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EMIENT DOMAIN - TEXAS

Denbury Green Pipeline-Texas, LLC v. Texas Rice Land Partners, Ltd.

Supreme Court of Texas - January 6, 2017 - S.W.3d - 2017 WL 65470

Pipeline company petitioned for a temporary restraining order and temporary and permanent injunction to prevent property owner and its tenant from interfering with company's alleged right to enter the property as a common carrier for construction of carbon dioxide (CO₂) pipeline.

After granting the request for a temporary injunction, the District Court entered summary judgment permanently restraining owner and tenant from interfering with company's survey rights. Owner and tenant appealed.

The Court of Appeals affirmed. Petition for review by owner and tenant was granted. The Supreme Court reversed and remanded. On remand, the District Court granted summary judgment to company. Owner appealed. The Court of Appeals reversed and remanded. Company's petition for review was granted.

The Supreme Court of Texas held that:

- Court of Appeals improperly focused on company's intent at the time of its plan to construct the pipeline;
- Company's post-construction contracts for transporting other company's CO₂ were relevant;
- Company was "common carrier" with right to eminent domain; and
- Reasonably probable future use of pipeline did not need to serve a substantial public interest.

Prefatory phrase "for a person intending to build" demonstrated who had to prove common carrier status in test stating requirements for a person intending to build carbon dioxide (CO₂) pipeline to qualify as a common carrier with power of eminent domain, and the phrase thus did not make central inquiry company's intent at the time of its plan to construct the pipeline.

Pipeline company's post-construction contracts for transporting other company's carbon dioxide (CO₂) were relevant to analysis of whether company was common carrier with right to eminent domain and were properly considered by trial court granting summary judgment in favor of company.

Reasonable probability existed that, at some point after construction of pipeline for carbon dioxide (CO₂), it would serve the public by transporting CO₂ for one or more customers who would either retain ownership of their gas or sell it to parties other than the carrier, and, thus, company was "common carrier" with right to eminent domain. Company built pipeline along Gulf Coast in close proximity to potential customers and entered post-construction contract to transport CO₂ for another company.

Reasonably probable future use of carbon dioxide (CO₂) pipeline did not need to serve a substantial public interest in order for pipeline company to qualify as common carrier with right of eminent

domain.

Establishing a reasonable probability that the pipeline will, at some point after construction, serve even one customer unaffiliated with the pipeline owner is substantial enough to satisfy public use necessary to qualify owner as common carrier with right to eminent domain.

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