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Eminent Domain Fight Over Texas Rail Project Goes To Trial

By Cara Bayles

Law360, San Francisco (December 20, 2016, 11:10 PM EST) -- A Texas state judge has denied a bid for a quick win by the developers behind a high-speed rail project, sending to trial a suit alleging the company is entitled to survey private lands and pursue eminent domain in order to draw the best route for a train that would run from Dallas to Houston.

In a one-page order filed Friday, Harris County District Judge Joseph J. Halbach Jr. denied "in its entirety" Texas Central Railroad & Infrastructure Inc.'s motion for summary judgment, which asked the court to deem the developer both a "railroad company" and an "interurban electric railway company" under Texas law, a designation that would allow it to survey private property for possible eminent domain. The suit seeks injunctive relief against Calvin House, a landowner who denied the company access to his 330-acre property.

During the motion proceedings, each side claimed the other was misinterpreting Texas law. Texas Central, in its motion for summary judgment, rejected House's allegation the company wasn't an operational railroad company because it didn't own any trains or track.

"Defendant's interpretation of the statute would ultimately require one to conclude that — although it did not expressly say so — the legislature intended there to be no new railroads created in Texas after September 1, 2007," the October motion said. "Had the legislature sought to prohibit all new railroads in Texas, it certainly would have just said so."

House stood by his argument that the company wasn't a railroad under the statutory language, and claimed the fact that it would operate a railroad in the future wasn't enough for it to claim it qualified as an "operating a railroad." He said the Texas Supreme Court's 1999 *Fitzgerald v. Advanced Spine Fixation Systems* decision found that a party couldn't inject ambiguity into a clear statute.

"If [Texas Central's] theory were correct, there would be hundreds of Texas cases where a party attempted to interpret a statute by adding the future tense of words to fundamentally alter the clear meaning of the statute, under the guise that words in the present tense include the future tense," House said in a November reply brief. "For fundamental policy reasons, this is not and cannot be the law."

Once designated a railroad company, Texas Central would have the power to condemn private land for right-of-way purposes, should it be unable to agree on a purchase price with a landowner. To prove the harm and injury required for injunctive relief, it alleged that House was denying its statutory right to survey his property, and was jeopardizing the entire 240-mile project.

On Tuesday, House said while he was pleased with the ruling, he felt he'd been wronged by the entire process.

"Texas Central came to my property six different times asking for a survey," House said in a press release. "Every time they told me they had eminent domain. Then, they sued me, and I had to hire a lawyer. I'm glad the court ruled in my favor, but I sure didn't like being harassed for months, sued and forced into court."

House's attorney, Blake Beckham of The Beckham Group, called the ruling "a landmark victory for all Texas landowners."

"The ruling makes it crystal clear that Texas Central is not a railroad and does not have eminent domain authority," he said in the press release. "With no legal authority, no money and no approval to construct, the project is on a train to nowhere."

In a statement, Texas Central said it was disappointed in the court's decision to go to trial, but said it was confident its arguments would prevail there.

"The judge's two-sentence decision only declined the company's request for summary judgment, meaning the debate will be heard before a full trial. Contrary to what opponents are saying, he did not issue any opinion on the company's operations or its rights under state law," the statement said. "The decision does not set any kind of precedent, and we will show in a full trial that state law, established for more than a century, clearly gives railroad companies the right to conduct land surveys without interference.

House is represented by Blake Beckham, Patrick McShan and Alec Pedigo of The Beckham Group PC and Glenn Sodd, Jason Sodd and Jody McSpadden of Dawson & Sodd LLP.

Texas Central is represented by Robert Neblett III, William Powers Jr, Susan Dillon Ayers, W. Brad Anderson and Scott R. McLaughlin of Jackson Walker LLP.

The case is Texas Central Railroad & Infrastructure Inc. v. Calvin V. House, case number 2016-52516, in the District Court of Harris County, Texas, 333rd Judicial District.

--Editing by Bruce Goldman.