

Case No. S248141

SUPREME COURT
FILED

JAN 30 2010

IN THE SUPREME COURT OF CALIFORNIA

Jorge Navarrete Clerk

EVAN WEISS, BELINDA HENRY, MICHAEL HAYES, MICHEALE HAYES, ROSS SHAW, DEBBIE SHAW, and 1819 MSC, LLC, ^{Deputy}

Plaintiffs and Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through its
Department of Transportation; and ORANGE COUNTY TRANSPORTATION
AUTHORITY,

Defendants, Respondents, and Petitioners.

After a Published Decision by the Court of Appeal
Fourth Appellate District, Division Three, Case No. G052735

Appeal from Judgment of the Superior Court
State of California, County of Orange
Honorable Kirk H. Nakamura, Judge Presiding
Orange County Superior Court Case No. 30-2012-00605637

SUPPLEMENTAL REPLY BRIEF ON THE MERITS

*John S. Peterson (State Bar No. 101215)
Joseph A. Schwar (State Bar No. 223195)
PETERSON LAW GROUP
PROFESSIONAL CORPORATION
19800 MacArthur Boulevard, Suite 290
Irvine, California 92612
Telephone: (949) 955-0127
Facsimile: (949) 955-9007

Martin N. Buchanan (State Bar No. 124193)
LAW OFFICE OF
MARTIN N. BUCHANAN, APC
655 West Broadway, Suite 1700
San Diego, CA 92101
Telephone: (619) 238-2426

*Attorneys for Plaintiffs and Appellants Evan Weiss, Belinda Henry, Michael
Hayes, Micheale Hayes, Ross Shaw, Debbie Shaw, and 1819 MSC, LLC*

Case No. S248141

IN THE SUPREME COURT OF CALIFORNIA

EVAN WEISS, BELINDA HENRY, MICHAEL HAYES, MICHEALE HAYES, ROSS
SHAW, DEBBIE SHAW, and 1819 MSC, LLC,

Plaintiffs and Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through its
Department of Transportation; and ORANGE COUNTY TRANSPORTATION
AUTHORITY,

Defendants, Respondents, and Petitioners.

After a Published Decision by the Court of Appeal
Fourth Appellate District, Division Three, Case No. G052735

Appeal from Judgment of the Superior Court
State of California, County of Orange
Honorable Kirk H. Nakamura, Judge Presiding
Orange County Superior Court Case No. 30-2012-00605637

SUPPLEMENTAL REPLY BRIEF ON THE MERITS

*John S. Peterson (State Bar No. 101215)
Joseph A. Schwar (State Bar No. 223195)
PETERSON LAW GROUP
PROFESSIONAL CORPORATION
19800 MacArthur Boulevard, Suite 290
Irvine, California 92612
Telephone: (949) 955-0127
Facsimile: (949) 955-9007

Martin N. Buchanan (State Bar No. 124193)
LAW OFFICE OF
MARTIN N. BUCHANAN, APC
655 West Broadway, Suite 1700
San Diego, CA 92101
Telephone: (619) 238-2426

Attorneys for Plaintiffs and Appellants Evan Weiss, Belinda Henry, Michael
Hayes, Micheale Hayes, Ross Shaw, Debbie Shaw, and 1819 MSC, LLC

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	3
INTRODUCTION	5
ARGUMENT	6
I. OCTA Has Lost Sight of What This Case is Really About....	6
II. The Court Does Not Have Inherent Authority to Create a Procedural Shortcut for Inverse Condemnation Litigants to Bypass the Normal Summary Judgment Procedures	8
CONCLUSION.....	14
Certificate of Compliance.....	16

TABLE OF AUTHORITIES

CASES

<i>City of Oroville v. Superior Court</i> (2019) 7 Cal.5th 1091.....	7, 9
<i>Department of Forestry & Fire Protection v. Howell</i> (2017) 18 Cal.App.5th 154	12
<i>First State Ins. Co. v. Superior Court</i> (2000) 79 Cal.App.4th 324	9
<i>Hernandez v. Superior Court</i> (2003) 112 Cal.App.4th 285	8, 10
<i>In re Amber S.</i> (1993) 15 Cal.App.4th 1260.....	8, 12, 14
<i>James H. v. Superior Court</i> (1978) 77 Cal.App.3d 169.....	8
<i>Landgate, Inc. v. California Coastal Com'n</i> (1998) 17 Cal.4th 1006	10
<i>Los Angeles County Department of Children & Family Services v.</i> <i>Superior Court</i> (2008) 162 Cal.App.4th 1408	13, 14
<i>Massingill v. Department of Food & Agriculture</i> (2002) 102 Cal.App.4th 498	10
<i>Odello Bros. v. County of Monterey</i> (1998) 63 Cal.App.4th 778.....	12
<i>Orsetti v. City of Fremont</i> (1978) 80 Cal.App.3d 961.....	10
<i>Panico v. Truck Ins. Exchange</i> (2001) 90 Cal.App.4th 1294.....	12
<i>Parkview Villas Assn., Inc. v. State Farm Fire & Casualty Co.</i> (2005) 133 Cal.App.4th 1197	11
<i>Regency Outdoor Advertising, Inc. v. City of Los Angeles</i> (2006) 39 Cal.4th 507	7
<i>Rutherford v. Owens-Illinois, Inc.</i> (1997) 16 Cal.4th 953.....	8
<i>Skoumbas v. City of Orinda</i> (2008) 165 Cal.App.4th 783.....	12
<i>United Community Church v. Garcin</i> (1991) 231 Cal.App.3d 327....	11
<i>Zimmerman, Rosenfeld, Gersh & Leeds LLP v. Larson</i> (2005) 131 Cal.App.4th 1466	11

CONSTITUTIONAL PROVISIONS

California Constitution, article VI 5, 8, 14

STATUTES

Code Civ. Proc., § 437c 6, 9

Code Civ. Proc., § 437c, subd. (t) 10

RULES

Cal. Rules of Court, rules 3.1350-3.1354 9

INTRODUCTION

OCTA's supplemental brief adds nothing of import. In its original briefing, OCTA argued at length that Code of Civil Procedure section 1260.040 should be "imported" into inverse condemnation law. OCTA now merely argues that the court has inherent authority to do so under article VI of the California Constitution. But plaintiffs have never disputed that courts have *authority* to import eminent domain principles into inverse law in appropriate circumstances. Rather, what they have argued is that this is not such a circumstance. Specifically, it is not appropriate for courts to import a special procedural provision enacted by the Legislature for the limited purpose of determining *compensation* issues in eminent domain proceedings to decide *takings* issues in inverse condemnation actions. (Ans. Br. at 29-40.)

If anything, the case law on inherent authority under article VI only highlights why it would be inappropriate for the court to take this leap. A court's inherent authority to adopt suitable procedures is not unlimited, and should be exercised only where it is necessary to do so because the procedure is not already specified by statute or rule. But here, the Legislature has already specified a procedure for pretrial

resolution of issues in civil cases, including takings issues in inverse condemnation actions. It is called summary judgment. (Code Civ. Proc., § 437c.) OCTA may be dissatisfied with this procedure, but it is the one the Legislature has enacted, along with appropriate procedural provisions to protect litigants' rights to due process and a proper trial on the merits. The court may not exercise its inherent authority to create a new procedural shortcut that would circumvent the protections the Legislature has adopted for pretrial resolution of disputed issues in all civil cases, including takings issues in inverse condemnation.

ARGUMENT

I. OCTA Has Lost Sight of What This Case is Really About

Before addressing OCTA's inherent authority argument, it bears mentioning that its supplemental brief never actually mentions the central issue in the case. As this Court recently explained, it granted review in this case "to address whether section 1260.040 may be properly used in inverse condemnation proceedings to determine – in advance of a bench trial – *whether a taking or damaging of*

property has occurred.” (City of Oroville v. Superior Court (2019) 7 Cal.5th 1091, 1099, fn. 1, emphasis added.)

As plaintiffs have pointed out, this issue – whether a taking or damaging of property has occurred – is one that does not even come up in eminent domain proceedings. (Ans. Br. at 25.) In eminent domain, the government *admits* it is seeking to take or damage the property and therefore owes just compensation to the property owner. (*Regency Outdoor Advertising, Inc. v. City of Los Angeles* (2006) 39 Cal.4th 507, 530.) Thus, section 1260.040 would never be used in an eminent domain proceeding to determine whether a taking or damaging of property has occurred.

OCTA does not acknowledge this significant difference anywhere in its supplemental brief. It talks about “importation” and “cross-pollination” as if this were a simple matter of applying an eminent domain procedure to the same issues that arise in inverse condemnation. But it is not that simple. What OCTA is really arguing is *not* just that the court should import section 1260.040 from eminent domain to inverse condemnation, but that it should also apply the statute much more broadly to takings issues that do not come up in eminent domain proceedings, and were never intended to be covered

by the statute. This is not mere cross-pollination; it is more like grafting to create a new species never contemplated by the Legislature.

II. The Court Does Not Have Inherent Authority to Create a Procedural Shortcut for Inverse Condemnation Litigants to Bypass the Normal Summary Judgment Procedures

Under article VI, courts have inherent authority to adopt suitable methods of practice “if the procedure is not specified by statute or by rules adopted by the Judicial Council.” (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967, emphasis added.) “The ... power arises from necessity, where, in the absence of any previously established procedural rule, rights would be lost or the court would be unable to function.” (*In re Amber S.* (1993) 15 Cal.App.4th 1260, 1264, quoting *James H. v. Superior Court* (1978) 77 Cal.App.3d 169, 175-176.)

But if a procedure *is* specified by statute or rule, courts have no inherent authority to create alternative procedures. (See, e.g., *Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 296-300 [rejecting inherent authority argument and vacating order requiring

early and unilateral disclosure of expert witness information, because discovery statutes provide for mutual and simultaneous disclosure]; *First State Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 324, 333-336 [rejecting inherent authority argument and invalidating case management order requiring early resolution of choice-of-law issue, because it conflicted with summary judgment statute].)

This is a case where the Legislature and the Judicial Council *have* already prescribed the relevant procedure. Once again, the “procedure” at issue here is a procedure “to determine – in advance of a bench trial – whether a taking or damaging of private property has occurred.” (*City of Oroville, supra*, 7 Cal.5th at p. 1099, fn. 1.)

There already is a well-established procedure in place for adjudicating whether a taking or damaging of private property has occurred in advance of a bench trial. It is the summary judgment statute. Contrary to OCTA’s suggestion, the summary judgment statute and rules apply to *all* types of civil cases, not just those involving jury trials. (Code Civ. Proc., § 437c; Cal. Rules of Court, rules 3.1350-3.1354.) Thus, it is common for courts in inverse cases to decide whether a taking or damaging of property has occurred in summary judgment proceedings. (See, e.g., *Landgate, Inc. v.*

California Coastal Com'n (1998) 17 Cal.4th 1006, 1016, fn. 4 & 1032; *Massingill v. Department of Food & Agriculture* (2002) 102 Cal.App.4th 498, 502; *Orsetti v. City of Fremont* (1978) 80 Cal.App.3d 961.) And the summary judgment statute now allows parties to stipulate to allow the court to adjudicate other issues that do not completely dispose of a cause of action, affirmative defense, or issue of duty. (Code Civ. Proc., § 437c, subd. (t).)

OCTA itself has admitted that “summary judgment can be a useful tool in inverse condemnation,” but argues that the court should nevertheless import section 1260.040 as a “supplementary procedure” to “fill the gaps.” (Reply Br. at 28.) But that is precisely what a court may not do. If the Legislature has already specified a particular procedure for resolving issues, courts may not prescribe a different one just because they believe it is better or more efficient, no matter how laudable the goal. (*Hernandez, supra*, 112 Cal.App.4th at pp. 297-299.)

OCTA complains that summary judgment procedures are too “expensive” and “cumbersome.” (Supp. Br. at 17.) If that is so, however, it is only because the Legislature and Judicial Council have carefully designed summary judgment procedures to safeguard the

parties' due process rights and protect their right to a proper trial of genuinely contested factual issues. For example, the requirement of a separate statement of undisputed facts is designed to guarantee due process by giving the opposing party notice of the issues in dispute and an opportunity to present the evidence needed to defeat the motion. (*Zimmerman, Rosenfeld, Gersh & Leeds LLP v. Larson* (2005) 131 Cal.App.4th 1466, 1477.) "The due process aspect of the separate statement requirement is self-evident—to inform the opposing party of the evidence to be disputed to defeat the motion." (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 335.)

The separate statement also serves to isolate and identify exactly which facts are genuinely in dispute, so that courts may determine whether a trial on the merits is necessary. (*Parkview Villas Assn., Inc. v. State Farm Fire & Casualty Co.* (2005) 133 Cal.App.4th 1197, 1210.) Although OCTA focuses solely on the right to *jury* trial, the summary judgment statute also safeguards the fundamental right to a *bench* trial in cases where there are disputed issues of material fact, such as those involving a public entity's liability for a taking in inverse condemnation. (See, e.g., *Skoumbas v. City of Orinda* (2008)

165 Cal.App.4th 783 [reversing summary judgment on takings issue in inverse condemnation case]; *Odello Bros. v. County of Monterey* (1998) 63 Cal.App.4th 778, 785-792 [same].) Even in bench trials, courts may not adopt procedural shortcuts to avoid a trial on the merits without the parties' consent. (See, e.g., *Panico v. Truck Ins. Exchange* (2001) 90 Cal.App.4th 1294, 1296 [referring to "cases where trial judges have attempted to streamline trial proceedings by adjudicating a case from the bench based on offers of proof"].)

Because the Legislature has already prescribed a detailed procedure for pretrial resolution of issues in civil cases—a procedure carefully designed to safeguard fundamental rights—the court has no “inherent” authority to adopt a more summary procedure for resolving takings issues in inverse condemnation proceedings. Courts should not create alternatives to summary judgment by judicial fiat. And courts should be especially wary about adopting “procedural shortcuts” that “implicate constitutional issues.” (*Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 174.) “A court cannot adopt an innovative rule or procedure without carefully weighing its impact on the constitutional rights of the litigants.” (*In re Amber S.*, *supra*, 15 Cal.App.4th at pp. 1264-1265.)

Finally, a court's inherent power "may not be exercised in a manner that is 'inconsistent with or which contravene[s] a statute.' [Citation.]" (*Los Angeles County Department of Children & Family Services v. Superior Court* (2008) 162 Cal.App.4th 1408, 1420.) This means that "a court must determine the Legislature's intent behind the statutory scheme that the [proposed court] rule was intended to implement and measure the rule's consistency with that intent.' [Citation.]" (*Ibid.*) For example, where "the applicable statutory scheme reflects that the Legislature did not intend for courts to dismiss a dependency petition at a detention hearing," for a court to do so "under the supposed exercise of inherent authority" would be "inconsistent with the applicable statutory scheme," even if the statute does not expressly forbid it. (*Id.* at pp. 1419-1420.)

Likewise, in this case, the plain language and legislative history of section 1260.040 demonstrate that the Legislature only intended it to apply to issues affecting the determination of compensation in eminent domain proceedings, *not* takings issues in inverse condemnation proceedings. (Ans. Br. at 10-24.) For a court to exercise its "inherent authority" to apply the statute more broadly to takings issues in inverse condemnation proceedings would be

inconsistent with the Legislature's narrow intent in enacting section 1260.040. (*Los Angeles County Department of Children & Family Services, supra*, 162 Cal.App.4th at pp. 1419-1420.)

In sum, the court cannot and should not exercise its inherent authority to create a substitute or "supplemental" procedure for deciding takings issues in inverse condemnation cases. The Legislature has already enacted a summary judgment statute that permits pretrial resolution of issues in civil matters, including takings issues in inverse cases. A court's inherent powers may be broad, but they do not allow it to substitute its own procedures for those the Legislature has enacted. "Although broad in scope, this inherent power to fashion novel procedures is not unlimited." (*In re Amber S., supra*, 15 Cal.App.4th at pp. 1264-1265.)

CONCLUSION

OCTA's supplemental brief is helpful only to identify why its position should be rejected. The case law on inherent authority under article VI underscores why the court cannot and should not "import" a narrow procedural provision enacted by the Legislature for the limited purpose of determining *compensation* issues in eminent domain

proceedings to decide *takings* issues in inverse condemnation actions.

The judgment of the Court of Appeal should be affirmed.

Dated: January 29, 2020

**PETERSON LAW GROUP
PROFESSIONAL CORPORATION**

By: 

John S. Peterson
Joseph A. Schwarz

**LAW OFFICE OF
MARTIN N. BUCHANAN, APC**
Martin N. Buchanan

*Attorneys for Plaintiffs and
Appellants Evan Weiss, Belinda
Henry, Michael Hayes, Micheale
Hayes, Ross Shaw, Debbie Shaw, and
1819 MSC, LLC*

Certificate of Compliance

Pursuant to rule 8.520(d) of the California Rules of Court, I certify that the foregoing Supplemental Reply Brief on the Merits was produced on a computer in 14-point type. The word count, as calculated by the word processing program used to generate the brief, is 1943 words, exclusive of the matters that may be omitted from the count pursuant to the rules.

Dated: January 29, 2020

**PETERSON LAW GROUP
PROFESSIONAL CORPORATION**

By: 

John S. Peterson
Joseph A. Schwarz

**LAW OFFICE OF
MARTIN N. BUCHANAN, APC**
Martin N. Buchanan

*Attorneys for Plaintiffs and Appellants
Evan Weiss, Belinda Henry, Michael
Hayes, Micheale Hayes, Ross Shaw,
Debbie Shaw, and 1819 MSC, LLC*

CERTIFICATE OF SERVICE

Evan Weiss, et al. v. The People of the State of California, etc., et al.
California Supreme Court Case No. S248141
California Court of Appeal, Fourth District, Div. 3 Case No. G052735
Orange County Superior Court Case No. 30-2012-00605637

I, Madelyn DeLucca, am employed in the County of Orange, California. I am over the age of 18 years and not a party to the within action. My business address is 19800 MacArthur Boulevard, Suite 290, Irvine, California 92612.

On January 29, 2020, I served the **SUPPLEMENTAL REPLY BRIEF ON THE MERITS** by sending one copy by US Mail addressed to each of the following recipients by depositing copies in sealed envelopes with postage thereon fully prepaid with the United States Postal Service in Irvine, California:

SEE ATTACHED SERVICE LIST

I also submitted a PDF copy of the opposition on the Supreme Court of California by electronic submission via the Supreme Court's e-submission website.

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

Executed on January 29, 2020.

Madelyn DeLucca

SERVICE LIST

Evan Weiss, et al. v. The People of the State of California, etc., et al.
California Supreme Court Case No. S248141
California Court of Appeal, Fourth District, Div. 3 Case No. G052735
Orange County Superior Court Case No. 30-2012-00605637

Gary C. Weisberg
Laura A. Morgan
Esther P. Lin
Woodruff, Spradlin & Smart, APC
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626
(Counsel for Respondents Orange
County Transportation Authority and
The People of the State of California,
acting by and through the Department of
Transportation)

Michael G. Colantuono
Jennifer L. Pancake
Andrew C. Rawcliffe
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Boulevard, Suite 850
Pasadena, CA 91101
(Counsel for Respondent Orange
County Transportation Authority)

Norman E. Matteoni
Matteoni, O'Laughlin & Hechtman
848 The Alameda
San Jose, CA 95126
(Amicus curiae)

Hon. Kirk H. Nakamura
c/o Superior Court Clerk
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Clerk of the Court
California Court of Appeal
Fourth District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919