

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF NEVADA,
Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,
Respondents.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,
Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF NEVADA,
Respondent/Cross-Appellant.

No. 84345

Electronically Filed
May 31 2023 06:34 PM
Elizabeth A. Brown
Clerk of Supreme Court

No. 84640

**LANDOWNERS' REPLY TO CITY'S OPPOSITION TO MOTION FOR LEAVE TO FILE
LANDOWNERS' SUR-REPLY BRIEF ON APPEAL**

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I. *THE CITY'S ACTIONS CAUSED THE ADDITIONAL BRIEFING.*

The City could have avoided all of the additional briefing had it only disclosed to this Court the whole truth related to the 17 and 65 Acre Cases in its Opening Brief. Its failure to do so required the Landowners to request permission to address arguments that it would otherwise not be able to address. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (declining to consider an argument that the appellant “raised. . . for the first time in his reply brief, thereby depriving [the respondent] of a fair opportunity to respond”).

In its Opening Brief, the City told this Court the Landowners refused to develop the 17 Acre Property, even though the City approved 435 units, and the Landowners did not even bother to file an application to develop the 65 Acre Property, because, according to the City, the Landowners want to “raid the public treasury.” AOB at 35-36; ARB at 62. This was not accurate; the City failed to disclose to this Court the detailed findings of fact and conclusions of law (FFCLs) where District Court Judges Jones and Trujillo had already taken significant evidence on these City arguments and cited to substantial evidence the Landowners submitted at least six applications to use and develop the 65 Acre Property. The City also failed to disclose that it engaged in six specific actions to preserve the 17 and 65 Acre Properties for use by the public and to authorize the public to enter onto and use the 17 and 65 Acre Properties, resulting in a taking of the “entire” 17 and 65

Acre Properties, thereby prohibiting the Landowners from using any part of the 17 and 65 Acre Properties. *See* RAB at 8-12.

The failure to accurately describe the other proceedings prompted the Landowners to address these issues. Therefore, the Landowners' Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal ("Combined Briefing") disclosed the FFCLs entered by Judges Jones and Trujillo. This Court appropriately recognized that the merits of the appeal are sufficiently related to the issues the Landowners addressed when it rejected the City's motion to strike. *See* Mar. 31, 2023 Order Regarding Motions.

Soon after, the City filed its Reply Brief consisting of 16 pages of new arguments related to 17 Acre Case, including: 1) Judge Jones only found a "physical" or "trespass" take; 2) Landowners misrepresented the facts to Judge Jones; 3) related expert reports in the 17 Acre Case; and, 4) violation of the law to revoke the initial 17 Acre applications. The City also filed a new appendix containing 1,742 pages to argue the underlying facts of the 17 Acre Case before this Court. Thereby necessitating the Landowners to respond to the City's new arguments and new appendix by submitting a Sur-Reply. The City's failure to properly address these issues is the reason this case proceeded as it did.

II. *THE CITY WAIVED ANY ARGUMENT TO LIMIT REVIEW TO THE RECORD.*

The City waived any right to strike the facts and FFCLs from 17 and 65 Acre Cases from this appeal when it invoked both cases in its opening and reply briefs. Indeed, the City argued extensively the facts of the 17 Acre Case for the first time in its reply brief. ARB at 49-63. The Landowners’ Sur-Reply is critical to respond to the City’s incorrect representation of the facts. The City opened the door to these facts, then complained when Landowners provided this Court with the whole truth. Just compensation must be based on “fairness and equity” and “all relevant facts.” *Yaist v. United States*, 17 Cl. Ct. 246, 257 (Cl. Ct. 1989).

III. *THE CITY’S “STIPULATION” ARGUMENT IS WITHOUT MERIT.*

The City claims the Landowners’ Sur-Reply violates the briefing stipulation, because the City was supposed to have “the final merits brief.” City Opp. at 8. The City forfeited this right when it failed to disclose the whole truth and made new arguments. Additionally, this City’s argument grants the City a license to misrepresent facts without any Landowner recourse. Certainly, this was not the intent of the stipulation and courts will not enforce a stipulation where one party violates the purpose of the stipulation. *Cain v. Price*, 134 Nev. 193, 415 P.3d 25 (2018) (one party’s breach of a promise discharges the non-breaching party’s duty to perform).

IV. *NEW UNITED STATES SUPREME COURT PRECEDENT REJECTS THE CITY'S OPPOSITION.*

Courts can take judicial notice of proceedings in other courts when those proceedings have a direct relation to the matter at issue. *See, e.g., United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). The City's attempts to dictate unsupported facts related to the Landowners' property rights in a reply brief and then limit the Landowners' response are contrary to very recent United States Supreme Court precedent that requires an analysis of all relevant facts when deciding the property interest issue in an inverse condemnation case, like this. *See Tyler v. Hennepin Cnty.*, 598 U.S. ___, 9, 143 S. Ct. 644, ___ (2023) (court must look to traditional property law principles, historical facts, and the court's precedent when deciding the property rights issue). *See also Cedar Point Nursery*, *supra* (2021); *Knick v. Twp. of Scott*, 588 U.S. ___, 139 S. Ct. 2162 (2019); *Horne v. Dept. of Agric.*, 576 U.S. 350 (2015); *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23 (2012).

Considering all of this, it is appropriate under these unique circumstances to allow the Landowner's to file a Sur-Reply.

Dated this 31st day of May 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **LANDOWNERS’ REPLY TO CITY’S OPPOSITION TO MOTION FOR LEAVE TO FILE LANDOWNERS’ SUR-REPLY BRIEF ON APPEAL** with the Supreme Court of Nevada on the 31st day of May 2023. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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