

Bond Case Briefs

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EMINENT DOMAIN - GEORGIA

Hardy v. United States

United States Court of Appeals, Federal Circuit - July 15, 2020 - F.3d - 2020 WL 3980705

Owners of property adjacent to railroad corridor filed rails-to-trails class action against United States, claiming taking of their property without just compensation in violation of Fifth Amendment by Surface Transportation Board (STB) authorizing railbanking by conversion of railroad rights-of-way to recreational trails pursuant to National Trail Systems Act (Trails Act).

The Court of Federal Claims granted property owners' summary judgment motion, concluding that property owners had a cognizable property interest in the land at issue, and holding that issuance of applicable Notice of Interim Trail Use or Abandonment (NITU) effected a temporary taking of certain parcels along the railroad corridor. Government appealed.

The Court of Appeals held that:

- Under Georgia law, deeds reflected parties' apparent intent to convey easements, rather than land in fee simple, and
- Vacatur of Court of Federal Claims' decision and remand to trial court was warranted for further proceedings on questions of whether and when railroad would have abandoned portion of its rail line absent NITU.

Under Georgia law, deeds reflected parties' apparent intent to convey easements in the form of railroad rights of way, rather than a fee simple estate, and thus property owners had compensable property interests in land, where deeds consistently referred to property conveyed as a right of way, property owners received nominal consideration for interests conveyed, deeds did not fix acreage subject to conveyance, instead describing the location and quantity of subject land by reference to railroad track, neither habendum clause nor warranty clause recited conveyance in fee simple, and word "forever" in habendum and warranty clauses merely described duration of conveyance.

Under Georgia law, deed, when considered in its entirety, reflected parties' apparent intent to convey easement in the form of railroad right of way, rather than a fee simple estate, and thus property owner had a compensable property interest in land, although property owner received substantial consideration of \$150 for conveyance, where face of deed described conveyance as a right of way, county clerk's office seemed to have recorded deed as a right of way deed, conveyance was expressly defined as "what is necessary for Railroad purposes for said Railroad as a right of way," and amount of consideration was determined by a committee of arbiters selected to assess the damage sustained by property owner on account of right of way.

Under Georgia law, considered as a whole, deeds conveyed easements, rather than land in fee simple, to State Highway Department of Georgia to build state aid road, and thus property owners had compensable property interest in land, where deeds were titled "Right of Way Deed" and repeatedly referred to conveyance as a right of way, recited nominal consideration of one dollar, granted drainage rights, and some of deeds recited a reversionary interest, recitation of "in fee simple" in habendum clause modified, rather than superseded, conveyed premises and were

descriptive of extent of duration of enjoyment of easement, and statute pursuant to which road was built recited no requirement that real property rights for such state aid roads be acquired in fee simple.

Briefing and argument before appellate court did not sufficiently focus on whether or when railroad would have abandoned its easements absent Notice of Interim Trail Use or Abandonment (NITU), thus warranting vacatur of Court of Federal Claims' decision that issuance of NITU effected a physical taking of land, and remand to trial court for further proceedings on questions of whether and when railroad would have abandoned the portion of its rail line absent NITU.