

11 of 12 DOCUMENTS

**ARTHUR D'EGIDIO, et al., Plaintiffs and Appellants, v. PACIFIC BAY HOMES, et al.,
Defendants and Respondents.**

B149545 and B153233

**COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT,
DIVISION FOUR**

2002 Cal. App. Unpub. LEXIS 9163

September 30, 2002, Filed

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PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Los Angeles County, Howard J. Schwab, Judge. Super. Ct. No. PC024381.

DISPOSITION: Reversed.

COUNSEL: Sullivan, Workman & Dee and Joseph S. Dzida for Plaintiffs and Appellants.

Senn, Palumbo & Meulemans and Susan D. Hyman for Defendants and Respondents Pacific Bay Homes and Newhall County Water District.

Carl K. Newton, City Attorney; Burke, Williams & Sorensen and Brian A. Pierik for Defendant and Respondent City of Santa Clarita.

JUDGES: HASTINGS, J. We concur: VOGEL (C.S.), P.J., CURRY, J.

OPINIONBY: HASTINGS

OPINION: BACKGROUND

Appellants, the D'Egidio family, own real property situated in the City of Santa Clarita. When they acquired it, the property was subject to an easement acquired in 1951 by the County of Los Angeles in an eminent domain proceeding for the purpose of widening and improving Old Soledad Canyon Road, which dissected [*2] appellants'

property.

In 1987, the City of Santa Clarita was incorporated, and succeeded to the County's interest in the easement. A portion of the old road remained in the County, but not that part wholly within appellants' property. In 1996, after a new Soledad Canyon Road was built (which did not go through appellants' property), the County vacated that portion of the old road that remained within the County. The City of Santa Clarita took no official action to vacate its portion. In 1996, the City obtained appellants' consent to operate a "park-and-ride" lot on a portion of the old road that lay within the City.

In or about 1999, when respondent Pacific Bay Homes sought approval for a housing development in the City, respondent Water District required it to make improvements to the sewer system, including the construction of a sewage lift station. The City issued an encroachment permit to Pacific Bay in order to allow it to build the station on the Old Soledad Canyon Road. The station was built on the old right of way, with a wall and landscaping surrounding it, blocking all but ten feet of the right of way near where it intersects with the new Soledad Canyon Road. n1

n1 The basic facts as we have set them forth in our summary are not in dispute, and are in essence the same as those which have been set forth in the second amended complaint. In their briefs, the parties have ignored the pleadings and, for the most part, respondents' statements of undisputed facts, rather than follow the usual three-step process. (See e.g., *Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 589.) The parties have instead referred directly to the evidence submitted in support of and in opposition to the motions, apparently because respondents' statements of undisputed facts consist mostly of legal and factual conclusions.

[*3]

Appellants commenced this action in 1999 against respondents Pacific Bay Homes and public-entity does, alleging trespass and seeking inverse condemnation or to quiet title, as well as declaratory and injunctive relief. On July 28, 2000, appellants filed a second amended complaint substituting the City of Santa Clarita and the Newhall County Water District in place of doe defendants.

After the second amended complaint was filed, respondents brought motions for summary judgment or, in the alternative, summary adjudication of issues. Separate judgments were entered in favor of respondents City of Santa Clarita and Newhall County Water District on March 29, 2001, after their motions for summary judgment were granted, and appellants filed a timely notice of appeal from those judgments on April 11, 2001. n2

n2 The trial court denied appellants' motions for summary adjudication and for preliminary injunction in March 2000, and they are not at issue in this appeal.

After Pacific Bay's motion for summary adjudication [*4] was granted, dismissing all but one cause of action, the parties settled the claim not resolved by the motion, leaving no triable issue remaining, and judgment was entered pursuant to their stipulation on September 12, 2001, in order to facilitate appeal. n3 Appellants filed a timely notice of appeal from that judgment, and we consolidated the appeals upon the parties' joint request.

n3 See generally, *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 399-402, 981 P.2d 79.

DISCUSSION

Respondents' motions were all based upon the premise that the lift station was a use of the right of way within the scope of the easement acquired by eminent domain in 1951. In particular, respondents successfully urged in the trial court that the construction of the lift station was authorized by *Streets and Highways Code section 10100*, which gives the City authority "whenever the public interest or convenience requires," to install "in or along its streets . . . water mains, pipes, conduits, tunnels, hydrants, and [*5] other necessary works and appliances for providing water service . . . [and] any works, utility, or appliances necessary or convenient for providing any other public service." n4 Respondents also rely upon and *Public Utilities Code section 10101*, which grants every municipal corporation the right to construct "sewers

and sewer mains, all with the necessary appurtenances, across, along, in, under, over, or upon any road, street, alley, avenue, or highway." n5

n4 See also, *Streets and Highways Code section 5101*, and discussion within.

n5 A public water district is a "municipal corporation" for purpose of this section. (*State of California v. Marin Mun. W. Dist.* (1941) 17 Cal.2d 699, 702, 111 P.2d 651.)

Appellants raise a number of complex issues. They contend that by allowing the construction of a permanent obstruction on the right of way that effectively destroyed it as a street or highway, the City effected an abandonment of the right of way. In the alternative, they contend that respondents [*6] should be estopped from denying that the City abandoned its easement. Appellants also contend that the lift station is a nuisance, since it blocks the street, that its construction unlawfully created a new, expanded easement upon their property, requiring compensation in addition to that originally given in 1951, and that their right to access has been impaired, causing compensable damage to their property.

Respondents devote nearly all their energies to the issues of abandonment and estoppel with regard to the City's easement over appellants' property. There are, however, two easements at issue here. In addition to the City's easement, appellants, as owners of the land abutting the Old Soledad Canyon Road, also have an easement. (See *Rose v. State of California* (1942) 19 Cal.2d 713, 727, 123 P.2d 505 ("Rose").) Leaving for last the more difficult issues surrounding the City's public easement, we turn first to the issue of appellants' easement.

"That the owner of property fronting upon a street or highway has as appurtenant thereto certain private easements in the street in front of or adjacent to the lot—distinguished from the public easements therein—which [*7] are a part and portion of his property and are the private property of the lot owner as fully as the lot itself, is not open to question." (*Rose, supra*, 19 Cal.2d at pp. 726-727.) "This right is peculiar and individual to the abutting owner, differing from the right of passing to and fro upon the street, which he enjoys in common with the public, and any infringement thereof gives him a right of action . . . , and that any act of the municipality by which that easement is destroyed or substantially impaired for the benefit of the public is a damage to the lot itself within the meaning of the [California Constitution] for which he is entitled to compensation." [Citations.]" (*Rose, supra*, at p. 727.) n6

n6 The protection afforded by article I, section 19 of the California Constitution is more extensive than that provided under the Fifth Amendment to the United States Constitution. Under the former, private property may not be *taken or damaged* for public use without just compensation, whereas the Fifth Amendment is limited to a taking of property.

[*8]

Respondents contend, in essence, that a 60-foot wide permanent structure, blocking all but ten feet of Old Soledad Canyon Road, does not destroy or substantially impair appellants' easement as a matter of law. Appellants still have access, they reason, to the new Soledad Canyon Road from the areas of their property that abut that highway. They proffer no authority, however, for this remarkable assertion that by refraining from interfering with appellants' separate and unrelated easement in new Soledad Canyon Road, their interference with appellants' easement in Old Soledad Canyon Road is excused and non-compensable.

As the City points out, appellants' right of access from its easement is not unlimited. (See *People v. Ayon* (1960) 54 Cal.2d 217, 222-223, 5 Cal. Rptr. 151, 352 P.2d 519.) It is, however, more extensive than respondents suggest. (See *Bacich v. Board of Control* (1943) 23 Cal.2d 343, 352, 144 P.2d 818.) For example, blocking access to the next intersecting street in one direction by the creation of a cul-de-sac is compensable, although access still exists in the opposite direction to another intersecting street. (*Id.* at pp. 352-353.) [*9]

In *Rose, supra*, the street in front of the plaintiff's property was 66 feet wide, until a subway, 24 feet in width, was constructed in the center, leaving very narrow lanes and sidewalks on each side of the subway. (See 19 Cal.2d at p. 718.) Such a construction was an interference with the abutting property, and the extent of the interference and the amount of damages was for the trier of fact to determine. (*Id.* at pp. 729, 737-741.)

The obstruction is similar in this case. It is undisputed that respondents interfered with appellants' right of access by constructing a permanent structure that blocked all but ten feet of the road. The extent of the interference and the amount of damages remain triable issues of fact precluding summary judgment.

Respondents Water District and Pacific Bay Homes attempt to distinguish *Rose*, by pointing out that appellants' property is undeveloped. In *Rose*, however, the property was hardly developed. It consisted of a three-acre fruit orchard improved only by a residence, windmill, tankhouse, and barn. (*Rose, supra*, 19 Cal.2d at p. 718.) The Court

said: "The rights of an abutting owner [*10] to access to the street are the same whether his property is situated on a street in the business district of a large city or in the residential district of a small town. The extent of the damage for interference therewith might be different, but the right of access to the street would be the same." (*Id.* at p. 730.) Here too, the issue is one of the extent of the damage and the amount of compensation.

We return to the issues surrounding the City's easement. Appellants contend that by allowing the construction of the lift station on Old Soledad Canyon Road, the City has abandoned the right of way, causing the easement to be extinguished. Relying on *People ex rel. Dept. Pub. Wks. v. Volz* (1972) 25 Cal. App. 3d 480, 102 Cal. Rptr. 107, *City of Imperial Beach v. Algert* (1962) 200 Cal. App. 2d 48, 19 Cal. Rptr. 144, and *Palo Alto Inv. Co. v. County of Placer* (1969) 269 Cal. App. 2d 363, 74 Cal. Rptr. 831, appellants contend that the City should be equitably estopped from denying the abandonment of its easement, and that there was a triable issue of fact regarding their reliance upon representations and actions by the City [*11] and the County.

Respondents counter that there was no abandonment, since abandonment of a public street may be accomplished only in the manner provided by statute, which was not done here. (See *County of San Diego v. Cal. Water etc. Co.* (1947) 30 Cal.2d 817, 823, 186 P.2d 124.) We need not decide whether abandonment must be accomplished in every case only in the manner provided by statute, because we conclude that the statutory procedure provides an administrative remedy that must be followed before resorting to any judicial remedy, and that was not done in this case.

The statutory provisions providing for the abandonment of highways reflect strong public policy to protect not only the abutting landowners' rights, but also the public's interest in the continued use of its streets. (*County of San Diego v. Cal. Water etc. Co., supra*, 30 Cal.2d at pp. 826-827.) A city may abandon a street or highway by resolution of its legislative body, after a noticed vacation hearing upon finding that the street or highway is no longer necessary. (*Sts. & Hy. Code*, § 8324.) If the city fails to initiate a vacation proceeding, any interested person may petition [*12] it to do so. (*Sts. & Hy. Code*, § 8320, subd. (a).) A city council may, under some circumstances, summarily vacate a street that has been superseded by relocation, has become impassable, or is no longer required as a right of way. (*Sts. & Hy. Code*, §§ 8330 - 8334.) In the alternative, a city may follow any other procedure provided by the Streets and Highways Code for vacation of streets. (*Sts. & Hy. Code*, § 8308.)

The legislative determination is final, subject to re-

view by mandamus pursuant to *Code of Civil Procedure section 1085*, where it is alleged to have been arbitrary, capricious, or entirely lacking in evidentiary support, without proper notice or not in accordance with other procedures required by law. (*Heist v. County of Colusa (1984) 163 Cal. App. 3d 841, 846, 213 Cal. Rptr. 278.*) n7

n7 For example, the legislative determination may be reviewed where there is evidence of collusion between the city council and private landowners. (*Beals v. City of Los Angeles (1943) 23 Cal.2d 381, 386, 144 P.2d 839.*)

[*13]

Appellants were required to exhaust their administrative remedies provided by the statute. (Cf. *South Coast Regional Com. v. Gordon (1977) 18 Cal.3d 832, 836-838, 135 Cal. Rptr. 781, 558 P.2d 867.*) "Parties who are afforded by statute an opportunity to obtain adequate relief by application to a legislative or administrative municipal body, like a board of supervisors, with reference to the very matter of which they complain in an action in equity, [must] seek that relief from such body before being permitted to maintain an equitable action for the purpose." (*San Joaquin etc. Irr. Co. v. Stanislaus (1908) 155 Cal. 21, 27, 99 P. 365.*) The same rule applies to those who seek to enforce legal remedies in an action at law. (*Id. at p. 27.*)

Here, the second amended complaint did not allege that appellants sought a resolution from the Santa Clarita City Council to vacate its easement, and the parties agree that there was no such action taken by the City Council.

Unwarranted judicial interference with the legislative process is a violation of the constitutional doctrine of separation of powers. (*Santa Clara County v. Superior Court (1949) 33 Cal.2d 552, 555-559, 203 P.2d 1; [*14] Cal. Const., art. III, § 3.*) Thus, exhaustion of administrative remedies is "a jurisdictional prerequisite to resort to the courts" (*Abelleira v. District Court of Appeal (1941) 17 Cal.2d 280, 293, 109 P.2d 942*), unless an exception applies, such as futility, irreparable harm, or inadequacy of the only available administrative remedy. (See *Ogo Associates v. City of Torrance (1974) 37 Cal. App. 3d 830, 834, 112 Cal. Rptr. 761.*)

We conclude that appellants may not seek judicial vacation of the easement without first resorting to the statutory procedure. That does not end the discussion, however, with regard to that portion of the easement now occupied by the lift station.

A city has the power to improve property taken by eminent domain in almost any manner that "in the opinion

of the legislative body the public interest or convenience may require." (*Sts. & Hy. Code, § 5101.*) In particular, the legislative body of a city "may order the whole or any portion, either in length or in width, of any one or more of the streets, places, public ways, or property, easements, or rights-of-way, . . . owned by any city, . . . , and any property for which an order [*15] for possession prior to judgment has been obtained, to be improved by or have constructed therein, over, or thereon, either singly or in any combination thereof, any . . . sewers or instrumentalities of sanitation, . . . all other work which may be deemed necessary to improve the whole or any portion of those . . . easements [etc.], [and] all other work auxiliary to any of the above, which may be required to carry out the above." (*Sts. & Hy. Code, § 5101, subs. (c), (o), (p).*)

It is clear from the statute that a city council has the power, upon finding that the public interest or convenience so requires, to allow the construction of a sewage lift station on its easement, even though it originally condemned it for highway purposes. n8 A city may do so without additional compensation to the property owner, however, *only so long as the right-of-way is not obstructed, and the improvement does not interfere with its use as a highway.* (Cf., *Montgomery v. Railway Company (1894) 104 Cal. 186, 189-192; Mancino v. Santa Clara County Flood etc. Dist. (1969) 272 Cal. App. 2d 678, 682-683, 77 Cal. Rptr. 679.*) n9

n8 A municipality's power is more limited with regard to easements obtained by dedication pursuant to the Subdivision Map Act, *Government Code sections 66410, et seq.* (See *Gov. Code, § 66439.*)

[*16]

n9 "All streets are highways . . ." (*Montgomery v. Railway Company, supra, 104 Cal. at p. 188.*)

The construction of a permanent improvement for a public purpose is a new and inconsistent public use if the improvement obstructs the highway. (*Barney v. Keokuk (1876) 94 U.S. 324, 340-342, 24 L. Ed. 224* [construction of a permanent freight depot in the street]; *Montgomery v. Railway Company, supra, 104 Cal. at p. 194*, citing *Barney v. Keokuk, supra, 94 U.S. 324.*) A municipality must proceed in eminent domain before subjecting private property to a new public use that is inconsistent with the existing public use. (*City of Pasadena v. Stimson (1891) 91 Cal. 238, 256, fn. 1, 27 P. 604; San Bernardino County Flood etc. Dist. v. Superior Court (1969) 269 Cal. App. 2d 514, 518-519, 521, 75 Cal. Rptr. 24; Code Civ. Proc., §§ 1240.610, 1250.220, 1250.230.*)

The City contends that it is immune from liability under *Government Code section 818.4*, because it merely issued an encroachment permit. [*17] Under section 818.4: "A public entity is not liable for an injury caused by the issuance . . . of . . . any permit." We disagree. No statute may confer immunity on a governmental entity for a taking or damaging of property in violation of the Constitution. (*Bacich v. Board of Control, supra*, 23 Cal.2d at pp. 346-347; Cal. Const., art. I, § 19.)

The City also contends that appellants are barred from bringing this action, because they failed to file the claim required by *Government Code section 905*. No claim is required prior to filing an inverse condemnation action. (*Gov. Code, § 905.1*.)

The City also contends that no inverse condemnation action will lie against it. The City provides no authority for such a pronouncement, other than the entire eminent domain statute, *Code of Civil Procedure sections 1230.010*, et seq. The City is suggesting, in essence, that because it did not follow the constitutional and statutory prerequisites to subjecting appellants' property to a new public use, and instead helped others to do so, it bears no responsibility. We reject the City's suggestion.

"An 'inverse condemnation' action may be pursued when the state or other public [*18] entity improperly has taken private property for public use without following the requisite condemnation procedures [or] takes other action that effectively circumvents the constitutional requirement that just compensation be paid before private property is taken for public use." (*Customer Co. v. City of Sacramento (1995) 10 Cal.4th 368, 377, 895 P.2d 900*, fn. omitted.)

"An inverse condemnation action is an eminent domain proceeding initiated by the property owner rather than the condemner. The principles which affect the parties' rights in an inverse condemnation suit are the same as

those in an eminent domain action. [Citations.]" (*Breidert v. Southern Pac. Co. (1964) 61 Cal.2d 659, 663, fn. 1, 39 Cal. Rptr. 903, 394 P.2d 719*.) Anyone with an interest in the property is a proper defendant. (*Code Civ. Proc., § 1250.220*.)

In any event, public entities may be liable in damages for any indirect as well as direct government action resulting in a taking. (*People ex rel. Dept. of Transportation v. Diversified Properties Co. III (1993) 14 Cal.App.4th 429, 441-443*.) And all active joint participants in an unlawful taking or damaging [*19] of private property are proper defendants in an inverse condemnation action. (*Breidert v. Southern Pac. Co., supra*, 61 Cal.2d at p. 662.)

A "party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850*, fn. omitted.) To satisfy their burden, respondents were required to show that appellants would not be able to establish one or more elements of their cause of action, or that they had a complete defense to that cause of action. (*Id. at p. 849*.) Instead, respondents established that they interfered with appellants' rights as abutting landowners and effected a taking of appellants' property for a new public use without compensation. We conclude that respondents were not entitled to summary judgment, and the judgments must be reversed.

DISPOSITION

The judgments are reversed. Appellants shall have their costs on appeal.

HASTINGS, J.

We concur:

VOGEL (C.S.), P.J.

CURRY, J.