

Bond Case Briefs

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EMINENT DOMAIN - UTAH

Utah Department of Transportation v. Kmart Corporation

Supreme Court of Utah - September 25, 2018 - P.3d - 2018 WL 4612989 - 2018 UT 54

Proceedings were brought involving condemnation of access point from highway to shopping center.

The District Court entered judgment in favor of lessee. Department of Transportation (DOT) appealed.

The Supreme Court of Utah held that:

- Where the terms of a lease agreement terminate a lease upon condemnation, a lessee's right to just compensation is extinguished, unless otherwise reserved by contract, and
- Termination clause in condemnation provision in lease extinguished lessee's right to just compensation.

Under the "termination clause rule," when a lease agreement contains a termination clause, the lessee is not entitled to a condemnation award in the event of a condemnation, because any continuing interest in the leased property, the loss of which would otherwise have entitled the lessee to a condemnation award, has been extinguished under the lease agreement's terms.

Termination clause in condemnation provision in lease extinguished lessee's right to just compensation in action involving condemnation of access point from highway to shopping center; termination clause provided that lessee's leasehold interest would be terminated in the event a condemnation "materially impaired" an access point to property, court found that lessee's access had been materially impaired, thereby triggering termination clause, and although allocation clause provided that lessee reserved a right to compensation for the value of any fixtures or improvements it constructed or made to leased property, lessee did not assert that it was entitled to compensation award under allocation clause.