



California Supreme Court Provides Rare Update on Inverse Condemnation Doctrine

08.16.2019 | By **Willis Hon, Bradford B. Kuhn**

On August 15, 2019, the California Supreme Court (Supreme Court) issued its first inverse condemnation opinion in more than 22 years in the case *City of Oroville v. Superior Court of Butte County*, Case No. S243247 (Opinion). In this unanimous opinion authored by Justice Cuéllar, the Supreme Court held that to succeed on an inverse condemnation claim, a property owner must show more than just a causal link between the existence of a public improvement and damage to private property: it must demonstrate that the property damage was the probable result or necessary effect of an inherent risk associated with the design, construction, or maintenance of the relevant public improvement.

With inverse condemnation litigation on the rise in California, the Supreme Court recognizes the burden that would be placed on public agencies' scarce resources by imposing absolute or strict liability for any damage, no matter how remote, related to public improvements. As a result, the Opinion raises the bar on what property owners must demonstrate to prove liability by moving away from an automatic strict liability assessment and instead undertaking a more rigorous analysis focused on the reasonableness of the public agency's actions and the potential responsibility of the private property owner as a result of its acts or omissions that may have played a role in the damages.

Summary of the Opinion

This case involved an inverse condemnation claim brought by three dentists against the City of Oroville (City) when a sewer system back-up flooded the office owned by the dentists, where they operated their dental practice. The dentists filed a lawsuit claiming the City was strictly liable since the damages resulted from a public improvement (the City sewer system). The City argued it was not liable since the damages could have been prevented had the dentists installed a legally-required backwater valve, which they had failed to do. Both the trial court and the Court of Appeal held the City liable under inverse condemnation.

The Supreme Court reversed, finding that the Court of Appeal had erred by failing to analyze inverse condemnation with sufficient focus on substantial causation by inherent risks associated with the public improvement, and presuming that the City must disprove any causal connection to the harm. Instead, the Supreme Court found no inverse condemnation liability, holding that public entities are not strictly or otherwise automatically liable for any conceivable damage bearing some kind of connection, however remote, to a public improvement. Rather, a plaintiff must additionally show that the damage to private property was substantially caused by inherent risks associated with the design, construction, or maintenance of a public improvement.

In reaching this result, the Supreme Court walked through the inherent risks and the substantial causation elements of inverse condemnation, and held that either (i) damages must be the necessary or probable result of the public improvement, or (ii) the immediate, direct, and necessary effect of the improvement produced the damage. The Supreme Court explained that This approach avoids treating inverse condemnation as a species of strict or absolute liability that would avoid the necessary analysis of inherent risks and substantial causation, frustrating the development of public improvements because of the increased costs to public entities.

The Supreme Court explained that if it were to ignore the private owner's failure to install a backwater valve and simply impose strict liability, it would be:

airbrushing out of the picture not only the City's considered judgment about what it would take to balance the safety and practical considerations for this public improvement, but [the owners'] noncompliance with an ordinary planning code requirement that would have eliminated or at least mitigated risks of sewer backup damage. That is hardly different than turning inverse condemnation into a basis for automatic imposition of liability on the public entity if even a tenuous causal connection exists between the public improvement and private property damage, irrespective of whether a plaintiff's act or omission materially contributes to the risk. And it ignores that the City, like all public entities in an imperfect world of scarce resources, is in the business of weighing safety, the availability of resources, and possible risks that may result from its public improvements.

Significance of the Supreme Court's Holding

The Opinion is significant not only in that it is the first time the Supreme Court has weighed in on an inverse condemnation case since *Bunch v. Coachella Valley Water District*, 15 Cal.4th 432 (1997), but also because it is a distinct departure from the strict liability focus featured in earlier inverse condemnation cases. Instead, the Opinion incorporates elements of the reasonableness framework previously limited to inverse condemnation cases involving flood control improvements.

Significantly, the Supreme Court explained that for inverse condemnation claims, courts are permitted to consider a plaintiff's act or omission in the chain of causation, for example, a property owner's failure to follow reasonable requirements imposed by the public entity to reduce the risk of the public improvement. In other words, instead of automatically imposing inverse condemnation liability if a public improvement is a cause of damages to private property, courts must undertake a liability assessment which includes analyzing whether the damages were also a result of the acts or omissions of the private property owner.

Accordingly, in this case, the Supreme Court found that the record supports that the City acted reasonably in adopting the design for the sewer system, and that the sewer was designed in accordance with the accepted practices for designing and constructing sewer systems of that time. The Supreme Court further relied on a reasonableness assessment in stating that it was reasonable for the City to expect the private

property owners to comply with the law.

While the Opinion does not expressly state that the Supreme Court is abandoning the prior strict liability standard, the holding in this case suggests that the Supreme Court now contemplates a more nuanced analysis of the substantial cause element of inverse condemnation claims than before. The Opinion amounts to a significant win for public agencies and public utilities across California.

Nossaman attorneys are available to assist clients on issues regarding inverse condemnation and eminent domain law, including on the latest legal and policy developments in the area.