STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1398

The City of Saint Paul, petitioner,
Respondent,

vs.

Yermolenko LLC,
Appellant,

Eagle Valley Bank, N.A., et al.,
Respondents Below.

Filed April 1, 2013
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CV-10-10680

Peter G. Mikhail, Corrine A. Heine, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Dan Biersdorf, E. Kelly Keady, Ryan Simatic, Biersdorf & Associates, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

In this eminent-domain proceeding, appellant challenges the district court's grant of summary judgment on its claim for damages under Minnesota's minimum-compensation statute, Minn. Stat. § 117.187 (2012). Appellant argues that the district court erred in concluding that appellant is not entitled to minimum compensation, instead of just compensation, for the taking of its property. Because the district court correctly concluded that appellant did not relocate and therefore is not entitled to minimum compensation, we affirm.

FACTS

Appellant Yermolenko LLC (YLLC) is a Minnesota limited liability company. Gennadiy Yermolenko (Yermolenko) and Marina Yermolenko, who are married to each other, each own 50% of YLLC. Yermolenko also owns Capitol Car Company, which provides automotive-repair services and sells used cars. Yermolenko treated YLLC and Capitol Car as separate legal entities.

YLLC previously owned real property located at 321 Como Avenue. YLLC leased the property to Capitol Car, where it operated its automotive-repair and sales business. In September 2008, YLLC sold 321 Como and purchased real property located at 388 Como Avenue. YLLC purchased 388 Como so that Capitol Car could expand its business operations. YLLC planned to redevelop 388 Como and then lease it to Capitol Car. The plan included razing the existing building on the property and constructing a new, larger facility. YLLC demolished the existing building, but its plan to construct a

new building was cut short by the underlying eminent-domain proceeding. Thus, Capitol Car never moved its business to 388 Como.[1]

In July 2009, respondent City of Saint Paul resolved to acquire 388 Como in connection with a road-construction project. The city ultimately acquired title to the property by quick-take possession[2] and awarded YLLC $1.75 million for the property, the reported fair market value. YLLC did not contest the taking of its property. But YLLC appealed the monetary award to the district court, challenging the fair market valuation and further arguing that it was entitled to minimum compensation under Minn. Stat. § 117.187. YLLC sought minimum compensation of approximately $3.6 million, which was based on the amount necessary to purchase and adapt a comparable property.

The city moved for summary judgment on YLLC's minimum-compensation claim, and the district court granted the city's motion. YLLC withdrew its challenge to the city's fair market valuation, and the district court entered final judgment. This appeal follows.

D E C I S I O N

YLLC appeals the district court's award of summary judgment, contending that it is entitled to minimum compensation under Minn. Stat. § 117.187. YLLC asks this court

[1] Capitol Car continues to operate its business at another location.

[2] A quick-take "is an expeditious procedure designed to accomplish the immediate transfer of title and possession to property upon payment by the condemnor of the approved appraisal value of the property." *Fine v. City of Minneapolis*, 391 N.W.2d 853, 855 (Minn. 1986); *see also* Minn. Stat. § 117.042 (2012) (describing the quick-take process).

to reverse and remand for a trial to determine the amount of minimum compensation to which it is entitled.

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). "When a district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that is reviewed de novo." *Wiegel v. City of St. Paul*, 639 N.W.2d 378, 381 (Minn. 2002).

The district court's grant of summary judgment was based on the minimum-compensation statute, which provides:

> When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, "owner" is defined as the person or entity that holds fee title to the property.

Minn. Stat. § 117.187.

In granting summary judgment, the district court concluded that at the time of the taking, YLLC was the owner of 388 Como and that it did not occupy the property. The district court therefore reasoned that because "the minimum compensation statute is confined to '*owners*' *who* '*must relocate*,' and YLLC was not forced to relocate, it is not

entitled to minimum compensation." The district court based its decision on "a plain reading" of the minimum-compensation statute.

YLLC challenges the district court's conclusions regarding ownership and relocation. The challenge presumes that both YLLC and Capitol Car intended to occupy the property. We address each issue in turn.

I.

We first address the district court's implicit conclusion that only YLLC is the property owner for purposes of the minimum-compensation statute. YLLC contends that "where the fee owner of the condemned real estate is an LLC or other legal entity and the owner of the business operating on the condemned real estate is a different legal entity, the 'fee owner' requirement for [Minn. Stat. § 117.187] is satisfied if the real estate entity and the business entity are related parties with common ownership." Essentially, YLLC asks this court to ignore the fact that YLLC and Capitol Car are distinct legal entities and treat them both as owners for minimum-compensation purposes.

In support of its position, YLLC contends that the definition of owner in the minimum-compensation statute is ambiguous. Next, YLLC offers a statutory-construction argument, which addresses legislative intent. Finally, YLLC proposes adoption of a three-part inquiry for use in determining whether a "related party entit[y]," such as Capitol Car, qualifies as an owner under the minimum-compensation statute, even though it does not hold title to the taken property. YLLC defines related-party entities "as two or more separate legal entities that have some degree of common

ownership between them." YLLC's proposed inquiry asks, in part, whether "the owner of the displaced business . . . [is] also the fee title holder to the property."

"If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language. If a statute is ambiguous, we apply other canons of construction to discern the legislature's intent." *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (citation omitted).[3] "A statute is ambiguous if its language is subject to more than one reasonable interpretation." *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009).

YLLC cites *County of Dakota v. Cameron* as support for its contention that the definition of owner under the minimum-compensation statute is ambiguous. 812 N.W.2d 851, 854 (Minn. App. 2012) (holding that "[t]he terms 'comparable property' and 'community' in Minnesota's eminent-domain minimum-compensation statute, Minn. Stat. § 117.187 (2010), are defined according to their common usage" and that "[a] determination of damages under Minn. Stat. § 117.187 is based on traditional market-value analysis of comparable properties in the community"), *review granted* (Minn. May 30, 2012). That reliance is misplaced. Although this court concluded, in *Cameron*, that the minimum-compensation statute is ambiguous in some respects, the statutory

[3] These canons of construction include: "(1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute." Minn. Stat. § 645.16 (2012).

definition of owner was not at issue. *Id*. at 856-57 (identifying certain ambiguities in the minimum-compensation statute without referencing ownership and stating that "[t]he parties agree that the minimum-compensation statute is applicable . . . because Cameron was the fee owner of the taken property"). Moreover, this court limited its de novo interpretation of the minimum-compensation statute to "the definition of 'comparable property,' the definition of 'community,' and the damages-calculation method." *Id.* at 857. In sum, this court's recognition, in *Cameron*, of ambiguity in the minimum-compensation statute did not extend to the statutory definition of owner.

As to the definition of owner, the statute plainly states that for the purposes of section 117.187, "'owner' is defined as the person or entity that holds fee title to the property." Minn. Stat. § 117.187. This court recently interpreted the ownership component of section 117.187 and concluded that the definition is not ambiguous. *See City of Cloquet v. Crandall*, 824 N.W.2d 648, 652-53 (Minn. App. 2012) (considering whether a contract-for-deed vendee is an owner under the minimum-compensation statute and stating that "[s]ection 117.187 is not ambiguous").

In *Crandall*, this court observed that "Minnesota's minimum-compensation statute restricts itself to benefit owners, and it defines 'owner' as 'the person or entity that holds fee title to the property.'" *Id.* at 652 (quoting Minn. Stat. § 117.187 (2008)). That restrictive definition contrasts with other definitions contained in the eminent-domain statutes. For example, the definitional section of chapter 117 broadly defines owner to include "all persons with any interest in the property subject to a taking, whether as proprietors, tenants, life estate holders, encumbrancers, beneficial interest holders, or

otherwise." Minn. Stat. § 117.025, subd. 3 (2012). And with regard to compensation for loss of going concern, the legislature expressly included "a lessee who operates a business on real property that is the subject of an eminent domain proceeding" within that broad definition. Minn. Stat. 117.186, subd. 1(2) (2012). But for purposes of the minimum-compensation statute, the legislature narrowly and unequivocally limited the definition of owner to fee-title holders. *See* Minn. Stat. § 117.187. We presume that if the legislature wanted to include related-party entities within its definition of owner under the minimum-compensation statute, it would have done so. *See Crandall*, 824 N.W.2d at 652 ("If the legislature wanted to include contract purchasers within its section 117.187 definition, presumably it would have included them there explicitly just as it did in section 117.036.").

In summary, the legislature unambiguously limited the definition of owner under the minimum-compensation statute to fee-title holders. And because the definition is unambiguous, this court is not permitted to engage in statutory construction—we must apply the plain meaning of the statutory language. *See State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004) ("[W]hen the legislature's intent is clear from plain and unambiguous statutory language, [an appellate] court does not engage in any further construction and instead looks to the plain meaning of the statutory language." (quotation omitted)). Nor may this court expand the definition of owner to include related-party entities, as proposed by YLLC. *See Martinco v. Hastings*, 265 Minn. 490, 497, 122 N.W.2d 631, 638 (1963) (stating that a change in a statute must come from the legislature). Because it

is undisputed that YLLC—and only YLLC—held legal title to the taken property, the district court correctly limited its minimum-compensation ruling to YLLC.

II.

We next address the district court's conclusion that YLLC is not entitled to minimum compensation because it was not forced to relocate. The district court reasoned that YLLC did not occupy the property at the time of the taking. The city agrees, arguing that the minimum-compensation statute only applies to "homeowners and to businesses that own and occupy their property."[4]

The minimum-compensation statute does not define the term "relocate." But YLLC concedes that "[o]ccupancy of a property on the date of taking is clearly a prerequisite for application of the [minimum-compensation statute]."[5] And YLLC acknowledges that the occupancy "prerequisite was not satisfied in the present case." Nonetheless, YLLC argues that "physical occupation of the condemned parcel on the date of taking . . . is not necessary for application of the minimum compensation statute where the lack of physical occupation is caused by the project which requires the condemnation" and that under such circumstances, "occupation should be presumed where occupation was reasonably probable if the project had never occurred."

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[4] The city further argues that the minimum-compensation statute "does not apply to real estate holding companies." We do not address this argument because it is unnecessary to our determination of the issues presented.

[5] Because the parties do not challenge the district court's implicit conclusion that physical occupancy of the taken property at the time of taking is a necessary component of relocation under the minimum-compensation statute, we adopt this approach for the purpose of this appeal, without attempting to define "relocate" under section 117.187.

YLLC relies on the so-called project-influence rule. The rule provides that

> any increase or decrease in market value due to the proposed improvement may not be considered in determining market value. Just compensation within the meaning of our constitutional provision as well as the Fifth and Fourteenth Amendments of the Federal Constitution does not include the right to any increment in value resulting from the taking.

Hous. and Redevelopment Auth. v. Minneapolis Metro. Co., 273 Minn. 256, 260-61, 141 N.W.2d 130, 135 (1966). Thus, "[n]either an owner nor a condemnor is permitted to gain by any increase or decrease in value of the land taken due to the impact upon land values generated by an area redevelopment project for which the tracts included are acquired." *Id*. at 263, 141 N.W.2d at 136.

The project-influence rule traditionally has been used to determine the market value of taken property when awarding just compensation in an eminent-domain proceeding. *See Regents of Univ. of Minnesota v. Hibbing*, 302 Minn. 481, 482-87, 225 N.W.2d 810, 811-13 (1975) (applying the project-influence rule in "a condemnation proceeding to determine the fair market value of a parcel of residential property"); *Minneapolis Metro. Co.*, 273 Minn. at 260-63, 141 N.W.2d at 134-36 (applying the project-influence rule to determine the fair market value of condemned property). The rule ensures that just compensation is based on the market value that would have existed but for the underlying project. *See Minneapolis Metro. Co.*, 273 Minn. at 260-61, 141 N.W.2d at 135 (stating, "any increase or decrease in market value due to the proposed improvement may not be considered in determining market value").

YLLC argues that because the project underlying the taking was the only reason that it did not occupy the property, it should not be denied minimum compensation based on lack of physical occupancy. YLLC posits that if the city had not decided to take the property, the city would have granted the necessary variance for YLLC to construct a building on the property. YLLC maintains that "[t]he denial of the variance by the [c]ity prevented the construction of the new building, which otherwise would have been completed and ready for occupancy by September 2009, leaving the site vacant and unable to be occupied." YLLC contends that "the project became the only reason for the denial of the variance. This is classic project influence." We disagree.

YLLC's argument is not a "classic" application of the project-influence rule. YLLC does not rely on the rule to neutralize the impact of the project on the market conditions that were used to determine fair market value and just compensation. Instead, YLLC relies on the rule to excuse its failure to occupy the property, in an attempt to qualify for a statutory award of minimum compensation. Thus, YLLC applies the rule to obtain statutory as opposed to constitutional relief, and it expands application of the rule beyond valuation purposes.

Although the Minnesota Supreme Court has expanded application of the rule to a determination of statutory relief in an eminent-domain proceeding, it did so to neutralize a project's impact on market conditions affecting valuation. *See First Am. Nat'l Bank v. State*, 322 N.W.2d 344, 346-47 (Minn. 1982) (relying on the project-influence rule in the context of re-conveyance after taking under Minn. Stat. § 161.44 (1980) to conclude that the state may not benefit from an increase in land value caused by the project for which

the land was originally taken). The task of expanding application of the rule for purposes other than valuation similarly falls to the supreme court and not this court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them."); *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).

In sum, because YLLC's requested application of the project-influence rule is unprecedented, we do not apply the rule to excuse YLLC's lack of occupancy. And because it is undisputed that YLLC did not physically occupy the property on the date of taking, the district court did not err in concluding that YLLC was not forced to relocate and that it is not entitled to minimum compensation as a matter of law. We therefore affirm.

Affirmed.