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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CALIFORNIA CARTAGE COMPANY, INC., Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B264211 (Los Angeles County Super. Ct. No. BC536307)

APPEAL from a judgment of the Superior Court of Los Angeles County, Debre Katz Weintraub, Judge. Affirmed.

Blum Collins, Steven A. Blum, Gary Ho; Peterson Law Group, John S. Peterson and Stacy W. Thomsen for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Janet Karkanen, Deputy City Attorney; AlvaradoSmith, Keith E. McCullough and Mayte Santacruz for Defendants and Respondents.

In 2014, California Cartage Company, Inc. (California Cartage) brought an inverse condemnation action against the City of Los Angeles, Port of Los Angeles, and Los Angeles Harbor Department[1] (collectively, the City) after the City, pursuant to the terms of the parties' agreements, terminated California Cartage's lease. In 2015, the trial court sustained the City's demurrer to the second amended complaint (SAC) without leave to amend on the principal ground that California Cartage had failed to plead facts giving rise to a taking.

On appeal, California Cartage contends that the trial court erred by failing to recognize that a taking could occur when a contractual tenancy was terminated in order to implement a public use—in this case, the City's development of the Southern California international gateway project (the Project). We reject California Cartage's contention and, accordingly affirm.

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[1] In a subsequent pleading, California Cartage added the Los Angeles Board of Harbor Commissioners as a defendant.

BACKGROUND

I. The operative complaint's core allegations

On January 6, 2015, California Cartage filed its SAC, alleging two causes of action: inverse condemnation and negligent interference with economic relations.[2]

According to the SAC, the City owns 85 acres of land near the port of Los Angeles (the Property). Since the 1950's, the City has leased the Property to California Cartage. Initially, California Cartage occupied the Property pursuant to a series of fixed-term leases, but then, more recently, as a month-to-month tenant.[3] Over the course of 60 years, California Cartage "constructed extensive physical

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[2] In July 2104, the trial court sustained the City's demurrer to California Cartage's original complaint and all five causes of action asserted therein (inverse condemnation, nuisance, breach of the implied covenant of good faith and fair dealing, negligent interference with prospective economic relations, and violation of title 42 United States Code section 1983) with leave to amend.

In December 2014, the trial court sustained the City's demurrer to California Cartage's first amended complaint, granting leave to amend the claims for inverse condemnation and negligent interference with prospective economic relations, but denying leave to amend the claims for nuisance and breach of the implied covenant of good faith and fair dealing.

[3] The SAC, like its predecessor complaints, does not allege any of the terms of the parties' lease agreements or attach the agreements as exhibits to the pleading.

improvements" on the Property, developing a complex of freight terminals and logistics facilities, the operation of which generates over $65 million in annual revenues and employs hundreds of workers.

The Project is " 'a landmark rail infrastructure project that would increase the efficiency and competitiveness of moving containerized cargo through the nation's busiest harbor complex to U.S. and global markets.' " The Project represents the implementation of a plan adopted by the harbor department in 2004. In May 2013, the City began to clear land for the Project.

On July 2, 2013, the City, pursuant to the parties' lease agreements, sent to California Cartage 30-day notices terminating the latter's right to occupy the Property. "But for the . . . Project, these termination notices would not have been sent." On August 2, 2013, "in furtherance of" the Project, the City terminated California Cartage's 60-year occupancy of the Property.

The SAC does not contend that the City did not have the right under the parties' lease agreements to terminate California Cartage's tenancy as it did or that the notices of termination were made improperly. Further, the SAC does not allege that the City, at any time, ever instituted condemnation proceedings or threatened (either implicitly or explicitly) any such proceedings. Indeed, the SAC specifically alleges that the City kept "the power of eminent domain in its pocket."

Although the City, as the Property's owner and California Cartage's landlord, did not need to use or threaten to use its power of eminent domain, the SAC nonetheless alleged that it would be "manifestly unjust to conclude that [the City's ownership of the Property] is determinative, as a matter of law, of whether a business can recover compensation for goodwill or the value of its improvements, particularly if the business has been leasing the property at issue (here, more than 60 years) and has a reasonable expectation of continued use of its private property."[4]

II. The trial court's ruling

On January 29, 2015, the City demurrered to the SAC on the ground that it failed to state facts sufficient to support either cause of action. On March 2, 2015, after

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[4] The SAC further alleges that the "City has not paid California Cartage any compensation for the loss of business goodwill, the value of its improvements on the . . . Property, or the costs of relocation." However, it is unclear from the SAC whether California Cartage has, in fact, suffered any damages yet. No such losses are detailed in the pleading. Moreover, the SAC concedes that California Cartage has not yet been displaced from the Property. In fact, the SAC alleges that the builder/developer of the Project, Burlington Northern Santa Fe (BNSF), has allowed California Cartage to remain on the Property through "short term occupancy agreements." One reasonable inference from such an allegation (and the absence of any detailed allegations about its losses to date) is that California Cartage's business operations and revenue are largely unchanged despite the City's termination of its tenancy.

reviewing the parties' briefing, the trial court issued a tentative ruling sustaining the City's demurrer without leave to amend further.

With regard to the SAC's principal cause of action, the inverse condemnation claim, the trial court rejected California Cartage's assertion that the City's termination of the lease constituted a taking: "the termination of Plaintiff's short-term contractual right to occupy the land already owned by the City . . . does not constitute a taking for purposes of eminent domain law. [¶] . . . [¶] Plaintiff operates under the assumption that because the property . . . is going to be put to public use [t]his entitles Plaintiff to just compensation. Such an assumption equates public use with taking; yet these two elements are distinct. [¶] . . . [¶] Plaintiff's argument [that] the defense exercised [the] substantial equivalent of condemnation in this action is not persuasive for the [following] distinguishing facts: The defendants already owned the underlying fee in the property, and Plaintiff does not allege that it had unexpired years remaining on its lease . . . . [¶] For Plaintiff to be meritorious, the court would be required to skip the requirement that there had been a taking by simply assuming that a taking existed because defendants were going to put the subject property to public use. However, Plaintiff has not cited any authority which supports a finding of a taking [when] a tenant knowingly enters into a lease with a public entity as a landlord and the tenant does not have any unexpired years in the lease term

remaining . . . . Here, Plaintiff is deemed to have known it was entering into a lease pertaining to land owned by the City of Los Angeles. Because of this contractual relationship, Plaintiff would have been able to negotiate a lease provision for compensation of substantial improvements."

After California Cartage declined to offer any argument against the trial court's tentative ruling, the court adopted its tentative ruling as its final one, and subsequently entered judgment in favor of the City. California Cartage timely appealed.

DISCUSSION

I. Standard of review

" 'We independently review the ruling on a demurrer and determine de novo whether the pleading alleges facts sufficient to state a cause of action. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and facts of which judicial notice can be taken. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)' " (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 82.) If, as here, the trial court sustained the demurrer without leave to amend, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we

reverse; if not, no abuse of discretion has occurred. (*Ibid.*) "The burden of proving such reasonable possibility is squarely on the plaintiff." (*Ibid.*)

II. General principles governing inverse condemnation

Inverse condemnation, like eminent domain, "rest[s] on the constitutional requirement that the government must provide just compensation to a property owner when it takes his or her private property for a public use." (*Beaty v. Imperial Irrigation Dist.* (1986) 186 Cal.App.3d 897, 902 (*Beaty*).) Under the California Constitution, "[p]rivate property may be taken or damaged for a public use and only when just compensation . . . has first been paid to, or into court for, the owner." (Cal. Const., Art. I, § 19.)

An inverse condemnation proceeding—an action in which "the property owner takes the initiative"—is similar to a direct condemnation or an eminent domain proceeding—an action in which "the public entity takes the initiative." (*Beaty*, *supra*, 186 Cal.App.3d at p. 902.) There are, however, significant differences. "While, in eminent domain litigation, the focus is usually limited to the amount of compensation owed the property owner under the 'just compensation' clause*, in an inverse condemnation action the property owner must first clear the hurdle of establishing the public entity has, in fact, taken his or her property before he or she can reach the issue of 'just compensation.'* " (*Id.* at p. 903, italics added.)

"To state a cause of action for inverse condemnation, the property owner must show there was an invasion or appropriation (a 'taking' or 'damaging') of some valuable property right which the property owner possesses by a public entity and the invasion or appropriation directly and specially affected the property owner to his injury." (*Beaty*, *supra*, 186 Cal.App.3d at p. 903.) The damage must result from " ' " 'an exercise of governmental power while seeking to promote "the general interest in its relation to any legitimate object of the government." ' " ' " (*Id.* at p. 904.) In other words, in inverse condemnation, the government is obligated to pay for property taken or damaged for " 'public use' " or damaged in the construction of "public improvements." (*Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 379–380.) " 'A public use is "a use which concerns the whole community as distinguished from a particular individual or a particular number of individuals; public usefulness, utility or advantage; or what is productive of general benefit; a use by or for the government, the general public or some portion of it." ' " (*Id.* at p. 381.)

III. California Cartage's claims were properly dismissed without leave to amend

As noted above, the SAC asserted two causes of action: inverse condemnation and negligent interference with economic relations. As discussed below, the SAC failed to allege facts sufficient to support either cause of action.

A. CALIFORNIA CARTAGE FAILED TO ALLEGE FACTS SUFFICIENT TO SUPPORT AN INVERSE CONDEMNATION CLAIM

California Cartage argues that the termination of the leases was the "substantial equivalent" of an eminent domain proceeding by the City. For support, California Cartage relies principally on two cases: *Concrete Service Co. v. State of California ex rel. Dept. Pub. Wks.* (1969) 274 Cal.App.2d 142 (*Concrete Service*); and *Lanning v. City of Monterey* (1986) 181 Cal.App.3d 352 (*Lanning*). California Cartage's reliance on these cases is misplaced, because as those (and other) cases make clear, the public entity must, at a minimum, threaten to use its eminent domain powers for there to be the substantial equivalent of an eminent domain proceeding.[5]

In *Concrete Service*, *supra*, 274 Cal.App.2d 142, a proposed freeway right-of-way required the removal of improvements constructed by a commercial tenant. The agency proceeded to appraise the improvements for the " '*purpose of condemnation*' "; in other words, the agency "unequivocally expressed its intention to *take* the subject

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[5] California Cartage also relies to a large extent on a third case, *City of Glendale v. Superior Court* (*Giavanetto*) (1993) 18 Cal.App.4th 1768. *Giavanetto*, however, is inapposite because it involved the actual exercise of a city's eminent domain powers—the city in that case filed a complaint to condemn the five years remaining on the tenant's lease before the City had the right to unilaterally terminate the lease. (*Id.* at p. 1774.)

property for freeway purposes." (*Id.* at p. 147, italics added.) However, upon discovering that the tenancy was month-to-month, the agency commenced private negotiations with the landlord which culminated in the sale of the land to the agency. Taking on the role of the landlord, the agency then terminated the tenancy and demanded the land free of improvements. The tenant filed an inverse condemnation action claiming compensation for the improvements. (*Id.* at pp. 144–145.) The Court of Appeal agreed that the agency was liable, reasoning that if the agency had exercised its power of eminent domain as it had intended to do, the tenant would have been entitled to compensation for the taking of its improvements. Since the agency had to acquire the property for highway purposes, and gave notice to both the tenant and the landlord of its intent to condemn, its subsequent private purchase from the owner and termination of the tenancy constituted the "substantial equivalent" of condemnation. (*Id.* at p. 147.) The court concluded that the agency "acquired the real property in question, not as a result of bargaining in the open market, but rather in the broad exercise of its power to condemn private property for public use." (*Ibid.*)

Here, in contrast to *Concrete Service*, *supra*, 274 Cal.App.2d 142, the City did not express any intent to condemn the Property, because it did not have to—it already owned the property.

In *Lanning*, *supra*, 181 Cal.App.3d 352, the city purchased property from Southern Pacific in June 1982 after

several months of negotiations. A portion of the land purchased was subject to an existing lease[6] and the lessee had constructed improvements on it. The lease provided that the lessee would receive compensation for the loss of his improvements in the event the property was condemned. The trial court found that the private sale to the city had been " 'motivated by the *threat of condemnation*, and to that extent was made in lieu of condemnation.' " (*Id.* at p. 355, italics added.) The Court of Appeal held that "the subject property was in essence acquired by the City in the exercise of its power of eminent domain." (*Id.* at p. 359.) The holding in *Lanning* was based on the trial court's finding regarding the threat of condemnation and "by evidence that the City and the railroad expressly agreed in their sales agreement that such was the case, and by the testimony of Southern Pacific's manager of real estate who stated, " 'I would just like to say that this land was not for sale. As a matter of fact, it had been the intent of our real estate operation, if you will, to come in and try and subdivide that property, and make long-term leases, or whatever. So *the land was really*

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[6] The lessee in *Lanning*, *supra*, 181 Cal.App.3d 352, had been in possession since 1965 when he signed a five-year lease with a five-year option. In 1970, after constructing various improvements, the lessee elected not to exercise his option to renew. Instead, he entered into a new and apparently open-ended lease with Southern Pacific that allowed either party to terminate upon notice of six months. (*Id.* at p. 354.)

taken away from us: we did not want to sell it.' " (*Id*. at pp. 358–359, italics added.)[7] In reaching its decision, the Court of Appeal noted that "[n]ot every purchase of property by an agency having the power of eminent domain is an acquisition in lieu, or the substantial equivalent, of condemnation, entitling a tenant to compensation for the value of his improvements." (*Id*. at p. 358.)

Again, in contrast to *Lanning*, *supra*, 181 Cal.App.3d 352, there is no allegation in the SAC that a threat of condemnation underlay the City's termination of California Cartage's month-to-month tenancy.

In short, the cases upon which California Cartage relies are unavailing because they effectively equate the substantial equivalent of condemnation with the actual or implied threat of condemnation. In other words, the mere

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[7] In reaching its decision, the court in *Lanning*, *supra*, 181 Cal.App.3d 352, relied on *Concrete Service*, *supra*, 274 Cal.App.2d 142, and on *Redevelopment Agency v. Diamond Properties* (1969) 271 Cal.App.2d 315 (*Diamond Properties*). (See *Lanning*, at pp. 356–357.) In *Diamond Properties*, as in *Concrete Service* and *Lanning*, there was a substantial equivalent of condemnation because the agency gave notice to the owners and occupants that it intended to acquire the property by purchase or condemnation. In fact, the agency actually filed a complaint in eminent domain, but later dismissed it after negotiating with the owner of the property and completing a private purchase which was conditioned on the owner's giving notice to the tenants of the termination of their tenancy. (*Diamond Properties*, at p. 317.)

power to condemn is not sufficient for the substantial equivalent of condemnation; there must be some actual exercise of that power either by condemnation or the threat of condemnation.

The requirement in an inverse condemnation action for the government agency, at a minimum, to threaten condemnation was made plain in *Pacific Outdoor Advertising Co. v. City of Burbank* (1978) 86 Cal.App.3d 5 (*Pacific Outdoor*). In *Pacific Outdoor*, the inverse condemnation plaintiff argued that even though the city had not exercised its condemnation authority—that is, it had not used or even threatened to use its eminent domain power—the fact that it could have condemned the property in question was sufficient to support an action in inverse condemnation. (*Pacific Outdoor*, *supra*, at pp. 9–10.) In making its argument the plaintiff in *Pacific Outdoor* cited to the same cases that California Cartage directly or indirectly relies upon: *Concrete Service*, *supra*, 274 Cal.App.2d 142; and *Diamond Properties*, *supra*, 271 Cal.App.2d 315. (*Pacific Outdoor*, *supra*, at pp. 9–10.) The Court of Appeal in *Pacific Outdoor* rejected the plaintiff's argument, noting that while in both *Concrete Service* and *Diamond Properties* there was a "definite and unequivocal manifestation that the public entity in question was ready to use its power to condemn, and in fact would clearly do so if necessary to acquire the property at issue," there was no such " 'calculated attempt' " by the City of Burbank to use its eminent domain power. (*Pacific Outdoor*, at p. 11.) The

court concluded that "[t]he mere fact that [the city] has the power of eminent domain, when in fact such power is neither exercised nor remotely threatened, is insufficient to render it liable in an inverse condemnation action every time it deals in an open market transaction which results in leases or licenses being broken. The 'power to condemn' cannot in and of itself constitute proximate cause where there is an intervening force or factor. In an open market transaction the 'power to condemn' is not enough—*there must be evidence of implied or actual threat of condemnation, so that the ultimate result is a foregone conclusion*." (*Id.* at p. 12, italics added.)

Here, California Cartage, by alleging that the City kept its eminent domain power in its pocket *and* by not alleging that the termination notices were improper or inconsistent with the City's powers under those lease agreements or that those agreements were fraudulent or otherwise illegal, effectively alleged that the City's termination of the tenancy was a proper open market transaction. As such, under the teaching of *Pacific Outdoor*, *supra*, 86 Cal.App.3d 5, the SAC failed to state a claim for inverse condemnation.

In sum, it is not sufficient in an inverse condemnation action to allege merely, as California Cartage does in the SAC, that the public entity had the "the power of eminent domain in its pocket." Rather, the complaint must allege facts showing that the public entity exercised or threatened to exercise that power. In the absence of such alleged facts, there is, by definition, no taking and, as a result, the inverse

condemnation claim necessarily fails. The fact that the City's termination of the tenancy was for a public use is irrelevant if there was no taking—That is, government action for a public use is a necessary but not a sufficient requirement for an inverse condemnation claim. Accordingly, the trial court properly sustained the City's demurrer.

Based on the record before us, there does not appear to be a reasonable prospect that an amendment could cure this defect—the City did not use or threaten to use its eminent domain powers, because it did not need to—it already owned the Property and had done so for 60 years and there were no unexpired years left on the tenancy. Moreover, California Cartage effectively concedes that any additional amendment would not cure the defect in its inverse condemnation claim—California Cartage did not argue below and does not argue on appeal for the opportunity to amend further. As a consequence, we hold that the trial court acted correctly when it sustained the City's demurrer to the inverse condemnation cause of action without leave to amend.

B. CALIFORNIA CARTAGE FAILED TO ALLEGE FACTS SUFFICIENT TO SUPPORT A NEGLIGENT INTERFERENCE CLAIM

To proceed on a claim for negligent interference with prospective economic advantage against the City, California Cartage need to allege facts establishing the following elements: (1) an economic relationship existed between California Cartage and a third party, "which contained a reasonably probable future economic benefit or advantage to

plaintiff"; (2) the City "knew of the existence of the relationship and was aware or should have been aware that if it did not act with due care its actions would interfere with this relationship"; (3) the City was negligent; and (4) "such negligence caused damage to [California Cartage] in that the relationship was actually interfered with or disrupted." (*North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 786.)

The trial court did not err in sustaining the demurrer to this claim because, as discussed above, the SAC did not plead facts showing that the City engaged in conduct that was independently wrongful. "[A] plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful 'by some measure beyond the fact of the interference itself.' " (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392–393; *Korea Supply Co. v. Lockheed Martin Corp*. (2003) 29 Cal.4th 1134, 1158–1159.) An act is independently wrongful if it is unlawful, that is, "if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Korea Supply*, at p. 1159.)

Here, the alleged misconduct in the SAC was that "the City took California Cartage's right to occupy the . . . Property and turned it over to BNSF, the developer of the City's public project." However, the SAC does not allege any facts to show that the termination of California Cartage's lease was independently wrongful. For example,

there is no allegation that the termination and the notice thereof was contrary in any respect to any of the lease agreements' terms. Indeed, the SAC, by its silence, suggests the exact opposite.

As with the inverse condemnation claim, there is no evidence or argument that further amendment could correct this defect in the pleading. Accordingly, we hold that the trial court acted correctly when it sustained the City's demurrer to the negligent interference cause of action without leave to amend.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.