

# **Bond Case Briefs**

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## **EMINENT DOMAIN - CALIFORNIA**

### **Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority**

**Court of Appeal, Second District, Division 8, California - October 5, 2022 - Cal.Rptr.3d - 2022 WL 5107251**

Hotel owner brought action for nuisance and inverse condemnation against county transportation authority and general contractor, alleging that defendants' construction of underground subway line interfered with operation of hotel.

General contractor moved to strike portions of complaint. The Superior Court granted motion. Authority filed demurrer concerning claim for inverse condemnation. The Superior Court granted motion. Defendants then filed motion for judgment on the pleadings as to nuisance claim. The Superior Court granted motion. General contractor thereafter moved for summary adjudication as to nuisance claim. The Superior Court granted motion. Owner appealed.

The Court of Appeal held that:

- Owner failed to allege that traffic detours set up by authority caused its property to suffer from intangible intrusion burdening property in way that was direct, substantial, and peculiar to property itself, and thus failed to state claim for inverse condemnation under intangible-intrusion theory;
- Owner failed to allege that intrusion of noise and dust was unique, special or peculiar in comparison with other stakeholders in area, and thus failed to state claim against authority for inverse condemnation under intangible-intrusion theory;
- Owner alleged that invasion of, or interference with, use and enjoyment of its property caused by construction project was substantial, as required to state claim for private nuisance;
- Owner failed to allege that gravity of harm to owner's use and enjoyment of its property outweighed social utility of construction project, and thus failed to state claim for private nuisance;
- Statute providing that "[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance" provided defendants with immunity from liability for owner's nuisance claim;
- Whether or not general contractor's method of construction was reasonable did not hinge on whether general contractor possibly breached term of its contract with authority, in connection with its subcontractor's classification of noise limits, and thus did not create triable issue of material fact precluding summary adjudication on nuisance claim; and
- Testimony of hotel's former managing director that defendants conspired to harm hotel was speculative and did not create triable issue of material fact precluding summary adjudication on nuisance claim.