

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF BESSEMER,

Plaintiff/Counter-Defendant-
Appellee,

v

JACK HERRONEN, d/b/a HILLSIDE LODGE
PROPERTIES,

Defendant-Appellant,

and

DARBY BEAUDET,

Defendant/Counter-Plaintiff.

UNPUBLISHED
September 25, 2008

No. 278529
Gogebic Circuit Court
LC No. 06-000319-CC

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Defendant Jack Herronen¹, proceeding in propria persona, appeals as of right a judgment entered after a jury verdict awarding just compensation of \$5,000 in this condemnation action.² We affirm.

¹ For ease of reference, we will refer to defendant Herronen as “defendant,” and defendant Darby Beaudet as “Beaudet.” Beaudet is not a party to this appeal.

² This appeal is limited to defendant’s issues II-H and III in his brief on appeal. Defendant’s remaining issues were previously dismissed for lack of jurisdiction. *City of Bessemer v Herronen*, unpublished order of the Court of Appeals, entered November 21, 2007 (Docket No. 278529).

I

This case involves condemnation of property located at 109 Sellar Street in plaintiff city of Bessemer. Defendant sold the property on a land contract to Beaudet in 2003 for \$50,000. According to witnesses at trial, Beaudet attempted to renovate the property, but never completed the renovations or obtained necessary permits for the renovation work. When numerous code violations were not corrected, plaintiff began condemnation proceedings against the property in 2006, pursuant to the condemnation by state agencies and public corporations act (CSAPCA), MCL 213.21 *et seq.*, and the Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq.* Plaintiff's city council passed resolution no. 14 offering \$5,000 as compensation for the property. Defendant rejected the offer and made a counteroffer, requesting \$50,000. A jury awarded \$5,000 as just compensation for the property.

II

Defendant argues that he is entitled to attorney fees because the jury verdict was greater than the amount offered in plaintiff's complaint, and because plaintiff "discontinued" its action regarding a portion of the property. We disagree.

In reviewing a trial court's decision to grant or deny attorney fees, this Court reviews the trial court's findings of fact for clear error, and reviews questions of law de novo. *In re Clarence W Temple & Florence A Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008).

MCL 213.66(3) provides, in part:

If the amount finally determined to be just compensation for the property acquired *exceeds the amount of the good faith written offer under section 5*, the court shall order reimbursement in whole or in part to the owner by the agency of the owner's reasonable attorney's fees, but not in excess of 1/3 of the amount by which the ultimate award exceeds the agency's written offer [Emphasis added.]

In this case, plaintiff's good-faith written offer, presented in resolution no. 14, was for \$5,000, the same amount awarded by the jury. Accordingly, defendant was not entitled to attorney fees. We disagree with defendant's argument that he is entitled to attorney fees because plaintiff's complaint averred that the correct amount of just compensation was \$3,000. The statute clearly and unambiguously indicates that entitlement to attorney fees is to be determined by the amount of the agency's written offer, which in this case was \$5,000.

Defendant also argues that he is entitled to attorney fees under MCL 213.67 because plaintiff "discontinued" its action with respect to a portion of the property.

MCL 213.67 provides:

The agency shall not discontinue the action after the granting of possession or vesting of title to the property taken. In case of a discontinuance, the agency, as a condition of discontinuance, shall pay the actual expenses,

reasonable attorney fees, and actual damages to all the parties affected by the discontinuance as determined by the court.

In this case, plaintiff did not discontinue the action, but only corrected the legal description of the property to exclude an adjacent portion of the property that was not intended to be a part of the proceeding. Furthermore, MCL 213.67 applies only when an action is discontinued after the granting of possession or vesting of title to the property taken. In this case, plaintiff amended its complaint before the trial court reached a decision regarding the necessity of the condemnation. Therefore, defendant is not entitled to attorney fees.

III

Next, defendant argues that the jury's award of just compensation is inadequate because it does not leave him in as good a position as if the condemnation had not occurred. The jury's determination of the value of property taken by the government is a question of fact. *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 137; 680 NW2d 485 (2004). This Court will affirm an award of just compensation if it is supported by the evidence and it lies within the fair range of the testimony. *Id.* at 137-138.

In *Michigan Dep't of Transportation v Haggerty Corridor Partners Ltd Partnership*, 473 Mich 124, 152-153; 700 NW2d 380 (2005), our Supreme Court discussed the concept of just compensation in condemnation actions, explaining:

“Just compensation” is a legal term of art. *Silver Creek Drain Dist v Extrusions Division, Inc*, 468 Mich 367, 376; 663 NW2d 436 (2003). It is intended to place the property owner in as good a position financially as if the property had not been taken. This ensures that neither the property owner nor the public is enriched at the other's expense. *State Hwy Comm'r v Eilender*, 362 Mich 697, 699; 108 NW2d 755 (1961).

Just compensation is the fair market value of land at the time of its taking. *Id.* Under the UCPA, what is just compensation is determined as of the date the condemnation complaint is filed and as if the government's acquisition of the land had not been contemplated. MCL 213.70.

This Court further explained this concept in *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 268; 730 NW2d 523 (2006), stating:

When the government takes private property pursuant to its constitutional power of eminent domain, see Const 1963, art 10, § 2, it must do so for a public use and must pay to the property owner just compensation—an amount that “takes into account all factors relevant to [the] market value” of that property. The goal of just compensation is to require the condemning agency to pay the approximate price that a willing buyer would have offered for the property at the time of the taking, thereby placing property owners “in as good a position as they would have been in had their property not been taken from them.” [Citations omitted.]

Defendant argues that the just compensation award of \$5,000 is grossly inadequate because he executed a contract to sell the property for \$50,000 only four years before the condemnation proceedings began. When condemned property is sold in a bona fide, voluntary sale, which occurred at a point in time not so remote as to have no bearing upon the present value, the price of the property in that sale is admissible, but not conclusive, to establish the property's fair market value. See 27 Am Jur 2d, Eminent Domain, § 592, p 218.

Here, plaintiff presented evidence that the sale price of \$50,000 did not reflect the actual value of the property. Defendant failed to offer any corroborative evidence that the property had a fair market value close to \$50,000. Indeed, defendant failed to offer any expert evidence refuting plaintiff's evidence regarding market value. There was ample evidence from which the jury could conclude that Beaudet's opinion regarding the property's value was unreliable. Thomas Williams, a real estate appraiser, testified that Beaudet's decision was uninformed. Even defendant admitted that he "couldn't believe the amount" that Beaudet agreed to pay. The jury had the opportunity to observe Beaudet's testimony and evaluate his business acumen. Its determination that the fair market value of the property was \$5,000 is within the range of evidence presented by the parties, and should therefore be affirmed. *Merkur Steel Supply, supra* at 137-138.

We disagree with defendant's argument that he was entitled to compensation for the loss of his contractual right to receive payment in the amount of the outstanding land contract balance. Defendant's argument is not consistent with general principles of just compensation. Compensating an owner for an amount that an ill-informed vendee imprudently agreed to pay would constitute enrichment of the owner at public expense. *Haggerty Corridor Partners, supra* at 152-153.

Our Supreme Court has held that just compensation must be based on fair market value, notwithstanding the existence of an outstanding mortgage debt in excess of the market value. In *Detroit v Fidelity Realty Co*, 213 Mich 448, 458; 182 NW 140 (1921), a jury awarded just compensation of \$18,500 for condemned property. Although the owners held the property subject to a mortgage on which they owed "something over \$25,000," our Supreme Court upheld the verdict, explaining:

Their verdict was higher than the valuation put on the premises by the city and considerably lower than the value contended for by the defendants, but it was within the range of the testimony [*Id.* at 458-459.]

The Court rejected the mortgagee's argument that he was "entitled to the full amount of his mortgage and that the award must be at least equal to its amount," stating:

This contention is untenable and the authorities cited do not support it This contention misconceives the rights of the parties. Private property may not be taken without "just compensation." On the other hand the public, where the necessity for the taking is found, is entitled to acquire the title upon payment of "just compensation." Where, as here, there are no severance damages or other circumstances to vary the rule just compensation is measured by the fair market value of the property. This is neither increased nor diminished by the fact that a mortgage has been executed on the property. [*Id.* at 458.]

The Court also held that the trial court erred in apportioning part of the verdict to the owners where the just compensation award was not sufficient to satisfy the mortgagee's entire security. *Id.* at 459.

In this case, defendant, as a land contract vendor, is similarly situated to the mortgagee in *Fidelity Realty*. Like the mortgagee, his expectation of receiving future payments pursuant to a valid contract was terminated by the condemnation, and the just compensation award was less than the amount due on the contract. But the *Fidelity Realty* Court looked to the fair market value of the property to determine just compensation, notwithstanding the loss of contractual rights. Therefore, pursuant to the Court's reasoning in *Fidelity Realty*, defendant was not entitled to the land contract balance where the fair market value of the property was determined to be only \$5,000.

Defendant alternatively argues that plaintiff committed fraud by failing to provide notice in 2003 that the property was targeted for condemnation. Although defendant's argument is not entirely clear, he appears to contend that if the Downtown Development Authority (DDA) had disclosed its "secret plan" to condemn the property in 2003, he would not have sold it to Beaudet, which would have resulted in a higher appraised value because there would not have been incomplete renovations reducing the value.

Defendant's argument is not supported by law or fact. The statute on which defendant relies, MCL 125.1653, does not govern condemnation actions. Rather, it governs the creation of local authorities to address property deterioration in downtown districts. MCL 125.1653(2) governs public notice of the creation of such authorities. Plaintiff's city manager, Thomas Chatel, testified that the DDA complied with this statute by posting and publishing notices as required. More importantly, defendant cannot establish that any actions by the DDA in 2003 affected the outcome of this action. Defendant failed to produce any proof that the DDA was involved in the initiation of the condemnation proceedings, or that it took any actions in 2003 that culminated in plaintiff's initiation of such proceedings. Defendant's "secret plan" theory was based entirely on speculation and was not supported by any evidence.

IV

Finally, defendant argues that he was prejudiced when the jury was permitted to view the property, because viewing the property in its state of disrepair gave the jury an unfair and misleading impression of the property's value. Because defendant did not object to the jury viewing, we review this issue for plain error affecting his substantial rights. *Hilgendorf v St John Hosp & Medical Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001).

Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; *Waknin v Chamberlain*, 467 Mich 329, 333; 653 NW2d 176 (2002). Generally, all relevant evidence is admissible, unless otherwise provided by law, and evidence that is not relevant is not admissible. MRE 402; *Waknin, supra*. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. MRE 403.

The condition of the property was relevant to determining its fair market value. Additionally, defendant and Beaudet had the opportunity to explain what work was being done on the property and how plaintiff's stop-work orders prevented them from completing the renovation projects. Accordingly, the jury view of the property was not a plain error affecting defendant's substantial rights.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Jane M. Beckering