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EMINENT DOMAIN - CALIFORNIA

Shenson v. County of Contra Costa

Court of Appeal, First District, Division 2, California - March 30, 2023 - 89 Cal.App.5th 1144 - 306 Cal.Rptr.3d 584 - 2023 Daily Journal D.A.R. 2797

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.

The fact that drainage improvements required for county approval of subdivision served some off-subdivision needs did not convert the improvements into public works in inverse condemnation action brought by subdivision property owners; county ordinance requiring easements for off-subdivision drainage merely recognized that waters from landlocked properties must at times be conveyed through drainage improvements on other properties to reach a natural watercourse.

County's failure to act on developer's offer of dedication of subdivision's drainage improvements did not convert the improvements into public works in inverse condemnation action brought by subdivision property owners; the county's acceptance of the offer only for the purpose of recording the deed was not an equivocal acceptance of the offer for the purpose it was offered, i.e., to access the improvements, and county made no effort to maintain or repair the improvements.

County's requirement that subdivision developer install drainage improvements and county's acceptance "for recording only" of offer of dedication of the improvements did not create an implied acceptance of the drainage easements as public works in inverse condemnation action brought by subdivision property owners; county was not involved in the construction of the improvements and

did not perform maintenance or repair work on them.

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.

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