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### Summary of Moldon v. County of Clark, 124 Nev. Adv. Op. No. 49

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*Nevada Law Journal*

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***Moldon v. County of Clark*, 124 Nev. Adv. Op. No. 49 (July 24, 2008)<sup>1</sup>**

**CONSTITUTIONAL LAW – EMINENT DOMAIN**

**Summary**

Appeal from a district court order denying a motion for interest in an eminent domain action.

**Disposition/Outcome**

Reversed and remanded to the district court.

**Factual and Procedural History**

In April 1995, the City of Las Vegas Redevelopment Agency (“Agency”) sought to condemn real property belonging to appellants Paul and Laurel Moldon in an eminent domain action. The Agency was granted immediate occupancy and possession, and as a result, deposited \$725,000 (the estimated value of the property) into an account under the district court clerk’s supervision.

Upon the conclusion of the eminent domain action, the Moldons requested an order directing the district court clerk to pay to them the principal of the \$725,000 deposit, along with the interest earned. The district court denied the Moldon’s motion in accordance with NRS 355.210<sup>2</sup>. On appeal, the Moldon’s argue that the statute is unconstitutional.

**Discussion**

The Moldons argued that under the United States Supreme Court’s decision in Webb’s Fabulous Pharmacies, Inc. v. Beckwith,<sup>3</sup> the interest earned on the condemnation deposit could not be placed into Clark County’s general fund under NRS 355.210 without violating the Fifth and Fourteenth Amendments. In Webb’s, the Court concluded that a county’s use of interpleaded funds for public benefit, realized by retaining interest earned on the funds while they were in the registry of the court, constituted a taking in violation of the Fifth and Fourteenth Amendments, which prohibit a state from taking private property for public use without just compensation.<sup>4</sup>

Clark County argues that the Moldon’s reliance on Webb’s is inapposite for two reasons. First, unlike in Webb’s, the district court clerk here received no additional fees for handling the condemnation deposit; thus the interest is the sole fee. Second, Clark County argues that because the Moldons made the strategic choice to leave the

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<sup>1</sup> By Tyler James Watson

<sup>2</sup> Statute directs that interest earned on money deposited with the court be placed in the applicable local government’s general fund.

<sup>3</sup> 449 U.S. 155 (1980).

<sup>4</sup> Id. at 164-65.

condemnation deposit in the district court's trust account, instead of transferring the funds into a separate account, the Court's holding in Webb's is applicable.

Despite these arguments, the Nevada Supreme Court held that an unconstitutional taking occurred when Clark County retained the interest earned on the condemnation deposit. In McCarran International Airport v. Sisolak, the Court recognized that "an individual must have a property interest in order to support a takings claim" and that "the court must first determine 'whether the plaintiff possesses a valid interest in the property affected by the governmental action' . . . before proceeding to determine whether the governmental action at issue constituted a taking."<sup>5</sup>

Thus, under Sisolak, the Court determined whether the Moldon's had a property interest in the condemnation deposit. The Court found that they did have such an interest. Of further significance, the Moldons were ultimately granted the right to possess and control the whole amount of the condemnation deposit under their settlement agreement with the Redevelopment Agency. Therefore, they had a right to the interest generated by that principal.

The Court held that former NRS 355.210 was unconstitutionally applied to allow Clark County to take the Moldons' earned interest without just compensation. Thus, the Court held that the district court clerk's act of placing the interest earned on the condemnation deposit into Clark County's general fund constituted a taking without just compensation, and it impermissibly allowed Clark County to unduly burden the Moldons to single-handedly benefit the public as a whole.

Therefore, the Court held that there was a Takings Clause violation when the district court clerk allowed the interest earned from the condemnation deposit to remain in Clark County's general fund without justly compensating the Moldons; the interest earned on the Moldons' condemnation deposit in Clark County's general fund under former NRS 355.210 constituted an unconstitutional taking.

## **Conclusion**

The Court held that the Moldons were entitled to the interest earned on the condemnation deposit because they had a property interest in the deposit. The Court reversed the district court's order and remanded the matter to the district court so that the court may determine the amount of interest owed to the Moldons on the condemnation deposit.

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<sup>5</sup> 122 Nev. 645, 658, 137 P.3d 1110, 1119 (2006) (quoting Karuk Tribe of California v. Ammon, 209 F.3d 1366, 1374 (Fed. Cir. 2000)).