

Case No. S248141

JAN 11 2019

IN THE SUPREME COURT OF CALIFORNIA Jorge Navarrete Clerk

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
the Department of Transportation; and ORANGE COUNTY
TRANSPORTATION AUTHORITY,
Defendants, Respondents, and Petitioners.

ANSWER TO AMICUS CURIAE BRIEF

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

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

*Gary C. Weisberg (State Bar No. 132092)
Laura A. Morgan (State Bar No. 202745)
Esther P. Lin (State Bar No. 252569)
WOODRUFF, SPRADLIN & SMART, APC
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626-7670
Tel.: (714) 558-7000
Fax: (714) 835-7787

Attorneys for Defendants, Respondents, and Petitioners
ORANGE COUNTY TRANSPORTATION AUTHORITY, a public entity,
and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and
through the DEPARTMENT OF TRANSPORTATION

**TO THE HONORABLE CHIEF JUSTICE OF CALIFORNIA AND
THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME
COURT:**

1. INTRODUCTION

Defendants, Respondents and Petitioners People of the State of California, acting by and through the Department of Transportation and Orange County Transportation Authority (“Agencies”) submit the following response to the Amicus Curiae brief filed by Norman E. Matteoni (“Matteoni”) in support of Plaintiffs Evan Weiss, et al. in this matter.

Matteoni’s expertise in the eminent domain field and the everyday utility of his practice guide on the subject are respected and acknowledged. As explained in this response, however, the arguments presented by Matteoni do not overcome the arguments addressed in more detail in the Agencies’ reply brief.

**2. THE LEGISLATURE DELEGATED THE DEVELOPMENT
OF INVERSE CONDEMNATION LAW TO THE JUDICIARY**

Matteoni argues that Code of Civil Procedure section 1260.040 should not be applied in inverse condemnation cases because “there is no mention of the issue of inverse liability in either section 1260.040 or the Law Revision Commission Report.” (Amicus Curiae Brief, p. 5.) The Agencies agree that section 1260.040 was not expressly intended to apply directly to inverse condemnation. But that silence is beside the point because the Legislature delegated the development of inverse condemnation law to the judiciary. (Cal. Law Revision Com., 19 West’s Ann. Code Civ. Proc. (2007 ed.) foll. §1230.020, p. 229; Cal. Law Revision Com., 19A West’s Ann. Code Civ. Proc. (2007 ed.) foll. §1263.010, p. 5.) Ordinarily, the courts are not in the position of creating law from whole cloth: interpreting law, yes, but not making it. Yet, the Legislature has delegated the creation of inverse condemnation law to the judiciary. The

Legislature's delegation means that this Court has the power to adopt section 1260.040 into the body of inverse condemnation law if it so chooses even if the Legislature never contemplated that possibility.

The Law Revision Commission Report is useful as a means of understanding the purpose of section 1260.040 in the eminent domain context and, by extension, as a means of understanding whether it would be a good idea to adopt section 1260.040 into the body of inverse condemnation law. But the absence of indicia of legislative intent to allow the importation of section 1260.040 should not drive the Court's decision on what makes sense for the development of inverse condemnation law.

3. MOTIONS FOR SUMMARY ADJUDICATION ARE RARELY WELL-SUITED TO ADDRESS LIABILITY ISSUES

Matteoni's position is that rather than file a motion under section 1260.040 to decide issues of liability in an inverse condemnation case, the Agencies should have sought summary judgment under section 437c because "appropriate safeguards should be the rule." (Amicus Curiae brief, pp. 6-7.) There are two problems with this line of argument. First, if a section 1260.040 motion violates principles of due process when used to decide issues of liability, then a section 1260.040 motion should not be permitted in either a direct or inverse condemnation case. As set forth more fully in the Agencies' reply brief on the merits, a condemning agency can bring a dispositive section 1260.040 motion on an issue of liability or entitlement to a type of damage in an eminent domain case. Indeed, such a motion can be dispositive and target the lion's share of the compensation sought by the property owner. Yet, the Legislature decided that these liability issues may be decided by noticed motion 60 days before trial in the eminent domain setting. No reason has been advanced that warrants providing greater due process protections to inverse condemnation plaintiffs than eminent domain defendants. Due process protections should

be in place to protect the property owner regardless of whether the action arises in direct or inverse condemnation.

The second problem with this line of argument is that summary judgment would rarely be available to decide issues of liability in an inverse condemnation case. A motion for summary adjudication is not available to attack a single theory of liability unless the motion would dispose of an entire cause of action. (*Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97.) Summary adjudication is also not available to decide issues of entitlement to damages other than punitive damages. (*Ibid.*)

If Matteoni's approach were adopted, wise inverse condemnation plaintiffs would craft complaints containing multiple theories of liability within a single cause of action for inverse condemnation to guard against summary adjudication motions, and issues of entitlement to damages (e.g., loss of goodwill or precondemnation damages), could never be adjudicated pre-trial in inverse condemnation cases, though they could be in direct condemnation cases. No explanation has been provided that explains why this outcome is preferred over allowing the same issues to be decided using the same procedural device.

4. CONCLUSION

The fact that summary adjudication may sometimes be available to decide issues of liability in inverse condemnation cases is not a strong justification for prohibiting the use of section 1260.040 to decide issues of liability that arise in both direct and inverse condemnation contexts. And any due process concerns that Matteoni has with the application of section 1260.040 in inverse condemnation would exist with equal force in eminent domain.

This Court has the power to decide whether section 1260.040 may be used in inverse condemnation cases. The Agencies submit that importation is warranted for two main reasons: the same legal issues should

be subject to the same procedural device and the availability of a pre-trial determination on these legal issues would promote settlement of more inverse condemnation cases.

DATED: January 10, 2019

WOODRUFF, SPRADLIN & SMART

By: *LA Morgan*

GARY C. WEISBERG

LAURA A. MORGAN

ESTHER P. LIN

Attorneys for Defendants, Respondents,
and Petitioners, Orange County
Transportation Authority, a public
entity, and The People of the State of
California, acting by and through the
Department of Transportation

CERTIFICATE OF WORD COUNT

The text of the brief, including footnotes, consists of 909 words as counted by the Microsoft Word 2016-word processing program used to generate the brief.

DATED: January 10, 2019

WOODRUFF, SPRADLIN & SMART

By: *LA Morgan*
GARY C. WEISBERG
LAURA A. MORGAN
ESTHER P. LIN
Attorneys for
Defendants/Respondents,
Orange County Transportation
Authority, a public entity, and The
People of the State of California,
acting by and through the
Department of Transportation

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and not a party to the within action; I am employed by WOODRUFF, SPRADLIN & SMART in the County of Orange at 555 Anton Boulevard, Suite 1200, Costa Mesa, CA 92626-7670.

On January 10, 2019, I served the foregoing document(s) described as **ANSWER TO AMICUS CURIAE BRIEF**

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- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 10, 2019, at Costa Mesa, California.



Vilay Lee

SERVICE LIST

Weiss, et al. v. Orange County Transportation Authority, et al.

SERVICE LIST

John S. Peterson, Esq.
Peterson Law Group
19800 MacArthur Blvd., Suite 290
Irvine, CA 92612
Tel: (949) 955-0127
Fax: (949) 955-9007

Attorney for Plaintiffs EVAN
WEISS, BELINDA HENRY,
MICHAEL HAYES,
MICHEALE HAYES, ROSS
SHAW, DEBBIE SHAW,
AND 1819 MSC, LLC

VIA FIRST CLASS MAIL

Martin N. Buchanan, Esq.
Law Office of Martin N. Buchanan, APC
655 W. Broadway, Suite 1700
San Diego, CA 92101
Tel: (619) 238-2426

Co-Counsel for Plaintiffs
EVAN WEISS, BELINDA
HENRY, MICHAEL
HAYES, MICHEALE
HAYES, ROSS SHAW,
DEBBIE SHAW, AND 1819
MSC, LLC

VIA FIRST CLASS MAIL

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

VIA FIRST CLASS MAIL

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

VIA FIRST CLASS MAIL

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

VIA FIRST CLASS MAIL

Norman E. Matteoni
Matteoni, O'Laughlin & Hechtman
848 The Alameda
San Jose, CA 95126
Tel: (408) 293-4300
Fax: (408) 293-4004

VIA FIRST CLASS MAIL