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### Summary of City of Las Vegas v. Cliff Shadows Prof'l Plaza, LLC, 129 Nev. Adv. Op. 2

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*Nevada Law Journal*

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PROPERTY – EASEMENTS  
LAND USE – FEDERAL LAND PATENTS

**Summary**

The Court considered an appeal and cross appeal on issues arising from an eminent domain action brought by Appellant City of Las Vegas to acquire a 40-foot-wide strip of real property from Respondent Cliff Shadows Professional Plaza, LLC.

**Disposition/Outcome**

A federal patent need not explicitly specify that it is intended for use by a City when the patent's language expresses an intent for an easement to be used for "public utilities purposes."

A taking does not occur when the government uses its own easement without exceeding the easement's scope.

**Facts and Procedural History**

In 1956, a patent was issued to Cliff Shadows Professional Plaza's (Cliff Shadows) predecessor-in-interest conveying title to the property in question, subject to a future right-of-way. The patent was subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the boundary of said land. The patent was recorded in 1957.

In 2008, title was conveyed to Cliff Shadows subject to "[r]estrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property." A 40-foot wide strip of Cliff Shadows' property was designated by the City of Las Vegas (City) for use in the Cliff Shadows Parkway Improvement Project which sought to make use of the federal land patent's 33-foot right-of-way, plus an additional 7 feet, to widen a roadway.

The City's appraiser found the unencumbered portions to be worth \$15.50 per square foot, so the value of the unencumbered portions of the strip of property was \$61,876. The appraiser determined that the encumbered portion of the property had no value and assigned it a token value of \$100. Pursuant to the appraiser's valuations, the City offered to pay Cliff Shadows \$62,400 for the 40-foot-wide strip of property. Cliff Shadows rejected the offer.

The City filed an eminent domain action after Cliff Shadows rejected the City's offer of \$62,400. The complaint sought a permanent easement and all rights, title, and interest to the property in order to construct its improvement project. Cliff Shadows answered the complaint and filed a counterclaim for inverse condemnation.

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<sup>1</sup> By Brittany Puzey.

Cliff Shadows moved for partial summary judgment, arguing that the federal land patent did not create an easement for the City's benefit and the City was unconstitutionally taking the property, entitling Cliff Shadows to \$394,490 in just compensation (\$15.50 per square foot for both the encumbered and unencumbered portions of the property). The City filed an opposition to Cliff Shadows' partial summary judgment motion and a countermotion for summary judgment, arguing that Shadows was *not* entitled to compensation because the City's use of the right-of-way for roadway purposes did not constitute a taking, and rejected a \$228,707 offer of judgment made by Cliff Shadows.

The district court entered an order granting Cliff Shadows partial summary judgment, finding that the City lacked any right to use the easement because the federal patent did not specifically name the City. The district court also determined that the easement must be disregarded when computing just compensation and entered partial summary judgment against the City for \$394,490.

Cliff Shadows then moved for attorney fees on several grounds, including NRS 17.115, which governs attorney fee awards in connection with offers of judgment. The district court determined that Cliff Shadows was entitled to a portion of the attorney fees sought under NRS 17.115 because it obtained a judgment more favorable than its offer of judgment. The district court granted in part and denied in part Cliff Shadows motion for attorney fees.

The City appealed the district court's partial summary judgment, and Cliff Shadows appealed the district court's decision to award only partial attorney fees.

## **Discussion**

Justice Saitta wrote the opinion for the Court sitting en banc.

There were four issues before the Court: (1) whether the district court erred in determining that a federal land patent did not create a 33-foot wide easement that Las Vegas is entitled to use; (2) whether the district court erred in determining that Las Vegas' proposed use of the easement constitutes a taking of private property constitutionally requiring just compensation in return; (3) whether the district court erred in disregarding the easement when it computed just compensation; and (4) whether the district court's award of attorney fees was an abuse of discretion.

First, the City argued that the federal land patent created an easement that the City is entitled to use. The Court agreed, based on a plain language interpretation of the statute, and relying on the rule that any ambiguities in a federal land patent should be construed in favor of the government.

Cliff Shadows' argued that the City was not entitled to use the right-of-way because it was not reserved for use by the City, because the patent did not specifically name the City. The Court rejected this argument, relying largely on *Stoltz v. Grimm*,<sup>2</sup> where two federal land patents contained language nearly identical to the patent at issue here. Those patents stated: "This patent

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<sup>2</sup> 100 Nev. 529, 689 P.2d 927 (1984).

is issued subject to an easement for a road-way not exceeding 33 feet in width, to be constructed across said land, or as near as possible, to the exterior boundaries.”<sup>3</sup> Even though the City of Reno was not specifically named in the patents, the patents were treated as compelling a dedication to Reno, and the landowner was required to dedicate the land to the city.<sup>4</sup> The Court also was persuaded by other jurisdictions' similar interpretations of federal land patents with nearly identical language.

The Court also reasoned that even if the patent was ambiguous, the “well-established rule of construction [is] that any ambiguities within a federal land patent are construed in favor of the government.” Accordingly, the Court held that the federal land patent burdening Cliff Shadows' property created a public easement which the City had a right to use for roadway and utility purposes.

Second, the City argued that its use of the easement as part of its improvement project did not constitute a taking. Cliff Shadows contended that if a valid easement existed, then the scope of that easement allows for roadways to be created only if they directly benefit the owners of property issued through federal land grants pursuant to the Small Tract Act, and that the City's proposed use of the easement is beyond the scope of the easement, thereby constituting a taking.

Here, the Court noted that the City's use of the easement would only constitute a taking if the proposed use fell outside the scope of the easement as articulated in the federal land patent. The Court held that the City's improvement project fit within the scope of the easement because the plain language the patent stated that the easement is subject to an easement for "roadway" and "public utilities" purposes, and the City's improvement project serves those purposes. Furthermore, the Court rejected Cliff Shadows argument that roadways could be created only if they directly benefit the owners of property issued pursuant to the Small Tract Act, because the patent did not include that qualification.

The Court also relied on the rule established in *Lucas v. South Carolina Coastal Council*,<sup>5</sup> and accepted by various jurisdictions to conclude that a taking does not occur when the government uses its own easement without exceeding the easement's scope. Here, the City had not attempted to create an easement over a parcel that was never previously burdened; the easement existed when Cliff Shadows purchased the property. Cliff Shadows therefore lacked the property right that the City attempted to use. Accordingly, the district court erred in determining that the City's proposed use of the easement constitutes a taking.

Since the Court held that the patent entitled the City to use easement, and that the City's proposed use of the easement did not constitute a taking, the other two issues were disposed of.

Further, unlike the Dissent, the Court refused to address the total valuation of Cliff Shadows' property, reasoning that it was not disputed on appeal.

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<sup>3</sup> *Id.* at 531, 689 P.2d 928.

<sup>4</sup> *Id.* at 535, 689 P.2d 931.

<sup>5</sup> 505 U.S. 1003, 1028-29 (1992).

## **Conclusion**

The Court concluded that (1) the district court erred in determining that the federal land patent did not create a 33-foot-wide easement because the plain meaning of the patent's language created a valid public easement and (2) the district court erred in determining that the City's proposed use of the easement constituted a taking because the use of the easement was within its scope and did not strip Cliff Shadows of a property interest. In light of those conclusions, the Court determined that Cliff Shadows was not entitled to just compensation or attorney fees.

## **Dissent**

The Dissent argued that the valuation of Cliff Shadows' was in dispute. Relying on *McCarran International Airport v. Sisolak*<sup>6</sup> and a long history in Nevada of protecting property owners against government takings, the Dissent argued that the City was required to pay just compensation for its use of the easement. Additionally, the Dissent relied on *City of North Las Vegas v. Robinson*<sup>7</sup> in finding that the valuation of the property was calculated incorrectly. The Dissent argued that the property should have been calculated "based on the highest and best use" without focusing only on the condemned part of the property.<sup>8</sup>

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<sup>6</sup> 122 Nev. 645, 137 P.3d 1110 (2006).

<sup>7</sup> 122 Nev. 527, 134 P.3d 705 (2006).

<sup>8</sup> Id. at 531-21, 134 P.3d at 708.