

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
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Granted Appeal Summary

Case

C. ROBERT JOHNSON, III, ET AL. v. CITY OF SUFFOLK, ET AL.
(Record Number 191563)

From

The Circuit Court for the City of Suffolk; L. Farmer, Judge.

Counsel

L. Steven Emmert (Sykes, Bourdon, Ahern & Levy, P.C.), Joseph T. Waldo and Russell G. Terman (Waldo & Lyle, P.C.) for appellants.

David L. Arnold, D. Rossen S. Greene, and Matthew R. Hull (Pender & Coward, P.C.), and Christopher D. Pomeroy and Paul T. Nyffeler (AquaLaw PLC) for appellees.

Assignment of Error

The trial court erroneously sustained the demurrers, because the declaratory-judgment petition states a facially valid claim for inverse condemnation, and:

- A. The trial court erroneously based its ruling on federal caselaw interpreting the United States Constitution, because the oystermen's claims are based on the Constitution of Virginia.
- B. The trial court erroneously ruled that the City and HRSD have the right to pollute the Commonwealth's waters and that they need not pay just compensation to the oystermen. In doing so, it erroneously relied on now-obsolete caselaw, and erroneously applied that caselaw.

Assignments of Cross-Error (City of Suffolk)

1. The trial court erred in overruling the demurrers on the ground that an inverse condemnation case will not lie against the City because the City lacks the authority to exercise eminent domain over the oyster ground leases in this case.
2. The trial court erred in failing to consider the argument in the City's demurrer that the Petition should have been dismissed because the Appellants failed to allege a public use and failed to allege facts sufficient to show that their property was taken or damaged for a public use.

3. The trial court erred in failing to consider the argument in the City's demurrer that the Petition should have been dismissed because oyster ground leases do not guarantee lessees water of a certain purity or pollution level.

4. The trial court erred in failing to consider the argument raised in the City's demurrer that the Petition should be dismissed because whatever taking or damage the Appellants did allege was due to the state's exercise of its police power.

5. The trial court erred in failing to consider the argument raised in the City's plea in bar that the Petition should be dismissed as time-barred because the claims are premised on conditions which have existed continuously since before the three-year statute of limitations.

Assignment of Cross-Error (Hampton Roads Sanitation District)

1. The Circuit Court erred in denying in part HRSD's demurrer by finding that HRSD has condemnation authority over Petitioners' alleged oyster planting ground leases despite Virginia Code § 28.2-628, which removed its condemnation authority over grounds leased by the Commonwealth to third parties pursuant to Virginia Code §§ 28.2-600 *et seq.*