

Bond Case Briefs

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EMINENT DOMAIN - TEXAS

Hlavinka v. HSC Pipeline Partnership, LLC

Court of Appeals of Texas, Houston (1st Dist.) - June 18, 2020 - S.W.3d - 2020 WL 3393540

Pipeline system owner transporting polymer grade propylene initiated condemnation proceeding against landowner to obtain right to pipeline easement across landowner's four tracts of land.

Landowner filed plea to jurisdiction challenging pipeline's eminent domain power, arguing trial court did not have jurisdiction because pipeline was not a common carrier and therefore did not have authority to condemn property.

The County Court at Law No. 2 and Probate Court, Brazoria County granted pipeline's partial motion for summary judgment, denied landowner's plea to the jurisdiction, granted pipeline's motion to exclude landowner's testimony as to property valuation, and awarded landowner \$132,293.36 for condemnation. Landowner appealed.

The Court of Appeals held that:

- Pipeline transported oil product for purposes of statute providing independent grant of eminent domain authority to pipelines as common carriers;
- Reasonable probability test applied to determination of if, at some point after construction, pipeline would serve public;
- Genuine issue of material fact existed as to reasonable probability that pipeline would serve public rather than private interests;
- Existing easements over ten-foot tracts of land created well-defined separate economic units, and thus landowner could rely on per rod factor to determine value; and
- Landowner's valuation testimony as to land condemned for pipeline easement did not violate project-enhancement rule.

Pipeline transported oil product for purposes of statute providing independent grant of eminent domain authority to pipelines as common carriers, and thus trial court had jurisdiction to hear pipeline's condemnation proceeding to acquire right to pipeline easement across landowner's property, where pipeline transported polymer grade propylene produced from refinery grade propylene and propane which were both components of, or derived from, crude petroleum.

Reasonable probability test applied in pipeline's condemnation proceeding seeking right to pipeline easement over landowner's property in order to transport polymer grade propylene oil product, to determination of if, at some point after construction, pipeline would serve public by transporting gas for one or more customers who would either retain ownership of gas or sell it to parties other than pipeline owner, and was thus a common carrier.

Genuine issue of material fact existed as to reasonable probability that pipeline system owner's proposed pipeline would serve the public rather than system owner's private interest in selling transported polymer grade propylene to single buyer, precluding summary judgment in pipeline's condemnation action seeking right to pipeline easement over landowner's property.

Genuine issue of material fact existed as to reasonable probability that pipeline system owner's proposed pipeline would serve the public rather than system owner's private interest in selling transported polymer grand propylene to single buyer, precluding summary judgment in pipeline's condemnation action seeking right to pipeline easement over landowner's property.

Existing easements over ten-foot tracts of land on landowner's property created well-defined separate economic units functionally separate from larger property, and thus landowner could rely on per rod factor to determine value of 30-foot-wide easement condemned by pipeline system owner, where landowner relied on additional information to support valuation opinion, including experience of neighboring property owners and his own experience with land agent for existing pipeline on property, market value of easement was influenced by other factors including type of easement and location of easement, and income derived from pipeline development far exceeded income derived from any other use of property.

Landowner's valuation testimony did not violate project-enhancement rule prohibiting factfinder from considering any enhancement to value of landowner's property that resulted from taking itself in assessing damages to be award for condemnation, where landowner established separate economic units already existed on land in ten-foot-wide tracts running parallel to other pipelines on property prior to pipeline system's condemnation, landowner defined parameters for existing pipeline easements that were different from condemnation project, and units were valuable as tracts for future pipeline development separate and apart from pipeline system project.