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Appellate Court No. 63121-7
Skagit County Superior Court No. 07-2-00173-8

IN THE COURT OF APPEALS - STATE OF WASHINGTON
DIVISION ONE

WESLEY F. RIEDEL and LANA L. RIEDEL,
husband and wife,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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REPLY BRIEF OF APPELLANTS

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I. ARGUMENT IN REPLY

The Trial Court's enforcement of the contested stipulation should be reversed because it prevents the Riedels from receiving just, fair, and full compensation for the property taken, because it was negotiated based on a mutual mistake as to the use to which the remaining property could be put, because the State has broken both pre-mediation and mediation promises, and because the State failed to prove the content of the stipulation.

A. The Riedels have not Received the Just Compensation Guaranteed by the Constitution and State Law

Just compensation for the taking of private property is guaranteed to every citizen by our State's constitution. Const. Art. I, sec. 16. The constitution is backed up by State law which requires payment of "the fair and full value" of the property taken. RCW 8.8.050. Nowhere does the State even attempt to assert that the Riedels would be justly compensated for the property the State took if the stipulation is enforced.

To the testimony that it took twice as much real property as it paid for the State makes no reply. For the breaking of its pre-mediation promise to provide drainage, it makes no excuse. In an attempt to excuse the breaking of its access promise it claims that it need not provide marked U-turns or property accesses as

big as promised, because it is possible for people to make a U-turn without signs permitting them. And the State shows no concern for the fact “just” compensation was negotiated under the mistaken belief that the Riedels' remaining property could be used to reestablish their home and business.¹

Compensation set based on broken promises and mistaken beliefs affecting value cannot be just compensation, nor can it represent the fair and full value of the property taken. The State makes no attempt to argue that the compensation amount in the stipulation is just, fair, or full.

The State, however, argues that the Riedels are not entitled to just compensation because they blundered by relying on the State's pre-mediation and mediation promises. It argues that there is no debate as to the material terms of the mediation stipulation because its views must be the correct ones, and that it is free to disregard those provisions of the agreement it does not wish to obey. This is just the sort of all-powerful, abusive State action our constitution was designed to limit.

B. Gobbledygook is not Good Faith

The State bound itself to promptly resolve the remaining issues in good

¹ The State does not deny the mutual mistake, but rather, argues that any implication that it was not a mutual mistake has no support in the record. Brief of Respondent, at 18, FN 10.

faith. Its failure to do so is well substantiated by the declarations on file, and by the hearing held before Judge Cook on May 16, 2009.

The State moved to enter judgment on the stipulation before Judge Cook. The Riedels resisted, arguing the State failed to comply with the prompt good faith resolution provision. The hearing focused primarily on one example of the State's refusal to promptly resolve remaining issues in good faith.

The State had agreed to either pay to move certain tangible property or to pay its value. But the State refused to pay for the property not moved, claiming that even though the property was sold at auction by the State, the Riedels could not be compensated for it because the State had paid to move it. RP 5-16-09 20-21. The State argued that if the Riedels did not like not getting paid for their property they could file an administrative appeal, and that the prompt good faith resolution language of the stipulation did not apply because it did not make the stipulation contingent. RP 5-16-09, 21-22.

The Court denied the motion to enter judgment, finding “whether or not the State is, number one, acting in good faith, and number two, whether or not [the State has] honored [its] own agreement” are hotly contested. RP 5-16-09, 23-24.

The Court went on to characterize the written response the Riedels

received from the State as a “bunch of gobbledy goop.”² The State's performance did not improve after the hearing before Judge Cook. But the State claims its failure to resolve the other issues promptly in good faith cannot be enforced against it.

C. The State does not Get to Decide What the Agreement Means, or To Choose What Provision Binds It

After arbitration the State has consistently claimed the prompt good faith provision has no meaning. It argues that it can have the benefit of the rest of the agreement without complying with this term. It argues that the prompt good faith resolution provision does not make the agreement contingent. The Riedels understood that their total compensation was contingent on resolving additional issues. The stipulation document is consistent with their position.

Whether the prompt good faith language creates a contingency, or is an integral contractual promise, it must have meaning. It is not, to the Riedels, meaningless language. The Trial Court found, in an unchallenged finding, that not all issues were resolved at mediation. It ordered the parties back to mediation to resolve the remaining issue. CP 313. It is evident that the mediation did not

² The on-line Urban Dictionary defines “gobbly goop” as nonsensical legal jargon. Wikipedia gives the etymology of “gobbledygook”, including its origin as a descriptive term for the convoluted language of bureaucrats. The term describes confused condescending language designed to impress or frustrate, rather than to elucidate.

resolve all issues, and it is evident that the State did not promptly negotiate in good faith to resolve remaining issues. The State is not entitled to claim the prize of a low price while ignoring its commitment to resolve other matters.

In addition to deciding the good faith prompt resolution language did not bind it, the State decided it could just disregard other language in the stipulation. The stipulation required it to pay the stipulated amount directly to the Riedels.³ The State however, disregarded this provision and paid the money into the Court. If the State can decide to disregard contract language how could the Riedels possibly understand what was being stipulated?

There is a substantial disagreement as to the material terms of the stipulation. The State does not get to resolve material issues at its pleasure. The stipulation cannot be enforced in the manner the State insists that it be enforced. It should be set aside because there is a legitimate dispute as to its material terms..

D. There is Inadequate Proof of the Contents of a Written Stipulation

The Riedels testified that the written stipulation was altered after they signed it. CP 14. The obvious additions and changes to the stipulation and the lack of initials support their testimony.⁴ The State has the burden of proving the

³ Appellant's initial brief, Appendix A, and FN 4 as to lack of citation to Clerk's Papers.

⁴ Although some changes are initialed, apparently by counsel for the State, no other initials at all appear on other apparent alterations to the document.

content of the stipulation. It presented no testimony or evidence on the point. It did not offer the original stipulation at the hearing. There is simply no way to know what the content of the stipulation was at the time the Riedels signed it.

The State did not meet its burden of proving the contents of the stipulation, the stipulation should not be enforced.

II. CONCLUSION

The Riedels will not receive just compensation for the fair and full value of their property if the stipulation is enforced. They will be paid for approximately half of the property taken, they will not be paid for, or granted, drainage rights for their farmland. Because they cannot reestablish their home and store on the remaining property they will be unable to recreate what the State took.

Mediation should not be a trap for the citizen in a condemnation mediation. The Trial Court's decision to enforce the stipulation should be reversed

RESPECTFULLY SUBMITTED this 5th day of January, 2010.



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