STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1060

County of Anoka, petitioner,
Respondent,

vs.

Housing and Redevelopment Authority in and for the City of Ramsey,
Respondent Below,

Ramsey-Arbor Properties, LLC,
Appellant.

Filed December 26, 2017
Reversed and remanded
Connolly, Judge

Anoka County District Court
File No. 02-CV-14-5758

Anthony C. Palumbo, Anoka County Attorney, Dan Klint, Jason J. Stover, Assistant County Attorneys, Anoka, Minnesota (for respondent)

Howard A. Roston, Benjamin R. Tozer, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Schellhas, Judge; and Stauber, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

CONNOLLY, Judge

Appellant landowner challenges the summary judgment granted to respondent county, arguing that genuine issues of material fact as to whether the condemned land is part of a larger parcel preclude summary judgment. Because there are genuine issues of material fact concerning appellant's property, we reverse the grant of summary judgment and remand for trial.

FACTS

In 2006, Arbor Commercial Group (ACG), owned by Steve Young, purchased land in respondent County of Anoka. The western part of the land was known as Parcel 20; the eastern part was known as Tract A. The two parts are contiguous but have separate legal descriptions. In 2008, ACG applied for permission to develop Tract A by constructing a multi-tenant office building, which opened in 2009. Parcel 20 was not developed. Appellant Ramsey-Arbor Properties, LLC, of which Young was also the owner, then acquired the land from ACG.

In 2014, respondent exercised its power of eminent domain to acquire Parcel 20 for a new interchange at the intersection of two highways. Initially, respondent sought the whole of Parcel 20, but later dropped a strip of land adjoining Tract A from the condemnation petition. That strip became known as Parcel 20B; the condemned land was known as Parcel 20A.

Appellant's condemnation award, $412,247, was based solely on the value of Parcel 20A and did not include any compensation for damage to Tract A caused by the taking.

Appellant challenged the award in district court, arguing that the taking damaged Tract A. Respondent moved for partial summary judgment. Its motion was granted; appellant's award was limited to damages incurred by the taking of Parcel 20A and excluded any damages the taking may have caused to Tract A.

Appellant challenges the grant of summary judgment, arguing that genuine issues of material fact preclude it.[1]

D E C I S I O N

On appeal from summary judgment, this court reviews de novo whether there is a genuine issue of material fact. *STAR Centers, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). "[S]ummary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents *sufficient evidence* to permit reasonable persons to draw different conclusions." *Schroeder v. St. Louis Cty.*, 708 N.W.2d 497, 507 (Minn. 2006).

> [T]racts of land may be considered as a unit for the purpose of the assessment of the damages for a taking from only one of such tracts, provided that the use to which the tracts are applied is so connected, that the taking from one in fact damages the other.

Minn. Stat. § 117.086 (2016); *see also* Minn. Stat. § 117.08 (1970), (predecessor statute, providing that, in a taking, the landowner is to be reimbursed "for the value of the land taken" and for "damages, if any . . . to other property involved"). Caselaw has interpreted

[1] Because we conclude that the grant of summary judgment was precluded by genuine issues of material facts, we do not address appellant's argument that the district court misapplied the law.

the statutes. *See e.g.*, *Victor Co. v. State*, 290 Minn. 40, 186 N.W.2d 168 (1971) (applying Minn. Stat. § 117.08).

> The measure of damages under the constitutional requirement to pay just compensation for property, not only taken but destroyed or damaged, comprehends that the award be a single award for the entire damage for the land taken plus any consequential damages resulting to the owner's remaining land, considered not as an independent item of loss but as an element of damage affecting the market value of the tract remaining.

Id. at 44, 186 N.W.2d at 171-72. A claim for consequential damages requires "proof that the land taken and the owner's remaining land possess special adaptability for a particular unitary use and [are] actually and permanently put to such use, and that a taking of one tract result[s] in damage to the tract remaining." *Id.*, 186 N.W.2d at 171.

In *Victor*, the owner of a manufacturing plant had complied with a city ordinance to provide parking for employees and customers by maintaining a parking lot half a block away from the plant. *Id.* at 41, 186 N.W.2d at 170. When the parking lot was taken, the commissioners "refused to consider the owner's claim that the market value of the manufacturing plant property was diminished by the taking of the parking lot." *Id.* at 42, 186 N.W.2d at 170. But the supreme court concluded that "the taking of an off-street parking lot required to be provided by city ordinance could have the effect of diminishing the market value of the manufacturing plant it was provided to serve." *Id.* at 44, 186 N.W.2d at 171. The owner's remedy for the commissioners' decision was "taking an appeal to the district court for a determination of the owner's claim to consequential damages to the manufacturing plant and a jury reassessment of the damages awarded by

[the] commissioners," because "[w]hether physically distinct tracts are adaptable to, and actually and permanently used as, a single unitary tract is a question for the jury unless the evidence is conclusive." *Id.* at 41, 45, 186 N.W.2d at 170, 172.

Here, the evidence is not conclusive. Genuine issues of material fact exist as to whether Parcel 20A and Tract A are a single unitary tract: There are disputes over the driveway, lighting, utilities and storm water systems, appraisers' opinions, intent of the owner/developer, irrigation, landscaping, and zoning, among other issues. These are material to whether Parcel 20A and Tract A meet the unitary-use standard that is a prerequisite to awarding consequential damages for the nontaken property, Tract A.

Respondent relies on *City of Minneapolis v. Yale*, 269 N.W.2d 754 (Minn. 1978) (concluding that "the evidence overwhelmingly supports a finding that the use of the [owner's] buildings was 'so connected' that the taking of [one b]uilding damaged the other noncontiguous properties"). *Yale*, 269 N.W.2d at 758. *Yale*, like *Victor*, concerned noncontiguous pieces of property, one of which was taken.[2] *Id.* at 754-55. *Yale* is procedurally distinguishable; in that case, the parties filed cross-appeals from the commissioners' decision. *Id.* at 756. A professional real estate appraiser testified for the

[2] In *Yale*, the supreme court noted that "*Victor* . . . was decided prior to the effective date of Minn. Stat. § 117.086" and applied "the newer statutory standard contained in Minn. Stat. § 117.086." *Yale*, 269 N.W.2d at 757 n.1. Respondent argues that "[i]t is not at all clear that the *Victor* decision is relevant, given the subsequent enactment of Minn. Stat. § 117.086." But *Victor* held that consequential damages could be awarded for the effect of a taking on a noncontiguous parcel of land, and the legislature incorporated this holding into the revised statute: "[N]oncontiguous tracts of land may be considered as a unit for the purpose of the assessment of the damages for a taking from only one of such tracts . . . ." Minn. Stat. § 117.086. Far from making *Victor* irrelevant, the new statute codified it, at least in part.

owner that the building taken was an "'integral and necessary part' of the entire unit." *Id.* at 758. The taking authority's witness had been "instructed to appraise [the taken property] as a separate parcel and not as a part of the complex" and therefore could not "testify as to the unity of use issue." *Id.*

> The district court conducted a personal tour of the complex and subsequently heard oral testimony over a 2-day period. After so doing, the district court in its findings of fact cited 14 different categories of facts which supported its conclusion that there was a unity of use among all the buildings.

Id. at 757. *Yale* does not support resolving a consequential-damages case on summary judgment.[3]

Reversed and remanded.

[3] Respondent also relies on *Yale* for the proposition that "the unified use must be present at the time of the taking, rather than a hypothetical or even probable future use." But the supreme court in *Yale* was rejecting the argument that the owner's adaptation of other properties to perform the function of the taken property proved that there was no unity of use: "[I]n Minnesota, damages in condemnation actions are to be measured by the damage caused at the time of the taking. Consequently, whatever the [owner] did to preserve the efficient functioning of its operation after the time of the taking is of no consequence here." *Id.*