

Bond Case Briefs

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INVERSE CONDEMNATION - CALIFORNIA

Simple Avo Paradise Ranch, LLC v. Southern California Edison Company

Court of Appeal, Second District, Division 7, California - May 23, 2024 - Cal.Rptr.3d - 2024 WL 2347470

Avocado farm brought action, by filing a short-form complaint that adopted and incorporated a master complaint that other plaintiffs had previously filed in related, consolidated proceedings, against privately owned public utility and its parent company, alleging claim for inverse condemnation and seeking damages arising from a major fire allegedly caused by utility's unsafe electrical infrastructure.

Avocado farm and defendants settled, and a stipulated final judgment was entered by the Superior Court, under which farm was awarded \$1.75 million in damages on its inverse-condemnation claim, but which stated that the judgment was without prejudice to utility's right to appeal both the judgment and a prior order, entered before farm filed its complaint, of the Superior Court denying utility's demurrer to the master complaint. Utility appealed.

The Court of Appeal held that:

- Appeal was not rendered moot by fact that judgment's award of \$1.75 million was contingent on appeal's outcome;
- Stipulated judgment was appealable, despite appellate court's serious reservations about whether it should be;
- Farm's complaint sufficiently alleged that utility was a public entity, as required to state an inverse-condemnation claim;
- Farm's complaint sufficiently alleged that its damages were substantially caused by utility, as required to state an inverse-condemnation claim;
- Farm's complaint sufficiently alleged that its damages resulted from an inherent risk associated with utility's infrastructure, as required to state an inverse-condemnation claim; and
- Farm's complaint sufficiently alleged that utility's infrastructure was for the public use, as required to state an inverse-condemnation claim.

Appeal by privately owned public utility of stipulated judgment against it awarding, contingent on appeal's outcome, \$1.75 million in damages to avocado farm on farm's inverse-condemnation claim against utility for damages from fire allegedly caused by utility's unsafe electrical infrastructure was not rendered moot by the potential that, if utility did not prevail on appeal, utility would have to pay the stipulated damages to farm, but appellate court discouraged what amounted to a side bet on the outcome of an appeal.

Stipulated judgment against privately owned public utility awarding, contingent on appeal's outcome, \$1.75 million in damages to avocado farm on farm's inverse-condemnation claim against utility for damages from fire allegedly caused by utility's unsafe electrical infrastructure was appealable, despite general rule that a stipulated judgment is not appealable and despite appellate

court's serious reservations about applying the exception to that rule for a stipulated judgment agreed on merely to facilitate an appeal following an adverse determination of a critical issue, where the trial court had previously denied public utility's demurrer to similar claims in related consolidated cases, and the parties clearly intended to seek appellate review.

Allegations in avocado farm's complaint against privately owned public utility for inverse condemnation arising from damages to farm from fire allegedly caused by utility's unsafe electrical infrastructure were sufficient to allege that utility was a public entity, as required for farm to state an inverse-condemnation claim against it, where farm alleged that the utility enjoyed a state-protected monopoly or quasi-monopoly derived from its exclusive franchise provided by California, that its monopoly was guaranteed by the California Public Utilities Commission (CPUC), and that amounts the utility might have to pay in inverse condemnation could, under CPUC regulations, be included in rates and spread among ratepayers.

Allegations in avocado farm's complaint against privately owned public utility for inverse condemnation arising from damages to farm from fire allegedly caused by utility's unsafe electrical infrastructure were sufficient to allege that farm's damages were substantially caused by utility, as required for farm to state an inverse-condemnation claim against utility, where farm alleged that utility knew that its infrastructure was old and was improperly maintained for safety, but it failed to properly assess and remediate known risks of fire, including by failing to power down its infrastructure, despite warnings of high winds and hazardous conditions, before a major fire allegedly caused by electrical arcs in utility's distribution system.

Allegations in avocado farm's complaint against privately owned public utility for inverse condemnation arising from damages to farm from fire allegedly caused by utility's unsafe electrical infrastructure were sufficient to allege that farm's damages resulted from an inherent risk associated with the infrastructure, as required for farm to state an inverse-condemnation claim against utility, where farm alleged that utility deliberately chose to forgo regular monitoring and repair of its aging infrastructure, it did not meet its own target metrics for inspecting, assessing, and remediating electrical poles that did not meet modern safety standards, and it instead modified its monitoring software to recalculate safety factors and reduce the number of poles requiring remediation.

Allegations in avocado farm's complaint against privately owned public utility for inverse condemnation arising from damages to farm from fire allegedly caused by utility's unsafe electrical infrastructure were sufficient to allege that utility's infrastructure was for the public use, as required for farm to state an inverse-condemnation claim against utility, where farm alleged that the power lines that ignited the fire were part of an electrical distribution system that served thousands of acres in Central, Coastal, and Southern California.