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EMINENT DOMAIN - NORTH CAROLINA

Department of Transportation v. Bloomsbury Estates, LLC

Supreme Court of North Carolina - August 23, 2024 - S.E.2d - 2024 WL 3909395

Department of Transportation (DOT) initiated a taking action against condominium association and developer, and parties entered consent judgment that established \$3,950,000 was just compensation for the taking but did not establish how the just compensation would be divided between developer and association.

During pendency of the taking action, developer and association each filed a separate collateral complaint against each other regarding the rights to the property. Developer then filed motion for an issues hearing in the DOT taking action.

The Superior Court consolidated all three actions and entered summary judgment for developer, concluding that it was entitled to \$3,350,000 and remainder of compensation should be assigned to association, and then entered final judgment. Association appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Developer filed petition for discretionary review, and it was granted.

The Supreme Court held that:

- Trial court properly distributed just compensation from the taking based on adoption of ruling in developer's separate action under res judicata principles, and
- Trial court did not abuse its discretion in distributing just compensation in manner that compensated developer for loss of development rights and allocated residual to association.

Interlocutory order in developer's action against condominium association, allowing equitable reformation of fifth amendment to condominium declaration so as to extend developer's right to complete second phase of condominium project after Department of Transportation's (DOT) temporary taking had terminated, had preclusive effect in DOT's taking hearing held to determine just compensation allocated to developer and condominium association, and thus, trial court properly distributed just compensation from the taking prior to resolution of parties' issues in developer's and association's collateral actions; issue of validity of condominium declaration's fifth amendment was only issue that affected parties' rights and it was fully litigated in developer's action since association enjoyed full and fair opportunity to litigate issue.

Trial court did not abuse its discretion in distributing, on summary judgment, just compensation from Department of Transportation's (DOT) taking of property from a condominium construction project for a railroad right of way in a manner that compensated developer for loss of its development right and allocated residual to condominium association, despite association's contention that material issues of fact existed as to whether association owned property and development rights, where appraisers agreed, based on validity of amendment to condominium declaration that extended developer's right to complete second phase of condominium project after DOT's temporary taking had terminated, developer was entitled to compensation for loss of development rights.

