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EMINENT DOMAIN - NORTH CAROLINA

Town of Apex v. Rubin

Supreme Court of North Carolina - August 22, 2025 - S.E.2d - 2025 WL 2427569

Town brought condemnation action to acquire an easement across landowner's property and to connect sewer access to an adjoining parcel.

After town installed sewer line, the Superior Court found the taking was for a private purpose, and entered judgment for landowner, and denied town's motion for reconsideration. Town appealed, and the Court of Appeals affirmed.

Landowner then filed motion to enforce the judgment, and town commenced separate action seeking a declaratory judgment that it had acquired an easement by inverse condemnation when it installed the sewer line.

Landowner filed motion to dismiss town's inverse condemnation action, and town filed motion for relief from judgment in the condemnation action. The Superior Court, Wake denied landowner's motions and granted town's motion for relief from the judgment. Property owner appealed.

In the condemnation action, the Court of Appeals affirmed in part, reversed in part, and vacated in part, while in the inverse condemnation action, the Court of Appeals affirmed in part, vacated in part, and remanded. Town filed petitions for discretionary review and landowner filed conditional petition for review, which were allowed.

The Supreme Court held that:

- Prior pending action doctrine precluded town's declaratory judgment action regarding inverse condemnation;
- Court's judgment that taking was for a private purpose revested title in the property to landowner;
- Trial court had inherent authority to order mandatory injunctive relief requiring town to remove sewer pipe; and
- Question of the proper remedy, including whether a mandatory injunction was warranted, required remand to the trial court.

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