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Summary of City of North Las Vegas v. 5th & Centennial, LLC, 130 Nev. Adv. Op. 66

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PREJUDGMENT INTEREST IN EMINENT DOMAIN CASES

Summary

On rehearing, the Court determined that (1) calculation of prejudgment interest begins at the time a taking, and the resulting injury, occurs; and (2) a fifteen year statute of limitations period should be applied to inverse condemnation and prejudgment claims.

Factual and Procedural Background

In 2002 the City of North Las Vegas (the City) began construction on a roadway along North 5th Street (the Project). In 2004 a subsequent plan called for the Project to be widened, on condition that landowners give up affected property. Between 2000 and 2005 the respondents/cross-appellants (the Landowners) acquired five vacant parcels (the Property) along the northern half of the Project.

The economic downturn and a lack of federal funds stalled the Project. In 2010, the Landowners filed a complaint against the City for inverse condemnation and pre-condemnation damages, alleging that the City's delayed condemnation of the Property prevented them from advantageously selling the Property.

The district court awarded the Landowners pre-condemnation damages and prejudgment interest. On appeal, the Court affirmed these awards, but reversed and remanded for a new determination of when prejudgment interest should be calculated. In filing the instant petition for rehearing, the City asserted expiration of the applicable statute of limitations and lack of standing, two previously unraised defenses: the.

Discussion

Standard of review

Affirming its prior decision, the Court chose to rehear this case to clarify the relevant law.

Prejudgment interest

The City argued that prejudgment interest should be calculated from the date of the service of the summons and complaint, as the Court stated in *Manke v. Airport Auth. Of Washoe County*.² In *Manke* the Court used the service date to start the calculation of prejudgment interest because the taking occurred at the service of summons. However, the Court noted that in *City of Sparks v. Armstrong*³, the date of a taking could be before the service of the summons. Viewing both cases, the Court held “the underlying rule remains consistent . . . prejudgment interest begins at the time a taking occurs.”

¹ By Adam Wynott.

² 101 Nev. 755, 710 P.2d 80 (1985).

³ 103 Nev. 619, 621–22, 748 P.2d 7, 9 (1987).

The Court reiterated that when private property is taken by the government, the owner is entitled to just compensation. Under the Nevada Constitution, “just compensation” is the monetary amount necessary to put the owner in the same position he or she would have been in had the taking not occurred⁴. Just compensation for property taken through eminent domain also includes interest.⁵ Nevada law requires courts to determine “the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken.”⁶ The Court concluded that the most appropriate date to use “is the first compensable date of injury resulting” from the conduct of the taking entity.

Statute of limitations

The Court held that the City could not pursue a statute of limitations defense because it brought the issue for the first time in its petition for rehearing. Despite this, the Court took the opportunity to state that it has applied a fifteen-year statute of limitations to takings actions.⁷ Despite inverse condemnation and pre-condemnation claims being different, the Court found that there is no reason to apply different statutes of limitation.

Standing

The Court declined to address this argument because the City failed to state how the Court overlooked or misapplied a material fact or controlling law.

Conclusion

In this case the date of the taking, and resulting injury, occurred prior to service of the summons and complaint. Because just compensation is meant to place the owner in the same monetary position had the taking not occurred, prejudgment interest is calculated from the date of the taking. In order to make the Landowners whole, the Court concluded that prejudgment interest for per-condemnation damages begins at the date of the injury.

Having been first brought on appeal, the City could not raise its statute of limitations or standing defenses.

⁴ Nev. Const. art. 1, § 22(4).

⁵ NRS 37.120(3).

⁶ NRS 37.175(4).

⁷ The Landowners purchased the Property in 2000 and brought the initial action in 2010, well within the fifteen year statute of limitations applied by the Court.