IN THE COURT OF APPEALS OF IOWA

No. 3-961 / 12-1722
Filed December 5, 2013

SELECT AUTO GROUP, INC.,
Plaintiff-Appellant,

vs.

CITY OF CEDAR RAPIDS, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Sean McPartland, Judge.

Select Auto Group appeals the district court ruling declining to issue a writ of mandamus. **APPEAL DISMISSED.**

David J. Dutton, Erin P. Lyons and Thomas D. Harbaugh of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo, for appellant.

Mohammad H. Sheronick and James H. Flitz, Cedar Rapids, for appellee.

Heard by Doyle, P.J., and Tabor and Bower, JJ.

BOWER, J.

Select Auto Group (Select Auto) appeals the district court ruling declining to issue a writ of mandamus. Select Auto argues the district court erred in: finding they had no right to challenge the City of Cedar Rapids's (City) authority to use eminent domain, failing to properly apply case law, finding Select Auto had waived its right to just compensation, determining the City provided constitutionally adequate notice, and failing to find the City did not strictly comply with eminent domain procedures. During the pendency of this appeal, the City abandoned the condemnation proceedings rendering this appeal moot. We therefore dismiss the appeal.

I. Background Facts and Procedures

Select Auto is a used automobile dealership located in Cedar Rapids, Iowa. The company has three shareholders: Bruce Larson, Rob Adkins, and Ernie Kozak. Adkins and Larson are also the owners/principals of Thriving Resources L.L.C., which owns the land on which Select Auto operates. Select Auto leases the land from Thriving Resources.

On March 1, 2011, Adkins, as a principal of Thriving Resources, was served with condemnation papers.[1] It is undisputed Select Auto was not named in the notice of condemnation. Prior to negotiations the City obtained a report of ownership and liens which identified Thriving Resources as the legal owner of the property. The title search did not locate the lease because, at this point, the lease had not been recorded. Rita Rasmussen, the City's senior real estate

[1] The condemnation proceedings were intended to acquire a permanent utility easement across the property.

officer, testified it is customary to ask the property owner about any leases. No representative of the City asked about leases during negotiations, nor did Thriving Resources volunteer the information.[2] Craig Reischauer was retained by the City to conduct the negotiations and was told by Larson and Adkins that they were the owners/operators of Select Auto; however the existence of the lease was not disclosed to Reischauer.

The City employed commercial real estate appraiser, Dennis Cronk. Cronk's appraisal notes the property is owner-occupied and unencumbered by any leases. Cronk could not recall whether he asked Adkins or Larson about any potential leases, though he asked Adkins whether anyone else would need to be contacted regarding the property. Considering the common ownership of Select Auto and Thriving Resources, neither Adkins nor Larson made Cronk aware of the lease with Select Auto.

The City filed an application to condemn the property with the chief judge of the sixth judicial district on February 18, 2011, as required by Iowa Code section 6B.3 (2011). The compensation commission was scheduled to meet on April 6, 2011. Between February 18 and April 6, however, the parties continued to negotiate without any mention of the lease. Notice of the compensation commission meeting was served upon Thriving Resources and Adkins. The notice did not mention Select Auto, and neither Adkins nor Larson notified the

[2] The City claims unrecorded leases are occasionally discovered during negotiations. It is customary, in such situations, to then conduct concurrent negotiations with the leasehold owner.

City of the omission. No mention of the lease was made at the compensation commission's meeting.

The lease, dated July 20, 2006, was recorded on July 14, 2011, more than ninety days after the compensation commission's meeting.

Select Auto filed its petition in equity seeking a writ of mandamus on November 17, 2011. Trial was held on May 23, 2012, and the district court declined to issue the writ on July 31, 2012. A timely appeal was filed.

II. Standard of Review

Our review of the district court's ruling is de novo. *Bellon v. Monroe Cnty.*, 577 N.W.2d 877, 879 (Iowa 1998).

III. Discussion

During the oral arguments to this court, we became aware the City abandoned the condemnation proceedings. Abandonment by the condemning party is allowed at any time. *Virginia Manor, Inc. v. City of Sioux City*, 261 N.W.2d 510, 515 (Iowa 1978). Once the City abandoned the condemnation proceedings, any justiciable controversy came to an end. "An appeal is moot if it no longer presents a justiciable controversy because the contested issue has become academic or nonexistent." *In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001). "The test is whether the court's opinion would be of force or effect in the underlying controversy." *In Interest of D.C.V.*, 569 N.W.2d 489, 494 (Iowa 1997). Exceptions exist for instances where the issue is likely to recur or the matter is of public importance. *M.T.*, 625 N.W.2d at 704.

We find the present matter to be moot. There is no longer an underlying controversy our opinion could impact in any meaningful way. If granted, the writ of mandamus would compel the City to condemn a property interest they no longer desire, tied to a piece of land the City no longer wishes to acquire. Because the issue is moot, unlikely to recur, or not of public importance, we dismiss the appeal.

APPEAL DISMISSED.