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EMINENT DOMAIN - CALIFORNIA

Ventura29 LLC v. City of San Buenaventura

Court of Appeal, Second District, Division 6, California - January 4, 2023 - 87 Cal.App.5th 1028 - 304 Cal.Rptr.3d 122 - 2023 Daily Journal D.A.R. 774

Developer brought action against city, asserting causes of action for inverse condemnation, private nuisance, trespass, and negligence, arising from city engineer's modification of approved grading plan to require developer to remove uncertified fill, which city had dumped on the property 38 years before developer acquired it.

The Superior Court sustained city's demurrer to the complaint without leave to amend. Developer appealed.

The Court of Appeal held that:

- Developer's contention that time-sensitive construction would come to a grinding halt with no forward progress did not excuse its failure to exhaust administrative remedies;
- City engineer's alleged oral modification of the grading plan did not excuse developer from having to exhaust administrative remedies;
- Developer's lack of knowledge of its right to appeal did not excuse its failure to exhaust administrative remedies;
- City was not equitably estopped from asserting that developer forfeited its inverse condemnation claim by failing to exhaust administrative remedies; and
- Developer's concession that prior owners may have known of the uncertified fill on the property precluded application of the discovery rule.

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