JUST COMPENSATION

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(1-6-1) Valuation of Property as a Whole

(2-1-2) What Constitutes the Larger Parcel?

Village of Port Chester v. Bologna
(App. Div. 2012) 943 N.Y.S.2d 575

The subject property sought to be taken for redevelopment consisted of several parcels, owned individually by their respective owners. The city contended that each parcel should be valued individually. The owners contended the parcels constituted a single parcel for valuation purposes. The trial court agreed with the owners and awarded a total of $3,062,000 ($2,850,000 for the taken land, plus $212,000 in consequential damages). The Village appealed. *Held*: affirmed.

Generally, to be considered a single parcel, the subject land must be contiguous, and there must be unity of ownership and of use. However, where, as here, the parcels are contiguous and there is an agreement among the owners to "share equally in the expenses, gains and losses," to such joint control is enough to establish the parcels' unity of ownership for valuation purposes. The absence of a written agreement was not decisive because under New York law, a partnership may exist with regard to land, and it may be created by a parol agreement. Similarly, the owners established unity of use by showing that they intended throughout (beginning before condemnation plans were known) to develop these parcels together for a major retail drugstore, and by the time this case was tried they had an executed lease by CVS drugstores. This was not a case where the lease was entered into in contemplation of the coming condemnation, as contended by the Village. The trial court found to the contrary, so it was proper for it to give some consideration to the existence of the lease.

Finally, because of "spoliation of evidence" by the Village, in the form of destruction of the draft appraisal report by its appraiser, the trial court properly imposed sanctions in the form of "an adverse inference."

{*G. Kanner Note:* The opinion does not disclose what was the economic impact of the trial court's "adverse inference." For the trial court's opinion, see 907 N.Y.S.2d 441, which informs us that the Village's original deposit was only $975,000. Thus the owners were awarded an increase of $2,087,000.}

(1-3-5) Substitution Cost
(4-6-1) Litigation Expenses

County of South Dakota v. Cameron
(Minn. App. 2012) 812 N.W.2d 851

When the county took Cameron's 13,000 square foot parcel improved with a 444 square foot liquor store, he invoked Minnesota's minimum compensation statute (Minn. Stat. § 117.187) requiring that the displaced owner be awarded at least a sum that is sufficient to buy a comparable property in the community. But there were no comparable commercial properties in the community, so the owner contended that he was entitled to the cost of a suitable commercial parcel and the cost of construction of a comparable store on it – which came to $2,175,000. The condemnor contended that a comparable sale of a nearby liquor store indicated a value of $505,000 ($155,000 for the business and $350,000 for the land and building). The commissioners awarded $655,000, but the trial court awarded $997,055, plus $161,964 in attorney fees and $62,006.63 in appraisal fees and other litigation expenses. The owner appealed. *Held*: In a first impression opinion, construing the statute, the court affirmed.

The condemnor contended that the statute was so ambiguous that reasonable persons could not agree on its meaning. The court agreed that the statute was ambiguous and as such subject to statutory interpretation. The owner contended that a property that has already sold (the comparable sale) could not be used because it was not available. But the court disagreed and held that the statute was not intended to guarantee that the owner would be able to continue business at the new (replacement) property. Moreover, since the owner also contended that the statute did not require that the owner actually buy a replacement property with his award, there was no reason to limit the "universe of comparable properties to only those… that are available for purchase." There was no indication of such legislative intent in the record.

The court also rejected the owner's definition of "comparable property," and held that it would be unreasonable to impute to the legislature the intention of guaranteeing the availability of a replacement property. So the court would use "comparable" as usually used in eminent domain law (meeting the comparability criteria).

The court rejected the owner's argument that "community" in the statute meant the trading area of his store. That construction of the statute would defeat its intent by eliminating from its purview non-commercial properties. The court held that the comparable property presented by the county was close enough to be in the "community" as the subject property.

As for valuation, the court held that the usual market data approach (with adjustments) was proper, and rejected the owner's contention that he was entitled to the asking price of the comparable.

Though the owner's building was 124 years old and the trial court thought that it would be unfair to award him only the "strict replacement cost," it would also be unfair to the condemnor to grant the owner a windfall that a brand new building would represent. So the trial court's compromise between these two unpalatable alternatives was proper. As for attorneys' fees, the owner was not

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entitled to the full amount of the fees he had to pay to his lawyers ($217,991.45), and the trial court's award of $161,964.50 was both reasonable and amounted to a factual determination within the discretion of the trial court.

(4-6-1) Litigation Expenses

People ex rel. D.O.T. v. Superior Court (Menigoz)
(Cal. App. 2012) 138 Cal.Rptr. 472

Although DOT at first offered $159,000 before trial, while the owner demanded $189,000, DOT decided to settle the case by agreeing to the owner's demand "several days before the scheduled trial date," and judgment was entered accordingly by stipulation. The owners then sought attorneys' fees under Cal. Code Civ. Proc. § 1250.410 (providing that where the owners' pretrial demand is reasonable but the condemnor's offer is not, and in light of the trial award, the trial court may award attorneys' fees to the owner). DOT argued that this statute does not apply to stipulated judgments where a trial did not take place. The trial court agreed with the owners and awarded attorneys' fees on the grounds that by settling only a few days before trial, DOT subjected the owners to incur unnecessary trial preparation expenses. On DOT's petition for a writ of mandate to review the trial court's decision, *Held*: Writ of mandate issued, directing the trial court to vacate the award of litigation expenses. However, the owners would recover ordinary court costs both in the trial court and in connection with this writ proceeding.

The purpose of the statute is to compensate condemnees where the condemnor's unreasonable conduct forces the matter to full preparation for, and expenditures incurred in, what turns out to be an unnecessary trial. Here, there was no trial. The court distinguished another case (*Coachella Valley County Water Dist. v. Dreyfuss* (Cal.App. 1979) 154 Cal.Rptr. 467) in which litigation expenses were awarded where the condemnor settled after the jury had been impaneled. This was not the case here.

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