
EMINENT DOMAIN - GEORGIA

White v. Department of Transportation

Court of Appeals of Georgia - October 27, 2017 - S.E.2d - 2017 WL 4855671

Department of Transportation (DOT) filed petition to condemn a portion of a shopping center that contained multiple separately-owned commercial buildings.

Owner of one of the buildings, who possessed easement rights in the shopping center property, appealed the declaration of taking and disputed the amount of compensation.

The trial court awarded summary judgment to DOT. Property owner appealed.

The Court of Appeals held that owner's claim for consequential damages to his commercial building could not be pursued in the condemnation proceeding.

Property owner's claim for consequential damages to his commercial building resulting from condemnation of a portion of the shopping center in which the building was located, including the alleged reduction in the building's value due to reduced visibility and accessibility, could not be pursued in the condemnation proceeding, in which owner did receive compensation for damage to his easement rights, but rather was required to be brought in a separate inverse condemnation proceeding. Damages to the remainder of the shopping center property were the only consequential damages that could be recovered in the condemnation proceeding involving that property.

In order for a condemnee to recover consequential damages to the remainder of his property when only a part is taken, it must appear that the damages to the remainder proximately and naturally arose from the condemnation and taking of the condemnee's own property; consequential damages to a contiguous tract of land having a different ownership from that in which the taking occurs may be real and may in fact exist, but a separate owner's claim for consequential damages to his land contiguous to the tract where the taking occurs cannot be asserted in a condemnation action.