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EMINENT DOMAIN - NORTH CAROLINA

Department of Transportation v. Adams Outdoor Advertising of Charlotte Limited

Supreme Court of North Carolina - September 29, 2017 - S.E.2d - 2017 WL 4322754

Condemnee, an outdoor-advertising company, sought review of state Department of Transportation's determination of just compensation for its taking of condemnee's leasehold interest in a parcel of land in which Department had purchased a fee-simple interest, but on which condemnee had a billboard.

The Superior Court found that the Outdoor Advertising Control Act governed compensation and that money owed to condemnee had to include the value of the outdoor advertising, taking into account the lease portfolio, including any reasonable expectation of renewal, the physical structure, and the accompanying permits. Department appealed. The Court of Appeals reversed. Condemnee petitioned for discretionary review.

The Supreme Court of North Carolina held that:

- General fair market valuation provision of statute on powers of the Department, rather than the Outdoor Advertising Control Act, governed the determination of compensation;
- Value that billboard added to the leasehold interest was admissible to help the trier of fact determine leasehold interest's fair market value;
- Income that condemnee received from renting out space on billboard was admissible to help the trier of fact determine the fair market value of leasehold interest;
- Evidence of condemnee's permits as to its billboard was admissible to help the trier of fact determine the fair market value of leasehold interest;
- Automatic ten-year extension provision in condemnee's lease was a proper factor for the trier of fact to consider in determining the fair market value of leasehold interest; but
- Trier of fact could not consider condemnee's optional ten-year lease extensions in determining the fair market value of leasehold interest; and
- Bonus-value method used by Department's appraiser was inadmissible to determine fair market value of leasehold interest.

General fair market valuation provision of statute on powers of the state Department of Transportation, rather than the Outdoor Advertising Control Act, governed the determination of compensation resulting from Department's condemnation of a leasehold interest in a parcel of land in which Department had purchased a fee-simple interest, but on which condemnee, an outdoor-advertising company, had a billboard, and thus the fair market value of the leasehold interest determined the compensation; Act gave Department the power to condemn a billboard specifically when the Department was condemning the billboard because it was prohibited by the Act, but Department's condemnation of the leasehold interest was to widen a highway, not because the billboard that sat on the fee was nonconforming.

In a proceeding to determine the fair market value of property under statute that gives the state

Department of Transportation the power to condemn property when condemnation of that property is necessary for a state road or highway, all factors pertinent to a determination of what a buyer, willing to buy but not under compulsion to do so, would pay and what a seller, willing to sell but not under compulsion to do so, would take for the property must be considered; in other words, the fair market value is the price to which a willing buyer and a willing seller would agree.

Value that billboard added to the leasehold interest was admissible to help the trier of fact determine the fair market value of that interest in regards to state Department of Transportation's condemnation of leasehold interest in a parcel of land in which Department had purchased a fee-simple interest, but on which condemnee, an outdoor-advertising company, had the billboard, even though billboard was condemnee's personal property; value that billboard added to leasehold would not have just come from rental income, but also from the inherent value of billboard's presence on the property.

Billboard on parcel of land in which state Department of Transportation had purchased a fee-simple interest and in which condemnee, an outdoor-advertising company, held a leasehold interest was a "trade fixture," and thus the billboard was condemnee's personal property; the billboard was attached to the land for the purpose of conducting an outdoor-advertising business, and condemnee's lease stated that all structures erected by or for the condemnee were at all times the property of the condemnee and could be removed by the condemnee notwithstanding that such structures were intended to be permanently affixed to the property.

Income that condemnee, an outdoor-advertising company, received from renting out space on a billboard on a parcel of land in which state Department of Transportation had purchased a fee-simple interest and in which condemnee held a leasehold interest was admissible in condemnation action to help the trier of fact determine the fair market value of condemnee's leasehold interest; the billboard was essentially self-operating rental property.

Evidence of permits of condemnee, an outdoor-advertising company, as to its nonconforming billboard on a parcel of land in which state Department of Transportation had purchased a fee-simple interest and in which condemnee had a leasehold interest was admissible in condemnation action to help the trier of fact determine the fair market value of the leasehold interest; condemnee's lease permitted it to cancel the lease or to seek rent abatement if it were unable to maintain its permits, and evidence of the permits would have helped inform the trier of fact about the value of a leasehold interest that existed solely to maintain and use the very billboard whose use was sanctioned by the permits.

Automatic ten-year extension provision in lease of condemnee, an outdoor-advertising company, was a proper factor for the trier of fact to consider in determining in condemnation action the fair market value of condemnee's leasehold interest in a parcel of land on which condemnee's billboard was located and in which state Department of Transportation had purchased a fee-simple interest; a provision that guaranteed a contractual right to renew was a proper factor for the trier of fact to consider in determining the fair market value of a leasehold interest, and under the terms of the automatic-extension provision, the lease extension would occur without condemnee taking any action.

Trier of fact could not consider the optional ten-year lease extensions of condemnee, an outdoor-advertising company, in determining in condemnation action the fair market value of condemnee's leasehold interest in a parcel of land on which condemnee's billboard was placed and in which state Department of Transportation had purchased a fee-simple interest; the optional extensions could have been cancelled at will by either party, and the extensions did not give condemnee a right to renew the lease, but rather created only an expectancy in the renewal of the lease.

Bonus-value method used by state Department of Transportation's appraiser did not properly reflect the fair market rental value of condemnee's leasehold interest in a parcel of land on which condemnee's billboard was located and in which Department had purchased a fee-simple interest, and thus Department's bonus-value evidence was inadmissible in condemnation action to determine leasehold's fair market value, where appraiser determined the leasehold interest's market rental value solely by using the rent specified in two of condemnee's other leases for nearby sites, but he did not determine whether the nearby leases were truly comparable to condemnee's lease in question with respect to the rights granted.