

Ncp Imperial v. V.

Superior Court of California, County of Los Angeles

October 7, 2022, Decided

21STCV37773

Reporter

2022 Cal. Super. LEXIS 60513 *

NCP IMPERIAL, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, et al. v. LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

Counsel: [*1] For Plaintiff(s): Anish Banker Joseph A. Schwar.

For Defendant(s): Molly Murphy (LA CourtConnect); Warren Robert Wellen and Jonathan Brazile (LA CourtConnect).

Judges: Honorable Monica Bachner.

Opinion by: Monica Bachner

Opinion

NATURE OF PROCEEDINGS:

Demurrer of Defendant, State of California, Acting By and Through the Department of State Hospitals, to First Amended Complaint

Ex Parte Application of Defendant, State of California, Acting by and Through the Department of State Hospitals, to Specially Set Hearing for Motion for Judgment on the Pleadings or, Alternatively, to Continue the Trial Date

Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed and filed this date.

Matter is called for hearing and argued.

The Court adopts its tentative ruling as its final order as follows:

Defendant's demurrer to the complaint is sustained without leave to amend.

Defendant State of California acting by and through the Department of State Hospitals ("DSH") ("Defendant") demurs generally to Plaintiffs NCP Imperial, LLC's, and

Family Property Holdings, LLC's (collectively, "NCP" or "Plaintiffs"), first and only cause of action for **inverse condemnation** in their first amended complaint ("FAC").

Defendant demurs [*2] on grounds the FAC fails to state a cause of action, as the alleged facts do not support the claim against DSH. C.C.P. §430.10(e). Defendant further moves for dismissal with prejudice and such other relief as this court deems proper. (Notice of Demurrer, pg. 2.)

Background

Plaintiffs filed their complaint on October 13, 2021. Plaintiffs filed the operative FAC on April 15, 2022, alleging a single cause of action for **inverse condemnation**. Plaintiffs allege they are the fee owners of real property located at 12501 Imperial Highway, Norwalk, California, 90650, APN 8025-003-005 (the "Subject Property"). Plaintiffs allege DSH and the Los Angeles County Flood Control District (the "County") (collectively, "Defendants") have been engaged in a public storm drain and flood control project known as the Bloomfield Drain, relevant portions of which are located in the City of Norwalk (the "Project"). (FAC ¶8.) The Project involves a subterranean 102-inch storm drainpipe that terminates at Imperial Highway into a catch basin owned, operated, and maintained by the City of Norwalk, and the Bloomfield Drain is owned, operated, maintained, and used by Defendants for county and state storm water and flood control [*3] purposes. (Id.) Plaintiffs allege Defendants are responsible for and substantially participated in the design, construction, operation, and maintenance of the Project. (FAC ¶9.) The Subject Property is bounded by Imperial Highway to the south and a residential development to the west (the "Westerly Property"). (FAC ¶10.) Plaintiffs allege the Subject Property and the Westerly Property were both owned by DSH in connection with the Metropolitan State Hospital, located to the north of Subject Property. (FAC ¶11.) Plaintiffs allege that on or about 1968, DSH constructed a subterranean 78-inch reinforced concrete sewer pipeline (the "78" RCP") that connected Metropolitan State

Hospital to a catch basin located underneath Imperial Highway. (FAC ¶12.) Approximately 339 feet of the subterranean 78" RCP is in the south westerly quadrant of the Subject Property extending from the Subject Property's boundary to the Westerly Property to the 78" RCP's terminus at Imperial Highway. (FAC ¶13.)

Plaintiffs allege on July 16, 1976, the State conveyed Subject Property to Plaintiffs' predecessor in interest, International Business Machines Corporation (IBM) by quitclaim deed (the "Quitclaim Deed"), which [*4] did not reserve to the State any interest, including any easement interest, in and to the 78" RCP located within the Subject Property, but did reserve a smaller 60-inch easement for a separate 18-inch storm drain ("Storm Drain Easement No. 1") in the Quitclaim Deed. (FAC ¶14.) On September 29, 1980, IBM granted the State a second 60-inch easement for another underground 18-inch pipeline for water drainage purposes ("Storm Drain Easement No. 2"), which Plaintiffs allege does not pertain to the 78" RCP. (FAC ¶15.)

On or about February 7, 2018, Plaintiffs acquired Subject Property with the specific intent to redevelop the property and conducted a review of Subject Property's title including any encumbrances reported on title and obtained an ALTA survey of the Subject Property. (FAC ¶17.) Plaintiffs allege the 78" RCP was not identified on any preliminary title report or ALTA survey, and Plaintiffs' due diligence, investigation, and discovery did not disclose the existence of the 78" RCP. (Id.) Plaintiffs allege it was only after they acquired Subject Property from IBM that they discovered the existence of the unrecorded and undocumented 78" RCP that was actively being used by Defendants [*5] as part of their Project. (FAC ¶18.) Specifically, Plaintiffs allege they discovered Defendants had previously engaged in a joint project whereby Defendants had designed, constructed, and installed the 102-inch storm drainpipe for the Bloomfield Drain and connected the 102-inch storm drainpipe to into DSH's storm drain system for the Metropolitan State Hospital, which included the 78" RCP. (FAC ¶18.) Plaintiffs allege the 78" RCP is an essential component of the Project and was designed by Defendants to provide overflow capacity for the Project's main line to collect and divert both County and the Metropolitan State Hospital storm drain and runoff water into the 78" RCP if the capacity of the 102-inch storm drainpipe is exceeded. (FAC ¶19.) Plaintiffs allege the 78" RCP is an active storm drain designed, constructed, operated, and maintained by Defendants to provide flood control for County and State storm drain

and runoff water. (FAC ¶20.)

Plaintiffs allege Defendants' connection of the Bloomfield drain to the 78" RCP was once without legal right, title, permission, or consent after DSH failed to reserve any right, title, or interest in or to the 78" RCP located on the Subject Property [*6] and Defendants continue to use the portion of 78" RCP located within the Subject Property in connection with the Project. (FAC ¶¶22-23.) Plaintiffs allege that upon discovery, they notified Defendants to stop using the Subject Property for Defendants' project and that the ongoing use is causing damage to Subject Property including development potential, and Defendants have refused. (FAC ¶24.) Plaintiffs allege Defendants have conceded the 78" RCP is an essential and necessary component of the Project and they do not have an easement interest in and to the 78" RCP. (FAC ¶¶25-26.) Plaintiffs allege Defendants have effectively taken a de facto permanent easement over portions of the Subject Property for flood control purposes, and have also taken control and use of Plaintiffs' remainder property by conditioning Plaintiffs' use and/or redevelopment of the entire Subject Property upon compliance with the County's permitting process because removing the 78" RCP will adversely affect the hydraulics, performance and integrity of the County's and State's storm flow via the Bloomfield Drain. (FAC ¶¶27-28.) Plaintiffs allege they have never consented to or authorized Defendants' possession, ongoing [*7] use, occupancy, and/or damaging of the Subject Property for the use, operation, and/or maintenance of the Project. (FAC ¶ 31.)

Inverse Condemnation (1st COA)

A cause of action for **inverse condemnation** based on the physical taking and damaging of private property requires a showing that plaintiff owned the real property; and (1) the property was taken or damaged; (2) the cause was a public project; and (3) causation. ([California State Automobile Association v. City of Palo Alto \(2006\) 138 Cal.App.4th 474, 480](#) ["**Inverse condemnation** lies where damages are caused by the deliberate design or construction of the public work; but the cause of action is distinguished from, and cannot be predicated on, general tort liability or a claim of negligence in the maintenance of a public improvement."]; see also [Wildensten v. East Bay Regional Park District \(1991\) 231 Cal.App.3d 976, 979-981](#) ["To state a cause of action for **inverse condemnation**, the plaintiff must allege the defendant substantially participated in the planning, approval, construction, or operation of a public project or

improvement which proximately caused injury to plaintiffs property."); [Smith v. City & County of San Francisco \(1990\) 225 Cal.App.3d 38, 45](#) [complainants must allege facts showing deprivation of substantially all reasonably beneficial use of the property]; [Arreola v. County of Monterey \(2002\) 99 Cal.App.4th 722, 762](#) ["[S]ubstantial participation does not necessarily mean actively participating in the project, ... [*8] but may include the situation where the public entity has deliberately chosen to do nothing."]; id. ("a public entity is a proper defendant in a claim for ***inverse condemnation*** if it has the power to control or direct the aspect of the public improvement that is alleged to have caused the injury.")

Standing

Defendant argues Plaintiffs lack standing because Plaintiffs did not suffer injury and are not "damaged" by use of the 78" RCP as they are the subsequent owners of the Subject Property. (Demurrer pgs. 5-6; Decl. of Murphy ¶2.) Plaintiffs argue in opposition that Defendants confuse the legal principles of standing with statute of limitations, and Defendant ineffectively argues the statute of limitations has already accrued. (Opposition, pg. 4.)

"Every action must be prosecuted in the name of the real party in interest, except as provided by statute." (C.C.P. §367.) A party who invokes the judicial process lacks standing if it "does not have a real interest in the ultimate adjudication because [it] has neither suffered nor is about to suffer any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented." ([Schmier v. Supreme Court \(2000\) 78 Cal.App.4th 703, 707.](#)) "When a complaint [*9] fails to state a cause of action in favor of the plaintiff, a demurrer ... will be sustained." (Ibid. (Citation omitted.))

A cause of action accrues at the moment the party who owns it is entitled to bring and prosecute an action thereon. ([Krusi v. S. J. Amoroso Construction Co. \(2000\) 81 Cal.App.4th 995, 1003.](#)) "[A] cause of action for damage to real property accrues when the defendant's act causes 'immediate and permanent injury' to the property or, to put it another way, when there is '[a]ctual and appreciable harm' to the property. (*Id.* at pg. 1005 (Emphasis in original.)) 'Choses in action belong to the party who suffered the injury.' (*Id.* at pg. 1003.) A cause of action is not transferred without the previous owner's "clear manifestation" of the transfer. (*Id.*)

"[T]he right to recover [***inverse condemnation*** damages] remains in the person who owned the property at the time of the taking or damaging, regardless of whether the property is subsequently transferred to another[.]" ([City of Los Angeles v. Ricards \(1973\) 10 Cal.3d 385, 389](#) [Citations omitted].)

Plaintiffs do not have standing because they did not suffer injury as successors in interest. Plaintiffs acquired the Subject Property after the use of the 78" RCP for the Project, the alleged "damage," occurred. Plaintiffs allege that they acquired the property at issue on or about February [*10] 7, 2018. (FAC ¶17.) They allege that this was after the County connected the 78" RCP to the Bloomfield Drain. (FAC ¶18.) Plaintiffs allege that the "Defendants had previously engaged in a ... project" whereby the 78" RCP was connected to a 102-inch line in the Bloomfield Drain system. (FAC ¶18.) The FAC concedes Plaintiffs were not the property owners at the time of the alleged taking. If a taking occurred, it was either when the County connected the 78" RCP to its Project, or when DSH abandoned the 78" RCP when it sold the property at issue in 1976. Assuming that DSH's abandonment of the pipeline in 1976 constituted a taking, Plaintiffs do not have standing to sue for a taking since that occurred over 40 years before they purchased the property.

Based on the alleged facts, leave to amend is denied because amendment would be futile. ([Vaillette v. Fireman's Fund Insurance Co. \(1993\) 18 Cal.App.4th 680, 685.](#))

Based on the foregoing, Defendant's general demurrer to the FAC is sustained without leave to amend.

The Court's written Ruling is signed and filed this date.

Moving party is to prepare, serve and submit a proposed order of dismissal Pursuant to the request of moving party, the Hearing on Motion for Summary Judgment scheduled for 03/07/2023 is advanced to [*11] this date and vacated.

Moving party is to give notice.