 28-2-30(5), 28-2-470.

Accordingly, based on the pleadings and the single cause of action asserted, there is no remaining issue of fact raised by the Amended Complaint that would entitle plaintiff to judgment if resolved in Plaintiff's favor, and Town is entitled to judgment on the pleadings pursuant to Rule 12(c), SCRCP.

"Mootness has been defined as follows: 'A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief'." Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (citing Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). "In the civil context, there are three general exceptions to the mootness doctrine." Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

> First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review. . . Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest. . . Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

Id. (emphasis added).

In evaluating whether a moot issue is capable of repetition, yet evading review, "the action must be one which will truly evade review." Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006). "[A]n action that is capable of repetition does not necessarily evade review."

Id. (citing Seabrook v. City of Folly Beach, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999)). Sloan involved an appeal of a trial court ruling that a Freedom of Information Act challenge to the defendant's refusal to produce certain records became moot when the records were produced. As the Sloan Court explained,

> In Seabrook, the plaintiffs brought an action against the city alleging that the city imposed conditions on a residential development for which it had no authority. 337 S.C. at 304, 523 S.E.2d at 462. After the trial court found in favor of the plaintiffs, the city removed the conditions and approved the plat. In reviewing the appeal this Court found that the issue was moot, and that although the scenario was capable of repetition, it did not evade review.
>
> The instant case is analogous to Seabrook. Although Friends admits that the current situation is capable of repetition, it does not evade review. Should another person bring an action against Friends for a violation of FOIA and Friends fails to produce the requested documents, the Court will have the opportunity to review the issue.

Sloan at 27, 630 S.E.2d at 478. In other words, a matter susceptible to "evading review" is something which by its nature "usually becomes moot before it can be reviewed." Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996) (citing S.C. Dep't of Mental Health v. State, 301 S.C. 75, 390 S.E.2d 185 (1990)).

As indicated in this analysis, South Carolina does not apply a "stringent" analysis of "voluntary cessation" of conduct as the plaintiff asserts is applied in federal appellate courts. *See* Plaintiff's Memo. in Opposition (discussing Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000)). The case of Jowers v. S.C. Dep't of Health & Env't Control, 423 S.C. 343, 815 S.E.2d 446 (2018), cited by plaintiff for the proposition that South Carolina follows federal mootness principles, is in fact a case involving separate doctrines of standing and ripeness. Instead, under South Carolina law, "[t]he utilization of an exception under the mootness doctrine is flexible and discretionary pursuant to South Carolina jurisprudence, not a mechanical rule that is automatically invoked." Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

In the present action, any future attempt to condemn a similar easement would be inherently susceptible to judicial review and would invoke statutory attorney fee protections for the plaintiff. S.C. Code Ann. § 28-2-470 ("Proceedings to challenge condemnor's right to condemn"); *see also* S.C. Code Ann. § 28-2-510(A) and (C) (providing for landowner recovery of attorney fees in successful challenge actions and withdrawn condemnation actions). This is distinguishable from a wastewater treatment plant sporadically violating effluent limitations, Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000), or a challenge to "[s]hort-term student suspensions [which], by their very nature, are completed long before an appellate court can review the issues they implicate." Byrd v. Irmo High Sch., 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996).

Under the second exception to the mootness doctrine, this case and the related actions are discrete disputes involving three properties and do not give rise to any "imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." Curtis at 568, 549 S.E.2d at 596. The third exception to mootness doctrine contemplates an appellate situation in which, because "a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." Id. As this matter is not on appeal, and does not involve review of any prior trial court decision, this exception is not relevant.

The Amended Complaint, in the prayer for relief, requests that "both the 'Existing' and the 'New' Condemnation Notices be quashed and that the Town be forever barred and enjoined from filing either of them or proceeding with either of them." For the reasons discussed above, this claim for relief is now moot as the New Notice has been withdrawn, and the plaintiff's substantive objections underlying the request to quash the condemnation notice, relating to public necessity, "bad faith", and similar issues, do not need to be addressed in this action. The pleading does not

contain a request for broad preclusive relief that would permanently bar the Town from any future similar condemnation action based on past "bad faith" or similar allegations. Without prejudice to the right of the plaintiff to later assert such a claim, the Court notes that no authority has been submitted for the proposition that a court has the power to grant that type of relief (with the exception of the theory of estoppel, as discussed below). As a general matter, municipalities are authorized to exercise the power of eminent domain in order to "become the owner of any land or to acquire any easement or right-of-way therein for any authorized corporate or public purpose," S.C. Code Ann. § 5-7-50.

Although the theory of estoppel was not included in the Amended Complaint, in connection with the subject motion counsel for the plaintiff did cite to an appellate opinion that found a golf course developer was entitled to an order estopping Santee Cooper from future attempts to condemn its property for an overhead high voltage transmission tower and line route. Southern Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993) In Southern, the basis for estoppel was that the property owner had moved forward with plans to purchase and improve the property as a golf course, with expenses in excess of $50 million, in reliance upon inaccurate representations from a Santee Cooper official that all powerline routes on the property would be buried. In this case, while the Amended Complaint includes allegations that the Town engaged in various types of procedural missteps, as well as "misrepresentation", "bad faith", and "fraud" in the process associated with the first and second condemnation notices, the Court is unable to see how the plaintiff's factual allegations encompass the required elements of an estoppel claim, including the elements of reliance and prejudicial change in position.[1]

[1] "The essential elements of estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the

Accordingly, the Amended Complaint and the single cause of action asserted in the pleading, a challenge to the "New Notice," are held to be moot and are hereby dismissed. This dismissal is without prejudice to any claims that the plaintiff may wish to assert at a later time and, likewise, without prejudice to any future condemnation attempts by the Town.

2.) Any claims related to the "Existing Challenge Action" are dismissed pursuant to Rule 12(b)(8), SCRCP

The Amended Complaint also includes extensive discussion of the allegations underlying the plaintiff's separate prior "Existing Challenge Action." (See *generally, e.g.,* Paragraphs 81 through 212). Paragraph 182 specifically incorporates by reference the allegations from the Amended Complaint in the plaintiff's Existing Challenge Action. That current action is still pending between the same parties (subject to the recent summary judgment order, with a pending fee and/or cost petition by the plaintiff). Therefore, to the extent that the Amended Complaint may seek to challenge or otherwise obtain relief in relation to the separate prior condemnation notice and condemnation action, any such claim in this action is hereby dismissed without prejudice pursuant to SCRCP 12(b)(8) on the ground that another action is already pending between the same parties for the same claim.

3.) The Court declines to grant plaintiff leave to conduct further discovery and then amend the pleadings to assert new claims for relief

At the hearing on this motion, counsel for the plaintiff expressed an interest in further amending the pleadings at an undetermined date to assert some new claims for relief. With the

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party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts. . . . As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position." S. Dev. Land & Golf Co. v. S.C. Pub. Serv. Auth., 311 S.C. 29, 33, 426 S.E.2d 748, 750 (1993) (internal citations omitted).

exception of indicating a desire for an adjudication that the Town be forever barred from seeking a beach renourishment easement on the subject property, the plaintiff did not directly assert which specific causes of action or claims for relief would be raised in a Second Amended Pleading. Instead, counsel for the plaintiff generally referenced different types of claims, including claims for damages, that might be asserted after additional factual discovery.

The Court declines to grant plaintiff leave to amend the pleadings to assert new claims after conducting further discovery. A pleading "sets forth a cause of action, whether an original claim, counterclaim, [or] cross-claim[.]" Rule 8(a), SCRCP. While, generally speaking, additional claims may be permitted in an amendment after discovery of facts in the course of litigating an initial, properly stated cause of action, there is no basis under the South Carolina Rules of Civil Procedure for open-ended discovery in the absence of even a single pending claim. Allowing the action to move forward in that manner would be unfairly prejudicial to the Town, which would be subjected to the time and expense of participating in discovery without even knowing which claims might be at issue.

To the extent that such discovery may be intended to obtain evidence pertaining to potential claims for which the plaintiff presently lacks sufficient information or belief to even assert allegations, this only underscores the fact that such claims are beyond the scope of the facts pleaded in the Amended Complaint. The plaintiff must complete any additional desired factual investigation and assert any additional claims outside of this now moot action.

4.) <u>The Town's request for protection from discovery is granted</u>

Based on the Court's holding that the single cause of action asserted in the Amended Complaint is dismissed as moot, the Court also grants the Town's request for protection from any obligation to respond to or comply with plaintiff's outstanding written discovery requests and deposition notice in this action. This relief is granted on the grounds that (a) as set forth above, the

challenged Condemnation Notice has been abandoned and withdrawn, rendering this action moot and the discovery sought unnecessary; (b) such discovery would therefore be unreasonably burdensome and expensive taking into account the needs of the case, Rule 26(a), SCRCP; and (c) such protection is necessary to protect Town from unnecessary burden and expense, Rule 26(c), SCRCP. At this time, discovery is limited to any claim that may be submitted for attorney fees or costs.

Conclusion

For the foregoing reasons, Town's Motion to Dismiss and Motion for Protective Order Regarding Discovery are hereby granted in the respects set forth hereinabove, and the Amended Complaint and the single cause of action it asserts, a condemnation challenge action pertaining to the October 2020 "New Notice," are hereby dismissed without prejudice. This dismissal is without prejudice to any claims that the plaintiff may wish to assert at a later time and, likewise, without prejudice to any future condemnation attempts by the Town.

Any request for fees and/or costs should be presented by separate petition/motion in this action. For purposes of this Order and any ensuing petition for fees and/or costs, the Town has stipulated that:

(a) Delivery of the Condemnation Notice referenced as the "New Notice" in the Amended Complaint constituted service of the same and commencement of a condemnation action within the meaning of the Eminent Domain Procedure Act, and Town's filing of the *Notice of Abandonment* constituted an abandonment and withdrawal of such Condemnation Notice and action; and

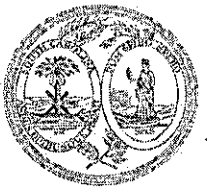
(b) Plaintiff may assert any claim it may have herein to reasonable attorney fees, litigation expenses, and costs as part of this action or, in the alternative and upon written notice to Town, in the separately pending "Existing Condemnation Action" referenced in the Amended Complaint.

IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Circuit Court Judge

_____, 2021

Georgetown, South Carolina



Georgetown Common Pleas

Case Caption: M Baron Stanton VS Pawleys Island Town Of

Case Number: 2020CP2200930

Type: Order/Dismissal

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148