Case No. D071311

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

MEDICAL ACQUISITION COMPANY, INC.,

Plaintiff, Defendant, and Respondent,

vs.

TRI-CITY HEALTHCARE DISTRICT,

Plaintiff, Defendant, and Appellant.

Appeal From San Diego County Superior Court
Earl H. Maas, III, Judge – Case No. 37-2014-00009108-CU-BC-NC
[Consolidated with 37-2014-00022523-CU-MC-NC]

THE LEAGUE OF CALIFORNIA CITIES' AND CALIFORNIA STATE ASSOCIATION OF COUNTIES' APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT TRI-CITY HEALTHCARE DISTRICT

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TO THE HONORABLE PRESIDING JUSTICE:

Pursuant to Rule 8.200, subdivision (c) of the California Rules of Court, the League of California Cities and the California State Association of Counties submit this application to file an *amicus curiae* brief in support of Appellant Tri-City Healthcare District.

IDENTITY OF *AMICI CURIAE* AND STATEMENT OF INTEREST

The League of California Cities ("League") is an association of 474 California cities dedicated to protecting and restoring local control in order to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide – or nationwide – significance. The Committee has identified this case as being of such significance.

The California State Association of Counties ("CSAC") is a non-profit corporation. The membership consists of 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

This case presents an issue that is of critical importance to all California cities and counties; the ability to exercise their police power by abandoning an eminent domain action at any stage of the proceeding. The League and CSAC are well-situated to offer valuable input and insight into this case. As statewide associations of California cities and counties, the League and CSAC are able to provide this Court with an explanation of the devastating consequences that could

occur if this Court accepts the arguments urged by Respondent Medical Acquisition Company. In particular, the League and CSAC seek to provide this Court with the full context and history of a condemnor's ability to abandon an eminent domain proceeding.

Because the League and CSAC have unique and important insight into the matters implicated in this litigation, the League and CSAC apply to this Court for permission to file this *amicus curiae* brief in support of Appellant on this issue of statewide significance. No party has made any monetary contribution to fund the preparation and submission of this brief.

DATED: June 13, 2018

Respectfully submitted,

BURKE, WILLIAMS & SORENSEN

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League of California Cities and
California State Association of Counties

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THE LEAGUE OF CALIFORNIA CITIES' AND CALIFORNIA STATE ASSOCIATION OF COUNTIES' PROPOSED *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT TRI-CITY HEALTHCARE DISTRICT

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I. ISSUE PRESENTED

Whether the trial court erred when it granted Medical Acquisition Company, Inc.'s ("MAC") motion to set aside Tri-City Healthcare District's ("Tri-City") request to abandon the eminent domain proceeding with no showing by MAC that it had substantially changed its position to its detriment in "justifiable reliance" as required by the Code of Civil Procedure Section 1268.510(b).

II. INTRODUCTION AND SUMMARY OF ARGUMENT

It has long been enshrined that a public entity's inherent power of eminent domain is absolute and that "constitutional provisions merely place limitations upon its exercise." (*People ex rel Dep't of Pub. Works v. Chevalier* (1959) 52 Cal.2d 299, 304.) "The power of eminent domain arises as an inherent attribute of sovereignty that is necessary for government to exist." (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (2000) 83 Cal.App.4th 556, 561.) It is this power existing in both the Federal and State Constitutions that the California legislature has sought to further refine through the Eminent Domain Law (Code Civ. Proc., § 1230.010 *et seq.*). And the legislature has stated clearly when a taking is not complete, and prior to that time elapsing, the government may unilaterally abandon an action as long as it pays damages.

Code of Civil Procedure Section 1268.510 states that any time prior to 30 days after final judgment, a public entity possesses a right to abandon the eminent domain proceeding. Here, it is undisputed that Tri-City's abandonment was timely. The trial court nonetheless felt that the result was unfair, and that, "Humpty Dumpty" cannot be put "back together again." (31 RT 5730:7.) However, the law is clear that absent assurances by the condemnor that it would not abandon the eminent domain proceeding, and the condemnee's detrimental reliance on those assurances, the public entity's power to abandon rests soundly within its discretion. Here, MAC put no evidence forward whatsoever that Tri-City made any

representations that it would not abandon the proceeding. Therefore, the trial court's overarching concern about fairness can be resolved by awarding MAC any and all damages it can establish it sustained because of the abandonment. However, the law is abundantly clear that the sovereign is the one who can decide when to abandon if it is willing to pay a monetary price for that abandonment. Absent assurances akin to equitable estoppel, the court must permit that abandonment. As such, the trial court erred by relying on what it defined as fairness, but not looking at the law on the limited circumstances when a trial court can set aside a timely notice of abandonment.

This Court should reverse the judgment, directing the trial judge to permit Tri-City to abandon the eminent domain proceeding.

III. LEGAL ANALYSIS

As has been raised by Tri-City on appeal, the trial court erred on multiple grounds by setting aside the notice to abandon the eminent domain proceeding. First, given that the record was devoid of any representations made by Tri-City that it would not abandon the instant condemnation proceeding, there was no justifiable reliance. Second, even if justifiable reliance were present, there is no basis to conclude that damages are not an adequate remedy, and force a public entity at taxpayers' expense, to consummate the taking by paying the judgment. The law is clear that the legislative decision to abandon should not be second-guessed, except in extremely rare cases. This is not such a case.

A. There Is No Justifiable Reliance.

Abandonment may occur after possession and judgment are taken, as long as a written notice to abandon is served on the condemnee and filed with the court within 30 days after final judgment. (Code Civ. Proc., § 1268.510.) And while the law specifically recognizes the condemnor's right to abandon, it also recognizes the right of the condemnee in such situations be paid its damages and costs from such

abandonment. (Code Civ. Proc., § 1268.610.) This time limit, 30 days after judgment, marks the moment when the taking is effectuated by which the right to discontinue any proceeding cannot constitutionally extend. (See *Nichols on Eminent Domain*, Ch. 26D, § 26D.01[3][a] (Matthew Bender, 3rd ed.); see also *Pool v. Butler* (1903) 141 Cal. 46, 53; *Lamb v. Schottler* (1880) 54 Cal. 319, 327.)

In certain limited circumstances, a court is permitted to set aside any such abandonment. The Code provides for the limited power to set aside an abandonment when, "[the court] determines that the position of the moving party has been substantially changed to his determinant in justifiable reliance upon the proceeding and such party cannot be restored to substantially the same position as if the proceeding had not been commenced." (Code Civ. Proc., § 1268.510(b).)

In this very District and Division, in *Community Development Com. v. Shuffler* (1988) 198 Cal.App.3d 450, this Court aptly noted that the power to abandon is "broad" and "unconditional" and that the Law Revision Commission recognized that the power can only be curtailed if, "the condemnor has done some additional act which would estop him, [otherwise] he can abandon with near impunity.'" (*Id.* at 460 [Quoting *City of Torrance v. Superior Court* (1976) 16 Cal.3d 195, 207].) This Court stated further that setting aside a notice to abandon is reserved for limited circumstances where there are "repeated and emphatic assurances from the condemnor that it intended to prosecute the eminent domain proceeding to final judgment." (*Id*.) This statement is echoed in many other cases and leading treatises; justifiable reliance is akin to estoppel and to be used in very limited circumstances. (See, e.g., *Los Angeles Unified School Dist. v. Trump Wilshire* (1996) 42 Cal.App.4th 1682, 1690; Condemnation Practice In California, (3d. ed. Cal. CEB), § 8.65 [stating that a condemnee may be able to obtain an order prohibiting abandonment only on an estoppel theory].)

Here, neither MAC, nor the trial court, articulated any acts by Tri-City that could be considered to meet the high threshold for establishing estoppel against a governmental body. Equitable estoppel will not be applied against public agencies unless there are exceptional conditions and extensive reliance by the person seeking to estop the public agency. (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309; *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 500.) Equitable estoppel may be "invoked against a government entity in 'exceptional cases' when 'justice and right require it.' But it may not be invoked where its application would tend to thwart public policy." (*Goodwill Indus. v. County of Los Angeles* (1953) 117 Cal.App.2d 19, 26; *City of Long Beach v. Mansell, supra*, 3 Cal.3d at 501; *Lundeen Coatings Corp. v Department of Water & Power* (1991) 232 Cal.App.3d 816, 830.)

There can be no dispute that there is a strong public policy allowing taxpayers to avoid shouldering a substantial eminent domain award that was not anticipated, and the right to protect against that outcome by abandoning. These are precisely the policies implicated here, and the trial court ignored these public policy concerns. Instead of identifying relevant facts to establish estoppel in its brief, MAC all but concedes that there are no such facts. (Respondent's Brief ("RB"), p. 33.) Rather than discussing facts that constitute estoppel, MAC claims that there was no way to force the parties back together as its principal assertion that justifiable reliance was present. MAC even has trouble identifying the portions of the trial court's order that articulates justifiable reliance. MAC's citations to the trial court order underscore the problems with that order. The trial court's ruling is not grounded on longstanding jurisprudence, which requires more than "unfairness" before estopping a governmental entity from exercising its police powers. Rather, the trial court's concern was about fairness to the condemnee and the issues the court has with the legislature's definition of when a condemnation

has in fact occurred under section 1268.510(b). Those concerns are best addressed by the legislature.

Given that there are no facts implicating the narrow equitable estoppel contours articulated by the Code of Civil Procedure and the corresponding case law, there is simply no basis to set aside the abandonment.

B. Damages are an Adequate Remedy

Given that damages were an adequate remedy for any harm MAC sustained by the eminent domain proceeding, the trial court erred by setting aside the abandonment on the theory that "fairness" so required. Again, there was little, if any, evidence here that damages would not be an adequate remedy.

MAC claims that the trial court correctly set aside the abandonment when MAC withdrew the deposit in order to obtain a replacement investment. (RB at 59.) However, any transactional costs associated with this reliance (if justifiable) could be quantified as damages as a condition of abandonment, they cannot be used as a basis for setting aside any such abandonment. (Code Civ. Proc., §1268.610(a).) There is simply no reliance that has been articulated by MAC, that if true and justifiably incurred, cannot be calculated and reduced into a damages claim and presented under the statutory process for claiming such damages. Instead, MAC asserted these damages as a way to bootstrap a finding that the acts it took in response to the eminent domain action amounted to the rare circumstances necessary to set aside an eminent domain action. However, these facts are evidence at most of damages that MAC may claim as a result of the abandonment. These facts, which are present in numerous eminent domain actions throughout California, do not and cannot amount to a justification for the trial court to set aside the abandonment.

MAC is a sophisticated party who chose to withdraw the deposit and spend it. That choice should not somehow abrogate the right of a condemnor to assess

any verdict before deciding whether to consummate the condemnation. As the leading treatise on eminent domain makes clear, one of the strongest arguments for a statutory provision like Section 1268.510(b) is that public policy requires the cost of a public improvement be ascertained before it can be finally determined that it is advisable and in the public interest to condemn that improvement. Instead, it is the award that is an offer which the condemnor must decide whether to accept or decline based on what is best for that public entity and its constituents. (*Nichols on Eminent Domain*, Ch. 26D, § 26D.01[3][a], 26D-54 (Matthew Bender, 3rd ed.).) MAC knew or should have known the risks it took by withdrawing the deposit, and any claim of harm now cannot be a basis for setting aside the abandonment, but can be calculated and analyzed under the statutory scheme for available damages upon abandonment.

IV. CONCLUSION

For the foregoing reasons, *Amici* urges the Court to reverse the decision of the trial court.

DATED: June 13, 2018

Respectfully submitted,

BURKE, WILLIAMS & SORENSEN

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League of California Cities and California State Association of Counties

CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Micrsoft Word software, this brief contains 3,088 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 12th day of June, 2018, in Oakland, California.

Respectfully submitted,

BURKE, WILLIAMS & SORENSEN

By: */s/ Benjamin L. Stock*
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California State Association of
Counties

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1901 Harrison Street, Suite 900, Oakland, CA 94612.

On **June 13, 2018**, I served the following document(s): **THE LEAGUE OF CALIFORNIA CITIES' AND CALIFORNIA STATE ASSOCIATION OF COUNTIES' APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT TRI-CITY HEALTHCARE DISTRICT** on the interested parties in this action by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows:

SERVICE LIST
Medical Acquisition Company, Inc. vs. Tri-City Healthcare District
Court of Appeal Case No. D071311

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Clerk of the Court California Supreme Court 350 McAllister Street San Francisco, CA 94102	**Electronic Copy** **(CRC, Rule 8.212(c)(2))**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of June, 2018, at Oakland, California.

/s/ *Laura A. Montalvo*
LAURA A. MONTALVO