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EMINENT DOMAIN - INDIANA

701 Niles, LLC v. AEP Indiana Michigan Transmission Company, Inc.

Court of Appeals of Indiana - July 7, 2022 - N.E.3d - 2022 WL 2517441

Publicly-regulated utility company brought condemnation action against limited-liability corporation (LLC), seeking to obtain easements by eminent domain for an underground electric-transmission line.

The Circuit Court denied LLC's motion for preliminary injunction seeking to enjoin utility company from using the land for placement of a separate private transmission line for third-party private university. LLC filed interlocutory appeal.

The Court of Appeals held that:

- LLC did not knowingly waive any objections to use of the land for a wholly private purpose by third-party;
- Third-party could not be allowed to obtain easements for private use through utility company's condemnation action against LLC; and
- Placement of third-party's private electric-transmission line constituted a constitutionally-impermissible taking of a separate property right from LLC and therefore warranted injunctive relief.

Limited-liability corporation (LLC), which had been negotiating with publicly-regulated utility company regarding easements for an underground electric-transmission line across LLC's land, did not knowingly waive any objections to use of the land for a wholly private purpose by third-party university, in utility company's condemnation action against LLC, since utility company's condemnation complaint did not put LLC on notice of any intended use of the land by a private party, utility company only asserted a public use to which LLC had no objection, and utility company concealed its memorandum of understanding with university to allow the university to concurrently occupy the underground duct bank with the placement of a separate private transmission line.

Private university, as third-party, could not obtain easements for private use through publicly-regulated utility company's condemnation action against limited liability corporation (LLC), which sought to obtain easements on LLC's land by eminent domain for public use of underground electric-transmission line; private and public uses would not have been concurrent, separate line would have been installed and would separately need to be maintained for the university's sole private use, utility company acknowledged that arrangement with university to install separate line did not in any way further mission of transferring electric services to customers, and university's private line required extra construction materials and installation of additional manholes.

Placement of private electric-transmission line for sole use by private university, as third-party, on or through land owned by limited-liability corporation (LLC), which had negotiated with publicly-regulated utility company regarding placement of a transmission line intended only for public use,

constituted a constitutionally-impermissible taking of a separate property right from LLC and therefore warranted injunctive relief enjoining utility company from installing the university's line to the duct bank without LLC's express consent, in utility company's condemnation action against LLC seeking to obtain easements by eminent domain, since the university's private line was separate and distinct from the line for public use sought by utility company.