



DATE: May 26, 2023

TO: City Council

FROM: Office of the City Attorney and the Civil Action Investigation Committee

SUBJECT: *Francisco Serna and Ajhalei Snoddy v. City of Colorado Springs, Wynetta Massey, Darlene Kennedy, Dennis Barron*, No. 23-cv-00728-DDD-MDB, United States District Court, District of Colorado

This memorandum apprises you of the facts alleged in the above-referenced case as you consider the claims made against **Wynetta Massey** and **Darlene Kennedy**.

NATURE OF THE CASE

This action arises out of the City's acquisition of the Plaintiffs' property through the exercise of its eminent domain power. Plaintiffs owned property that was needed for the West Colorado Avenue Action Plan Project. The property was an oddly-shaped, 1/3 acre at West Colorado Avenue and Columbia Road, where the Adams Crossing Bridge now stands. The City filed its eminent domain action against Plaintiffs back in August 2017. At the conclusion of a contested hearing in October 2017, the City obtained possession of the property and Project construction proceeded. The case finally went to a valuation trial in early April 2023.

Since October 2021, however, Plaintiffs have contended that the Project was federally-funded and, thus, that the City was required to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "URA"), including giving them a comparable dwelling. For many reasons, the City disputes Plaintiffs' claim to benefits under the URA.

An attorney employed by the City emailed Plaintiffs outlining just four of the City's arguments for denying them benefits under the URA. In closing, the email stated that Plaintiffs' claim to benefits under the URA "is frivolous" and advised them "that if [they] persist in asserting such an argument in any forum, in any jurisdiction, the City may seek a judgment against [them] for its attorney fees and costs in having to defend against it." Because Plaintiffs also indicated that they did not wish "to litigate further," the City

attorney provided drafts of the paperwork by which the parties could agree to stipulate to transfer title of Plaintiffs' property to the City, which would effect a dismissal of the eminent domain action.

Plaintiffs contend that the email was a "coercive threat" that violated their rights and that it sought an "illegal donation" of their property in violation of their substantive due process rights. Although Ms. Massey did not author or send the email, Plaintiffs contend that Ms. Massey is responsible for all actions taken by the City attorney throughout the course of the eminent domain action, including the allegedly violative email, because Ms. Massey's name appears in the signature block of the eminent domain court filings and because when Plaintiffs email Ms. Massey, it is the City attorney who responds to them.

As for Ms. Kennedy, Plaintiffs contend that she "misrepresented the sources of project funding in her emails to [them] in April 2017." Plaintiffs also assert that Ms. Kennedy is "responsible" for the City's alleged "failure to comply with the City's Acquisition Policy Manual at the June 13, 2017 City Council Meeting" at which City Council approved the resolution authorizing the use of eminent domain by (1) not having the correct project manager request eminent domain authority from City Council; (2) allegedly misrepresenting to City Council that Plaintiffs had received notice of the June 13, 2017 City Council meeting; and (3) allegedly sending Plaintiffs communications in which Ms. Kennedy took the position that Plaintiffs are not entitled to an acquisition under the URA.

Plaintiffs also assert a laundry list of purported violations of the URA and the constitution against "Defendants" to the action, without specifying which "Defendant" personally participated in the alleged violation. Many of Plaintiffs' claims seek to enforce the URA and assert as unconstitutional the mere positions that the City has taken in the eminent domain litigation.

As a remedy, Plaintiffs seek an injunction requiring the City to restart negotiations for the acquisition of their property pursuant to the URA. They seek reimbursement for approximately \$25,000 in attorney fees and a declaration that the City's Procedure Manual for the Acquisition and Disposition of Real Property Interests is unconstitutional because it does not require the use of a review appraiser in all circumstances.

RECOMMENDATION

The Civil Action Investigation Committee has met and recommends that the City represent Wynetta Massey and Darlene Kennedy as required by the Colorado Governmental Immunity Act. Ms. Massey and Ms. Kennedy were acting in the course and scope of their employment and not in a willful and wanton manner. As usual, City Council should reserve the right not to pay any award of punitive damages.