

Bond Case Briefs

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Catalina Foothills Unified School Dist. No. 16 v. La Paloma Property Owners Ass'n, Inc.

Court of Appeals of Arizona, Division 1 - November 24, 2015 - P.3d - 2015 WL 7454106

School district brought action against homeowners association to condemn private road to allow safest vehicular access into early childhood learning center. The Superior Court granted district immediate possession of road, and later granted district's motion in limine to preclude association's expert appraisal of severance damages, entered partial judgment limiting issue at trial to be just compensation, and, after jury trial, awarded association fair market value and cost-to-cure severance damages.

Association appealed, and district cross-appealed.

The Court of Appeals held that:

- A district's power to condemn for buildings necessarily includes power to condemn to create access;
- Evidence was sufficient to conclude that condemnation was necessary;
- District obtained fee simple interest;
- Association was not deprived of opportunity to present severance damages;
- District did not violate statutes regarding voter approval of purchase or sale of school sites;
- District's complaint did not fail to name indispensable parties; and
- Prejudgment interest rate was prime-rate-plus-1%.

A school district's power to condemn property for use as buildings or grounds necessarily must include the power to condemn property to create access to school buildings and grounds.

Evidence was sufficient to support conclusion that school district's condemnation of private road owned by homeowners association was necessary to allow safe vehicular access into early childhood learning center. Even if there were other means of entry to center, district presented evidence that road provided safest access to center because there was traffic signal at intersection but not at any other location that afforded access, and association offered no persuasive argument for upsetting district's determination.

School district, after condemning private road owned by homeowners association, obtained fee simple interest, and therefore did not violate statute requiring fee simple interest in lands taken for public buildings or grounds. Even though district ultimately granted association perpetual nonexclusive easement over road, thereby allowing subdivision owners to use road to drive to and from their homes, district's complaint sought "fee title" to road, and district's conveyance back of easement did not change nature of interest district acquired by condemnation.

Homeowners association, as previous owner of private road condemned by school district, was not deprived of opportunity to present claim for severance damages to jury by superior court's exclusion of association's expert report estimating severance damages as more than \$1 million, and therefore

court did not rule that association was obligated to accept easement from district to mitigate severance damages. Even though court found easement was a cure of severance damages, expert report was based on incorrect premise that district lacked power to convey easement to association, and conclusion that easement cured severance damages did not preclude association from offering other evidence of severance damages or cost of other reasonable steps to cure.

School district did not violate statute requiring voter approval for purchase of school sites by condemning private road owned by homeowners association to provide vehicular access into early childhood learning center. District received approval in bond election in which voters approved proposal to authorize district to acquire property and expend funds for new preschool facility, and district had independent statutory power to acquire property by condemnation at time of bond election.

School district did not violate statute requiring voter approval for sale of school sites by conveying easement to homeowners association on road formerly owned by association and condemned by district. Easement did not prevent district from using school property for its intended purpose, nor did easement cause district to lose any rights in use of school property.

School district's complaint for condemnation of private road owned by homeowners association was not deficient for failure to name owners of individual lots within subdivision as indispensable parties. Property taken was not owned by lot owners, declaration of covenants, conditions, and restrictions granted owners non-exclusive easement to use common areas and authorized association to represent interested persons in proceedings to condemn common areas, and association offered evidence that owners suffered injury to individual parcels at trial, which jury rejected.

Prejudgment interest rate for school district's condemnation of private road was prime-rate-plus-1%, applicable to any judgment unless specifically provided for in statute or different rate was contracted for in writing, rather than 10%, applicable to interest owed on any loan, indebtedness, or "other obligation." Rate applicable to "other obligation" was limited to those akin to loan or indebtedness, and interest for condemnation was calculated on amount of jury's determination of just compensation, which could not have been known until verdict and final judgment.