COA Opinion: "Loss of market advantage" is not an element of damages under the Uniform Condemnation Procedures Act

5-26-2011 by Kristina Araya

In *Charter Township of Lyon v McDonald's USA, LLC*, No. 294074, the Court of Appeals reversed the trial court's judgment that compensated a commercial developer for a its intangible property interest in an easement in one of its condominium units that was taken under the Uniform Condemnation Procedures Act ("UCPA"). Justice O'Connell authored the majority opinion, and Justice Beckering concurred in part.

In *Charter Township of Lyon*, two related companies each developed a commercial site, within close proximity to each other, in Lyon Township. One of the developers, the intervening defendant ("Defendant"), sold a condominium unit in its development to McDonald's USA, LLC ("McDonald's"). The sale was subject to a Master Deed and Bylaws, which granted Defendant a limited property interest in utility easements on the property, subject to approval by the township. Subsequently, the township filed a condemnation action against McDonald's and acquired a permanent subsurface water and sewer utility easement under McDonald's unit in order to benefit a new development in the area. McDonald's was compensated for the easement. Defendant was also awarded compensation for its intangible interest to control improvements in the development. The trial court determined the value of Defendant's loss by considering the two related commercial developments to be "one parcel." Additionally, the trial court also based its award on Defendant's "loss in competitive advantage."

First, the Court of Appeals found the trial court erred when it determined the two related developments were one "parcel" under the UCPA. The easement must be part of the land that is subject to common ownership in order for the easement to be part of the parcel at issue. The Court of Appeals found nothing in the record that established common ownership of the two related developments because the Master Deed for each separate development named a separate developer, and neither deed granted any interest to a parent corporation. The common ownership between the two developers was therefore "extraneous" and the trial court erred by considering any loss in value to the related development. The record reflected that Defendant's particular development did not suffer any loss in value due to the easement, and therefore it was an error to compensate Defendant for the taking.

Second, the Court of Appeals discussed its opinion in *Bd of Co Rd Comm'rs v Bald Mountain West*, unpublished opinion per curiam of the Court of Appeals, issued February 14, 2008 (Docket No. 275230), and held that *Bald Mountain* does not recognize "outpositioning" or "loss of market advantage" as an element of damages under the UCPA. The trial court had cited *Bald Mountain* for the proposition that a party may be compensated for a governmental taking that outpositions a landowner in the marketplace. The Court of Appeals explained that *Bald Mountain* merely recites the

"standard propositions regarding just compensation." The Court concluded that the trial court's award "essentially erased the risk of market competition."

Justice Beckering concurred with the majority opinion with respect to the majority's finding that the Defendant retained a compensable, but limited interest in the easement and that the record did not support the finding that the related developments were one parcel under the UCPA. However, Justice Beckering declined to join the majority opinion with respect to the nature of the property interest retained by Defendant or the Court's holding with respect to "outpositioning" in the marketplace on the grounds that these discussions were mere dicta.