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**EMINENT DOMAIN - UTAH**

## Cardiff Wales, LLC v. Washington County School District

**Supreme Court of Utah - May 26, 2022 - P.3d - 2022 WL 1672215 - 2022 UT 19**

Former landowner brought action against school district and developer for declaratory relief and to set aside school district's sale of landowner's former property to developer after school district decided not to build high school on property, alleging violation of statutory right of first refusal for property acquired under threat of condemnation.

The District Court dismissed. Former landowner appealed, and the Court of Appeals affirmed. Landowner petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Property is acquired under "threat of condemnation" when government entity has specifically authorized the use of eminent domain to acquire the real property;
- Person claiming a right of first refusal to reacquire property must plead and prove that the entity to which she sold her property had, in some way, specifically authorized the use of eminent domain to take it; and
- Former landowner sufficiently alleged that school district took some sort of action that transformed its general eminent domain power into a specific threat to take landowner's parcel by eminent domain.

Property is acquired under "threat of condemnation," for purposes of requirement that seller have a right of first refusal if the acquired property is subsequently conveyed, when an official body of the state or a subdivision of the state, having the power of eminent domain, has specifically authorized the use of eminent domain to acquire the real property, rather than when there is a threat to authorize the use of eminent domain.

A landowner alleging a right of first refusal to reacquire property taken by threat of eminent domain cannot simply claim she sold her land to the government because of a general fear that the government might have taken it had she not sold; instead, to meet her statutory burden of showing a threat of condemnation, a landowner must plead and prove some government action that indicates the government has authorized the use of its eminent domain authority in a way that bespeaks a specific intent to condemn the landowner's property.

Former landowner sufficiently alleged that school district took some sort of action that transformed its general eminent domain power into a specific threat to take landowner's parcel by eminent domain, as required for landowner to have the right of first refusal to reacquire the parcel after school district decided the parcel was unnecessary for its plans; although landowner did not use the words "specifically authorize" in its complaint, it alleged that school district stated it wanted to buy the property for a new high school and "intended to acquire the Parcel through condemnation if necessary," landowner explained that it ultimately sold the parcel "in order to avoid an eminent domain lawsuit," and letter from school district stated that, if agreeable terms could not be reached, the district "would be forced to use eminent domain powers."

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