

Bond Case Briefs

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EMINENT DOMAIN - KANSAS

Doug Garber Construction, Inc. v. King

Supreme Court of Kansas - January 27, 2017 - P.3d - 2017 WL 383342

Eminent domain proceeding was commenced regarding property condemned by Secretary of Transportation in order to facilitate construction of highway.

The District Court awarded property owner \$112,000 as compensation, and property owner appealed.

The Supreme Court of Kansas held that:

- Street relocation and wetland reclamation project, for which property was taken, was contingent upon highway construction project such that projects had to be treated as one for valuation purposes, and
- Property owner's lay testimony that taken half-acre plot was worth \$40 million was not based on permissible considerations.

Street relocation and wetland reclamation project, for which property was taken, was contingent upon highway construction project which destroyed wetlands such that projects had to be treated as one for valuation purposes and project influence rule prohibited expert's testimony as to valuation of taken property based on its proximity to new intersection of highway and relocated street. Expert's report treated the completion of the highway and street as a unified project that would catalyze commercial development, and report based its fair market value calculation on new land use opportunities that would arise after the highway was constructed and the relocated street served as a new gateway to city.

Property owner's lay testimony that taken half-acre plot was worth \$40 million was not based on permissible considerations and thus was inadmissible to determine value in eminent domain proceeding. Valuation was based on miles of highway in other states which had been sold for billions of dollar, and required property owner to be able to lawfully collect tolls from road users.