

SUPREME COURT COPY

Supreme Court Case No.: S213468

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

CITY OF PERRIS

Plaintiff and Respondent,

v.

RICHARD C. STAMPER, et al.

Defendants and Respondents.

SUPREME COURT
FILED

APR 26 2016

Frank A. McGuire Clerk

Deputy

ON REVIEW FROM THE COURT OF APPEAL, FOURTH
APPELLATE DISTRICT, DIVISION TWO
CASE NO. E053395

AFTER AN APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE
COUNTY, THE HONORABLE DALLAS HOLMES, JUDGE
CASE NO. RIC524291

**PLAINTIFF/RESPONDENT CITY OF PERRIS' SUPPLEMENTAL BRIEF, AND
REQUEST FOR LEAVE TO FILE IT
(CA Rules of Court, Rule No. 8.520(d)(1))**

ALESHIRE & WYNDER, LLP
Eric L. Dunn, State Bar No. 176851
Sunny K. Soltani, State Bar No. 209774
Pam K. Lee, State Bar No. 246369
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Telephone: (949) 223.1170
Facsimile: (949) 223.1180

Attorneys for Plaintiff and Respondent CITY OF PERRIS

APPLICATION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

(Cal. Rules of Court, Rule No. 8.520(d)(1))

I, Pam K. Lee, do declare as follows:

I am an attorney at law duly licensed to practice before all courts in the State of California and am a partner at the law firm of Aleshire & Wynder, LLP, attorneys of record for Plaintiff/Respondent City of Perris (“City”) in the above captioned matter.

Pursuant to Rule 8.520(d)(1) of the California Rules of Court, “a party may file a supplemental brief limited to new authorities, new legislation, or other matters that were not available in time to be included in the party's brief on the merits.”

The City filed its (i) opening brief on the merits on January 16, 2014, (ii) reply brief on March 12, 2014, and (iii) response to amicus curiae brief on May 29, 2014.

On April 24, 2015, after the City had filed all of its briefs before this Court, the California Court of Appeal, First District, came out with its opinion in *People Ex Rel. Calif. Dep't of Transportation v. Hansen's Truck Stop, Inc.* (2015) 236 Cal.App.4th 178 (*Hansen's*).

The City desires to address the impact of the *Hansen's* decision on this case before the Court and has prepared the attached supplemental brief.

Additionally, Rule 8.520(d)(1) of the California Rules of Court requires that any supplemental brief be served and filed no later than 10 days before oral argument.

Accordingly, because the City is timely serving and filing this application and supplemental brief 10 days prior to oral argument on May 5, 2016, the City requests permission of this Court to file the proposed supplemental brief, which is attached to this application.

DATED: April 25, 2016

ALESHIRE & WYNDER, LLP
Attorneys At Law
ERIC L. DUNN
SUNNY K. SOLTANI
PAM K. LEE

By: _____



PAM K. LEE
Attorneys for Plaintiff and
Respondent CITY OF PERRIS

TABLE OF CONTENTS

	<u>Page</u>
I. NEW AUTHORITY FROM THE FIRST DISTRICT OF THE CALIFORNIA COURT OF APPEALS SUPPORTS THE CITY'S POSITION THAT THE JUST COMPENSATION ISSUE (WHICH IS DETERMINED BY A JURY) DOES NOT INCLUDE ISSUES REGARDING THE RIGHT TO DAMAGES (WHICH IS DETERMINED BY A COURT).	1
II. WHETHER AN OTHERWISE REASONABLY PROBABLE DEDICATION REQUIREMENT IS CONSTITUTIONAL IN AN EMINENT DOMAIN CONTEXT IS AN ISSUE REGARDING THE RIGHT TO DAMAGES, AND THUS, AN ISSUE FOR THE COURT TO DETERMINE.	4
A. Whether A Dedication Requirement Is Constitutional Is A Question Of Liability To Be Determined By The Court And Is Predicate To The Determination of Compensation To Be Determined By the Jury.....	4
B. As In The <i>Hansen's</i> Case In Which The Issue Regarding Entitlement To Damages For Impairment Of Access And Loss Of Goodwill Was Bifurcated And Decided By The Court, Pursuant To Code of Civil Procedure Section 1260.040, Prior To The Jury Trial On Compensation, The Issue Of The Constitutionality Of An Otherwise Reasonably Probable Dedication Requirement Is Also A Legal Issue To Be Decided By The Court.	6
III. CONCLUSION	8
CERTIFICATE OF WORD COUNT.....	9

TABLE OF AUTHORITIES

	<u>Page</u>
STATES CASES	
<i>Community Redevelopment Agency v. Matkin</i> (1990) 220 Cal.App.3d 1087, 272 Cal.Rptr. 1	3
<i>Emeryville Redevelopment Agency v. Harcros Pigments, Inc.</i> (2002) 101 Cal.App.4th 1083	5
<i>Escondido Union School Dist. v. Casa Suenos De Oro, Inc.</i> (2005) 129 Cal.App.4th 944	5
<i>Housing Authority v. Forbes</i> (1942) 51 Cal.App.2d 1	5
<i>Koppikus v. State Capitol Commissioners</i> (1860) 16 Cal. 248	1
<i>Metropolitan Water District of Southern California v. Campus Crusade for Christ, Inc.</i> (2007) 41 Cal.4th 954.....	5,6
<i>Oakland v. Pacific Coast Lumber etc. Co.</i> (1915) 171 Cal. 392 at pp. , 153 P. 705.....	3
<i>Pacific Gas & Electric Co. v. Peterson</i> (1969) 270 Cal.App.2d 434	5
<i>People Ex Rel. Calif. Dep't of Transportation v. Hansen's Truck Stop, Inc.</i> (2015) 236 Cal.App.4th 178 (<i>Hansen's</i>)	passim
<i>People v. One 1941 Chevrolet Coupe</i> (1941) 37 Cal.2d 283	1
<i>People v. Ricciardi</i> (1943) 23 Cal.2d 390, at pp. , 144 P.2d 799.....	3
<i>Redevelopment Agency v. Contra Costa Theater, Inc.</i> (1982) 135 Cal.App.3d 73	5
<i>Vallejo & Northern RR Co. v. Reed Orchard Co.</i> (1915) 169 Cal. 545	1

STATE STATUTES

Cal. Const. Art. I, § 19.....1, 3
Code of Civil Procedure Section 1250.4102, 3, 7
Code of Civil Procedure Section 1260.040 6, 7, 8

I. NEW AUTHORITY FROM THE FIRST DISTRICT OF THE CALIFORNIA COURT OF APPEALS SUPPORTS THE CITY'S POSITION THAT THE JUST COMPENSATION ISSUE (WHICH IS DETERMINED BY A JURY) DOES NOT INCLUDE ISSUES REGARDING THE RIGHT TO DAMAGES (WHICH IS DETERMINED BY A COURT).

In common law, the right to a jury trial applies only to civil and criminal actions, not to actions in equity. (*People v. One 1941 Chevrolet Coupe* (1941) 37 Cal.2d 283, 287.) Eminent domain cases are actions in equity and thus not entitled to a trial by jury. (*Koppikus v. State Capitol Commissioners* (1860) 16 Cal. 248, 254.) Thus, it was only through an amendment in the California Constitution in 1879 that a jury becomes involved in an eminent domain case, and *only* on the issue of “just compensation.” (Cal. Const. Art. I, § 19 (formerly § 14).) *All* other issues of fact and law are still decided by a court. (*Vallejo & Northern RR Co. v. Reed Orchard Co.* (1915) 169 Cal. 545, 556.)

Recently, in *People ex rel. Calif. Dep't of Transportation v. Hansen's Truck Stop, Inc.*, (2015) 236 Cal.App.4th 178 (*Hansen's*), the Court of Appeal, First District, upheld that longstanding precedence that the California Constitution guarantees to the parties the right to a jury trial on the issue of just compensation, but “except [for] those *relating to compensation*, the issues of fact in a condemnation suit, are to be tried by the court...[citations omitted].” (*Id.* at 196-97 [emphasis in original].)

In *Hansen's*, the State Department of Transportation filed a complaint in eminent domain to condemn a portion of a larger parcel owned by the Hansens for the purpose of building a highway interchange. (*Id.* at 183.) The Hansens operated a truck stop on the larger parcel, and in their answer,

claimed additional compensation due to the impairment of highway access and the loss of goodwill in their business resulting from the condemnation and the construction project. (*Id.* at 184.) Prior to the trial date, the State filed a motion to bifurcate the proceedings, seeking an initial adjudication on the Hansens' entitlement to seek damages for access impairment and loss of goodwill prior to the actual trial on compensation. (*Id.*) The court granted the bifurcation and ordered that "the jury phase of the trial, to determine the amount of just compensation... shall immediately follow the court phase of the trial." (*Id.*)

For the final offer of compensation made pursuant to Code of Civil Procedure Section 1250.410 before the commencement of trial, the State offered \$784,000, while the Hansens demanded \$5 million, which included \$600,000 for the take, \$1.9 million for severance damages (including access impairment), and \$2.5 million for loss of goodwill.

After the court phase of the trial on the right to damages for access impairment and loss of goodwill, the trial court ruled that the Hansens proved they were entitled to damages related to access impairment and loss of goodwill. (*Id.* at 184.) Thereafter, the Hansens filed a second final demand for compensation in the amount of \$2.99 million, which included \$570,000 for the take, \$1.88 million for severance damages, \$200,000 for loss of goodwill, and \$340,000 for loss of tangible property. (*Id.*) The State did not make a second offer of final compensation. (*Id.*)

After the jury phase of the trial on actual compensation, the jury awarded the Hansens \$2.53 million in compensation, including \$525,122 for the take, \$1.7 million in severance damages, and \$300,000 in loss of goodwill, among others. The Hansens then filed a motion to recover their litigation expenses, based on the fact that their final demand of \$2.99 million was

reasonable and close to the jury's award, while the State's offer of \$784,000 was unreasonable. (*Id.*) The State opposed the motion, arguing that only the Hansens' first final demand for compensation of \$5 million could be considered in determining whether the court should award litigation expenses, because the second demand of \$2.99 million was filed after trial commenced and was therefore untimely under Section 1250.410 of the Code of Civil Procedure. (*Id.* at 185.) The trial court denied the Hansens' motion.

In analyzing Code of Civil Procedure Section 1250.410, which requires the parties to exchange their respective final offers and demands of compensation "at least 20 days prior to the date of the trial on *issues relating to compensation*", the appellate court analyzed the definition of the phrase "issues relating to compensation". Seeing no precedent interpreting that phrase from Section 1250.410, the appellate court looked at the right to a jury trial on the "issue of compensation" under Article I, Section 19 of the California Constitution.

The appellate court opined:

...in the parlance of eminent domain, 'issues relating to compensation' are those pertaining to the amount of compensation, that is the fair market value of the property plus the amount of any other damages resulting from the condemnation. The compensation issues ***do not include other issues of fact or law***, such as whether the property owner is entitled to ***severance damages*** because the parcel being taken is part of a larger parcel (*Oakland [v. Pacific Coast Lumber etc. Co.* (1915) 171 Cal. 392] at pp. 396-397, 153 P. 705) whether the condemnor has the ***legal authority to condemn the property*** ([*Community Redevelopment Agency v. Matkin* [(1990) 220 Cal.App.3d 1087] at 1091-1092, 272 Cal.Rptr. 1) or whether the property owner is entitled to damages for ***impairment of access*** ([*People v. Ricciardi* [(1943) 23 Cal.2d 390], at pp. 402-403, 144 P.2d 799.) We therefore conclude that the phrase "the trial on issues relating to compensation" found in section 1250.410

has a particular meaning in eminent domain practice, and refers to the trial in which the trier of fact *determines the amount of compensation, including the amount of damages if any, to be awarded to the property owner.* (*Id.* at 198.)

Thus, the *Hansen's* court accurately summarized the bifurcation of the roles of the court and jury in an eminent domain proceeding: (i) the court adjudicates all issues of fact and law, including an owner's "entitlement to various categories of damages"; and (ii) the jury adjudicates the issue related to actual damages and compensation.

II. WHETHER AN OTHERWISE REASONABLY PROBABLE DEDICATION REQUIREMENT IS CONSTITUTIONAL IN AN EMINENT DOMAIN CONTEXT IS AN ISSUE REGARDING THE RIGHT TO DAMAGES, AND THUS, AN ISSUE FOR THE COURT TO DETERMINE.

A. Whether A Dedication Requirement Is Constitutional Is A Question Of Liability To Be Determined By The Court And Is Predicate To The Determination of Compensation To Be Determined By the Jury.

As the City has previously argued in its opening and reply briefs before this Court, the issue of the constitutionality of an otherwise reasonably probable dedication requirement that a public entity claims it would require in order to grant a property owner permission to put the property to a higher use is essentially an issue regarding whether a taking has occurred or whether the owner is entitled to damages, and thus, an issue for the court – not a jury – to decide. (*See* City's Opening Brief on the Merits, p. 22; City's Reply Brief on the Merits, pp. 9, 15-17.)

Before a jury is entitled to determine the *amount* of compensation and issues that directly relate to the amount of compensation, a court is required to determine whether an owner is entitled to compensation in the first place, whether due to the existence of access impairment, severance damages, loss of

goodwill, or other precondition to the right to be compensated. (*Hansen's*, 236 Cal.App.4th at 198.) All of the above issues have been distinguished by California courts as questions of mixed fact and law that must be determined by a court. (See, e.g., *Emeryville Redevelopment Agency v. Harcross Pigments, Inc.* (2002) 101 Cal.App.4th 1083, 1116 [issue involving goodwill]; see also *Pacific Gas & Electric Co. v. Peterson* (1969) 270 Cal.App.2d 434; *Housing Authority v. Forbes* (1942) 51 Cal.App.2d 1, 8 [issue of public use, necessity, and least private injury are issues for the judge alone to decide]; *Escondido Union School Dist. v. Casa Suenos De Oro, Inc.* (2005) 129 Cal.App.4th 944 [whether fixtures pertain to realty is an issue for the court]; *Redevelopment Agency v. Contra Costa Theater, Inc.* (1982) 135 Cal.App.3d 73 [liability for precondemnation damages].) This is because such questions in essence determine the existence of public entity liability such that the right to damages is warranted.

Likewise, whether an otherwise reasonably probable dedication requirement is constitutional is a question that establishes whether the City is liable to Defendants and Appellants Stamper and Robinson (“Owners”) such that the Owners have a right to damages. This issue of liability must be determined *before* the jury gets to determine what damages in the form of compensation the Owners are entitled to as a result of the City’s liability.

Citing to *Metropolitan Water District of Southern California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954 (*Campus Crusade*”), Owners contend that the constitutionality of an otherwise reasonably probable dedication requirement is an issue that affects fair market value of their property and thus is a compensation issue for the jury. This Court in *Campus Crusade*, however, recognized that a court, not a jury, must make certain determinations that are a predicate to the award of compensation, “issues of

law – or mixed issues of law and fact where the legal issues predominate, even if there are underlying disputes of fact – antecedent to the valuation of the property.” (*Campus Crusade, supra*, 41 Cal.4th at 972-73.)

The reasonable probability of a zone change which was at issue in *Campus Crusade* was an issue directly related to fair market value of the property and compensation and was not an issue related to the public entity’s liability or owner’s right to damages. Thus, the reasonable probability of a zone change is distinguishable from the constitutionality of a dedication requirement, which is at issue in this case. If the dedication requirement is constitutional, then there is no liability on the City and the Owners are not entitled to damages to the remainder of their property (i.e. severance damages), as the *Hansen’s* court emphasized. If the dedication requirement is unconstitutional, then Owners are entitled to severance damages, which is an issue to be decided by the jury. This comports with the *Campus Crusade* and the *Hansen’s* decisions.

B. As In The *Hansen’s* Case In Which The Issue Regarding Entitlement To Damages For Impairment Of Access And Loss Of Goodwill Was Bifurcated And Decided By The Court, Pursuant To Code of Civil Procedure Section 1260.040, Prior To The Jury Trial On Compensation, The Issue Of The Constitutionality Of An Otherwise Reasonably Probable Dedication Requirement Is Also A Legal Issue To Be Decided By The Court.

In the *Hansen’s* case, the State filed a motion to bifurcate the proceedings seeking first the determination to the Hansens’ entitlement to seek damages for access impairment and loss of goodwill. (*Hansen’s, supra*, 236 Cal.App.4th at 184.) The trial court properly granted the request and ordered “the jury phase of the trial, to determine the amount of just compensation” to

follow immediately after the court phase of trial. (*Id.*) This was done pursuant to Code of Civil Procedure Section 1260.040.

As analyzed in the City's Reply Brief, Section 1260.040 allows the court to determine any dispute regarding *evidentiary* and *other legal issue affecting the determination of compensation* prior to the jury trial on compensation.¹ In the *Hansen's* case, the bifurcation and division of responsibilities between the court and jury were not disputed, as it was clear that the role of the court is to determine the entitlement to damages, which is a legal or evidentiary issue, while the role of the jury is to determine the extent of damages, which is a purely factual issue.

In the *Hansen's* case, if the proceedings were not bifurcated such that the jury determined *at trial* both whether the Hansens were entitled to seek damages for access impairment and loss of goodwill and the extent of those damages, the Hansens would not have been permitted to file their second final demand for compensation under Code of Civil Procedure Section 1250.410, which was filed after the court trial and which was deemed by the appellate court as the operative offer and demand. (*Hansen's, supra*, 236 Cal.App.4th at 201.) As stated by the *Hansen's* court, "we further hold that, in a bifurcated proceeding, 'the trial on issues relation to compensation' means the trial in

¹ The City's Reply Brief also noted, on pages 16 and 17 thereof, that Section 1260.040 was enacted in 2001 by the California Legislature to facilitate early resolution of condemnation cases by providing a process for alternative dispute resolution, encouraging early exchange of appraisals, and creating specific timelines for a speedy trial process. (Sen. Rules Com., Off. Of Sen. Floor Analyses, 3rd reading analysis of Assem. Bill No. 237 (2001-2002 Reg. Sess.), as amended Aug. 28, 2001, p. 1.) Without the bifurcation of such proceedings, eminent domain trials would become inefficient, confusing to the jury, and overly time consuming.


which the *amount* of compensation is determined.” (*Id.* at 183 [emphasis added].) This comports with well-established case law and the City’s proposition that the court phase of an eminent domain trial, pursuant to Code of Civil Procedure Section 1260.040, decides all issues of law and fact affecting compensation, while the jury phase of an eminent domain trial decides the extent of damages and amount of compensation to be awarded.

III. CONCLUSION

For the foregoing reasons, the City urges this Court to reverse the Court of Appeal’s holding on the issue of a jury deciding the constitutionality of an otherwise reasonably probable dedication requirement in an eminent domain proceeding.

DATED: April 25, 2016

ALESHIRE & WYNDER, LLP
Attorneys At Law
ERIC L. DUNN
SUNNY K. SOLTANI
PAM K. LEE

By: 

PAM K. LEE
Attorneys for Plaintiff and
Respondent CITY OF PERRIS

CERTIFICATE OF WORD COUNT

I certify that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the attached Supplemental Brief was produced on a computer and contains 2,381 words, as counted by the Microsoft Word 2010 word-processing program used to generate said Brief.

DATED: April 25, 2016

ALESHIRE & WYNDER, LLP
Attorneys At Law
ERIC L. DUNN
SUNNY K. SOLTANI
PAM K. LEE

By: 

PAM K. LEE
Attorneys for Plaintiff and
Respondent CITY OF PERRIS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On April 25, 2016, I served the original of the following document(s) described as **PLAINTIFF/RESPONDENT CITY OF PERRIS' SUPPLEMENTAL BRIEF, AND REQUEST FOR LEAVE TO FILE IT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2016, at Irvine, California.



Karen R. Becker

SERVICE LIST
City of Perris vs. Richard C. Stamper, et al.
Supreme Court Case No. S213468
California Court of Appeal, Fourth Appellate District,
Division Two – Case No. E053395
Richard C. Stamper, et al. v. City of Perris
Riverside Superior Court, Central District – Case No. RIC524291

<p><u>Via Overnight Mail</u></p> <p>K. Erik Friess, Esq. ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS, LLP 1900 Main Street, 5th Floor Irvine, CA 92614</p> <p>T 949.553.1313 F 949.553.8354 E-MAIL: rfriess@allenmatkins.com</p>	<p>ATTORNEYS FOR DEFENDANTS AND APPELLANTS, Richard C. Stamper, Donald D. Robinson and Donald Dean Robinson, LLC</p> <p>(1 COPY)</p>
<p><u>Via Overnight Mail</u></p> <p>Supreme Court of California Office of the Clerk, First Floor 350 McAllister Street San Francisco, CA 94102</p> <p>Tel: (415) 865-7000</p>	<p>(1 ORIGINAL & 9 COPIES)</p>
<p><u>Via Overnight Mail</u></p> <p>Hon. Dallas S. Holmes c/o Clerk of the Court Riverside County Superior Court 4050 Main Street Riverside, CA 92501</p> <p>Tel: (951) 777-3147</p>	<p>(1 COPY)</p>
<p><u>Via Overnight Mail</u></p> <p>Court of Appeal 4th District Div 2 3389 Twelfth Street Riverside, CA 92501</p> <p>Phone: (951) 782-2500 Fax: (951) 248-0235</p>	<p>(1 COPY)</p>