

Bond Case Briefs

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EMINENT DOMAIN - ARIZONA

State v. Foothills Reserve Master Owners Association, Inc.

Supreme Court of Arizona - January 28, 2025 - P.3d - 2025 WL 311248

State Department of Transportation filed condemnation action to acquire subdivision's common areas for freeway construction, and homeowners sought proximity damages for a complete taking of 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, and the Court of Appeals reversed and remanded. The Supreme Court granted homeowners' petition for review.

The Supreme Court held that as a matter of first impression, easements were severed from a larger parcel such that homeowners were entitled to severance damages for any injury to remaining property as a consequence of the freeway's proximity.

When determining whether property condemned is part of a "larger parcel," such that the landowner may be entitled to severance damages, a court must initially ask if the property condemned constitutes a portion of a single parcel, and if the answer to that initial inquiry is "no," the court must ask if the condemned property nevertheless forms part of a "larger parcel" with a separate, distinct parcel owned by the condemnee, and should examine the unities of use, ownership and contiguity to make that determination; if the court determines that the condemned property is not part of a "larger parcel," the inquiry ends, and the condemnee is not entitled to severance damages, but if the court determines that the condemned property forms part of a "larger parcel," the court should then decide whether the condemnation or any improvements built on the condemned property injured the remaining portion, and if so, the condemnee is entitled to severance damages.

Appurtenant easements which the State condemned as part of freeway construction project were severed from a larger parcel that included homeowners' physical real properties such that homeowners were entitled to severance damages for any injury to the homeowners' remaining property as a consequence of the freeway's proximity; homeowners were members of a subdivision homeowners' association and had a positive easement to use the subdivision's common areas for enjoyment and a negative easement which restricted the common areas to undevelopable open space, and the State condemned the common areas as part of its freeway project.