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EMINENT DOMAIN - ARIZONA

State v. Foothills Reserve Master Owners Association, Inc.

Court of Appeals of Arizona, Division 1 - December 7, 2023 - P.3d - 2023 WL 8467518

State Department of Transportation filed condemnation action to acquire subdivision's common areas for highway construction, and homeowners sought proximity damages for a complete taking of their positive easements to use the land and negative easements to preserve the open space.

Following cross-motions for summary judgment, the Superior Court determined homeowners were entitled to proximity damages, and a stipulated final judgment was entered. State appealed.

The Court of Appeals held that:

- Easements were not parcels of land for purposes of severance damages, and
- Homeowners did not possess any title to or ownership interest in common areas.

Negative and positive common area easements, which allowed subdivision homeowners to use common areas and required common areas to remain open space, were not parcels of land, and thus homeowners were not entitled to proximity damages for the loss of the easements after common areas were condemned and taken as part of highway construction project.

Subdivision homeowners did not possess any title to or ownership interest in common areas taken for highway construction project, and thus could not recover severance damages for the alleged "severance" of their homes from a larger parcel which included the common areas; rather, homeowners' association owned the common areas, and homeowners only possessed easements giving them a right to use or limit development of the common areas.

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