



# Buyer Beware: Improper Sale Documentation Results in Waiver of Inverse Condemnation Claim

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If a party purchases property impacted by a governmental taking, and the purchase price already reflects the damages suffered by the taking, can the purchasing party still pursue the government for damages? The California Court of Appeal chimed in on the issue this week in *Ridgewater Associates, Inc. v. Dublin San Ramon Services District* (May 11, 2010) \_\_ Cal.App.4th \_\_. The court held that a property owner cannot recover for inverse condemnation where (1) it knowingly purchases property impacted by a government taking, and (2) the purchase price reflects the property's condition in light of the government impacts.

The case is important not simply because the property owner was thrown out of court despite what amounted to an admitted taking of private property without payment of just compensation. What really matters here is that it should have been relatively simple to avoid the problems the property owner faced in *Ridgewater*.

The simplest solution would have entailed the prior owner filing an inverse condemnation action. However, even if the prior owner simply wanted "out," it could have easily assigned the inverse claim to the buyer. Since both the seller and the buyer inadequately documented the transaction, neither had a remedy for what amounts to an ongoing taking of the property. And the government essentially got a "free pass" for its taking.

## Facts and Procedural Background

Ridgewater purchased a warehouse on a one-acre property immediately adjacent to a sewage treatment facility operated by the Dublin San Ramon Services District. Prior to purchasing the property, Ridgewater's inspections revealed water intrusion that Ridgewater believed caused damage to the property. As a result,

the seller reduced the purchase price from \$2.65 million to \$2.5 million. Critically, in agreeing to a reduced purchase price, the parties did not take any specific steps to preserve the prior owner's inverse condemnation action against the District and, in particular, the seller did not assign – at least not clearly – its claims against the District to Ridgewater. (While the Court of Appeal noted that the purchase agreement states that Ridgewater acquired "all rights of the previous owner," the trial court found that the undisputed material facts demonstrated there was "no evidence that the purchase agreements transferred to [Ridgewater] the former owners' rights to pursue an inverse condemnation action.")

Shortly after the close of escrow, Ridgewater sued the District for inverse condemnation, claiming that the warehouse had been damaged by water intrusion from the District's water treatment plant. The complaint alleged that the District's plant had caused cracks in the slab foundation, concrete erosion, cracking and bulging in and outside the warehouse, water seepage, and soil erosion.

The District moved for summary judgment, arguing that Ridgewater lacked standing because any injury to the property occurred before Ridgewater purchased it, and therefore Ridgewater was not harmed by any taking. The trial court granted the motion, finding that Ridgewater did not have standing to pursue the inverse condemnation claim because it was aware of the conditions and it could not demonstrate any injury that occurred during its ownership of the property.

### **The Court of Appeal's Decision**

On appeal, the court first provided the necessary backdrop for an inverse condemnation claim, explaining that the property owner must demonstrate: (1) the agency substantially participated in the planning, approval, construction, or operation of a public project or improvement which proximately caused injury to plaintiff's property; and (2) the taking results in property damage, other depreciation in market value, or unlawful dispossession of the owner.

As to the standing issue, Ridgewater argued that it was only seeking compensation for damages that accrued after it purchased the property. (Ridgewater apparently did not argue that it could recover for earlier damages under an assignment of rights from the seller.) In particular, Ridgewater claimed that the District's operation of the sewage treatment plant caused "continuous and repeated" damage to its property because the District periodically adds additional water to its treatment plant, and each time this water is added, a taking occurs. The District, in response, relied on case law which holds that a claim for inverse condemnation "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."

The court sided with the property owner on the standing issue, holding that Ridgewater's claims for damages accruing after the purchase provided Ridgewater with sufficient standing to assert an inverse condemnation action. But the property owner's good news ended there.

While the court noted that the evidence proved it was "highly likely that the property was damaged for public use," Ridgewater nonetheless had no viable claim. Ridgewater was aware of the water intrusion conditions prior to purchasing the property – and, more importantly, the price it paid was reduced to take those conditions into account. The court held that this price reduction eliminated any claim for diminution in value, as Ridgewater was already "compensated" for any such diminution through a reduced purchase price.

## Lessons Learned

From a property owner's perspective, the *Ridgewater* case provides important guidance for any buyer or seller of property which involves a potential inverse condemnation claim. First, the parties should understand that for damages arising prior to the sale, the claim rests with the seller; it does not automatically transfer to the buyer. This is crucial, because it means that either the seller must proceed with the inverse condemnation action after the sale, or the seller must assign its rights to the buyer, allowing the buyer to pursue the seller's claim.

Second, for ongoing situations such as the water intrusions in *Ridgewater*, the parties should take care to document any adjustments to the purchase price so as to avoid, if possible, the holding in *Ridgewater* that the buyer has already been "compensated" for the damage.

From an agency perspective, there is also an important lesson in *Ridgewater*. Government agencies should pay particular attention to the title history of any property when getting sued for inverse condemnation. Any time a property has transferred recently, the agency should take steps to determine whether the parties were aware of the potential claim and, more particularly, whether the buyer received any discount on the purchase price as a result of any such issues. This can easily be determined through the course of routine discovery, as long as the agency's attorneys understand the issue – and ask the right questions.