

Direct No.: 415.755.2605
Our File No.: F0015-0003
bstock@bwslaw.com

January 10, 2019

The Hon. Judith McConnell, Acting Presiding Justice
The Hon. Terry B. O'Rourke, Associate Justice
The Hon. Richard D. Huffman, Associate Justice
Court of Appeal
Fourth Appellate District, Division One
Symphony Towers, 750 B Street, Suite 300
San Diego, California 92101

Re: Request for Publication of Decision in *Medical Acquisition Company, Inc. vs. Tri-City Healthcare District*, Case No. D071311

Dear Justices McConnell, O'Rourke and Huffman:

The League of California Cities ("League") respectfully requests that the Court publish a portion of its opinion in *Medical Acquisition Company, Inc. vs. Tri-City Healthcare District*, Appeal No. D071311 (the "Opinion"). Specifically, the League requests that the Court publish Part I of the Discussion portion of the Opinion on the issue of abandoning an eminent domain action. Part I of the Opinion satisfies the standards for publication under California Rules of Court, rule 8.1105(c).

1. Interest of the League of California Cities

The League is an association of 475 California cities dedicated to protecting and restoring local control 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 ("League Committee"), which is comprised of 24 city attorneys representing all regions of the State. The League Committee monitors litigation of concern to municipalities and identifies cases that are of statewide or nationwide significance. The League Committee has identified this case as having such significance.

2. The Opinion Satisfies Rule 8.1105(c)

California Rules of Court, rule 8.1105(c), sets forth a liberal standard for publication. It encourages publication of opinions that meet any one of nine criteria.

The Honorable Judith McConnell
Acting Presiding Justice
January 10, 2019
Page 2

(Rules of Court, rule 8.1105(c) (“An opinion ... should be certified for publication” if it satisfies any one of nine criteria).)¹ Here, the Opinion satisfies criteria nos. 2, 6, and 8.

First, this Court’s the Opinion applies an existing rule of law to facts that are significantly different than those in published opinions. (Rule 8.1105(c)(2).) As the Opinion explains, courts have held that condemners have the ability to abandon an eminent domain judgment unless a court determines that the position of the condemnee has been substantially changed to his/her detriment in justifiable reliance upon the proceeding and that such party cannot be restored to substantially the same position as if the proceeding had not been commenced. The Opinion further explains that unless the condemner performed an additional act which would estop the agency, condemners are able to abandon. Here, the Opinion makes clear that justifiable reliance is missing when the public entity gave no assurances that it intended to prosecute its action to final judgment. While various other reported opinions look at what sort of representations are needed to establish justifiable reliance, this Opinion makes clear that, in the first instance, there needs to be representations. Thus, the Opinion satisfies subdivision (c)(2) of rule 8.1105.

Second, this Court’s Opinion involves a legal issue of continuing public interest. (Rule 8.1105(c)(6).) The Opinion interprets when and how a condemner may abandon an eminent domain judgment under the Code of Civil Procedure section 1268.510. As this case exemplifies, there may be instances where there is adversity between a

¹ Rule 8.1105(c) provides that an opinion should be published if it:
(1) Establishes a new rule of law; (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions; (3) Modifies, explains, or criticizes with reasons given, an existing rule of law; (4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule; (5) Addresses or creates an apparent conflict in the law; (6) Involves a legal issue of continuing public interest; (7) Makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law; (8) Invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision; or (9) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would make a significant contribution to the development of the law. [paragraph breaks omitted.]

The Honorable Judith McConnell
Acting Presiding Justice
January 10, 2019
Page 3

condemnor and condemnee prior to commencement of an eminent domain action. Condemnors face this issue from time to time when seeking to acquire property and there is a hold out property owner who may in part be holding out based on a preexisting grievance with that condemnor. The Opinion makes clear that the previous dealings between the parties is not relevant in determining whether a condemnor may in fact abandon the action upon entry of judgment. Therefore, this Court's Opinion satisfies subdivision (c)(6) of rule 8.1105.

Finally, this Court's Opinion satisfies subdivision (c)(8) of rule 8.1105. As this Court may have discovered when researching its Opinion, cases involving abandonment are far and few between. In over 100 years of reported decision in California, there are only a handful of cases interpreting this important legal principle allowing condemnors to analyze whether public tax dollars should be spent on a project based on an unexpected verdict, or whether the tax dollars should be redirected for a different public purpose. These decisions should be left with the sovereign to decide absent factors as stated in the Eminent Domain Code and interpreted by several cases. This Opinion reaffirms the sparse existing case law on this important post judgment option.

In sum, multiple grounds support the publication of Section 1.A and 1.B of the Opinion.

3. Conclusion

Based on the foregoing, the League believes that the Opinion meets the standards for publication set forth in California Rules of Court, rule 8.1105(c). We respectfully urge this Court to order Sections 1.A and 1.B of the Opinion published.

Respectfully Submitted,

BURKE, WILLIAMS & SORENSEN, LLP



Benjamin L. Stock