

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - GEORGIA

Emery v. Chattooga County

Court of Appeals of Georgia - January 6, 2014 - S.E.2d - 14 FCDR 27

The property subject the taking was a 60 foot ingress and egress easement across an unpaved road that runs through landowner's property and provides access to approximately 20 residents living along Hairs Lake Road. Pursuant to OCGA § 32-3-1, the County filed a declaration of taking to acquire landowner's interest in the easement after the other property owners adjoining the road approached the County and agreed to convey their interest in the easement to the County for the purpose of the road being made part of the county road system, meaning, in this case, that it would be paved and maintained by the County.

Landowner sought to set aside County's declaration of taking. The Superior Court denied petition. Landowner appealed.

The Court of Appeals held that county did not act in bad faith, did not abuse or misuse its discretion, and did not exceed its authority when it acted to condemn unpaved road.

Although road primarily would be used for ingress and egress by approximately 20 area residents, and although decision to condemn property was not made until surrounding landowners requested that county acquire road, there was no indication that general public would not have right to use road, paving and maintaining road would benefit emergency responders, and county had policy to acquire, improve, and maintain roads as parts of county were developed and residents requested that county do so.

Condemnor is not authorized to exercise the power of eminent domain to acquire property to be used by private individuals for private use and private gain, but the amount of usage of the property by the general public is not controlling when determining whether a condemnor is authorized to exercise the power of eminent domain.