



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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August 31, 2020

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of Supervisors*

**Re: *Christopher Farrell v. Fairfax County Board of Supervisors, et al.,
Case No. CL-2020-569***

Dear Counsel:

This matter is before the Court on Defendant Fairfax County Board of Supervisors' Demurrer. The issue to be decided is whether an inverse condemnation action must first be presented to the Fairfax County Board of Supervisors pursuant to the Virginia Claim Presentment Statutes. After considering the pleadings and oral arguments of both parties, the Court finds that due to the self-executing nature of just compensation claims, Plaintiff is not required to present his inverse condemnation claim to the Board of Supervisors prior to filing

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suit. Further, Plaintiff has asserted facts sufficient for a claim of inverse condemnation; therefore, Defendant Fairfax County Board of Supervisors' Demurrer is overruled.

I. BACKGROUND

The facts are taken from the briefs and those presented at the hearing on May 21, 2020. Christopher Farrell ("Plaintiff") is the owner of 3132 Sleepy Hollow Road in Fairfax County ("Farrell Property"). The Farrell Property is part of the Sleepy Hollow Subdivision ("Subdivision"). Plaintiff acquired the deed to the Farrell Property on March 12, 2010.

A storm drainage easement was created through a Deed of Dedication dated February 5, 1960. Stormwater is carried underground from the storm sewer inlets located within the right-of-way of Valley Court, a public road maintained by the Virginia Department of Transportation ("VDOT"). This stormwater travels through a 200-foot-long pipe allegedly owned by the County ("County Pipe"). The County Pipe then ends at the Farrell Property.

During storms, the County Pipe directs water away from Valley Court and deposits water onto the Farrell Property. Specifically, the flooding occupies 5,793 square feet of the Farrell Property. This leads to a physical occupation of the Farrell Property for public use of drainage and storage of stormwater. Thus, Plaintiff is suing for inverse condemnation. Fairfax County Board of Supervisors filed a demurrer.

On May 21, 2020, the Court heard Fairfax County Board of Supervisors' demurrer regarding two issues. First, whether Plaintiff was required to comply with the Virginia Claims Procedure Act under Va. Code § 15.2-1248. Va. Code § 15.2-1248 states Plaintiff is required to present his claim to the governing body prior to filing suit. Second, if no notice was required under Va. Code § 15.2-1248, then whether Plaintiff sufficiently alleged an inverse condemnation claim against the Fairfax County Board of Supervisors.

This Court took the first issue under advisement and now holds that Plaintiff was not required to present his claims to the Fairfax County Board of Supervisors under Va. Code § 15.2-1248 before filing suit. Further, because Plaintiff did not violate the Virginia Claims Procedure Act, the Court reviewed the facts presented and determined that Plaintiff alleges facts sufficient for a claim for inverse condemnation and thus the Fairfax County Board of Supervisors' Demurrer is overruled.

II. ARGUMENTS

Defendant Fairfax County Board of Supervisors argues that the Complaint fails to allege compliance with the Virginia Claims Procedure Act. Defendant asserts Va. Code § 15.2-1248 prohibits any action from being maintained against the County unless the claimant had first presented his claim to the board of supervisors of such county for allowance. Further, Defendant argues that failure to allege compliance with these statutes is fatal to an action against a county. *See Viking Enter. v. Cty of Chesterfield*, 670 S.E.2d 741, 746 (Va. 2009).

Plaintiff refutes Defendant's allegations and claims that Plaintiff was not required to present his claim to the Fairfax County Board of Supervisors before filing suit. First, Plaintiff argues that inverse condemnation claims are self-executing under Article I, § 11 of the Virginia Constitution. Further, because inverse condemnation claims are self-executing, the landowner can waive making a claim on the Board and proceed directly to the Circuit Court with his constitutional claim. Thus, the Plaintiff requests the demurrer be overruled.

A. Standard of Review

The purpose of a demurrer is to determine whether a complaint states a cause of action upon which relief may be granted. *Bell v. Saunders*, 278 Va. 49, 53, 677 S.E.2d 39, 40-41 (2009). A demurrer admits the truth of the facts contained in the pleading to which it is addressed as well as any facts that may be reasonably and fairly implied and inferred from those allegations. *Yuzefovsky v. St. John's Wood Apartments*, 261 Va. 97, 102, 540 S.E.2d 134, 136 (2001).

In considering a demurrer, the court is limited to review of the complaint and any attachments to the complaint. *TC MidAtlantic Dev., Inc. v. Commonwealth*, 280 Va. 204, 212, 695 S.E.2d 543, 548 (2010). To withstand demurrer, a complaint need only contain "sufficient allegations of material facts to inform a defendant of the nature and character of the claim," and need not "descend into statements giving details of proof." *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22, 24, 431 S.E.2d 277, 279 (1993).

A demurrer, thus, tests the legal sufficiency of a pleading and should be sustained if the pleading fails to state a valid cause of action when viewed in the light most favorable to the plaintiff. Va. Code Ann. § 8.01-273; *Sanchez v. Medicorp Health Sys.*, 270 Va. 299, 303, 618 S.E.2d 331, 333 (2005). Further, a demurrer cannot be used to decide the merits of a case, lest a trial court may incorrectly short-circuit litigation pretrial and determine a dispute without permitting the parties to reach a trial on the merits. *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 139, 747 S.E.2d 804, 805 (2013).

B. Inverse Condemnation Actions Do Not Have to Comply with the Claims Presentment Requirements Under Virginia Law.

An inverse condemnation action alleges a violation of the just compensation provision of Article I, § 11 of the Virginia Constitution. Article I, § 11 of the Virginia Constitution provides that the government "shall not pass . . . any law whereby private property shall be taken or damaged for public uses, without just compensation." Since inverse condemnation is a violation of a constitutional provision it is self-executing. *Chaffinch v. Chesapeake & Potomac Tel. Co.*, 227 Va. 68, 70 (1984). Thus, it gives rise to a common-law action regardless of whether the legislative branch has provided any statutory procedure authorizing one. *See id.*

Although a violation of the just compensation provision is self-executing, the Board of Supervisors is arguing that the Plaintiff must still comply with Va. Code § 115.2-1248 and present his claims to the County before filing his action. Va. Code § 115.2-1248 states:

No action shall be maintained by any person against a county upon any claim or demand until such person has presented his claim to the governing body of the county, unless the governing body has entered into a binding arbitration agreement or there is a provision in a written contract with the county to submit to arbitration any controversy thereafter arising. When there exists such a provision in a contract or there is a written agreement to arbitrate, the provisions of the Uniform Arbitration Act, Article 2 (§ 8.01-581.01 et seq.) of Chapter 21 of Title 8.01, shall apply.

The Supreme Court of Virginia has found that “the purpose of this section is to afford the county authorities the opportunity to investigate the circumstances, examine the locality in which the injury is alleged to have occurred, and to discover the witnesses promptly so as to ascertain the facts while their recollections are fresh.” *Hartwell v. Cty. of Fairfax*, 83 Va. Cir. 105 (2011) (citing *City of South Norfolk v. Dail*, 187 Va. 495, 501 (1948)). Moreover, failure to allege compliance requires dismissal on a demurrer. *Viking Enter. v. Cty. Of Chesterfield*, 670 S.E.2d 741, 746 (Va. 2009).

However, the application of Va. Code § 15.2-1248 cannot be reconciled with Article I, § 11 of the Virginia Constitution as applicable in this case. Specifically, the just compensation provision is self-executing, yet Defendant is arguing that the case can be dismissed on demurrer for failure to present Plaintiff’s claims to the County. To apply the presentment provision in this context would thereby deprive Plaintiff of his ability to seek just compensation under the Virginia Constitution despite the provision being self-executing because he failed to comply with a procedural barrier.

Likewise, the Supreme Court of the United States interpreted the Takings Clause of the Fifth Amendment in *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162, 204 L.Ed.2d 558 (2019). The Court held plaintiffs can bring a federal lawsuit under the Fifth Amendment without first exhausting state remedies as previously required in *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108 (1985). The Court, reasoned that “[b]ecause of the ‘self-executing character’ of the Takings Clause ‘with respect to compensation,’ a property owner has a constitutional claim for just compensation **at the time of the taking**” *Knick*, 139 S. Ct. at 2171, 204 L. Ed. 2d 558 (emphasis added).

By overruling the procedural blockages stated in *Williamson County*, the Supreme Court overruled far greater procedural barriers than presenting a claim to the county before filing suit under the analysis that the just compensation provision is self-executing. Similarly, Article I, § 11 of the Virginia Constitution has also been held to be self-executing and thus, Plaintiff in this case must have the right receive compensation if the court finds a taking did occur.

Further, in *Hartwell v. County of Fairfax*, this Court concluded that unlike other claims against counties where the Supreme Court of Virginia has found the Claim Presentment Statutes to be applicable, a claim for inverse condemnation is “self-executing and the landowner may enforce his constitutional right to compensation in a common-law action.” *Hartwell*, 83 Va. Cir. at 108.

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Therefore, in this case Plaintiff was not required to present his claim to the Board of Supervisors prior to filing suit. Further, this Court finds that the facts presented sufficiently allege a claim for inverse condemnation. Thus, the Board of Supervisors' demurrer is overruled.

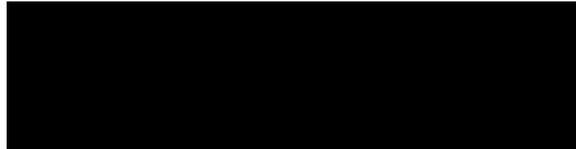
IV. CONCLUSION

For the reasons stated herein, this Court holds that Plaintiff was not required to present his claims to the County prior to filing his action. Accordingly, this Court holds that the Fairfax County Board of Supervisors' Demurrer is overruled.

Ms. Mernin is to draft and circulate an appropriate order reflecting the Court's ruling for submission by September 15, 2020.

And this matter continues.

Very truly yours,

A large black rectangular redaction box covering the signature area.

Grace Burke Carroll

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