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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

SANTA ANA WATERSHED PROJECT  
AUTHORITY,

Plaintiff and Respondent,

v.

CASTLE & COOKE LAKE ELSINORE  
WEST, INC. et al.,

Defendants and Appellants.

E052217

(Super.Ct.No. RIC495874)

OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge.

Reversed.

Cox, Castle & Nicholson, Edward C. Dygert, Kenneth B. Bley and James R.

Repking for Defendants and Appellants.

Aklufi and Wysocki, Joseph S. Aklufi, David L. Wysocki; Greines, Martin, Stein  
& Richland and Robert Olson for Plaintiff and Respondent.

Castle & Cooke Lake Elsinore West, Inc., and Castle & Cook Alberhill Ranch, LLC, defendants and appellants (hereafter collectively referred to as Castle & Cooke), appeal from the stipulated judgment entered in this eminent domain action after the trial court granted the motion of Santa Ana Watershed Project Authority, defendant and respondent (hereafter SAWPA), to exclude evidence of severance damages at trial. The parties stipulated to entry of judgment awarding Castle & Cooke \$5,179 as the fair market value of the real property SAWPA took for a pipeline easement. In this appeal, Castle & Cooke contend the trial court's ruling was wrong and therefore the judgment must be reversed. We agree, for reasons we explain below.

### **SUMMARY OF FACTS**

The circumstances giving rise to this eminent domain action are not in dispute.<sup>1</sup> In 2001, SAWPA constructed a 23-mile segment (referred to as Reach V) of the Santa Ana Regional Interceptor System (SARI) in Lake Elsinore on what it believed were existing public rights of way. SARI is a regional pipeline that carries up to 30,000,000 gallons per day of nonreclaimable wastewater (referred to as salt water, or brine) from the Santa Ana River Watershed to treatment facilities in Orange County and eventual disposal in the Pacific Ocean. In 2006, Castle & Cooke, which own 400 acres of real

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<sup>1</sup> Because they are not in dispute, we take the majority of our facts from the parties' briefs.

property in Lake Elsinore,<sup>2</sup> discovered that some or all of Reach V is on their property, and not within existing public rights of way as SAWPA originally thought.<sup>3</sup>

As a result of Castle & Cooke's discovery, in March 2008 SAWPA filed the eminent domain action that is the subject of this appeal to acquire nonexclusive easements for the segments of the SARI pipeline on Castle & Cooke's property. SAWPA sought and obtained prejudgment possession of the subject property, and deposited with the court \$7,455, the fair market value of the property taken, and therefore the compensation SAWPA estimated it owed to Castle & Cooke as a result of the taking.

Before trial, SAWPA filed various motions in limine including one to preclude Castle & Cooke from introducing evidence to show severance damages, i.e., damage to Castle & Cooke's remaining property caused by the SARI pipeline. Castle & Cooke, in turn, filed a motion in limine asking the trial court to define the larger parcel, which they contend is the first step in calculating severance damages.

A hearing on both motions began March 3, 2010, and ended on August 12, 2010. Four witnesses testified at the hearing—SAWPA's appraiser, its project manager, Castle & Cooke's development engineer, and their appraiser. SAWPA's appraiser testified, in

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<sup>2</sup> SAWPA takes issue with this fact and contends that Castle & Cooke actually own more than 900 contiguous acres, all but 31 of which are subject to the Alberhill Ranch Specific Plan. The number of acres Castle & Cooke actually own is not relevant to any issue in this appeal.

<sup>3</sup> SAWPA also takes issue with the date on which Castle & Cooke discovered the pipeline on their property and the circumstances under which that discovery occurred. Again, those details are not relevant to any issue in this appeal.

pertinent part, that in his opinion the pipeline did not cause damage to Castle and Cooke's remaining property and therefore there were no severance damages. Because he was of the opinion there were no severance damages, SAWPA's appraiser did not define the larger parcel. Castle and Cooke's appraiser, in turn, testified that the pipeline (which runs through three separate parcels of property) will make it more difficult to develop the remaining property and therefore it reduces the fair market value of the remaining property as a result of which they were entitled to severance damages.

Ultimately, the trial court found that Castle & Cooke failed to support their severance damage claim with evidence that the SARI "pipeline interfered with, or diminished the value of, the use and developability [*sic*] of their properties. Furthermore, [Castle & Cooke's] claim was improperly based on conceptual, unapproved, speculative plans for development that had no other purpose than to attempt to enhance their damage claim." Because the trial court found Castle & Cooke had not established their severance damage claim, it ruled that all evidence of such damages was inadmissible at trial on the issue of just compensation. In other words, the trial court found as a matter of law that Castle & Cooke was not entitled to severance damages.

Castle & Cooke challenge that ruling in this appeal.

## **DISCUSSION**

The issue raised in this appeal—whether the trial court correctly found that severance damage evidence was inadmissible at a trial—was addressed and resolved in

*Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954 (*Campus Crusade*). Therefore, we quote liberally from that opinion.

1.

**STANDARD OF REVIEW**

The trial court considered evidence presented by both SAWPA and Castle & Cooke before granting SAWPA's motion to exclude from trial all evidence of severance damages. In granting SAWPA's motion, the trial court effectively granted summary adjudication in favor of SAWPA and against Castle & Cooke on the severance damage issue. In other words, the issue in this appeal does not involve an exercise of the trial court's discretion in assessing the admissibility of evidence. Instead, it involves an issue of law, namely whether the evidence presented in the trial court created a factual issue regarding severance damages. We review issues of law, and orders granting summary adjudication, de novo. (*Hill Brothers Chemical Co. v. Superior Court* (2004) 123 Cal.App.4th 1001, 1005; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860; see also *City of Livermore v. Baca* (2012) 205 Cal.App.4th 1460, which analogizes a trial court's ruling on an in limine motion to exclude all evidence on a particular issue as equivalent to a nonsuit on that issue and thus subject to de novo review.)

2.

**ANALYSIS**

The severance damage issue in this appeal has both a substantive and a procedural component. The substantive component involves the meaning of the term "severance

damage,” which is used to describe both the injury, i.e., damage to the remaining property caused by the taking, as well as the damages awarded when such an injury exists, i.e., the difference in the fair market value of the remaining property before and after the taking. More particularly, “When the property taken is part of a larger parcel, the owner is compensated not merely for the injury to the part taken<sup>[4]</sup> but also for the injury, if any, to the remainder. [Citation.] Compensation for the injury to the remainder is the amount of the damage to the remainder caused by the taking, reduced by the amount of the benefit to the remainder caused by the taking. [Citation.] Such compensation is commonly called ‘severance damages.’ [Citation.]” (*Campus Crusade, supra*, 41 Cal.4th at p. 965.) In other words, ““Where the property taken constitutes only a part of a larger parcel, the owner is entitled to recover, *inter alia*, the difference in the fair market value of his property in its ‘before’ condition and the fair market value of the remaining portion thereof after the construction of the improvement on the portion taken. Items such as view, access to beach property, freedom from noise, etc. are unquestionably matters which a willing buyer in the open market would consider in determining the price he would pay for any given piece of real property.” [Citation.] Severance damages are not limited to special and direct damages, but can be based on *any factor*, resulting from the project, that causes a decline in the fair market value of the property.’ [Citation.]” (*Campus Crusade*, at p. 971.)

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<sup>4</sup> The property owner, as discussed below, is compensated for the fair market value of the property taken. Therefore, the sentence more correctly should read that the property owner is compensated “not merely for the value of the part taken . . . .”

The procedural component of severance damages relates to the fact that in eminent domain actions all issues except compensation are decided by the court. (*Campus Crusade, supra*, 41 Cal.4th at p. 971.) Therefore, all factual disputes except those relating to compensation are resolved by the court. (*Ibid.*) Relying on the noted legal principle, the plaintiff water district in *Campus Crusade* argued that ““as a matter of constitutional and decisional law, *all* issues having to do with the existence of, or entitlement to, severance damages are entrusted to the trial judge,’ such that ‘[o]nly after the trial judge has determined that severance damages exist does the jury consider the amount of those severance damages.’” (*Campus Crusade*, at p. 972.) The Supreme Court disagreed. The Court noted the “proposed rule assumes that questions relating to the measurement of severance damages can be readily distinguished from questions relating to the entitlement to them in the first place but, as [the Court has] previously cautioned, the two concepts are not necessarily ‘so easily separable.’ [Citation.] Even if these two concepts can be separated for purposes of allocating decisionmaking between the court and the jury, [the plaintiff water district’s] proposed rule does not find much support in the law. Severance damages ‘normally are measured by comparing the fair market value of the remainder before and after the taking.’ [Citation.] The fair market value of a property is a fact to be determined by the jury. [Citations.] ‘The jury is entitled to and should consider those factors which a buyer would take into consideration in arriving at a fair market value, were [the buyer] contemplating a purchase of the property.’ [Citation.]” (*Ibid.*)

In rejecting the plaintiff water district’s “theory that entitlement to severance damages is for the court and only the amount thereof is for the jury,” the Supreme Court acknowledged that in some cases there are issues the court must resolve as “a predicate to the award of severance damages.” (*Campus Crusade, supra*, 41 Cal.4th at p. 972.) For example, the Supreme Court has held when the facts of a case raise the question, the trial court must determine as an issue of law what constitutes the larger parcel, and whether separate parcels may be aggregated and considered as one large parcel. (*Id.* at p. 971.)

In this case, as in *Campus Crusade*, the public agency constructed a pipeline on property the agency acquired by eminent domain, and the completed pipeline runs through property owned by the condemnee. In this case, as in *Campus Crusade*, the condemnee identified various factors created by the pipeline’s presence on the condemnee’s remaining property that affect the fair market value of that remaining property. Those factors in *Campus Crusade* included whether the improvement—a segment of the Inland Feeder project, which is a 43-mile pipeline carrying water from Devil Canyon to Diamond Valley (*Campus Crusade, supra*, 41 Cal.4th at p. 962)—will rupture in an earthquake (the pipeline is only four feet below the surface where it crosses the San Andreas Fault in order to facilitate repair in the event it ruptures during an earthquake (*ibid.*)); the adverse or negative visual and aesthetic impacts on landscaping resulting from the shallow placement of the pipe; and limitations on development caused by grading restrictions and pipeline placement. (*Id.* at p. 972.) The Supreme Court held, “As long as the effect of these factors on the fair market value [of the remaining property]

is not conjectural, speculative, or remote, it is for the *jury* to decide the extent to which they may affect the value of the property. [Citations.]” (*Id.* at pp. 972-973.) Therefore, when “the property owner produces evidence tending to show that some other aspect of the taking—such as risk of a pipeline rupture—‘naturally tends to and actually does decrease the market value’ of the remaining property, it is for the jury to weigh its effect on the value of the [remaining] property, as long as the effect is not speculative, conjectural, or remote. [Citation.]” (*Id.* at p. 973.)

Castle & Cooke argued in the trial court that the fair market value of its remaining property, i.e., the property through which the SARI pipeline runs, was reduced by the pipeline because (a) structures that might be built as part of future development of the property cannot be built on top of the pipeline easements, a factor referred to in the trial court as site constraints; (b) the pipeline might rupture and cause damage to surrounding property; (c) the pipeline could make it more difficult to connect utilities to structures that might be built as part of future development of the property; (d) the fact that the pipeline carries “hazardous waste” or brine would have to be disclosed to potential buyers; (e) the pipeline could affect future grading on the remaining property because SAWPA might limit the amount of dirt a future developer would be allowed to place over the pipeline; and (f) future development of the property might require a prospective buyer to obtain approval from SAWPA before developing the property, which adds an additional layer of administrative discretion.

As previously stated, “Where the property taken constitutes only a part of a larger parcel, the owner is entitled to recover, *inter alia*, the difference in the fair market value of his property in its ‘before’ condition and the fair market value of the remaining portion thereof after the construction of the improvement on the portion taken. Items such as view, access to beach property, freedom from noise, etc. are unquestionably matters which a willing buyer in the open market would consider in determining the price he would pay for any given piece of real property.” (*Pierpont Inn, Inc. v. State of California* (1969) 70 Cal.2d 282, 295.) Severance damages are not limited to special and direct damages, but can be based on any factor, resulting from the project, that causes a decline in the fair market value of the property. (*San Diego Gas & Electric Co. v. Daley* (1988) 205 Cal.App.3d 1334, 1345.)

We think it fairly obvious that in determining the fair market value of the remaining property, a willing buyer would want to know about the SARI pipeline, and therefore the seller would have to disclose the existence of the pipeline.<sup>5</sup> We also think it fairly obvious that a willing buyer would consider each of the factors Castle & Cooke

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<sup>5</sup> We do not determine in this appeal whether as Castle & Cooke contend the seller also has a duty to disclose the hazardous nature of the brine running through the pipeline. We hold only that the existence of the pipeline is a fact a willing buyer would want to know. Therefore, that fact is relevant to determining the fair market value of the property, which is defined as the “‘highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.’ [Citation.]” (*Campus Crusade, supra*, 41 Cal.4th at p. 965.)

cited in the trial court, and set out above, in determining what price to pay for the remaining property. In short, the location of the pipeline and its effect on the placement of future structures, the fact that the pipeline carries millions of gallons of brine, the possibility it might rupture, that the presence of the pipeline could make it more difficult to connect utilities, that it might affect future grading plans, and that SAWPA might insist on approving future development of the property all are factors that naturally tend to affect the fair market value of the property. Castle & Cooke's engineer testified that the pipeline is a development constraint that a future developer would have to work around, and their appraiser testified that the cited factors actually do decrease the market value of the property.

SAWPA, in turn, argued in the trial court, as it does in this appeal, that the noted factors do not decrease the value of the remaining property. For example, SAWPA contends that the pipeline does not create site constraints first because it is buried under existing or planned streets in two parcels and on the third parcel where a part of the pipeline is not under existing or future streets, there are many other parts of the property on which a buyer could build and therefore the highest and best use of the property is unchanged.<sup>6</sup> SAWPA does not dispute that structures cannot be built on top of the

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<sup>6</sup> SAWPA also argues that most of its pipeline is located within an existing water district easement for a 30-inch pipeline and therefore the SARI pipeline does not cause site constraints. Although it is not entirely clear that SAWPA raised this claim in the trial court, we will not belabor the point because Castle & Cooke disputes SAWPA's assertion. Consequently, whether most of the SARI pipeline is located within existing water pipe easements with the result that the SARI pipeline does not interfere with

*[footnote continued on next page]*

pipeline. Whether that fact affects the fair market value of the property is a question for a jury to decide. If, as SAWPA contends, it is not difficult to work around the pipeline because there are many site configurations that do not involve building on top of the pipeline, then a jury presumably would find that Castle & Cooke did not suffer damage as a result of the limitation on site configurations caused by the pipeline.<sup>7</sup> Likewise, SAWPA does not dispute that the pipeline could rupture and release thousands of gallons of brine. Instead, SAWPA argues that the possibility does not affect the value of Castle & Cooke's remaining property because there was no evidence the content of the pipeline is hazardous to human health, and unlike the pipeline in *Campus Crusade*, there was no evidence the pipeline was designed to rupture in an earthquake. Again, SAWPA's argument does not refute the possibility of a rupture or leak in the pipeline. In fact, Castle & Cooke presented evidence in the trial court to show that in 2006 the pipeline leaked when a contractor hit it, and the cost of cleaning up, which included disposing of brine-saturated soil, was \$700,000. As with the other factors Castle & Cooke cited as supporting severance damages, the possibility the SARI pipeline could rupture is an issue

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*[footnote continued from previous page]*

development of the property and does not reduce the fair market value of the property, is an issue of fact for a jury to decide.

<sup>7</sup> SAWPA argues that the SARI pipeline is under existing and planned public roads and in the one parcel where the pipeline runs outside of such areas, Castle & Cooke does not have approved development plans. The lack of approved development plans is irrelevant because it is the development potential of the remaining property that is the focus of severance damages. In those parcels where the pipeline is under existing or planned public streets, the development factor might not apply, unless as Castle & Cooke claims a future developer could abandon or move those streets.

for a jury to consider in deciding whether the presence of the pipeline affects the fair market value of Castle & Cooke's remaining property.

We recognize in reaching this conclusion that language in *Campus Crusade* and in other cases suggests the trial court should make a threshold determination, as a matter of law, whether the effect of the improvement is “speculative, conjectural, or remote.” (*Campus Crusade, supra*, 41 Cal.4th at p. 973.) The issue regarding severance damages in *Gas & Electric Co. v. Miller & Lux Inc.* (1931) 118 Cal.App. 140 (*Miller & Lux*), which the Supreme Court cites in *Campus Crusade* as authority for the quoted language, was whether injury caused not by the improvement (a gas line) but by future speculative events such as employees of the gas company trespassing on the remaining property and damaging crops, supports a severance damage claim. As stated in *Miller & Lux*, “The rule is that severance damage must be based upon some real physical disturbance of a property right which naturally tends to and actually does decrease the market value and that mere fears of remote or contingent possibilities of damage are not sufficient. [Citations.]” (*Miller & Lux*, at p. 144.)

In this case, as in *Campus Crusade*, the physical disturbance of a property right consists of the pipeline that runs through the condemnee's remaining property. That disturbance is real, not conjectural or speculative. Although SAWPA disputes that the disturbance reduces the value of the remaining property, that issue must be resolved by a jury. In short, this is not a case in which severance damages are based on a speculative future injury to the remaining property.

Castle & Cooke presented evidence to show the effect of the SARI pipeline on each of the three parcels of real property through which the pipeline runs. Their appraiser expressed the opinion that the effects reduced the fair market value of the property from what it was before the SARI pipeline was installed. Whether the effect exists and if so the extent to which it reduces the fair market value of the remaining property below what it was before the pipeline was installed is a question of fact for a jury to determine. Therefore, we conclude the trial court erred in ruling that severance damage evidence was inadmissible at a trial in this case.

**DISPOSITION**

The judgment is reversed. Castle & Cooke to recover their costs on appeal.

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MCKINSTER  
J.

We concur:

RAMIREZ  
P. J.

KING  
J.