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EMINENT DOMAIN - CALIFORNIA

Shenson v. County of Contra Costa

Court of Appeal, First District, Division 2, California - March 30, 2023 - Cal.Rptr.3d - 2023 WL 2706499

Owners of creekside properties sued county and flood control district for inverse condemnation and parallel tort causes of action after drainage improvements failed and their properties were damaged by erosion and subsidence.

The Superior Court granted defendants' motion for summary judgment. Owners appealed.

The Court of Appeal held that:

- County's requirement that developer make drainage-related improvements and offer to dedicate an easement as conditions of subdivision approval did not convert spillway into a public drainage system;
- Fees collected by flood control district did not establish that subdivision's drainage improvements were incorporated into a public drainage system;
- Failure of defendants to require mitigation by upstream property owners did not establish that subdivision's drainage improvements were a public work; and
- Any error in trial court's exclusion of expert's statement regarding county's custom and practice was harmless.

County's requirement that private developer make drainage-related improvements and offer to dedicate an easement as conditions of approval of subdivision did not convert spillway constructed by developer into a public drainage system, as alleged in inverse condemnation action brought by subdivision property owners, where county never expressly accepted the easement offer and never maintained or repaired the spillway or installed any improvements.

Fees collected from subdivision property owners by flood control district were not evidence that subdivision's drainage improvements were incorporated into a public drainage system in inverse condemnation action brought by owners against district and county; fees were collected pursuant to a drainage fee ordinance to be placed in a fund intended to cover a local match to a proposed federal flood-control project that was never built.

Failure of the county or flood control district to require upstream property owners to install mitigation measures to offset the downstream runoff through subdivision was not an affirmative act that demonstrated public control or dominion over subdivision's drainage improvements in inverse condemnation action brought by subdivision property owners.

Trial court's error, if any, in excluding expert's statement about county's custom and practice regarding assumption of responsibility for maintaining privately-constructed drainage improvements was harmless in inverse condemnation action brought by subdivision homeowners; evidence of custom and practice could not establish that county created a contract by accepting subdivision developer's offer of dedication and thereby undertook to maintain the improvements, and the terms

implied by expert conflicted with express terms of the agreement between county and developer.

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