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Harris County Fresh Water Supply District No. 61 v. Magellan Pipeline Company, L.P.

Court of Appeals of Texas, Houston (1st Dist.) - April 19, 2022 - S.W.3d - 2022 WL 1144636

After administrative phase of condemnation proceeding for pipeline-installation easement resulting in award to fresh-water-supply district of $160,000 over amount pipeline companies had already paid district for the easement, district filed a plea to the jurisdiction and objections to the award, arguing that the award failed to award district adequate compensation for companies' acquisition of the easement.

The County Civil Court at Law granted companies a permanent easement, awarded the district the $160,000 additional compensation, and denied district's request for additional compensation. District appealed.

The Court of Appeals held that:

- District was not operating within governmental immunity's bounds with respect to condemnation proceeding, and thus district's governmental immunity from suit was abrogated;
- District waived its right to assert either that companies lacked condemnation authority because they were not common carriers or that condemnation was precluded by paramount-publi--importance doctrine; and
- Even if district could dispute companies' common-carrier status, sufficient evidence supported finding that companies qualified as common carriers.

Fresh-water-supply district was not operating within governmental immunity's bounds with respect to condemnation proceeding in which pipeline companies sought easement to install pipeline underneath district's property, and thus district's governmental immunity from suit was abrogated; proceeding was filed by companies at district's request, district entered contractual agreements with companies in which it was contractually obligated to participate in the proceeding, district initiated the judicial phase of the proceeding by filing objections to compensation award that it received at close of administrative phase, and, in the judicial phase, district affirmatively sought to oppose the condemnation and to recover damages for companies' alleged breach of the agreements.

Fresh-water-supply district waived its right to assert either that pipeline companies lacked authority to condemn an easement underneath district's property that companies sought for building a pipeline because they were not common carriers or that condemnation was precluded because district's use of the property companies sought to condemn served an issue of paramount public importance over companies' use, where district entered contract with companies in which it agreed that it would not contest companies' authority to condemn the easement and that the scope of condemnation proceeding would be limited to any additional compensation that district might be due in excess of compensation that companies paid it before initiating the proceeding.

Sufficient evidence supported finding that pipeline would be used to serve customers unaffiliated

with companies that owned pipeline and, thus, supported a finding that companies qualified as common carriers, as required for companies to have authority to condemn a pipeline-installation easement underneath fresh-water-supply district’s property; evidence indicated that third parties unaffiliated with the companies used pipeline to transport refined petroleum products, and eventual pipeline was being built to accommodate volume commitments from those third parties.

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