

STATE OF SOUTH CAROLINA, FILED IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON GWEN T. HYATT FOURTH JUDICIAL CIRCUIT

2013 MAR -8) PM 3:46

Claude W. Graham,
Plaintiff,

v.

Town of Latta, South Carolina,
Defendant.

CLERK OF COURT
DILLON COUNTY Civil Action Number: 08-CP-17-376

ORDER

A CERTIFIED
TRUE COPY
Gwen T. Hyatt
CLERK OF COURT
DILLON COUNTY

AND

Vickie B. Graham,
Plaintiff,

v.

Town of Latta, South Carolina,
Defendant.

Civil Action Number: 08-CP-17-377

THIS MATTER CAME BEFORE THE COURT pursuant to a motion for directed verdict on behalf of the Defendant, Town of Latta, during a trial held in Dillon, South Carolina, the week of October 8, 2012. The Plaintiffs were represented by Reynolds Williams, Esquire, and the Defendant was represented by Michael B. Wren, Esquire, and Daniel C. Plyler, Esquire. Arguments were presented by counsel for both the Plaintiffs and the Defendant.

The Court enters this Order with regards to the cause of action for inverse condemnation asserted by Plaintiff Vickie B. Graham in her Second Amended Complaint. This Order contains the Court's findings of fact and conclusions of law pursuant to Rule 52, SCRCP. After hearing the evidence in this matter, considering the arguments by counsel, and thoroughly reviewing the applicable law, the Court finds as follows:

ad
#1

7
Plaintiff Vickie B. Graham has pled a cause of action for inverse condemnation against the Defendant relative to her residence and real property located at 220 East Rice Street in the Town of Latta, South Carolina. The Defendant operates a municipal wastewater system, which includes a sewer line located upon the subject property. The Plaintiffs assert that the sewer line on the subject property leaked or overflowed on September 5 and 6, 2008, and on subsequent dates, thereby causing damage to the subject property, and constituting a taking of the subject property. The Defendant has denied this claim.

Plaintiff Vickie B. Graham purchased the subject property in either 1989 or 1990. Subsequently, Plaintiff Claude W. Graham discovered, at some time prior to the events on September 5 and 6, 2008, that there was a sewer line located upon the subject property. The sewer line in question has existed on the subject property since approximately 1924. However, the parties have stipulated that the Defendant has been unable to produce a written instrument conveying an easement for the portion of the sewer system that crosses the subject property.

The storm event on September 5 and 6, 2008 resulted from Tropical Storm Hanna passing through Dillon County, South Carolina, which, by various accounts, produced a significant amount of rainfall causing flooding in the vicinity of the subject property. The Plaintiffs' engineering expert witness, Roger Davis, opined during their case in chief, that infiltration was an issue with the Town of Latta's wastewater system, which may have resulted from improper maintenance of that system. However, no evidence was presented that the Defendant undertook any affirmative act that resulted in any of the damages asserted by the Plaintiffs. There was also testimony that infiltration is a common issue in municipal wastewater and/or sewer systems. Furthermore, the sum of the testimony by the Plaintiffs and their witnesses was that the Defendant did not take any action relative to the subject sewer line on the Plaintiffs' property during the relevant time periods in question.

aul
#2

Based upon the facts and evidence presented at trial, the Court makes the following conclusions of law:

An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain. To establish an inverse condemnation, a plaintiff must show: (1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence. *Hawkins v. City of Greenville*, 358 S.C. 280, 290, 594 S.E.2d 557, 562 (Ct. App. 2004). Allegations of mere failure to act are insufficient. *Id.* at 291, 594 S.E.2d at 563.

Whether the plaintiff has established a claim for inverse condemnation is a matter for the court to determine. *WRB Limited Partnership v. County of Lexington*, 369 S.C. 30, 32, 630 S.E.2d 479, 481 (2006)(citing *Cobb v. South Carolina Dep't of Transp.*, 365 S.C. 360, 618 S.E.2d 299 (2005)). 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. *Id.* See also, *Rolandi v. City of Spartanburg*, 294 S.C. 161, 363 S.E.2d 385 (Ct. App. 1987).

The Plaintiffs have set forth no evidence that the Defendant Town of Latta, or any agent or representative thereof, undertook any affirmative, aggressive or positive act, which resulted in the damages alleged by the Plaintiffs. At most, the Plaintiffs have asserted that the Defendant failed to act with regard to the subject sewer line located on the Plaintiffs' property. As is stated above, mere failures to act are an insufficient basis upon which to maintain a claim for inverse condemnation. Therefore, based upon the applicable case law cited herein, the Court finds that the Plaintiffs have failed to establish a claim for inverse condemnation, and, as such, the Defendant is entitled to directed verdict and this claim is dismissed as a matter of law.

arl
3

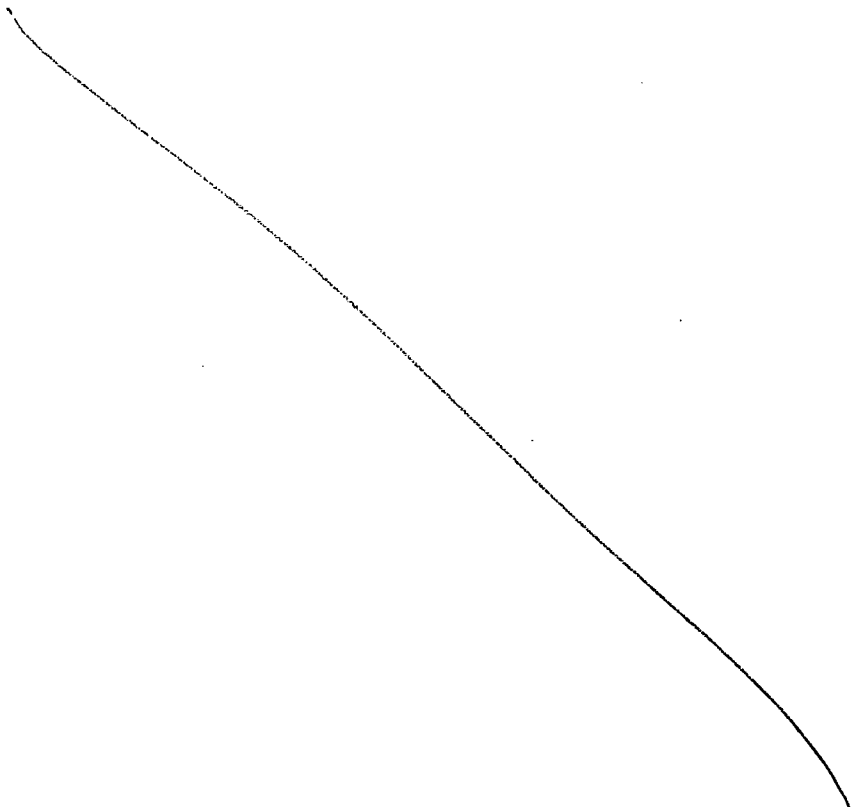
AND IT IS SO ORDERED.



The Honorable Alison Renee Lee
Presiding Judge

Columbia, South Carolina

February 27, 2013



arp
#4