2009

Resolutions of necessity in eminent domain: City of Stockton v Marina Towers. 2009

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Eminent Domain: Post-resolution events do not cure inadequate resolution of necessity.
City of Stockton v Marina Towers LLC (2009) 171 CA4th 93, 88 CR3d 909

The City of Stockton issued resolutions of necessity for a vacant office building and land owned by Marina Towers LLC near a redevelopment area. The resolutions were framed in the conclusory terms of the statute and did not specify a particular project for which the condemned property would be used. Marina Towers objected and claimed that the city had interfered with Marina Towers' development negotiations. The city obtained immediate possession. By the time the case came to trial, the city had built a parking lot and a baseball field on the two parcels taken. The trial court relied on the post-resolution uses of the property to validate the resolutions of necessity and awarded compensation for the acquisition of the property, but rejected the claim for damages for unreasonable precondemnation activities. The court of appeal reversed the trial court judgment and remanded to the trial court for a conditional dismissal on just terms, including Marina Towers' reasonable litigation expenses.

The court of appeal held that a resolution of necessity must specify the public use for which acquisition is sought under CCP §1245.230. That use was not specified by the city's vague resolutions and could not be specified after the fact by subsequent events. Otherwise, there could be no reasoned determination of the city's right to condemn the property. Thus, Marina Towers' objection had merit, the city's complaint in eminent domain was defective, and its action had to be dismissed. However, that dismissal may be conditioned on remedial action ordered by the court. CCP §1260.120. It was undisputed that the city had constructed public use projects on the property. An unconditional dismissal would produce a windfall to Marina Towers in the value of the improvements made by the city. Under CCP §1260.120(c) and *City of Lincoln v Barringer* (2002) 102 CA4th 1211, 1233, 126 CR2d 178, the dismissal may be made conditional on corrective and remedial action ordered by the court. The court of appeal did not reach the remaining issues, including valuation of the property. The court of appeal reversed the judgment and remanded to the trial court for conditional dismissal on such terms as are just, including an award of litigation expenses to Marina Towers. If the city passes new resolutions of necessity, an amended complaint must be filed and the case tried de novo.

THE EDITOR'S TAKE: This decision should be called the case where "*Kelo* Came Home to Roost." Its primary purpose, I think, is to warn local governments that they cannot just take private property because of some uncertain (or ulterior) motive and get away with it by hiding behind boilerplate clichés about noble but meaningless civic goals. (This strong language is not mine; the court's characterization of the city's actions was "nondescript, amorphous," "vague, uncertain and sweeping," "woefully lacking," "global yet evasive," "hopelessly obscure," "inscrutable and meaningless"—adjectives all apparently concocted and applied by it in the face of the trial court's upholding of the project.)

Yet despite that array of insults, the city is clearly going to be allowed to have its ballpark and parking lot. An unconditional dismissal in favor of the owners was denied, and the eminent domain proceedings were only conditionally dismissed, leaving no doubt that the project—since it is now obviously capable of concrete definition—will be upheld on remand.

The publication of this iron-fist-and-silk-glove opinion tells me that it was not written as much for the officials of Stockton as for those employed in all the other local government agencies that have eminent domain authority. The lesson for them is that the courts will be watchful and that they cannot ride roughshod over the landowners' objections to the taking of their properties; there will be serious judicial review of the "public use" that is asserted as the motivation. (Although it is much less explicitly stated in the opinion, there may also be close oversight of any subsequent turnover of the property to another private party or, when the local redevelopment agency is also involved, whether the asserted "blight" truly exists.) The noisy public reaction to *Kelo* has been heard by the judges.

Nor is the judicial threat one of mere rebuke. Stockton's public parking lot may stand, but it will cost the taxpayers. All of the costs of the litigation, both trial and appeal, including attorney fees, plus possible consequential damages, are going to be recovered by these defendants. That may be a strong disincentive for planners to be profligate and an equally strong incentive for landowners—and their attorneys—to fight back.

—Roger Bernhardt