

No. 75372-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY,
a regional transit authority, dba Sound Transit,

Respondent,

v.

STERNOFF L.P.,

Appellant.

FILED
Sep 30, 2016
Court of Appeals
Division I
State of Washington

CITY OF SEATTLE'S RESPONSE BRIEF

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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 SEP 30 PM 4:01

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I. INTRODUCTION

Through this condemnation action, Central Puget Sound Regional Transit Authority (“Sound Transit”) is attempting to condemn portions of a parcel (the “Sternoff Property”) over which The City of Seattle (“Seattle”) has two easements for the construction, operation, and maintenance of an electrical transmission system (the “Transmission Line Easements”).

Although the Transmission Line Easements are recorded, Seattle was not originally named as a party in Sound Transit’s Petition in Eminent Domain (the “Petition”). Because it was concerned that its property rights could be impaired, Seattle intervened in the condemnation action and was granted leave to intervene on June 15, 2016.

The trial court order being appealed, the First Amended Findings of Fact, Conclusions of Law, Order and Judgment Adjudicating Public Use and Necessity, (“Order”) was entered on June 7, 2016 – before Seattle intervened. As it was not yet a party to the condemnation action, Seattle did not participate in the hearing that led to the Order, nor did it have an opportunity to develop the record upon which this appeal is based.

The Order explicitly excludes Seattle’s Transmission Line Easements from the property being condemned and provides that Sound Transit is appropriating the condemned property subject to the Transmission Line Easements.

Seattle submits this brief to ensure that the Court's opinion reflects that Seattle's property interests are not at issue in this appeal. Clarifying that this appeal has no effect on Seattle's property interests is imperative because Seattle anticipates that Sound Transit will attempt to condemn its property interests in the Sternoff Property at some point in the future.

II. STATEMENT OF THE CASE

A. The City of Seattle Has Two Easements Over The Sternoff Property.

Seattle acquired the first Transmission Line Easement over what is now the Sternoff Property in 1927, and the second one in 1929. CP ____¹ (Declaration of John Bresnahan at ¶ 2. Ex. A). The Transmission Line Easements are recorded with the King County Recorder's office. CP ____.

On the Sternoff Property, the Transmission Line Easements cover an area running between 75 and 85 feet to the east from the center line of 124th Avenue NE along the full length of property's frontage on that road. CP ____.²

¹ Seattle has not yet received an index of Clerk's Papers. Seattle filed its Designation of Clerk's Papers on September 26, 2016. Once the Index is received, an errata with the appropriate Clerk's Papers page numbers will be filed.

² The centerline of 124th Avenue forms the western boundary of the Sternoff Property. CP ____.

The Transmission Line Easements allow Seattle to construct, operate, and maintain an electrical transmission system on the Sternoff Property. Per the terms of the easements, the City has the right to locate up to three transmission line towers and related facilities on the Sternoff Property. CP ____.

The Transmission Line Easements are part of a series of similar easements and fee simple parcels that form a contiguous corridor that runs from electricity generating facilities located in the Skagit River area to Seattle's Maple Valley electrical substation. CP _____. Seattle operates an existing high voltage electrical transmission line ("Transmission Line") in a portion of this corridor, and the corridor provides room for access to the Transmission Line as well as space for the location of an additional transmission line. CP _____.

As reflected in the Petition, the property that Sound Transit seeks to condemn in this action includes a fee simple interest in a strip of property running along the length of 124th Ave. NE (the "Fee Simple Tract"). CP 2-4, 31-37. The Fee Simple Tract is located entirely within the Transmission Line Easements. CP _____. Through the Petition, Sound Transit is also seeking to condemn a series of permanent and temporary wall, water line, drainage, and construction easements across the Sternoff Property

(“Construction Easements”). CP 2-4, 31-37. The Construction Easements Sound Transit is seeking to condemn cover the entire Transmission Line Easement on the Sternoff Property. CP ____.

The construction of any improvements in the Fee Simple Tract or the exclusive use of the Construction Easements by Sound Transit, could adversely impact Seattle’s easement rights by making it impossible for it to locate the transmission line towers that it has the right to construct, operate, and maintain under the express terms of the Transmission Line Easements, or by otherwise limiting Seattle’s use of the easement areas. CP ____.

B. The Order Being Appealed Expressly Excludes Seattle’s Interests From The Property Being Condemned

The Order expressly excludes Seattle’s interests from the property being condemned. Specifically, the Order provides:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that entry of this Order and Judgment does not include an appropriation of the City of Seattle’s existing easements in and to the Condemned Property for transmission and/or distribution system and appurtenances, as reflected in King County Recording Nos. 2342831, 710818046, 2560137, and 241252.

CP 575.

Further, the conclusions of law entered in support of the Order provide that Sound Transit’s condemnation of the property is subject to

Seattle's pre-existing property interests. Specifically, Conclusion of Law

No. 9 provides:

Petitioner seeks to appropriate the Condemned Property (described and/or depicted in Exhibits 1-10 hereto) and is taking the Condemned Property subject to the City of Seattle's existing easements for transmission and/or distribution system and appurtenances, as reflected in King County Recording Nos. 2342831, 710818046, 2560137, and 241252.

CP 576.

C. Seattle Was Not Originally Named As A Party In The Petition But, Because It Was Concerned That The Condemnation Action Could Impair Its Property Interests, It Intervened.

Despite having a recorded easement over the Sternoff Property, Seattle was not originally named as a party in the Petition. CP 1. But, because it was concerned that its property interests could be impaired by the condemnation action, Seattle moved to intervene. CP _____. Seattle's concerns arise from the fact that the property interests being condemned by Sound Transits conflict with its pre-existing property rights and could allow Sound Transit to construct improvements that would interfere with or conflict with Seattle's use of its Transmission Line Easements. CP _____.

Seattle was granted leave to intervene on June 15, 2016, after the Court entered the Order, and after Sternoff filed its notice of appeal. CP _____. As Seattle was not a party at the time, and Sound Transit had not

yet taken any formal action to condemn its property interests, Seattle did not participate in the hearing on Sound Transit's motion for public use and necessity, and had no opportunity to develop the record that forms the basis of this appeal. (VRP).

III. ARGUMENT

A. The Court's Opinion Should Reflect The Limitations Of The Trial Court's Order And The Issues On Appeal So As To Avoid Prejudicing Seattle's Ability To Protect Its Property Interests In The Future.

To date, Sound Transit has not taken any action to formally condemn Seattle's interests in the Sternoff Property. The Order being appealed explicitly excludes Seattle's property interests from the property being condemned. Given the importance of the Transmission Line Easements to Seattle, it is prepared to vigorously oppose any future effort by Sound Transit to condemn its property interests in the Sternoff Property. The Court's opinion resolving this appeal should reflect that Seattle's interests are not being condemned so as to not prejudice its ability to protect its property interests in the future.

Further, the issues presented in this appeal are narrow and no question has been put before the Court regarding Seattle's property interests or Sound Transit's authority to condemn those interests. Neither the notice

of appeal filed by Sternoff nor the brief filed by Sternoff references Seattle's property interests. Accordingly, the Court's decision resolving this appeal should be narrowly crafted and should not address Seattle's interests so as to avoid a ruling that could be used as law of the case against Seattle in future proceedings. See Clark Cty. v. W. Washington Growth Mgmt. Hearings Review Bd., 177 Wash. 2d 136, 145, 298 P.3d 704, 708–09 (2013) (error for appeals court to consider claims regarding real property that “were not raised on appeal, and remained separate and distinct from the claims that the parties raised on appeal” and “[a]n appellate court's review is necessarily limited by the scope of a given appeal. The court must address only those claims and issues necessary to properly resolving [sic] the case as raised on appeal by interested parties.”); See Roberson v. Perez, 119 Wash. App. 928, 932, 83 P.3d 1026, 1029 (2004), aff'd, 156 Wash. 2d 33, 123 P.3d 844 (2005) (“If a question was not considered in the first appeal and the appellant is not precluded from raising the question on remand, the question does not fall within the law of the case doctrine.”).

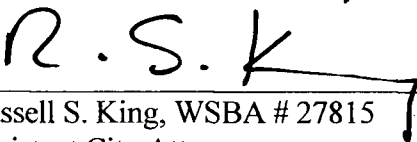
IV. CONCLUSION

The City of Seattle respectfully requests that the Court's opinion resolving this appeal reflect the facts regarding the City's interests, and the limitations of the trial court's Order and the issues raised on appeal as

hereinabove described.

RESPECTFULLY SUBMITTED this 30th day of September, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2016, I filed the foregoing document with the Court of Appeals, Division I, and served on counsel listed below via Email and U.S. Mail.

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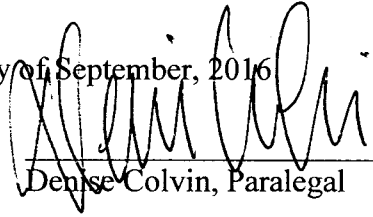
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DATED this 30th day of September, 2016



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