

## Property and Business Owners' Precondemnation Damages Claims Dismissed

We've covered in the past the [impacts property and business owners suffer when government agencies plan for public projects](#). We've also covered when agency planning crosses the line and results in [precondemnation damages or a de facto taking](#).

A recent unpublished Court of Appeal decision, [Joffe v. City of Huntington Park](#), highlights (1) the types of impacts owners suffer and (2) the difficulty owners face in trying to recover for such impacts.

In *Joffe*, a related property owner and furniture manufacturing business claimed that the city repeatedly expressed a desire to acquire their property and surrounding properties for a new redevelopment project. The owner was told for six years that the redevelopment project was on track and that its property would be acquired as part of the project. The city went as far as:

- appraising the property and the business;
- analyzing relocation of the business;
- requesting that the owner obtain an independent appraisal for negotiation purposes;
- placing large signs in the vicinity announcing the project; and
- stating in writing that the property would be acquired for the project either voluntarily or involuntarily.

After six years, the project never proceeded, and the city never acquired the property.

The business claimed it needed a long lead-time to manufacture its furniture orders, and its customers became concerned it could not fulfill its obligations given the uncertainty of its future tenancy. The business could not enter into long-term furniture contracts with major retailers due to the uncertainty and the retailers' contract penalty clauses should the business be unable to perform. The business eventually went under, and as a result, the business suffered a loss of goodwill.

The property owner claimed it repeatedly tried to obtain new tenants, but no one was interested given the uncertainty of the ability to remain at the site. Thus, the owner claimed it could not obtain fair market rent for its property. Both the owner and tenant sought to recover for precondemnation, or *Klopping*, damages as a result of the city's actions.

The city claimed that its actions were not unreasonable, and it never "announced an intent to condemn," and therefore *Klopping* damages were never triggered. The trial court agreed with the city, and the complaint was dismissed. The Court of Appeal also agreed with the city, finding no precondemnation liability.

### **No Unreasonable Delay Following an Announcement of Intent to Condemn**

The Court explained that where no resolution of necessity is adopted, the property owner must demonstrate that the agency's action resulted in a special and direct interference with the owner's property. Here, the city's actions could have similarly impacted over 200 parcels within the proposed project area. While the property and business owner clearly suffered due to the city's actions, the Court announced that **the correct test in analyzing liability is to judge the agency's actions, not the impacts suffered by the owner**. The Court also concluded that the city's undertaking the appraisal process was required under the law, and that such acts do not cross the line to establish liability. Similarly, informal representations of an intent to use eminent domain if no agreement is reached do not trigger *Klopping* damages. In short, the Court held that the actions all fell within the context of general planning and did not rise to the level of demonstrating a present intent to acquire.

### **No Unreasonable Precondemnation Conduct**

The plaintiffs alleged that the city's actions were done to intimidate them and force them to sell. The Court disagreed, concluding that the actions on their face were in line with typical public agency activities when planning for public projects. There was no evidence of extortion, no evidence of an intent to depress the value of the property, no evidence of false allegations or misrepresentations, or anything else establishing the city acted unreasonably.

The *Joffe* case highlights the devastating impacts property owners and businesses can suffer as a result of the drawn-out public project planning process. It also highlights, however, the uphill battle owners face in trying to recover for such impacts.