

SUPREME COURT OF TEXAS

KMS Retail Rowlett, LP f/k/a KMS Retail Huntsville, LP v. City of Rowlett, Texas

KMS Retail Rowlett · No. 17-0850 · Decided May 17, 2019

SUMMARY

The Supreme Court of Texas considered whether the City of Rowlett’s condemnation of KMS Retail’s private-road easement violated the Texas Constitution’s public-use requirement or Government Code chapter 2206. The Court held that chapter 2206 did not apply because the taking was for a transportation project—a public road—and concluded that the taking was necessary for a constitutional public use. The Court also held that KMS failed to raise a fact issue showing that the taking was fraudulent, in bad faith, or arbitrary and capricious, and affirmed the judgment below.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Justice Jeffrey V. Brown; Chief Justice Hecht; Justice Green; Justice Guzman; Justice Devine; Justice Busby; Justice Brown
JURISDICTION	Texas
DECIDED	May 17, 2019
DOCKET	17-0850
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review from the Fifth District Court of Appeals of Texas following summary judgment in an eminent-domain action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The court takes as true evidence favorable to the nonmovant, indulges every reasonable inference in the nonmovant's favor, and resolves doubts in the nonmovant's favor. When both traditional and no-evidence summary-judgment motions are filed, the no-evidence motion is considered first. A traditional-summary-judgment movant must show no genuine issue of material fact and entitlement to judgment as a matter of law; the nonmovant opposing a no-evidence motion must produce at least a scintilla of evidence raising a genuine issue of material fact.
PRECEDENTIAL VALUE	published opinion; precedential

PARTIES

KMS Retail Rowlett, LP f/k/a KMS Retail Huntsville, LP v. City of Rowlett, Texas

TOPICS

eminent domain municipal

takings clause

municipal law

statutory interpretation

constitutional law

PRACTICE AREAS

eminent domain

municipal law

constitutional law

real estate

civil procedure

QUESTIONS PRESENTED

1. Whether Texas Government Code section 2206.001 applies to a condemnation for a public road that is also connected to an economic-development agreement.
2. Whether the City's condemnation of KMS's easement was for a constitutional public use and was necessary to advance that use.
3. Whether KMS raised a genuine issue of material fact that the condemnation was fraudulent, in bad faith, or arbitrary and capricious.
4. Whether summary judgment was proper on the City's and KMS's competing traditional and no-evidence motions.

HOLDINGS

1. Government Code section 2206.001(c)(1) creates an exception for takings for transportation projects, including public roads. Because KMS's easement was taken to facilitate construction of a public road, chapter 2206's additional limitations on takings for private parties or economic-development purposes did not apply.
2. The condemnation was for a constitutional public use and was necessary, at least on the undisputed record, to provide public cross-access, traffic circulation, and emergency-vehicle access between commercial areas. The possibility that Briarwood and Sprouts also benefited did not deprive the use of its public character.
3. KMS failed to raise a fact issue that the City's taking was fraudulent, in bad faith, or arbitrary and capricious. Alleged private benefits or an additional private motive do not invalidate a taking when the taking also serves an otherwise valid public use; fraud in this context requires that the taking actually confer only a private benefit contrary to the ostensible public use.

KEY QUOTATIONS

"We cannot read subsection (c) as anything other than a clear-cut exception to the limitations imposed by subsection (b)." (at 12)

"Although the courts ultimately decide what a public use is, a legislative declaration on public use is entitled to our deference." (at 18)

“This is not, therefore, a case about a taking that was packaged as a public use but actually conferred only a private benefit.” (at 25)

FACTUAL BACKGROUND

KMS owned a nine-acre commercial tract in Rowlett containing four businesses and a private drive connecting those businesses to Kenwood Drive. The City negotiated an economic-incentives agreement with adjacent landowner Briarwood to facilitate a Sprouts Farmers Market development, and the agreement contemplated extending KMS's private drive across the tract to provide cross-access. After Briarwood could not secure the necessary easement from KMS, the City condemned KMS's easement and converted it to a public road. The City asserted that the road would provide public cross-access, improve traffic circulation, reduce traffic on nearby roads, and provide emergency-vehicle access; KMS contended the condemnation was a pretext to benefit Briarwood and Sprouts.

PROCEDURAL HISTORY

The City of Rowlett filed an eminent-domain proceeding to condemn KMS's private-road easement for conversion into a public road connecting commercial properties. Special commissioners awarded KMS \$31,662. The trial court denied KMS's motion to dismiss and summary-judgment motion, granted the City's motion for partial summary judgment, confirmed the commissioners' award, and dismissed KMS's claims with prejudice. The Fifth District Court of Appeals affirmed. The Texas Supreme Court granted KMS's petition for review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Valence Operating Co. v. Dorsett, 164 S.W.3d 656, 661 (Tex. 2005)
- Provident Life & Accident Insurance Co. v. Knott, 128 S.W.3d 211, 215 (Tex. 2003)
- Southwestern Electric Power Co. v. Grant, 73 S.W.3d 211, 215 (Tex. 2002)
- Ford Motor Co. v. Ridgway, 135 S.W.3d 598, 600 (Tex. 2004)
- King Ranch, Inc. v. Chapman, 118 S.W.3d 742, 751 (Tex. 2003)
- FM Properties Operating Co. v. City of Austin, 22 S.W.3d 868, 872 (Tex. 2000)
- Lighting Oil Co. v. Anadarko E&P Onshore, LLC, 520 S.W.3d 39, 45 (Tex. 2017)
- City of Austin v. Whittington, 384 S.W.3d 766, 772, 777-80, 791 (Tex. 2012)
- Housing Authority of City of Dallas v. Higginbotham, 143 S.W.2d 79, 83-84 (Tex. 1940)
- Kelo v. City of New London, 545 U.S. 469 (2005)
- W. Seafood Co. v. United States, 202 F. App'x 670, 677 (5th Cir. 2006)
- Harris County Flood Control District v. Kerr, 499 S.W.3d 793, 813 (Tex. 2016) (Lehrmann, J., concurring)
- Jaster v. Comet II Construction, Inc., 438 S.W.3d 556, 562 (Tex. 2014)

- Entergy Gulf States, Inc. v. Summers, 282 S.W.3d 433, 443 (Tex. 2009)
- Sullivan v. Abraham, 488 S.W.3d 294, 299 (Tex. 2016)
- Molinet v. Kimbrell, 356 S.W.3d 407, 411 (Tex. 2011)
- City of Rockwall v. Hughes, 246 S.W.3d 621, 625 (Tex. 2008)
- TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439 (Tex. 2011)
- In re Office of the Attorney General, 422 S.W.3d 623, 629 (Tex. 2013)
- TIC Energy & Chemical, Inc. v. Martin, 498 S.W.3d 68, 74 (Tex. 2016)
- Texas State Board of Examiners of Marriage & Family Therapists v. Texas Medical Association, 511 S.W.3d 28, 35 (Tex. 2017)
- Tex. Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex., LLC, 363 S.W.3d 192, 198 (Tex. 2012)
- Coastal States Gas Producing Co. v. Pate, 309 S.W.2d 828, 833 (Tex. 1958)
- Maher v. Lasater, 354 S.W.2d 923 (Tex. 1962)
- Phillips v. Naumann, 275 S.W.2d 464, 466-67 (Tex. 1955)
- Estate of Waggoner v. Gleghorn, 378 S.W.2d 47 (Tex. 1964)
- FKM Partnership, Ltd. v. Board of Regents of the University of Houston System, 255 S.W.3d 619, 629 n.9 (Tex. 2008)
- Malcomson Road Utility District v. Newsom, 171 S.W.3d 257, 269 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)
- City of Austin v. Whittington, 384 S.W.3d 766, 773-80 (Tex. 2012)
- ETC Marketing, Ltd. v. Harris County Appraisal District, 528 S.W.3d 70, 89 (Tex. 2017) (Brown, J., concurring)