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INVERSE CONDEMNATION - TEXAS

City of Austin v. Liberty Mut. Ins.

Court of Appeals of Texas, Austin - May 16, 2014 - S.W.3d - 2014 WL 2041867

A wildfire that started on September 4, 2011, in a vacant lot in western Travis County and spread into the surrounding neighborhood, causing personal injury and extensive property damage. A group of homeowners and insurers brought actions against the city as subrogation claims on behalf of a number of their insured property owners. Plaintiffs asserted that the City was responsible for the fire, which they allege started when the electric utility's overhead distribution lines came in contact with each other during high winds, causing electrical arcing, which in turn caused "molten metal globules" to fall to the ground and ignite dry vegetation.

For plaintiffs' inverse condemnation claims to be valid, the damage from the fire had to be the almost-certain result of the City's fiscally driven decision to curtail inspection of its overhead power lines. The City had to know at the time it made the decision that the chain of events was "substantially certain" to result from that decision.

The Court of Appeals concluded that the facts pleaded by appellees did not reasonably permit a conclusion that the fire and resulting damage were substantially certain to occur. The relevant power lines, even if not inspected, were not "almost certain" to become so slack that they would contact each other in high winds. Even if they became slack enough to allow for contact, it was not "almost certain" that those wires would actually come in contact with each other in high winds. And even if they did come in contact with each other, it was not "almost certain" that such contact would cause electrical arcing sufficient to create molten metal globules that would then fall to the ground. Nor was it almost certain that any molten globules that fell would fall onto vegetation as opposed to a less flammable surface such as a roadway or parking lot or, for that matter, on green vegetation after the current drought has ended.

"We conclude that the series of events that connects the City's maintenance decision to the property damage, while arguably foreseeable, was not an almost-certain result of or necessarily incident to that decision. At best, appellees' factual allegations would show that the City's conduct furnished a condition that made property damage a substantial risk. That is far different, however, from being the substantial certainty required for a valid takings claim. Toleration of a dangerous condition may or may not set the stage for a subsequent disaster, yet, as discussed above, only if the event causing damage is the substantially certain result of the conduct can the City be charged with the requisite level of intent to constitute a taking. The fact that a disaster happens does not, by virtue of its occurrence, mean that it was a substantial certainty from the outset."