

Bond Case Briefs

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EMINENT DOMAIN - PENNSYLVANIA

Chernomusa N-Jie v. Department of Transportation

Commonwealth Court of Pennsylvania - August 7, 2023 - A.3d - 2023 WL 5006238

Landowner filed petition for appointment of board of viewers pursuant to the Eminent Domain Code, alleging that removal of landowner's pedestrian bridge by the Department of Transportation (DOT) constituted de facto taking. DOT filed preliminary objections, alleging that bridge was unpermitted encroachment upon highway right-of-way and encroached on adjacent property.

The Court of Common Pleas overruled DOT's preliminary objections and granted landowner's petition. DOT appealed.

The Commonwealth Court held that:

- Substantial evidence supported finding that DOT's actions were unreasonable and prolonged, as would support landowner's claim for de facto taking, and
- Remand was not warranted to determine precise date and nature of taking.

Substantial evidence supported trial court's finding that the Department of Transportation's (DOT) removal of landowner's pedestrian bridge during DOT's project to replace a retaining wall on its right-of-way was unreasonable and prolonged, as would support landowner's claim that DOT's actions constituted a de facto condemnation; bridge was landowner's only access to his property, causing him to use a ladder to climb in and out of a streambed to access the property, and DOT installed a new guardrail, further blocking landowner's access.

Remand was not warranted to determine the precise date of the Department of Transportation's (DOT) condemnation of landowner's property, and the precise nature of the property interest condemned, in proceeding on landowner's petition for appointment of a board of viewers under the Eminent Domain Code, alleging that DOT's removal of landowner's pedestrian bridge during DOT's project to replace a retaining wall on its right-of-way constituted a de facto taking; the trial court found that landowner's interest in the pedestrian bridge and its supporting pillars had been condemned, and that the condemnation "occurred during the summer of 2020," which was sufficient to allow the board of viewers to assess damages for the taking.