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Summary of Buzz Stew, LLC v. City of North Las Vegas, Nevada, 131 Nev. Adv. Op. 1

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Buzz Stew, LLC v. City of North Las Vegas, Nevada, 131 Nev. Adv. Op. 55220 (Jan. 29, 2015)¹

CONSTITUTIONAL LAW: GOVERNMENT TAKING

Summary

The Court determined that (1) in *Buzz Stew I*, the Court found no taking occurred under Art. 1 Sec. 8(6) of the Nevada Constitution, and Buzz Stew did not properly amend their complaint to pursue a new taking claim, and (2) a new trial is unwarranted because Buzz Stew cannot prove a taking and the district court did not clearly err by refusing to find a taking and awarding costs to the City.

Background

Buzz Stew, LLC purchased 20 acres in North Las Vegas in 2002. Around this same time, the City of North Las Vegas was preparing to construct a flood drainage system that would traverse this property. In 2003, the City of North Las Vegas announced intent to condemn the portion needed for the project. However, the City was unable to secure funding and they did not file the condemnation action. The City did not publicly retract its public condemnation announcement, and Buzz Stew sold the land in 2004 to Dark, LLC. In the sales contract, Buzz Stew informed Dark that a portion of the property might be subject to a drainage easement by the City. Buzz Stew retained the right to any proceeds resulting for the condemnation proposed in the easement.

A few years after selling the land, Buzz Stew sued the city for inverse condemnation and precondemnation damages. The City moved for motion to dismiss for failure to state a claim, which the district court granted. Buzz Stew appealed, resulting in the *Buzz Stew I* decision where the Court held that although there was no taking, the case would be remanded to determine whether the City's delay was unreasonable and injurious.

After close of evidence of that remand, Buzz Stew orally indicated they would like to amend the pleadings, and some debate exists over whether they successfully moved to amend their complaint.² The jury found the City did not act unreasonably in delaying the condemnation. On this appeal, Buzz Stew asserts that errors in the court below – namely, the failure of the court to allow him to amend despite allegedly newly discovered evidence – require a new trial with regard to the pre-condemnation damages claim and also with respect to evidence demonstrating a taking.

Discussion

Pursuit of a New Takings Claim

Whether a taking has occurred under Art. 1 Sec. 8(6) of the Nevada Constitution is a question of law which this Court reviews de novo. The government may not take private property for public use unless it pays just compensation.³ To bring a taking claim, the party must have a

¹ By Stacy Newman

² The Court notes this confusion but ultimately determines that an oral indication from Buzz Stew's attorney was not enough to establish a motion to amend the pleadings.

³ NEV. CONST. art. 1, § 8(6); U.S. CONST. amend. V.

legitimate interest in property that is affected by the government's activity at the time of the alleged taking.⁴ Buzz Stew asserted two instances of taking: the construction of the drainage channel on the property in 2008, and the diversion of flood waters over the property.

The court determined some of these issues are precluded by *Buzz Stew I*, but again found the alleged easement contract language in question simply notified Dark of the City's project and reserved the proceeds from a condemnation action. It did not reserve any future property interest. Instead, Buzz Stew only had a legitimate property interest from 2002-2004. Because there was no construction or pooling of flood water during the time which Buzz Stew had a legitimate property interest, the District Court did not err in refusing to recognize a taking.⁵

New Trial

Buzz Stew argued that multiple errors in the district court required a new trial. This Court disagreed and determined the jury was reasonable in finding that the City did not act unreasonably in delaying the condemnation proceedings. Further, Buzz Stew did not prove that federal funds were used and cannot show violations of the federal Relocation Act. Moreover, awarding costs to the City was proper because prevailing parties are entitled to costs, thus the court did not clearly err in awarding those costs.⁶

Conclusion

This Court held that new evidence at trial did not establish a taking occurred while Buzz Stew owned the property, and that no error made below warrants a new trial. Further, the City may recover costs with respect to the unsuccessful precondemnation claim. The findings of the district court are affirmed.

⁴ City of Las Vegas v. Cliff Shadows Prof'l Plaza, LLC, 129 Nev. ___, ___, 293 P.3d 860, 866 (2013).

⁵ The dissent argues *Buzz Stew I* impliedly recognized a property claim and that Buzz Stew retained a legitimate property interest after its sale, but the majority emphasizes that case was remanded solely to determine whether the City acted unreasonably in delaying its condemnation proceedings.

⁶ NEV. REV. STAT. § 18.020