IN THE SUPREME COURT OF THE STATE OF NEVADA

MAVEX MANAGEMENT CORPORATION D/B/A MOCKINGBIRD MANAGEMENT COMPANY, AND CRAIG KING NEVADA, INC.,
Appellants,
vs.
CITY OF NORTH LAS VEGAS,
Respondent.

No. 51634

FILED

MAR 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting judgment as a matter of law pursuant to NRCP 50 in an inverse condemnation action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellants Mavex Management Corporation, d.b.a. Mockingbird Management Company, and Craig King Nevada, Inc., (collectively, Mavex)[1] filed a suit for inverse condemnation, alleging that respondent City of North Las Vegas' (CNLV) requirement that Mavex build a drainage channel on its property constituted a compensable taking pursuant to Nollan v. California Coastal Commission, 483 U.S. 825 (1987), and Dolan v. City of Tigard, 512 U.S. 374 (1994). After a two-day bench trial, CNLV moved for judgment as a matter of law pursuant to NRCP 50. The district court granted the motion, finding that CNLV had not effectuated an unconstitutional taking.

[1]We note that Mitchell Vexler is the president of Mavex Management Corporation; and Mavex Management Corporation is an agent for Craig King Nevada, Inc.

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On appeal, Mavex argues that the district court erred in granting judgment as a matter of law because CNLV's actions in the present case constituted a compensable taking, resulting in Mavex paying for a public works project. We conclude that Mavex's argument fails because under these facts there was no taking and, therefore, we affirm the district court order granting judgment as a matter of law pursuant to NRCP 50. The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

Standard of review

This court reviews de novo an order granting judgment as a matter of law pursuant to NRCP 50. Nelson v. Heer, 123 Nev. 217, 223, 163 P.3d 420, 425 (2007). The issue presented in this case, whether CNLV has inversely condemned Mavex's property, is a question of law that this court also reviews de novo. McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 661, 137 P.3d 1110, 1121 (2006).

There was no taking pursuant to Nollan and Dolan

Mavex argues that CNLV's imposition of the construction of the channel violated the Takings Clause of the Fifth Amendment of the United States Constitution, as incorporated against the states by the Fourteenth Amendment, pursuant to the United States Supreme Court's holdings in Nollan and Dolan. We disagree.

The Takings Clause prohibits a governmental taking of private property for public use without just compensation. U.S. Const. amend. V. Nevada's Constitution has a similar provision proscribing the taking of private property for public use without compensation. See Nev. Const. art. 1, § 8.

Nollan and Dolan dealt with administrative land use decisions with regard to public easements. In Nollan, the California Coastal

Commission conditioned a building permit upon a demand for a lateral public easement across the Nollans' beachfront property. 483 U.S. at 831. The United States Supreme Court held that there must be an "essential nexus" between a legitimate state interest and the permit condition and rejected the Coastal Commission's claim that a nexus existed between the condition it imposed on the Nollans, a public easement, and the state's legitimate interest in providing the public visual and physical access to the beach. Id. at 837.

In Dolan, a city planning commission conditioned the approval of a store owner's application to expand her store and pave her parking lot on her agreement to dedicate land to the city to facilitate the improvement of a storm drainage system and the creation a pedestrian and bicycle pathway. 512 U.S. at 380. The Court determined the city's requirements constituted an impermissible taking because there was no rough proportionality between the exactions demanded by the city's permit conditions and the projected impact of petitioner's proposed development. Id. at 395.

Based on the facts presented here, we conclude that the instant case is factually distinguishable from both Nollan and Dolan. Here, we conclude that no taking occurred because this case does not involve a conditional building permit; concomitantly, there is no official government action.

CNLV did not condition the approval of a building permit upon Mavex granting it an easement. Instead, CNLV owned an easement on the property before Mavex purchased the land. Mitchell Vexler testified that he was aware of the easement when he purchased the property. While Vexler stated that he was not aware of the easement's "impact," meaning that it would not be relinquished until the channel had

been constructed, the easement was properly recorded and the buyer, Vexler, knew it existed.[2] Therefore, the drainage easement at issue in this case was an existing condition, unlike the easements in Nollan and Dolan, which were part of a government condition in exchange for a building permit.

Furthermore, when CNLV notified Mavex that it would not be able to fund construction of the drainage channel in 2000 because of budget issues, Mavex chose not to wait for public funding; it made the business decision to move forward and finance the construction channel on its own.

Because we conclude that these facts do not constitute a taking pursuant to Nollan and Dolan, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Parraguirre

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

_____, J.
Pickering

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[2]Once an easement is recorded, a subsequent purchaser of the effected property is deemed to have knowledge of the easement and, therefore, not permitted to disclaim that knowledge. NRS 111.320.

cc: Hon. Kenneth C. Cory, District Judge
Stephen E. Haberfeld, Settlement Judge
Victor M. Perri
The Perrin Law Firm, P.C.
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Eighth District Court Clerk