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## California Supreme Court Issues New Eminent Domain Opinion, Squashes Uncertainty Over Proper Date of Value

*By John C. Murphy, Jennifer Riel McClure and Jennifer Wood Dienhart*

Associate Justice Ming W. Chin, writing for a unanimous California Supreme Court, has just silenced almost five years of clamor and uncertainty. Before last Thursday, February 22, 2007, different lower courts had reached different results on a key eminent domain issue: the proper date of value. When should a landowner be allowed to use the trial date, the latest date possible, as the date the condemned property is valued?

Landowners prefer the latest date possible - - the trial date - - in a rapidly rising real estate market. Condemning agencies by contrast, prefer an earlier date of value, usually the date of pretrial deposit, around the time the agency first files its complaint. So who is correct?

In last Thursday's opinion, Mt. San Jacinto Community College District v. The Superior Court of the County of Riverside (February 22, 2007, S132251) \_\_\_\_\_ Cal.4th \_\_\_\_\_, the California Supreme Court ended the uncertainty. The Court endorsed the California Legislature's long-standing, clear, bright-line rule, a rule adopted more than 33 years ago. (See Code Civ. Proc., § 1263.110 et seq.)

### Conflicting Lower Court Opinions

Before the Court's Thursday decision, some recent conflicting rulings of the Court of Appeal had clouded the legal landscape.

- 1) **Saratoga Fire Protection District v. Hackett (2002) 97 Cal.App.4<sup>th</sup> 895** (The Court held - - contrary to the statutory scheme - - that the date the complaint is filed may not be the proper date of value for determining just compensation when no deposit is made, even when the matter is taken to trial within one year.)
- 2) **San Diego Metropolitan Transit Development Board v. RV Communities (2005) 127 Cal.App.4<sup>th</sup> 1201** (The Court held - - contrary to the statutory scheme - - that the deposit date does not set the date of value when the deposit does not truly represent "probable compensation.")
- 3) **Cathedral City Redevelopment Agency v. Stickles (2005) 134 Cal.App.4<sup>th</sup> 1406** (The Court held that it would not advance the date of value to the date of trial.)
- 4) **City of Santa Clarita v. NTS Technical Systems (2005) 137 Cal.App.4<sup>th</sup> 264** (The Court held here that the earlier date - - the date of deposit - - was the date of value, even when the deposit amount was supplemented by the condemning agency.)

### The Facts

Mt. San Jacinto Community College District ("College District") decided to

condemn 30 acres owned by Azusa Pacific University . The College District filed its lawsuit and deposited \$1.789 million for the property in December 2000. Thereafter, Azusa Pacific challenged the College District's right-to-take the property and proceeded with its planned construction of new buildings. Ultimately, however, the College District won the right to take the property. Azusa Pacific and the College District then each filed motions to determine the date of value.

The trial court ruled that the property should be valued at the later date - - the date the trial commenced - - December 2004. The Court of Appeal disagreed and ruled that Azusa Pacific could receive constitutional just compensation, even using the much earlier, December 2000 deposit date as the date of value.

Our State Supreme Court stepped into the fray. It addressed two issues.

- Do the long-standing date-of-value statutes, which gave the College District the benefit of the earlier December 2000 date of value, unfairly (and unconstitutionally) penalize the landowner?
- Do the statutes (Code Civ. Proc., § 1263.110 et seq.) also unfairly penalize a landowner who decides to withdraw a deposit before trial? By doing so, the owner waives its right-to-take challenge. (Code Civ. Proc., § 1255.260.) Is this consequence of withdrawal itself unconstitutional?

### **The Holding**

The Supreme Court sided with public agencies. It concluded that, when an agency makes a deposit of probable compensation which equals or exceeds the probable amount of the owner's compensation, then the early date - - the date of the deposit - - qualifies as the date of value.

In doing so, the Court deferred to the California Legislature's "quick-take" statutes, and relied in particular on the reasoning of a 1974 California Law Revision Commission Report. It noted that the deposit date of value provides some needed certainty for acquiring agencies. An alternate rule would provide a property owner incentive to delay proceedings to ensure a greater return on their property.

In distinguishing the recent conflicting decisions listed above, the Court found "of critical importance" that *Saratoga* involved a straight condemnation proceeding, where there had been no deposit of probable compensation. The Court noted that quick-take condemnations, by contrast, involve procedural safeguards that "ensure the deposit closely approximates the amount that a jury would actually award . . ." These include:

- a property appraisal requirement (Code Civ. Proc., § 1255.010);
- payment of a landowner's appraisal costs (up to \$5,000) (Code Civ. Proc., §1263.025);
- a landowner's ability to petition for an increase in the deposit (Code Civ. Proc., § 1255.030); and
- an agency's loss of a deposit date of value for failure to increase the amount of probable compensation, if required by the Court (Code Civ. Proc., § 1263.110).

### **The Second Issue**

The Supreme Court also sided with the agencies on the second issue. The Court concluded that, so long as the probable compensation deposit remains available to a landowner for prompt release, then forcing the landowner to waive its right-to-take challenge as a condition of actually withdrawing the deposit makes sense. It survives constitutional scrutiny. The Court again noted statutory safeguards for landowners, such as prompt resolution of right-to- take challenges in a bifurcated

proceeding (Code Civ. Proc., § 1260.010) and payment of prejudgment interest on the balance owed as means to neutralize any hardship to the landowner.

### **Open Issues**

What does this mean for agencies and landowners? Well, the long-standing bright-line statutory rules still apply. When an agency deposits funds for a property owner, the deposit date is the date of value. On the other hand, straight condemnation proceedings are not affected. Landowners are free to seek a trial date of value in those cases.

But some open questions remain.

- The Court specifically observed that Azuza Pacific had not challenged whether the College District's use was a "public use". Is it constitutional to force early on, before trial, a waiver of a public use challenge when a property owner seeks to withdraw a deposit?
- The Court's reasoning assumes that property owners have a real ability to challenge amount of the deposit made by the condemning agency. In the real world, however, property owners usually do not file such early challenges to the amount of the deposit. Among the reasons: Property owners usually choose to shield the identity and reasoning of their appraiser until expert discovery is conducted, closer to trial.

*John C. Murphy is Chair of Nossaman's Eminent Domain Group and specializes in commercial litigation with an emphasis on eminent domain, inverse condemnation and other complex business disputes. He can be reached at [jmurphy@nossaman.com](mailto:jmurphy@nossaman.com). Jennifer Riel McClure is a Partner in the Eminent Domain Group and can be reached at [jmclure@nossaman.com](mailto:jmclure@nossaman.com). Jennifer Wood Dienhart is an Associate in the Eminent Domain Group and can be reached at [jdienhart@nossaman.com](mailto:jdienhart@nossaman.com).*

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