

Bond Case Briefs

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EMINENT DOMAIN - COLORADO

CAW Equities, L.L.C. v. City of Greenwood Village

Colorado Court of Appeals, Div. VII - March 22, 2018 - P.3d - 2018 WL 1417920 - 2018 COA 42

Limited liability company (LLC) filed petition against city, seeking private condemnation of a public equestrian and pedestrian trail that bisected two of its adjacent properties.

The District Court denied petition and awarded attorney fees and costs in favor of city. LLC appealed.

The Court of Appeals held that:

- As a matter of first impression, the prior public use rule applies to taking public property for a right-of-way to construct a water ditch;
- LLC lacked legal authority under the prior public use rule to condemn trail; and
- LLC's petition was not authorized by law under the prior public use doctrine, and thus supported an award of attorney fees and costs in favor of city.

The prior public use rule applies to taking property for a right-of-way to construct a water ditch under the provision of the State Constitution permitting public lands to be condemned for rights-of-way for access to water.

Limited liability company (LLC) lacked legal authority under the prior public use rule to condemn a public equestrian and pedestrian trail that bisected two of its adjacent properties for a right-of-way to access water; although LLC's proposed water plan may have been the most cost-effective and efficient option to achieve its own purposes, it did not show that a ditch over the entire tract of land was necessary and conceded that a ditch in another tract was possible, though not preferable, and there were other available means and locations to achieve the goal of conveying or transporting water without interfering with the public trail which would defeat the use for which it was dedicated to the public.

Limited liability company's (LLC's) petition against city seeking to condemn all of a public trail, rather than an easement across it, that bisected two of its adjacent properties for a right-of-way to access water was not authorized by law under the prior public use doctrine, and thus supported an award of attorney fees and costs in favor of city under eminent domain statute authorizing award of reasonable attorney fees to a property owner if petitioner is not authorized by law to acquire the real property interests sought.