

# Inverse Condemnation/Aquatic Easement: Alabama Supreme Court Addresses Viability of Action Against State Agency



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The Supreme Court of Alabama (“Court”) in an August 29 opinion addressed an inverse condemnation action against an Alabama agency. See *Portersville Bay Oyster Co., v. Christopher Blankenship*, No. 1161101, 2018 WL 4124504 (Ala. Aug. 29, 2018).

An oyster farming business claimed that an Alabama Department of Conservation and Natural Resources (“Department”) contractor building a breakwater caused sediment and silt to kill oysters in its aquaculture easement.

By way of background, the Court notes that under Alabama law, the beds of various bodies of water, including bays, are the property of the state. However, a landowner on waterfront property has a statutory right to plant and harvest oysters from the bottom in an area 600 yards from the shoreline of the property. The same waterfront owner does not have the right to use elevated cages to harvest those oysters without a shellfish aquaculture easement from the Department.

A land and timber company owned waterfront property on Portersville Bay. In 2014 it leased its statutory right to plant and harvest oysters at the bottom of its submerged land on two contiguous tracts to the Portersville Bay Oyster Company (“Plaintiff”).

Plaintiff obtained two leases. One had a lease term of July 8, 2015 to July 7, 2018. The other a lease term of August 1, 2015 to July 31, 2020. In November of 2014, the Department conveyed a shellfish aquaculture easement to the .

The Department contracted to construct a breakwater and marsh for coastal protection in Mobile Bay. Construction began in May 2016. Sediment and silt removed during the project was deposited on the Plaintiff’s oyster beds in the areas encompassed by the Plaintiff’s leases and the easement. The Plaintiff alleged that this debris killed oysters being farmed there.

Plaintiff filed actions which included a lawsuit against the Commissioner of the Department in his official capacity. It asserted inverse condemnation and sought money damages. The Department asked the trial court to dismiss the Plaintiff’s claim. It argued that Plaintiff failed to state a claim upon which relief could be granted.

The trial court eventually dismissed the Department. It concluded that Plaintiff had not alleged a valid inverse condemnation claim.

The Alabama Supreme Court addressed whether the trial court's dismissal was proper. A Rule 12(b)(6) dismissal (failure to state a claim on which can be granted) is only proper "when it appears beyond a doubt that the Plaintiff can prove no set of facts in support" of the Plaintiff's claim.

Department relied primarily on the state's immunity in asserting its 12(b)(6) motion. In general, "the State of Alabama shall never be made a defendant in any court of law or equity," and this protection extends to state officials sued in their official capacities. However, Article I of the Alabama Constitution provides an exception: "private property shall not be taken for, or applied to public use, unless just compensation be first made therefor. . . ." As a result, even if the state lawfully uses its eminent domain powers to take private property, the property owner must be compensated.

Ordinarily, the government must initiate condemnation proceedings to exercise its power of eminent domain. If it does not, aggrieved property owners may, in appropriate circumstances, rely on inverse condemnation as a legal action to recover the value of the property that was taken. Condemnation proceedings require some affirmative act of "taking" on the government's part. However, the government need only occupy or injure the property in question to trigger an inverse condemnation action.

Department argued, and the Court acknowledged, that no statutory procedure existed for a taking of this nature. It was noted that under *Ex parte Carter* (a 1980 Alabama Supreme Court case), because no procedure existed by which the government could have asserted eminent domain, the Plaintiff was barred from bringing an inverse condemnation claim.

The Court rejected this argument. It overruled *Ex parte Carter* insofar as it supports Department's position.

The Court concluded that Plaintiff had acquired certain private property rights through the leases and the easement. Further, the activities of the Department were deemed to have foreseeably interfered with such rights. It held that, in the same way leasehold interests can be taken through eminent domain and inverse condemnation, easements can also be taken through eminent domain inverse condemnation.

The Court reversed the trial court's dismissal and remanded the case for further proceedings consistent with the finding that the defense of state immunity is not available to the Department.

A [copy of the opinion](#) can be found here.