

Bond Case Briefs

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EMINENT DOMAIN - GEORGIA

Edgewater Hall Enterprises, LLC v. City of Canton

Court of Appeals of Georgia - November 1, 2022 - S.E.2d - 2022 WL 16569409

After order and judgment stating that permanent easement was condemned for city's use to construct and maintain a gravity sewer main and pedestrian trail, servient tenement owner filed petition to set aside declaration of taking, and following subsequent order and judgment stating that temporary construction easement was condemned for city's use for access across property to construct sewer main and trail, servient tenement owner filed second petition to set aside taking.

Following hearing, the Superior Court denied petitions. Servient tenement owner filed applications for interlocutory appeal challenging denial of both petitions, which were granted.

The Court of Appeals held that:

- Evidence support determination that city's actions during negotiations regarding taking for temporary construction easement did not rise to level of bad faith;
- Plat city attached to declaration of taking for temporary construction easement was sufficient under taking statute; but
- Servient tenement owner was property owner and therefore had standing to petition to set aside declaration of taking related to permanent easement.

Evidence supported trial court's determination that actions of city during negotiations regarding taking for temporary construction easement for access across property to build sewer main and pedestrian trail did not rise to the level of bad faith to justify setting aside declaration of taking, even though city failed to recognize servient tenement owner as property owner despite conducting negotiations with it and offered lower amount than appraisal valuation; evidence showed that city stopped negotiating with servient tenement owner after city's title search led to erroneous conclusion that servient tenement owner was not the owner of property underlying easement and that amount city offered was based on comparable settlement city had reached with owner of different property.

Plat city attached to declaration of taking for temporary construction easement for access across property to build sewer main and pedestrian trail was sufficient under taking statute; even though plat did not provide any specific metes and bounds, plat set out sufficient information from which boundaries of claimed easement could be calculated exactly.

Servient tenement owner was owner of property and therefore was entitled to be named in and served with condemnation petition and had standing to petition to set aside city's declaration of taking related to permanent easement to construct and maintain a gravity sewer main and pedestrian trail; servient tenement owner paid taxes assessed by city and county and held title to the property by virtue of its deed.

