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Condemnee Need Not Entirely Vacate Premises to Recover Damages After Condemnation is Abandoned

Complete physical dispossession of a property is not a prerequisite to an award of damages after a condemnation proceeding is abandoned—moving from the property in reliance on the order granting the agency possession is sufficient. *San Joaquin Regional Transit District v. Superior Court*, No. C084755 (3rd Dist., Dec. 1, 2020) In 2010, the San Joaquin Regional Transit District filed an action to condemn property in Stockton owned by



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Civil Procedure section 1268.620 allows recovery of damages incurred "after the defendant moves from property in compliance with an order or agreement for possession or in reasonable contemplation of its taking." If the proceeding for a taking is dismissed for any reason, the court must order the plaintiff to deliver possession of the property and award damages proximately caused by the dismissal of the proceeding. The court rejected the District's argument that the statutory phrase "after the defendant moves from the property" implies that the defendant must completely vacate the property to receive damages. The court distinguished a prior case in which the court declined to award damages based on preliminary development plans that were cancelled in response to an eminent domain proceeding that was eventually abandoned. Unlike Sardee, which had moved most of its equipment and acquired additional property, the owner did not incur relocation costs prior to the government's abandonment of the condemnation proceeding. In addition, the court referenced the plain language of the statute, which only states that the party must "move"—not that it must be "physically dispossessed." The court also rejected the District's argument that Sardee had not "moved" under the statute because it had exclusive rights to occupy a portion of the property and continued to operate there. The court reasoned that Sardee had effectively

"moved" because it had already shipped most of its equipment to Illinois and the District had taken physical possession of the northern portion of the parcel. Despite its presence on the property Sardee was entitled to compensation because it "did more than just prepare" to move and had almost finished by the time the District abandoned the condemnation.

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