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V & S Railway, LLC v. White Pine County and City of Ely, 125 Nev. Adv. Op.
No. 23
(July 16, 2009)¹

**PROPERTY LAW: EMINENT DOMAIN - STATUORY
INTERPRETATION**

Summary

Appeal from a district court order granting summary judgment in an eminent domain action that held that appellant's condemnation action was barred, under NRS 334.030, once governmental agency designated a railroad as surplus government property.

Disposition/Outcome

Reversed and remanded for proceedings consistent with this opinion.

Factual/Procedural Background

In 1987, the LADWP purchased the Northern Nevada Railroad. By 2002, the railroad was no longer used and the LADWP designated the railroad as surplus property. Prior to offering the railroad for sale to the general public, the LADWP offered the railroad to governmental entities, including the town of Ely, Nevada. On November 6, 2003, Ely offered to purchase the railroad for \$750,000. On December 9, 2003, the LADWP sent Ely a letter indicating its terms for the transaction. On December 17, 2003, the LADWP received a \$250,000 deposit towards the purchase price from Ely.

Two separate condemnation actions regarding the railroad were subsequently filed. One was filed by V & S Railway, which wanted to obtain the railroad under NRS 37.230. The other was filed by Ely when its contract negotiations with LADWP soured. LADWP and Ely eventually entered into an asset-purchase-and-settlement agreement for the railroad.

White Pine County² and Ely together moved for summary judgment on V & S Railway's condemnation action. Ely and White Pine County argued that NRS 334.030(5) precluded V & S Railway's ability to pursue its condemnation action under NRS 37.230.³ The district court eventually granted summary judgment in favor of White Pine County and Ely. In granting summary judgment, the district court found no genuine issue of material fact as to whether V & S Railway was entitled to pursue its condemnation action.

In addition, the district court found that White Pine County and Ely were entitled to judgment as a matter of law because NRS 334.030(5) suspends NRS 37.230 and any other statutes that interfere with a governmental entity purchasing surplus property from another

¹ By James Conway

² White Pine County intervened in the proceedings.

³ NEV. REV. STAT. § 37.230 gives authority to "any company incorporated under the laws of this state, or constructing or operating a railway in this state," to acquire property for use as a railroad by condemnation.

governmental entity. In so deciding, the district court stated that NRS 334.030 was triggered when the LADWP, itself a governmental entity, designated the railroad as surplus property. The district court noted that NRS 334.030(5) states that any provision of law that is inconsistent with NRS 334.030 is suspended. Thus, any action brought pursuant to NRS 37.230, or any statute that would interfere with a governmental entity's purchase of surplus property from another governmental entity, was superseded by the LADWP designating the railroad as surplus. V & S Railway appealed from that order.

Discussion

The Supreme Court of Nevada began by noting that NRS 334.030 facilitates the purchase of surplus governmental property by governmental entities. The Court found that the statute is triggered when two governmental entities take steps demonstrating their intent to enter into a contract for the purchase and sale of surplus governmental property.⁴ In addition, the Court found that the statute does not require the actual formation of a contract and that the language of NRS 334.030(4)⁵ indicates that the statute applies as soon as the entities begin engaging in steps that show their intent to form a contract.

The Court held that NRS 334.030(5)⁶ is central to the resolution of the case. NRS 334.030(5) suspends any portion of any law that is inconsistent with allowing governmental entities to take full advantage of purchasing surplus property from other governmental entities. The Court noted that once NRS 334.030 is triggered, no other action may interfere with the surplus property purchase. As a result, V & S Railway's condemnation action should be suspended pursuant to NRS 334.030(5) once two governmental entities take steps demonstrating their intent to enter into a contract for the purchase and sale of surplus governmental property.

The Supreme Court of Nevada concluded that NRS 334.030 does not support the district court's finding that the LADWP's designation of the railroad as surplus property triggered NRS 334.030. Rather, the Court held that NRS 334.030 is triggered when governmental entities take steps showing their intent to enter into a contract for the purchase and sale of surplus governmental property. Therefore, on remand, the district court must determine whether the LADWP and Ely had already taken such steps when V & S Railway brought its condemnation action. If yes, then the district court should once again conclude that NRS 334.030(5) barred V & S Railway's condemnation action. In addition, if the district court finds that NRS 334.030(5) precludes V & S Railway's condemnation action, then White Pine County and Ely do not replace the LADWP. Such an interpretation, according to the Court, would undermine the statute's express purpose of allowing governmental entities to take full advantage of available surplus governmental property.

⁴ NEV. REV. STAT. § 334.030(2).

⁵ NEV. REV. STAT. § 334.030(4) states that "The governing body or executive authority, as the case may be, of any governmental entity may designate by appropriate resolution or order any officeholder or employee of its own to enter a bid or bids in its behalf at any sale of any equipment, supplies, material or other personal property, owned by any other governmental entity and may authorize that person to make any down payment or payment in full required in connection with such bidding."

⁶ NEV. REV. STAT. § 334.030(5) states that "Any provisions of any law, charter, ordinance, resolution, bylaws, rule or regulation which are inconsistent with the provisions of this section are suspended to the extent such provisions are inconsistent herewith."

Conversely, if the district court concludes that NRS 334.030 had not been triggered when V & S Railway brought its condemnation action, then the district court must reverse its grant of summary judgment in favor of White Pine County and Ely and permit V & S Railway to pursue its condemnation action against the LADWP. The Court also noted that NRS 334.030 does not give governmental entities a priority right to acquire surplus governmental property absent prior evidence indicating their intent to enter into a contract for the purchase of such property.

Conclusion

The Supreme Court of Nevada held that the district court incorrectly based its conclusion on the determination that NRS 334.030 was triggered by the LADWP designating the railroad as surplus governmental property. On remand, the district court must determine whether the LADWP and Ely had taken the necessary steps to make NRS 334.030 applicable when V & S Railway brought its condemnation action. If the district court concludes that the LADWP and Ely had taken such necessary steps under NRS 334.030, the district court should again conclude that NRS 334.030(5) bars V & S Railway's condemnation action.