

Determining Scope of Resolution of Necessity in Eminent Domain Actions

Before a public agency can exercise the power of eminent domain, it must adopt a resolution of necessity making certain findings in support of the taking of property. The resolution defines the scope of the agency's acquisition, and the agency is typically prevented from contradicting the terms of the resolution in the eminent domain action.

There is a delicate balancing-act in drafting the scope of the taking in the resolution. If the scope is too narrow, the agency may ultimately need to go back and acquire additional rights or property. On the other hand, if the scope is too broad, it provides an opportunity for property owners to present a claim for much greater damages. We've seen numerous eminent domain cases go to trial based on a dispute as to the scope of the take and what actions the resolution of necessity allows the condemning agency to undertake.

A recent unpublished California Court of Appeal decision, [People ex rel. Department of Transportation v. 927 Indio Muerto](#), provides an example of an eminent domain case going to trial primarily based on a dispute over the interpretation of the terms of a resolution of necessity. The case involves Caltrans' acquisition of a fee and easement interest in a portion of property in an effort to expand Highway 101 in Santa Barbara County. The resolution of necessity adopted by the California Transportation Commission provided that the acquisition included the right to enter the owner's remaining property at any time within 120 days after an order for possession or final judgment to complete work related to the project.

The court granted Caltrans' motion for prejudgment possession, the tenants on the property were temporarily relocated, and upon completion of the project, the tenants returned to the property. The 2,600 square foot easement portion of the acquisition was paved with concrete and Caltrans allowed the tenants to utilize this area for their business operations.

At trial, Caltrans' appraiser testified that as a result of the acquisition, the businesses suffered no loss of goodwill. The business' appraiser testified they suffered a \$710,000 loss of goodwill. The jury awarded the business \$75,000 for loss of goodwill. The owners and tenants appealed on a number of issues, primarily based on the terms of the resolution of necessity.

1. **Did the Resolution of Necessity Authorize Caltrans to Re-Enter the Property?** The owner contended that the resolution of necessity was vague and could be interpreted to allow Caltrans to re-enter the owner's property for 120 days after final judgment. The owner sought compensation accordingly. The trial court refused to give this instruction, instead interpreting the resolution as giving Caltrans the authority to either enter (i) after an order for possession or (ii) after final judgment. Since Caltrans entered after an order for possession, Caltrans had no right to re-enter after a final judgment, and the owner was not

entitled to compensation based on such an interpretation. The Court of Appeal agreed this was the appropriate reading of the resolution of necessity.

2. **Did the Court -- as Opposed to the Jury -- Appropriately Define the Scope of the Easement?** The trial court made a finding that the resolution of necessity allowed the property owner and businesses to continue to utilize the area of the property encumbered by the easement, and it instructed the jury to issue its determination of just compensation based on this instruction. The owner claimed that the jury -- not the judge -- should have decided this issue. The Court of Appeal concluded this was an issue appropriately determined by the judge, not the jury, since the jury is solely to determine just compensation.
3. **Was the Court's Interpretation of the Scope of the Easement Supported by the Evidence?** The property owner also argued that the trial court's interpretation of the scope of the easement -- that the owner/business could use the area for future business operations -- was simply contrary to the evidence. The Court of Appeal disagreed, concluding there was substantial evidence that the businesses could continue to use the easement area, and in fact they were doing so at the time of trial.

In this case, the trial court and the Court of Appeal both interpreted the resolution of necessity in favor of the condemning agency. The agency likely benefitted from the fact that the project had been completed prior to trial and therefore it was much easier to rely on what had actually happened when interpreting the scope of the resolution. If the trial took place before construction, the result might not have been as clear. The case serves as a good reminder to closely review the scope of the proposed resolution of necessity before it is adopted.

(NOTE to Business Appraisers: you may want to read the opinion as there is a useful discussion about the exclusion of the business' appraiser's testimony regarding loss profits due to speculation.)