



## Ben Holt Industries v. Northshore Utility District

1998 | Cited 0 times | Court of Appeals of Washington | December 7, 1998

Source of Appeal: Appeal from Superior Court of King County Docket No: 95-2-28430-2 Judgement or order under review Date filed: 10/03/97 Judge signing: Hon. Harriett M. Cody

Judges: Authored by Ronald E. Cox Concurring: H. Joseph Coleman Ann L. Ellington

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The exercise of a privilege bars a claim for tortious interference with a contract. Moreover, damages for inverse condemnation are limited to the diminution in value, if any, of the affected property. Because Northshore Utility District's exercise of its power of eminent domain here is a privilege and the damages sought by Ben Holt Industries are not for diminution of value, the grant of summary Judgement was proper.

We affirm.

In 1988, Ben Holt Industries ("Holt") purchased property in Kenmore for use as a storage facility. The property is located next to the operations facility of the Northshore Utility District ("Northshore").

In 1994, Northshore considered plans to build a consolidated facility. It identified Holt's property as a potential site for this facility and directed that preliminary investigation of the site proceed. That investigation resulted in Holt asking Northshore to inform it of its intentions regarding Holt's property. Northshore never responded.

In August 1994, Northshore offered to purchase Holt's property for its appraised value of \$900,000. Holt rejected this offer. Thereafter, Northshore decided to condemn the property.

Northshore obtained an order of public use and necessity. Holt appealed that order. During the appeal, Northshore abandoned the condemnation proceeding. It also sought remand of the case to the superior court for payment to Holt of reasonable attorney fees and costs.<sup>1</sup> In 1995, Holt brought this action against Northshore for tortious interference with contract and for inverse condemnation. The trial Judge granted Northshore's summary Judgement motions and dismissed both of Holt's claims.

Holt appeals.



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### Summary Judgement

Holt first contends that the trial court erred by summarily dismissing its tortious interference with contract cause of action. We disagree.

We will affirm a grant of summary Judgement only if there are no genuine issues of material fact and the moving party is entitled to Judgement as a matter of law.<sup>2</sup> In reviewing an order granting summary Judgement, we engage in the same inquiry as the trial court.<sup>3</sup> All facts and the reasonable inferences that may be drawn from them are viewed in the light most favorable to the nonmoving party.<sup>4</sup> We review questions of law de novo.<sup>5</sup>

#### A. Tortious Interference with Contract

There are five elements to a claim for tortious interference with contract. They are (1) the existence of a valid contractual relationship or business expectancy; (2) the defendant's knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) the defendant's interference for an improper purpose or by improper means; and (5) resultant damage to the person whose relationship is disrupted.<sup>6</sup>

Once the plaintiff establishes these elements, the defendant has the burden of justifying the interference or showing that it was privileged.<sup>7</sup> If the defendant exercises an absolute right that is superior or equal to the right that is invaded, the interference is justified as a matter of law.<sup>8</sup> "An absolute right exists only where a person has a definite legal right to act, without any qualification."<sup>9</sup>

Northshore's defense is based on its assertion that its exercise of the power of eminent domain is an absolute bar to Holt's claim. Thus, the question before us is whether the statute in effect at the time of the condemnation proceeding authorized Northshore to use its power for the purpose it sought. Answering this question requires us to determine the legislative intent of this statute. In determining that intent, we must read together the various parts of the statute to give effect to all of its words.<sup>10</sup>

Former RCW 57.08.010 governed the right of a water district to acquire property.<sup>11</sup> That statute's general grant of authority provided: A water district may acquire by purchase or condemnation, or both, all property and property rights and all water and water rights, both within and without the district, necessary for its purposes.<sup>12</sup>

The essence of Holt's argument is that, irrespective of the general grant of power found in section (1)(a) of the statute, the provisions of section (1)(d) prohibit Northshore from using its eminent domain power to acquire office space. That section provided in relevant part that a "water district may . . . construct, acquire, or own buildings and other necessary district facilities."<sup>13</sup> Holt reads this section to mean that a water district cannot acquire a building by condemnation. Such a reading is inconsistent with the Legislature's intent, and we reject it. First, Holt cannot and does not argue that



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Northshore acquired the property for an improper purpose. This is significant because section (1)(a) contains a broad grant of condemnation powers. Among them is the power to "acquire by purchase or condemnation, or both, all property and property rights and all water and water rights, both within and without the district, necessary for its purposes."<sup>14</sup> Second, and more significantly, within this broad grant of power, the Legislature defines "acquire" in section (1)(a) as "purchase or condemnation." Using this definition, we hold that Northshore's authority to "acquire" buildings necessary for its purposes, found in section (1)(d), must be read as the authority to acquire buildings by "purchase or condemnation." Holt advances no reason, and we perceive none, why Northshore may "construct" or "own" a building necessary for its purposes but not acquire by purchase or condemnation such a building. Thus, the most reasonable reading of the statute is that the Legislature intended to allow a water district to condemn property to acquire buildings necessary for its purposes.

Because Northshore has an absolute right to condemn property that is necessary for its purposes,<sup>15</sup> its interference with Holt's contractual relationships was privileged and a bar to the tort claim. Northshore argues that RCW 8.12.030, which grants the power of eminent domain to municipalities, permits Northshore to acquire buildings by condemnation. Because we resolve the question of Northshore's power to exercise eminent domain on the basis of former RCW 57.08.010, we need not address Northshore's argument under RCW 8.12.030.

Holt first argues in its reply brief that even if Northshore's actions were privileged, the privilege is overcome by Northshore's "improper motive" or "improper means" in exercising its eminent domain power. It cites *Pleas*<sup>16</sup> in support of this proposition. But its reliance on *Pleas* is misplaced. There, the City intentionally obstructed the efforts of Parkridge to build an apartment complex near Volunteer Park. The City hoped to curry favor with politically powerful neighbors who opposed the construction of the complex. Our Supreme Court held that the City acted with an improper motive and by improper means. But this determination of improper motive and means did not defeat a privilege held or asserted by the City. Rather, it supported Parkridge's tortious interference claim:

"Parkridge was required to show that the City's conduct was not only intentional but wrongful, and it has done so; the burden then shifted to the City to show that its conduct was either privileged or justified. The City has failed to produce persuasive evidence that its conduct comes under either category."<sup>17</sup>

Here, Holt argues that genuine issues of material fact exist as to whether Northshore acted with improper motive or means. But even if such facts did exist, they are not material because they do not overcome Northshore's privilege to exercise the power of eminent domain.

The trial court properly granted summary Judgment to Northshore on this claim.

### B. Inverse Condemnation Claim



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Holt next argues that dismissal of its inverse condemnation claim was improper. We reject this contention.

Washington's constitution requires compensation when private property is taken or damaged for public use.<sup>18</sup> Inverse condemnation is an action brought to recover just compensation for property that has been taken in fact, but without formal court proceedings.<sup>19</sup> To state a claim of inverse condemnation, the party must establish the following elements: (1) a taking or damaging (2) of private property (3) for public use (4) without just compensation being paid (5) by a governmental entity that has not instituted formal proceedings.<sup>20</sup> The first element, whether Northshore's conduct constitutes a taking, is at issue.

A taking is government interference with the use and enjoyment of private property that results in a decline of the property's market value.<sup>21</sup> Here, Holt claims that Northshore's condemnation proceedings forced it to cease construction on its property. Holt argues that this loss of use of its property constitutes a taking requiring compensation. Significantly, Holt does not allege any diminution in value to its property.

Citing to a case from a foreign jurisdiction,<sup>22</sup> Holt argues that the mere loss of use of its property is actionable inverse condemnation. But in that case the owners alleged that the government's interference in the use of their property impaired the property's market value.<sup>23</sup> Here, Holt alleges that the loss of use of its property resulted in increased construction costs, not in a diminution of value. This interference with Holt's contracts does not constitute a taking on which to base a state claim for inverse condemnation.

Nonetheless, Holt argues that an allegation of diminution in value is not necessary to sustain a claim for inverse condemnation. Because Holt cites federal authority in support of this argument, we take it to be based on the federal constitution. Even under federal authority, however, a taking requires a diminution in the property's value. Accordingly, we reject this argument.

Holt extensively discusses two Ninth Circuit cases for the proposition that federal takings claims require no diminution in the property's value.<sup>24</sup> But both of these cases specifically acknowledge that an element of a takings claim is a diminution in value:

"When a public entity acting in furtherance of a public project directly and substantially interferes with property rights and thereby significantly impairs the value of the property, the result is a taking in the constitutional sense and compensation must be paid."<sup>25</sup>

Because Holt failed to allege any loss in the value of its property, we reject its federal takings claim.

Holt's remaining argument also fails. It argues that Northshore, like the government entities in the Ninth Circuit cases, acted so unreasonably or improperly as to support a finding of a taking. But even



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assuming Northshore's conduct was unreasonable or improper, Holt is not entitled to relief because the measure of damages in an inverse condemnation claim is the diminution in the fair market value of the property. Here, Holt does not allege any diminution in the value of its property.

Because of our resolution of this case on the basis of the issues we have discussed, we need not reach Northshore's res judicata argument.

We affirm the summary Judgement.

### WE CONCUR

1. See RCW 8.25.075(1)(b).
2. CR 56(c).
3. Failor's Pharmacy v. Department of Social and Health Servs., 125 Wn.2d 488, 493, 886 P.2d 147 (1994).
4. Mountain Park Homeowners Ass'n v. Tydings, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).
5. Failor's Pharmacy, 125 Wn.2d at 493.
6. Leingang v. Pierce County Med. Bureau, 131 Wn.2d 133, 157, 930 P.2d 288 (1997).
7. Pleas v. City of Seattle, 112 Wn.2d 794, 800, 804, 774 P.2d 1158 (1989).
8. Plumbers and Steamfitters Union Local 598 v. WPPSS, 44 Wn. App. 906, 920, 724 P.2d 1030 (1986), review denied, 107 Wn.2d 1021, cert. denied, 482 U.S. 905 (1987).
9. Plumbers, 44 Wn. App. at 920 (quoting Topline Equip., Inc. v. Stan Witty Land, Inc., 31 Wn. App. 86, 94, 639 P.2d 825 (1982)).
10. State v. Thorne, 129 Wn.2d 736, 761, 921 P.2d 514 (1996).
11. Former RCW 57.08.010 was repealed by Laws 1996, ch. 230, sec. 1703, p. 1074, effective July 1, 1997. RCW 57.08.005 now governs the powers of water districts. The statute now expressly provides that a water district has the power to "construct, condemn, acquire, and own buildings and other necessary district facilities." RCW 57.08.005(6) (*italics ours*).
12. Former RCW 57.08.010(1)(a).
13. Former RCW 57.08.010(1)(d).



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14. Former RCW 57.08.010(1)(a) (*italics ours*).

15. See, e.g., *City of Tacoma v. Welcker*, 65 Wn.2d 677, 683, 399 P.2d 330 (1965) (holding that "the power of eminent domain is an attribute of sovereignty").

16. 112 Wn.2d at 804.

17. *Pleas*, 112 Wn.2d at 805.

18. Const. art. I, sec. 16 (amend. 9) states, "No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner . . ."

19. *Pierce v. Northeast Lake Wash. Sewer & Water Dist.*, 69 Wn. App. 76, 79, 847 P.2d 932 (1993) (citing *State v. Lakeside Indus.*, 66 Wn. App. 715, 725, 834 P.2d 631 (1992)), *aff'd*, 123 Wn.2d 550, 870 P.2d 305 (1994).

20. *Pierce*, 69 Wn. App. at 79.

21. *Lambier v. City of Kennewick*, 56 Wn. App. 275, 279, 783 P.2d 596 (1989), review denied, 114 Wn.2d 1016 (1990).

22. *Taper v. City of Long Beach*, 129 Cal. App. 3d 590, 181 Cal. Rptr. 169 (1982).

23. *Taper*, 129 Cal. App. 3d at 610.

24. *Martino v. Santa Clara Valley Water Dist.*, 703 F.2d 1141 (9th Cir.), cert. denied, 464 U.S. 847 (1983); *Richmond Elks Hall Ass'n v. Richmond Redev. Agency*, 561 F.2d 1327 (9th Cir. 1977).

25. *Richmond Elks Hall*, 561 F.2d at 1330; see *Martino*, 703 F.2d at 1147 (*italics ours*).

