

Bond Case Briefs

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EMINENT DOMAIN - NEW YORK

730 Equity Corp. v. New York State Urban Development Corp.

Supreme Court, Appellate Division, Second Department, New York - September 21, 2016 - N.Y.S.3d - 2016 WL 5107963 - 2016 N.Y. Slip Op. 06086

Condemnee brought action against condemnor seeking compensation arising from the taking of condemnee's real property.

Following bench trial, the Supreme Court, Kings County, awarded just compensation. Condemnor appealed.

The Supreme Court, Appellate Division, held that:

- Reasonable probability existed that condemnee's real property, which was located in manufacturing district, would have been rezoned to permit commercial uses along with residential and community facility uses, and
- Highest and best use of condemnee's real property following rezoning was 12-story budget hotel.

Reasonable probability existed that condemnee's real property, which was located in manufacturing district, would have been rezoned to permit commercial uses along with residential and community facility uses, and thus, potential uses of the property were not limited to uses permitted by zoning regulations at the time of the taking when determining just compensation award to condemnee. Although rezoning immediate area would result in certain nonconforming uses, the property and its surrounding blocks comprised section of outdated manufacturing zoning with large area of residential and commercial rezonings, and city policy was to rezone underutilized industrial sites to allow for commercial or residential development.

Highest and best use of condemnee's real property following rezoning to permit commercial, residential, and community facility uses was 12-story budget hotel, as used to determine just compensation award to condemnee. Lease on the property did not prohibit finding different highest and best use than contemplated in the lease, and condemnee's expert provided alternate designs for hotel that would meet zoning requirements and evidence of increased demand for and development of hotels in the area around vesting date.