

Case No. S248141

DEC 13 2018

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

EVAN WEISS, BELINDA HENRY, MICHAEL HAYES, MICHEALE
HAYES, ROSS SHAW, DEBBIE SHAW, and 1819 MSC, LLC,

Plaintiffs and Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and
through its Department of Transportation; and ORANGE COUNTY
TRANSPORTATION AUTHORITY,

Defendants, Respondents, and Petitioners.

After a Published Decision by the California Court of Appeal,
Fourth Appellate District, Division Three, Case No. G052735

Appeal from Judgment of the
Superior Court State of California, County of Orange
Honorable Kirk H. Nakamura, Judge Presiding
Orange County Superior Court Case No. 30-2012-00605637

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFFS AND APPELLANTS**

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rule of Court 8.520(f), I, Norman E. Matteoni, Matteoni, O'Laughlin & Hechtman, request leave to file an amicus curiae brief in support of Plaintiffs and Appellants EVAN WEISS, BELINDA HENRY, MICHAEL HAYES, MICHEALE HAYES, ROSS SHAW, DEBBIE SHAW, and 1819 MSC, LLC. I have read the briefs in this case and believe the Court may benefit from additional briefing on this important issue and that this brief will aid the Court in considering the issues presented.

IDENTITY AND INTEREST OF AMICUS CURIAE

Our firm's practice is primarily devoted to eminent domain. I have been practicing eminent domain law since 1965. I am the author of the CEB's publication, "Condemnation Practice in California." I was also a consultant, in the early 1970s, to the California Law Revision Commission in its comprehensive study resulting in the enactment of the Eminent Domain Law in 1974, effective 1975, and as an advisory committee member of the CACI Jury Instructions in 2003. Finally, the opinion below cites me as an authority for the decision under review.

No one but the undersigned either wrote or paid for this brief. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 29, 2018 in San Jose, California.



NORMAN EL MATTEONI (SBN 34724)

AMICUS CURIAE BRIEF

I. INTRODUCTION

I acknowledge the difference of opinion in two appellate decisions on the applicability of Code of Civil Procedure section 1260.040 to a determination of liability in an inverse condemnation action. But from my perspective, the resolution of the issue is straight forward.

This statute was intended to address valuation issues in a direct condemnation case. There was no legislative indication to apply the statute to the threshold liability issue presented by an inverse condemnation action.

Extending the statute to inverse liability does not properly protect the owner that claims injury to private property from a public project where the public agency responsible does not institute a condemnation action.

II. LEGISLATIVE HISTORY

The court below took the time to review the legislative history and the background analysis of the California Law Revision Commission's study – *Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain* (October 2000), that recommended the legislation. This Court has followed the same process a few years ago in *Mt. San Jacinto Community College District v. Superior Court* (2007) 40 Cal.4th 648, 657-660. It is clearly stated in *People v. Ricciardi* (2014) 54 Cal.4th 758, 824 (a non-condemnation case) that the Law Revision's comments are to be given

great weight in interpreting statutes. The opinion in *Dina v. People ex rel. Dep't of Transp.* (2007) 151 Cal.App.4th 1029 was not an exhaustive review of the law, but a simple approach of playing off the phrase – “resolution of issues”, in the title of the Law Revision Study. It concluded that “resolution of issues” was broad in meaning and could be extended to liability in an inverse condemnation case. The *Dina* court did not focus on the specifics of the study and recommendations it made. It ignored the admonition in the Law Revision Commission Comment to Code of Civil Procedure section 1230.020:

The provisions of the Eminent Domain Law are intended to supply rules only for eminent domain proceedings. The law of inverse condemnation is left for determination by judicial development.

Importantly, there is no mention of the issue of inverse liability in either section 1260.040 or the Law Revision Commission Report.

Assembly Bill 237 (Cal Stats 2001) followed the Commission’s recommendations to the letter. The amendments all relate to existing statutes of the Eminent Domain Law (Title 7 of Code of Civil Procedure) for direct not inverse condemnation:

1. Pretrial settlement offers – section 1250.410
2. Deposit of probable compensation – section 1255.010
3. Date of exchange – section 1258.220
4. Contents of statement of valuation data – section 1258.260

Further, section 1260.040 was made part of the Eminent Domain Law.

Moreover, the directive within the wording of the statute, that the motion be made 60 days prior to trial, is based on the amendment to section 1258.220, extending the time of exchange of valuation data from 60 to 90 days, in order to allow the trial attorneys to consider the exchange information and take depositions to understand the other side's position. See – California Law Revision Commission, *Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain* (October 2000), pp. 586-587.

Finally, two Government Code sections, also relating to direct condemnation, were amended:

1. Section 7267.1 – Negotiations
2. Section 7267.2 – Precondemnation offer

The entire focus of the legislation was directed to valuation issues.

Second, there is an available process by way of a motion for summary judgment to reach the issue of liability in inverse condemnation. That process presents more hurdles for the moving party for good reason. Such a motion is clearly aimed at dismissal; and safeguards are demanded to protect the party against whom it is brought. See Code of Civil Procedure section 437c.

Summary judgment was available to the State. It did not choose the process. Certainly, in eminent domain where an owner's property is taken or damaged, a process with appropriate safeguards should be the rule. There

are no shortcuts to government affecting property rights. Due process is imperative.

III. CONCLUSION

This court should affirm the decision below.

Respectfully Submitted,

MATTEONI, O'LAUGHLIN &
HECHTMAN

Dated: 11/29/18

By: 
NORMAN E. MATTEONI (SBN 34724)

PROOF OF SERVICE

I, Carol Ann Bianco-Webb, hereby declare:

I am a citizen of the United States; I am over the age of eighteen years and not a party to the within cause; I am employed in the City of San Jose, County of Santa Clara, State of California; and my business address is 848 The Alameda, San Jose, CA 95126. On November 29, 2018, I served the foregoing **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** on the party(ies) identified below by the following means of service:

X BY UNITED STATES MAIL: I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Jose, California.

Hon. Kirk H. Nakamura
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

(Case No. 30-2012-00605637)

Clerk of the CA Court of Appeal
Fourth District, Division Three
601 W. Santa Ana Boulevard
Santa Ana, CA 92701

(Case No. G052735)

Office of the CA Attorney General
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X BY ELECTRONIC SERVICE: I caused the foregoing document to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document on the individuals listed below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 29, 2018 at San Jose, California.



Carol Ann Bianco-Webb