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INVERSE CONDEMNATION - TEXAS

City of Grapevine and Grapevine Board of Adjustment v. CBS Outdoor, Inc.

Court of Appeals of Texas, Waco - May 2, 2013 - S.W.3d - 2013 WL 1830375

CBS operated an off-premise, nonconforming advertising billboard sign located adjacent to State Highway 114 in the City of Grapevine. As part of a project to expand State Highway 114, the State of Texas filed a petition for condemnation against several landowners to acquire real property near the highway. Although the pole supporting CBS's sign was not located on the real property sought to be condemned by the State, the sign aurally encroached over part of the property to be condemned by approximately four feet. The State therefore included CBS as a defendant in its suit and alleged that it was entitled to condemn not only fee title to the real property, but also title to the sign.

CBS sent a letter to the City, explaining that "as a result of the overhang, the State must either acquire the entire Sign structure, or CBS must conduct maintenance to the Sign so that the face no longer encroaches on the easement." Acknowledging that the City's "regulations prohibit the construction, erection, remodeling, alteration, relocation, or expansion of a sign unless a zoning permit has been obtained in accordance with Section 60 of the Zoning Ordinance," CBS requested permission to shift the face of the sign—one of the actions authorized by TxDOT's regulations—to eliminate the aerial encroachment.

In response to CBS's letter, the Assistant City Attorney notified CBS that the advertising sign was "currently nonconforming under the applicable City codes" and could not "be moved, altered, or adjusted under the current conditions." The City denied CBS's request to shift the face of the sign.

The State's project manager notified CBS that the aerial encroachment had to be removed. CBS eliminated the overhang by simply removing the four foot panel on the end of the sign face overhanging the right of way.

The City then informed CBS that the sign had been "illegally modified" in violation of the City's zoning ordinances and ordered CBS to remove the sign. CBS filed an appeal of the letter with the Grapevine Board of Adjustment and, alternatively, sought a variance. After a hearing, the Board denied CBS's appeal and request for a variance.

CBS later sued the City and the Board for judicial review of the Board's decision, injunctive relief, inverse condemnation in violation of the state and federal constitutions, violations of due process, declaratory relief, and attorneys' fees. The City filed a plea to the jurisdiction challenging each of CBS's claims, and the trial court denied the plea in its entirety.

The appeals court agreed with the city that the trial court lacked jurisdiction over CBS's claim for judicial review because CBS failed to exhaust its administrative remedies by not appealing the City's decision advising CBS that the advertising sign could not be "moved, altered, or adjusted."

The appeals court did not agree with the City's claim that the trial court lacked jurisdiction over CBS's inverse condemnation claim because: 1) CBS failed to exhaust its administrative remedies;

and 2) the State condemned the sign, thereby precluding the City from being sued for inverse condemnation of the sign. CBS's failure to appeal would have had no effect on the inverse condemnation claim and the State had declared that it was satisfied by CBS's removal of the encroaching portion of the sign.

The appeals court reversed that portion of the trial court's order denying the City's plea to the jurisdiction as to CBS's claims for judicial review, injunctive relief, due process, declaratory relief, and attorneys' fees and rendered judgment that CBS take nothing on those claims. It affirmed that portion of the trial court's order denying the City's plea as to CBS's inverse condemnation claim.