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EMINENT DOMAIN - ILLINOIS

Enbridge Pipeline (Illinois), LLC v. Temple

Appellate Court of Illinois, Fourth District - July 6, 2017 - N.E.3d - 2017 IL App (4th) 150346 - 2017 WL 2875682

After the Illinois Commerce Commission granted pipeline company eminent-domain authority to acquire easements over certain real estate for the planned construction of an approximately 170-mile liquid petroleum pipeline, company filed separate complaints for condemnation of permanent and temporary easements for common-carrier pipeline.

Landowners each filed a traverse and motion to dismiss, requesting dismissal of company's condemnation complaints. The Circuit Court denied landowners' traverse motions, granted company's summary judgment motion, and awarded just compensation totaling \$45,000. Landowners appealed.

The Appellate Court held that:

- Company fully complied with rule, providing that summary judgment affidavits shall be made on personal knowledge of affiants and shall set forth with particularity the facts upon which claim is based;
- Response by landowners failed entirely to comply with the requirements of rule, providing that affidavits shall be made on personal knowledge of affiants; and
- Trial court's dismissal of landowners' traverse motions effectively deprived landowners of exercising the option of presenting relevant evidence to rebut the presumptions of public use and public necessity.

Pipeline company, which had been granted eminent-domain authority by Commerce Commission to acquire easements for construction of pipeline, fully complied with rule, providing that summary judgment affidavits shall be made on personal knowledge of affiants and shall set forth with particularity the facts upon which claim is based, when it filed supporting affidavits from its two experts, which contained well-pleaded facts regarding the just compensation company was required to pay landowners in exchange for its property interests, as well as sworn or certified copies of all documents upon which experts relied.

In condemnation action, response by landowners, as nonmovants for summary judgment, failed entirely to comply with the requirements of rule, providing that affidavits shall be made on personal knowledge of affiants and shall set forth with particularity the facts upon which claim is based. Sole attachment to landowners' response was article from real estate magazine, and landowners' expert's report, as to the fair-market value of company's interests in landowners' properties, was not properly before the trial court at hearing on company's summary judgment motion.

Trial court's dismissal of landowners' traverse motions effectively deprived landowners of exercising the option of presenting relevant evidence to (1) rebut the presumptions of public use and public necessity that pipeline company possessed when it filed its condemnation suit and (2) refute the Commerce Commission's determination that company had engaged in good-faith negotiations when

the Commission granted company eminent-domain authority.

On remand, the trial court should conduct a two-stage traverse hearing, and at the first stage, the court should focus solely on whether landowners can present clear and convincing evidence to rebut the presumptions of public use and public necessity and sufficient evidence to refute the substantial deference afforded Commerce Commission's determination that pipeline company had engaged in good-faith negotiations when Commission granted company eminent-domain authority, and if landowners do so, then court should proceed to the second stage, which contemplates further hearing in which the parties present evidence in support of their positions.