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PERSPECTIVE

## Courts now look to a city's design in inverse condemnation actions

By Carolyn Frank

The California Supreme Court recently held that a city protects itself from inverse condemnation claims resulting from a sewer system backup by designing a reasonable sewer system with appropriate safeguards for these foreseeable damages. This new case places responsibility on private landowners to ensure that all required safeguards in the city's design have been implemented before proceeding with an inverse condemnation claim against a public entity. Instead of looking solely to the cause of damages, the courts will now look at the city's design and if a private individual fails to abide by the city's design it can be liable for the damages caused.

The California Constitution provides that "private property may be taken or damaged for a public use and only when just compensation ... has first been paid to ... the owner." Art. I sec. 19, subd. (a). A citizen can sue the government for inverse condemnation if they contend their property was taken or damaged without just compensation. *City of Oroville v. Super. Ct. of Butte County*, 2019 DJDAR 7729 (Cal. Aug. 15, 2019). Courts must consider the competing interests of the private individual and the public benefit when deciding inverse condemnation cases. "Private landowners may establish inverse condemnation liability even where the public improve-

ment was deliberately designed, constructed, and maintained was only one of several concurrent causes-provided the causal nexus between the risks inherent in the public improvement and the harm in question was sufficiently robust to create a pronounced likelihood of damage."

In *Oroville*, a dentist office in the city of Oroville sustained damage when a sewer backed up and flooded the office. Roots and branches caused the sewer backup. The dentist office sued the city alleging inverse condemnation. The city defended by showing that the city's sewer design required a backflow prevention device to be installed at the dentist office and no backflow prevention device was ever installed by the property owner. The dentist office's expert conceded that a functioning backflow prevention device would have prevented the damage. The Supreme Court held that although the sewer backup caused the injury and although this was a foreseeable risk of this type of injury, because the city's design included reasonable safeguards to prevent the damage the city was not liable for inverse condemnation. This new test puts the analysis on what caused the damages, not just what caused the sewer blockage.

Both the trial court and the Court of Appeal found the city liable for inverse condemnation. The lower courts relied on *California State Automobile Assn. v. City of Palo Alto*, 138 Cal. App. 4th 474 (2006), for the proposi-

tion that "in order to absolve itself of liability, the city would have to prove that other forces alone produced the injury." The Supreme Court rejected this proposition and held that to succeed on a claim for inverse condemnation "the damage to private property must be substantially caused by an inherent risk presented by the deliberate design, construction, or maintenance of the public improvement." Thus, "a court reviewing an inverse condemnation claim arising from a sewage overflow must consider whether the damages to private property were the direct and necessary effect of the inherent risks posed by the public improvement as deliberately designed, constructed or maintained." The court must also consider "whether the damages were the result of a risk created not by the public improvement, but by the acts of the private property owner. A causal connection between the public improvement and the property damage alone is insufficient to sustain a finding of inverse condemnation."

Here, the dentist office had not "shown the damage to its property was substantially caused by an inherent risk of the City's sewer system, as deliberately designed, constructed or maintained." To the contrary, "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 reasonable design of the sewer

system was defeated by the property owner's failure to install the requisite backflow prevention device specified in the city's sewer design. Thus, Oroville was not liable for inverse condemnation.

This landmark case is a major victory for public entities and puts responsibility on individual landowners to make sure they abide by the city's broad design. Had the Supreme Court decided differently it would have made it impossible for a city to protect itself from liability even with a well thought out sewer design. An individual landowner could defeat the city's plans by failing to install required safety precautions or by willfully damaging those safety precautions banking on the city being strictly liable for all damages caused. Thus, the Supreme Court has appropriately placed the expense of the damages caused on the individuals responsible for failing to implement the city's design.

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