

Bond Case Briefs

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JURISDICTION - ARIZONA

Town of Florence v. Florence Copper, Inc.

United States District Court, D. Arizona - March 10, 2014 - Not Reported in F.Supp.2d - 2014 WL 923026

The focal point of this case is a 1,187 acre parcel of real property located within the boundaries of the Town of Florence (the "Property"). The Property became subject to a PreAnnexation Development Agreement in 2003 which incorporated a Planned Unit Development by reference (the "PADA"). In 2007 the Property's zoning was changed from Light Industrial to Residential. Florence Copper, Inc. is the present owner of the Property.

Town filed an action against Copper and Pinal County in state court. Town's complaint advanced two claims for relief. The first was for a declaration of the parties' rights under various documents that apply to the Property. The second was a claim to acquire all nonconforming uses and structures on the Property through exercise of the Town's power of eminent domain.

Copper removed the litigation from state court pursuant to [28 U.S.C. § 1441\(a\)](#). The Notice of Removal indicated that there was diversity of citizenship jurisdiction under [28 U.S.C. § 1332\(a\)\(3\)](#) and that Pinal County had no interest in the Property which could support its inclusion as a defendant.

Town moved to remand to state court. Town's first argument in support of its motion to remand was that the presence of Pinal County as a defendant defeats diversity jurisdiction. However, Copper contended that Pinal County had been fraudulently joined. Copper argued that Pinal County was merely a "nominal party" and therefore should be disregarded citing [Navarro Savings Ass'n v. Lee](#).

Copper went on to argue that Pinal County's only interest in the Property arose from the fact that the Property was subject to Pinal County tax levies so that a tax lien in its favor is imposed by state statute. This it submits is an insufficient interest, because "any tax lien held by the County will remain in place regardless of which side prevails in this case." The court concluded that this did not alter the fact that Pinal County has a continuing interest in the Property, even if its interest appeared to be well secured.

"This court is guided by Ninth Circuit jurisprudence which instructs that so long as there is a possibility that a state court would find that a complaint advances a cause of action against a resident defendant, the federal court must remand the case. Here, there is no doubt that a state court would consider Pinal County a proper defendant in the eminent domain action, because of its continuing statutory right to a tax lien on the Property. In light of the appellate court's instruction, this case must be remanded."

