



# Court Finds Agency's Acquisition Program Does Not Give Rise to Precondemnation Damages

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As the approval process for development projects in California becomes more difficult and time consuming, public agencies must tread lightly so as to not cross the often blurry line for precondemnation damages liability. The drawn-out project approval process also puts property owners in an uncertain situation making it difficult to sell, process entitlements, and find or retain tenants.

These diverging positions came together in an interesting set of circumstances in a recent Court of Appeal decision, *City of Los Angeles v. Superior Court of Los Angeles County (Plotkin)* (April 12, 2011). In *Plotkin*, a number of property owners within the Manchester Square and Belford areas of Los Angeles sued the City for inverse condemnation, alleging that the City created "condemnation blight" by buying nearby properties in their neighborhoods, relocating the residents, demolishing the structures, and leaving the properties vacant. Summary adjudication was granted in favor of the property owners, but on appeal, the Court reversed, finding no inverse condemnation liability because the City's acquisitions were voluntary and unrelated to a public project.

## Background

In *Plotkin*, the property owners filed an inverse condemnation action against the City, alleging that the City had announced plans to expand Los Angeles International Airport (LAX), and had acquired most of the properties within the expansion areas. There was no dispute that the City had expended over \$265 million in its acquisition efforts, acquiring 72 percent of the multi-family dwellings and 95 percent of the single-family dwellings within the areas. After acquiring the properties, the City's practice was to demolish the buildings, leaving the land vacant. The property owners claimed that the City intended to create blight, encourage flight from the areas, and reduce the property values so it could acquire the properties more

cheaply for the airport expansion. The owners also claimed that the City's actions effectively froze the market as the City became the only potential buyer. Based on these allegations, the owners filed a motion for summary adjudication, seeking a determination that the City's actions created "condemnation blight" requiring the payment of just compensation.

The City did not dispute most of the facts set forth by the owners. However, the City established that its acquisition program was completely voluntary, and many of the residents expressed a desire for buyout and relocation due to the airport noise. Moreover, the City established that it did not intend to expand LAX into the neighborhoods, and therefore after voluntarily acquiring the properties, it had no specific intended use other than maintaining the properties in an undeveloped state.

The trial court concluded that although there had been no formal initiation of condemnation proceedings, the City was liable, holding "[i]nverse condemnation occurs when a gov[ernmental] agency depresses land values in an area near where it wants to acquire before even making its decision to take a particular parcel located in that area. Such will trigger the duty to pay just compensation. No actual taking is required."

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

The City filed a writ seeking review of the trial court's decision. On appeal, the Court explained that the property owners could only succeed on their inverse condemnation claim if they could prove a taking or damaging of their properties for a "public use" or "public improvement." The Court walked through long-standing inverse condemnation law, clarifying that there is no right to recover for a decline in the value of property adjacent to a public project where the property itself is not slated for condemnation, and there is likewise no recovery available for visual blight alone.

The Court analyzed the owners' claims under the precondemnation damages theory set forth in *Klopping v. City of Whittier* (1972) 8 Cal.3d 39. In order to establish such a claim, the condemning agency must act unreasonably in issuing precondemnation statements, either by excessively delaying eminent domain action or by other oppressive conduct. The Court held that in this case, the owners' precondemnation damages claim failed for three reasons:

1. The owners failed to establish that the City intended to acquire their properties through condemnation, or at least had a plan for their properties that would someday require condemnation. While the owners argued that the acquisition program was not truly "voluntary," they failed to present any evidence that any neighboring property owner felt coerced to sell, or that the City was undertaking these efforts for the purpose of reducing the value of property in the area.
2. The owners failed to demonstrate that the properties were being acquired for a public purpose. Once the City acquired the properties, they were simply demolished and not put to a public use. While the owners tried to establish that the acquisition activity was tied to the potential expansion of LAX, this fact was disputed and therefore summary adjudication was inappropriate.
3. The owners failed to show that the City's conduct was unreasonable. The owners suggested the City could have prevented "blight" by renting or developing the properties after they were acquired, but such actions would contradict the City's intended purpose of protecting individuals from living in proximity to airport noise.

### **Conclusion**

In order to establish a precondemnation damages claim, a property owner is required to demonstrate that a government agency (1) intended to acquire the owner's property for a public purpose through condemnation

at some future point, and (2) engaged in unreasonable actions geared toward devaluing the owner's property. In this case, the owners' assertions fell short on both counts.

The "unreasonable" line for precondemnation damages liability is often a moving target. Large public projects regularly require years to analyze environmental issues, process entitlements, and often face court challenges. And while this process takes place, there is no question that potentially impacted property owners face difficult challenges, and many times a diminution in property value. But precondemnation damages liability usually cannot attach unless the public agency makes announcements of intent to condemn or engages in other unreasonable conduct. While this may seem unfair to impacted property and business owners, if this were not the case, public projects may never get built, at least not in California.

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