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Clark County v. HQ Metro, LLC, 134 Nev., Adv. Op. 56 (Aug. 2, 2018) (en banc)

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PROPERTY LAW: RIGHT OF EASEMENT

Summary

The Court held that condemnation compensation is due to the party who lost a right to property when a court orders eminent domain to a government entity.

Background

Nevada Power Company (NV Energy) filed a complaint in eminent domain for an easement that would allow it to install electrical transmission lines on respondent HQ Metro LLC's property. The district court entered an order that allowed NV Energy to occupy and construct the transmission lines on the easement area. HQ Metro sold the property to Clark County before NV Energy physically entered or began construction on the easement. The district court held that because HQ Metro was the property owner at the time the district court ordered the easement, HQ Metro was entitled to the permanent easement compensation. On appeal, Clark County argues that it is entitled to monetary compensation for the permanent easement.

Discussion

Clark County and HQ Metro agree, pursuant to U.S. Const. amend. V and Nev. Const. art. 1, § 8(6), that the property owner at the time of the taking is entitled to the compensation for eminent domain proceedings. The parties disagree about what event constituted the taking. HQ Metro argues that the taking occurred immediately once the district court ordered permanent easement to NV Energy, or when HQ Metro owned the land. Clark County disputes HQ Metro's argument and argues that the taking occurred when NV Energy physically entered the premises and began to construct the transmission lines, or after Clark County had purchased the land.

The property owner at the time of a taking is entitled to compensation, not a subsequent property purchaser.² A taking can occur either once an entity takes a property's physical control or once a condemning entity enters into possession of a landowner's property.³

All rights inherent in ownership, including the right to possess, use, and enjoy property are what make up the bundle of property rights.⁴ The district court's order granting NV Energy immediate occupancy on HQ Metro's land caused a substantial government interference with HQ Metro's property rights. The district court's order allowed NV Energy to permanently occupy the easement area for its purposes and restrained HQ Metro from interfering with NV Energy's purposes which restricted HQ Metro's use and enjoyment of its property. Compensation is just desserts for HQ Metro's lost interest in its property bundle of rights.

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² *Argier v. Nev. Power Co.*, 114 Nev. 137, 139, 952 P.2d 1390, 1391 (1998).

³ *Id.* at 141.

⁴ *ASAP Storage v. City of Sparks*, 123 Nev. 641, 647 (2007).

If a plaintiff was ordered land under NRS 37.100, the defendant is entitled to compensation for the abandoned land.⁵ The district court's order for NV Energy to occupy a portion of HQ Metro's land was an injury to HQ Metro's property rights and the right to compensation vested at the time that the district court granted the order to NV Energy.⁶

Clark County argued that HQ Metro will receive a windfall if it is allowed to keep the compensation because Clark County's purchase price may not have been discounted for the taking by NV Energy. The Court did not make judgment upon the land's appraisal and purchase price because the question was not at issue. The property owner in land that has an easement on it receives compensation for the taking, then sells what remains of his or her property.⁷ Clark County could have contracted for the right to the condemnation compensation when it purchased the land from HQ Metro. However, the County was aware of the condemnation proceeding and agreed to the district court's order.

Conclusion

The Court affirmed the district court's holding that HQ Metro was entitled to compensation for permanent easement because the district court's order for eminent domain occurred while HQ Metro was the property's owner, and as such the compensation immediately vested with HQ Metro. The Court held that compensation did not transfer with HQ Metro's property sale to Clark County.

⁵ NEV. REV. STAT. §§ 37.180(1), (2) (2017).

⁶ *Argier*, 114 Nev. at 141, 952 P.2d at 1392–93.

⁷ *Id.* at 140, 952 P.2d at 1392.