

STATEMENTS OF INTENT TO CONDEMN DO NOT GIVE RISE TO INVERSE CONDEMNATION CLAIM

Ashley Joffe v. City of Huntington Park, No. B222880 (Cal Ct. App. 2d Dist., November 11, 2011)

January 6, 2012 by **Michael Hansen**

The Second Appellate District recently held that public statements and other actions indicating an intent to condemn must clearly meet the criteria set out in the landmark California Supreme Court decision *Klopping v. City of Whittier* (1972) 8 Cal.3d 39 (*Klopping*) in order for inverse condemnation liability to arise. In 1972, the California Supreme Court, in *Klopping*, held that a valid claim for inverse condemnation could be based on governmental actions *preceding* an actual, or even a de facto, taking of property. The plaintiffs Ashley Joffe and Plycraft Industries owned a furniture manufacturing business at a location where the defendants City of Huntington Park and a developer expressed intent to acquire and develop a proposed retail project. Plaintiffs alleged that the City's announced intent to condemn made it impossible to enter into long-term furniture contracts and consequently forced Plycraft out of business at that location. The property was never acquired by the defendants, and the plaintiffs filed a claim for inverse condemnation under *Klopping*.

Plaintiffs claimed recovery for unreasonable delay because (1) the actions of the defendants, including erecting large signs announcing the project and stating that plaintiffs' property would be acquired either voluntarily or involuntarily, were sufficient to constitute an "announcement of intent to condemn," under *Klopping*; or (2) the City acted unreasonably; or (3) the actions of the City constituted equitable or promissory estoppel. The City successfully demurred to these allegations because they were not sufficient to satisfy the requirement of *Klopping* that there be an "announcement of intent to condemn." Plaintiffs appealed and the Second Appellate District affirmed.

Unreasonable Delay Following an Announcement to Condemn

The court held that it could not be reasonably disputed that the defendants' conduct did not constitute an announcement of intent to condemn. The City's liability under *Klopping* was not triggered because the bulk of the City's conduct constituted general planning with no specific direct interference with plaintiffs' property, none of the acts went beyond the planning stage into the acquisition stage, and no offer had been made to purchase the property. The court downplayed the specific and unique harms alleged by plaintiffs due to their unique business characteristics. Instead, it held that the focus is on the defendants' conduct and whether it amounted to an interference with plaintiffs' right to use and enjoy their property, noting that the City did nothing to interfere with plaintiffs' use of their property and that the plaintiffs *chose* not to use it for their business.

Unreasonable Precondemnation Conduct

Plaintiffs argued that even if they failed to state a cause of action for unreasonable precondemnation delay under *Klopping*, they could still prevail on a cause of action for other "unreasonable precondemnation conduct," but the court determined that plaintiffs could not do so because they alleged no such conduct in the complaint. Specifically, the court found that there was no allegation that plaintiffs had informed the defendants of the unique nature of their business, and that the business would be harmed in the absence of knowing the specific date of condemnation.

Equitable or Promissory Estoppel

Plaintiffs also argued that the statements made by the defendants caused them to rely to their detriment on the threatened condemnation. The court held that plaintiffs failed to allege a claim for equitable estoppel because they did not allege a representation or concealment of material facts with knowledge of the actual facts. Also, the court determined that plaintiffs failed to allege a claim for promissory estoppel because they did not allege facts supporting a reasonable reliance on the defendants' statements, because reliance on the City's informal statements regarding planned acquisition was not reasonable.