



1-1-2008

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Recommended Citation

39 McGeorge L. Rev. 424

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Chapter 436: More Than Just a Clean-Up Bill?

Chad Bacchus

Code Sections Affected

Code of Civil Procedure § 1255.410 (amended); Government Code § 7267.2 (amended).
SB 698 (Torlakson); 2007 STAT. Ch. 436.

I. INTRODUCTION

Part of the American dream is to own a home.¹ In 2006, Angelica Sheldon realized this dream when she purchased a home in Seaside, California.² Angelica's dream may not last very long as she could potentially lose her home to a development group.³ The developer plans to build a 252-room hotel in an area currently occupied by family homes.⁴ Voicing her frustration with the City of Seaside, Angelica said, "Everything has been very secretive . . . the way it's been handled is totally wrong."⁵ This shows how property owners faced with the possibility of eminent domain,⁶ because of redevelopment, are often not informed of the condemnation process.⁷

Though the City of Seaside has not resorted to eminent domain in this case, the City has hired a relocation consultant in case the developer cannot successfully negotiate with all of the residents.⁸ If the City decides to utilize its eminent domain power, Chapter 436 may make it more difficult for citizens like Angelica Sheldon to oppose the government action.⁹

Redevelopment can be a positive outcome of the use of eminent domain and is considered an effective way to strengthen and even revitalize an economy.¹⁰

1. U.S. Dep't of Hous. & Urban Dev., *Owning a Home*, <http://www.hud.gov/owning/index.cfm> (last visited Sept. 29, 2007) (on file with the *McGeorge Law Review*).

2. Andre Briscoe, *Residents Fear Force Out*, MONTEREY COUNTY HERALD, Apr. 17, 2007, at B1.

3. *See id.* (stating that citizens feel like the city is not as worried about the homeowners as it is about the potential income this project will bring in).

4. *Id.*

5. *Id.* (alteration in original).

6. *See* BLACK'S LAW DICTIONARY 562 (8th ed. 2004) (defining "imminent domain" as "[t]he inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking").

7. *See* Briscoe, *supra* note 2 ("The only thing that they have told us is not to worry. . . . It's been very confusing and we think there is a chance that [the city] will use eminent domain to take our property.").

8. *See id.* (explaining that although the city stated that it is not talking about eminent domain at this point, it has hired a relocation consultant).

9. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 698, at 1, 3 (Apr. 10, 2007) (outlining the requirements of homeowners wishing to oppose an order of possession, making it mandatory to submit a declaration of any hardships, which has to be signed under penalty of perjury).

10. *See* Cal. Redevelopment Ass'n, *Redevelopment—An Essential Tool in Returning California to Economic Prosperity*, <http://www.calredevelop.org/AM/Template.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=3585> (last visited Sept. 29, 2007) [hereinafter *Essential Tool*] (on file with the

Statistics show that each dollar spent on redevelopment generates almost fourteen dollars “in total economic activity.”¹¹ During the 2002-2003 fiscal year, over 300,000 jobs were created through redevelopment, along with “\$1.58 billion [in] [s]tate and local taxes.”¹² Such statistics lead supporters to advocate redevelopment as “a means to reduce urban sprawl.”¹³ Last year there were over 400 community redevelopment agencies in California with close to 800 potential projects.¹⁴

II. LEGAL BACKGROUND

A. Existing Federal Law

The U.S. Constitution prohibits the government from taking private property for public use without paying just compensation.¹⁵ The act of taking private property for public use is referred to as eminent domain.¹⁶ Eminent domain is regulated by the U.S. Code, which requires a party seeking to acquire private property in the name of the United States to file a “declaration of taking.”¹⁷ The declaration of taking contains a statement of authority, a description of the property taken, a statement of property taken for public use, a “plan showing the lands taken,” and an estimate of what the just compensation will be.¹⁸ Once the declaration of taking is filed in federal court, the property’s title vests in the government.¹⁹

B. Existing California Law

The California Constitution allows for private property to be “taken or damaged for public use only when just compensation . . . has first been paid.”²⁰ California Code of Civil Procedure section 1255.410 allows the government to

McGeorge Law Review) (stating that redevelopment has improved the economy by creating business, affordable housing, and jobs).

11. Cal. Redevelopment Ass’n, Redevelopment Facts, <http://www.calredevelop.org/AM/Template.cfm?Section=Home&CONTENTID=1753&TEMPLATE=/CM/ContentDisplay.cfm> (last visited Sept. 29, 2007) (on file with the *McGeorge Law Review*).

12. *Id.* (“310,000[] [f]ull and part time jobs [were] created in just one year (2002-03).”).

13. Essential Tool, *supra* note 10.

14. *See id.* (“There are 417 community redevelopment agencies and 772 project areas in the state.”).

15. U.S. CONST. amend. V; *see supra* note 6 (defining eminent domain).

16. BLACK’S LAW DICTIONARY 562 (8th ed. 2004); *see also* Exec. Order No. 12,630, 53 Fed. Reg. 8859 (1988), *reprinted as amended in* 5 U.S.C.A. § 601 (West 2007) (“Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use.”).

17. 40 U.S.C.A. § 3114a (West Supp. 2007).

18. *Id.*

19. *Id.*

20. CAL. CONST. art. I, § 19.

file a motion in state court for an order of possession.²¹ This section also allows a property owner to oppose the exercise of eminent domain by submitting a written document explaining how his or her life would be adversely affected by the taking.²²

Section 1255.410 was recently amended to increase information and protection for property owners faced with eminent domain.²³ Specifically, language was inserted requiring the property owner facing eminent domain to sign a hardship document “under penalty of perjury.”²⁴ Just prior to the enactment of these amendments, concerns arose that the “penalty of perjury” language was ambiguous.²⁵ Senator Tom Torlakson agreed to introduce a clean-up bill in the next session to correct the controversial language.²⁶ Senator Torlakson stated that his intent was to have the penalty of perjury apply only to the “declaration stating facts supporting a hardship asserted in written opposition, and not to the opposition itself.”²⁷

III. CHAPTER 436

Chapter 436 amends California Code of Civil Procedure section 1255.410, which requires a property owner opposing an order of possession²⁸ to make an assertion of the hardship he or she would endure if the court grants the order.²⁹ The property owner must sign a document, “under penalty of perjury,” stating

21. CAL. CIV. PROC. CODE § 1255.410 (West 2007).

22. *Id.* § 1255.410(c); ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1210, at 1 (Aug. 16, 2006).

23. *See generally* CAL. CIV. PROC. CODE § 1255.410(c) (amended by 2006 Cal. Stat. ch. 594) (“Not later than [thirty] days after service of the plaintiff’s motion seeking to take possession of the property, any defendant or occupant of the property may oppose the motion in writing by serving the plaintiff and filing with the court the opposition.”); ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1210, at 2 (Aug. 16, 2006) (“[T]his bill seeks to help property owners faced with the loss of their property through eminent domain.”); ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 1210, at 4 (June 29, 2006) (“This bill apparently takes a cue from Justice Stevens’ comment [in *Kelo v. City of London*] that states can provide greater restrictions on the use [of] eminent domain by providing certain procedural protections for property owners faced with losing their property through eminent domain.”).

24. CAL. CIV. PROC. CODE § 1255.410(c).

25. *See* Letter from Senator Tom Torlakson, Cal. State Senate, to Gregory Schmidt, Sec’y of the Senate, Cal. State Senate (Aug. 30, 2006) [hereinafter Torlakson Letter] (on file with the *McGeorge Law Review*) (stating that during legislative hearings regarding SB 1210, “a concern was raised that the language regarding the penalty of perjury [was] unclear”).

26. *Id.*

27. *Id.*

28. *See* CAL. CIV. PROC. CODE § 1255.460(a)-(c) (West 2007) (“An order for possession issued pursuant to Section 1255.410 shall: (a) Recite that it has been made under this section. (b) Describe the property to be acquired, which description may be by reference to the complaint. (c) State the date after which plaintiff is authorized to take possession of the property.”).

29. CAL. CIV. PROC. CODE § 1255.410(c) (amended by Chapter 436); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 698, at 3 (Apr. 10, 2007).

facts that support the assertion of hardship.³⁰ Chapter 436 also requires government entities exercising eminent domain to provide a pamphlet detailing the condemnation process and outlining the property owner's rights at the time the government offers to purchase the property.³¹

IV. ANALYSIS OF CHAPTER 436

Chapter 436 clarifies the "penalty of perjury" language in California Civil Code section 1255.410.³² According to Senator Torlakson, Chapter 436 is designed to clean up ambiguous language and correctly reflect his intent regarding what must be affirmed under "penalty of perjury."³³ Chapter 436 remedies the language problem by making it clear that "penalty of perjury" refers only to the written statement of hardship signed by the property owner affected by the taking, not the general opposition of the taking.³⁴

Chapter 436 will not only remedy the language concern, but, according to some, it will also help to decrease time delays and costs in the takings process.³⁵ Supporters of Chapter 436 also believe that requiring property owners to sign their written statements of hardship under "penalty of perjury" is good public policy because it requires property owners to be accountable for their statements.³⁶ For example, the Association of California Water Agencies argues that property owners use their ability to oppose eminent domain to interrupt eminent domain proceedings, and that these owners do not always show a good reason for doing so.³⁷ These supporters seem to approve of Chapter 436 and its predecessor for different reasons than Senator Torlakson, whose stated intent in enacting the legislation was "to provide additional protections to property owners faced with losing their property through eminent domain."³⁸ Indeed, Chapter 436 requires government entities to provide informational pamphlets detailing the

30. CAL. CIV. PROC. CODE § 1255.410(c) (amended by Chapter 436); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 698, at 1, 3 (Apr. 10, 2007).

31. CAL. GOV'T CODE § 7267.2(a)(2) (amended by Chapter 436).

32. See CAL. CIV. PROC. CODE § 1255.410(c) (amended by Chapter 436) ("If the written opposition asserts a hardship, it shall be supported by a declaration signed under penalty of perjury stating facts supporting the hardship."); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 698, at 1-3 (Apr. 10, 2007) (explaining how SB 698 (Chapter 436) clarifies the "penalty of perjury" language to protect home owners).

33. Torlakson Letter, *supra* note 25.

34. *Id.*; CAL. CIV. PROC. CODE § 1255.410(c) (amended by Chapter 436).

35. Letter from Whitney Henderson, Legislative Advocate, Ass'n of Cal. Water Agencies, to Senator Ellen Corbett, Cal. State Senate (Apr. 6, 2007) (on file with the *McGeorge Law Review*).

36. See *id.* ("Under current law, no showing of a hardship is required and such allegations are often used to interrupt the process whether the defendant has a substantial reason or not. ACWA believes this change will result in decreased costs and time delays in the process and is good public policy.")

37. *Id.*

38. Compare *id.* (approving Chapter 436 because it will help to eliminate attempts by property owners to interrupt eminent domain proceedings), with Torlakson Letter, *supra* note 25 (explaining the reason behind Chapter 436 was "to provide additional protections to property owners faced with . . . eminent domain").

property owners' rights and the condemnation process when making an offer to purchase.³⁹

However, the clarifying language of Chapter 436 can potentially have a large impact on property owners' rights.⁴⁰ Requiring a property owner who is opposing the taking of their property to sign a declaration under penalty of perjury will likely limit property owner rights, not protect them.⁴¹ Such a requirement will cause the property owner to think about the consequences of an overstatement of any hardship caused by the taking.⁴² Property owners may decide that the possibility of a charge of perjury is too much to risk just to oppose eminent domain.⁴³ Thus, Chapter 436 seems to make the eminent domain process easier for the government and more difficult to challenge for the property owner.⁴⁴

V. CONCLUSION

In the end, Chapter 436 does nothing more than what Senator Torlakson said it would do—clean up ambiguous language.⁴⁵ Though the clarification of the requirements for opposing eminent domain may seem to favor the property owner, it may effectively make it harder for people like Angelica Sheldon to keep their property when faced with eminent domain.⁴⁶

39. CAL. GOV'T CODE § 7267.2(a)(2) (amended by Chapter 436).

40. Letter from Elizabeth Gavric, Legislative Advocate, Cal. Ass'n of Realtors, to Senator Tom Torlakson, Cal. State Senate (Apr. 9, 2007) (on file with the *McGeorge Law Review*) (“[SB 698 (Chapter 436)] will help ensure that private property owners will not be deprived of due process.”).

41. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 698, at 5-6 (Apr. 10, 2007).

42. *Id.*

43. *Id.*

44. *Id.*

45. Torlakson Letter, *supra* note 25.

46. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 698, at 3 (Aug. 31, 2007) (“[SB 1210, 2006 Cal. Stat. ch. 594.] provided additional protections to property owners faced with losing their property through eminent domain.”).