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128 Md. 105, 96 A. 1030

Court of Appeals of Maryland.
 TIMANUS

v.

**MAYOR AND CITY COUNCIL OF CITY OF
 BALTIMORE et al.**

No. 103.

Feb. 29, 1916.

Appeal from Baltimore City Court; James M. Ambler, Judge.

“To be officially reported.”

Appeal by F. Leslie Timanus against the Mayor and City Council of Baltimore and others to the Baltimore city court from an order of the commissioners for opening streets. Appeal dismissed, and the appellant appeals to the Court of Appeals. Affirmed.

West Headnotes

Eminent Domain 148  **238(4)**

[148k238\(4\) Most Cited Cases](#)

An appeal from the final order of commissioners for opening streets, entered before the street grade was established, which was taken after the expiration of the time fixed by Laws 1912, c. 32, § 179, and before the grade was established, can be dismissed.

Eminent Domain 148  **238(4)**

[148k238\(4\) Most Cited Cases](#)


Under Laws 1912, c. 32, § 178, the failure of an owner to receive notice of the final order assessing damages for street opening does not prevent the dismissal of his appeal, filed after the expiration of the time.

Eminent Domain 148  **238(4)**

[148k238\(4\) Most Cited Cases](#)

Statements by commissioners for opening streets


held to refer to a published notice of final award required by Laws 1912, c. 32, § 177, not to personal notice, and therefore not to excuse delay in appealing.

Estoppel 156  **62.5**

[156k62.5 Most Cited Cases](#)

(Formerly 156k62(5))

A city is not estopped or bound by any statement of the commissioners for opening streets not made in connection with, and relating to the discharge of their duties.

Estoppel 156  **62.5**

[156k62.5 Most Cited Cases](#)

(Formerly 156k62(5))

To establish estoppel against the city upon misleading statements made by commissioners for opening streets, it must appear that the statement was such as was calculated to mislead.

Argued before BOYD, C. J., and BRISCOE, BURKE, THOMAS, PATTISON, and STOCKBRIDGE, JJ.

Jacob S. New and John D. Nock, both of Baltimore (Benson & Karr, Julius H. Wyman, Charles E. Ecker, and George A. Solter, all of Baltimore, on the brief), for appellant. Edw. J. Colgan, Jr., of Baltimore (S. S. Field, City Sol., of Baltimore, on the brief), for appellees.

THOMAS, J.

This appeal is from an order of the Baltimore city court, dismissing the appeal of the appellant from the action of the commissioners for opening streets in Baltimore city, awarding damages and assessing benefits in the opening of Gwynn's Falls Parkway from Reisterstown Road to Gwynn's Falls Park.

The motion to dismiss was made by the city on the ground that the appeal was not taken within the time prescribed by law. The appellant filed an answer to the motion, in which he alleged: That

on the 19th of August, 1913, he received a notice of the amount of the damages awarded and benefits assessed to his property, and "that the commissioners for opening streets would meet at their office on August 26, 1913, at 11 o'clock a. m., to review the same, and would sit for that purpose for 10 days." That within the 10 days mentioned in said notice, he, "together with four other property owners on Mt. Holly street, appeared before the commissioners for opening streets and requested a review of said award." That the commissioners, through Eugene E. Grannan, Esq., advised the appellant "and the other property owners not to press the matter at that time; that the assessments and awards were not final, and there was no occasion for a review at that time; that in view of the popular objection, the ordinance would doubtless be repealed and the project abandoned, but, if not, that the commissioners would take the matter under consideration, make final awards, and that there would be additional notices given of these awards, at which time this appellant and certain other property owners might appear and present their claims; and that until this appellant and the other property owners heard from him, the said Grannan, they were to do nothing further." That relying upon this statement of the commissioners, the appellant waited for some time to hear from them, "and upon learning, some time later, that said awards had been made final," he immediately filed his appeal. The answer further alleged that the award of *1031 damages and assessment of benefits were made by the commissioners for opening streets on August 18, 1913, before the grade of Gwynn's Falls Parkway, where it touches the appellant's property, was finally established, on June 1, 1914, and that the proceedings of the commissioners for opening streets were therefore irregular and void.

Section 177 of the charter of Baltimore city (Acts 1912, c. 32) provides:

"As soon as the commissioners aforesaid

[commissioners for opening streets] shall have completed the valuation of damages to be ascertained by them as directed by this article, they shall cause a statement thereof to be made out for the inspection of all persons desiring information of its contents, and such statement, together with an explanatory map or maps, shall contain a description of each separate lot or parcel of ground deemed to have sustained damages, its dimensions, the name of the street, lane or alley on which it bounds, the names of all persons supposed to have any estate or interest in it, and the amount of damages as valued by the commissioners; *** and in like manner a description of each parcel of ground deemed by the commissioners to be benefited, the name or names of such person or persons as may be supposed to have any estate or interest therein, and the amount assessed thereon for benefits; and the said commissioners shall cause a notice to be published for four successive days in two daily newspapers of the city stating the extent of the ground covered by the assessment, and that such statement and maps are ready for the inspection of all persons interested therein and that the commissioners will meet at their office on a day to be named in said notice, which shall be not less than five nor more than ten days after the first publication of such notice, for the purpose of reviewing any of the matters contained in such statement to which any person claiming to be interested shall make objection; and the commissioners shall meet at the time and place so appointed, and shall hear and consider all such representations or testimony on oath or affirmation, verbal or in writing, in relation to any matter in said statement which shall be offered to them on behalf of any person claiming to be interested therein, and the said commissioners shall make all such corrections and alterations in the valuations, assessments and estimates, and all other matters contained in the said statements and explanatory map or maps aforesaid, as in

their judgment shall appear to them, or a majority of them, to be just and proper; and they may adjourn, from day to day, if necessary, to give all parties claiming a review an opportunity to be heard, not exceeding in the whole ten days; and after closing such review the commissioners shall make all such corrections in their statement and explanatory map or maps as they shall deem proper, and cause such statement as corrected to be recorded in their book of proceedings, and certified under the hands and seals of said commissioners and their clerk, and notify all persons interested by an advertisement, to be inserted once a week for four successive weeks, in two of the daily newspapers of the city that the said assessments have been completed, and that the parties affected thereby are entitled to appeal therefrom by petition in writing to the Baltimore city court within thirty days after the first publication of said notice.”

Section 178 of the charter (Acts 1912, c. 32) declares:

“It shall be the duty of the clerk of the commissioners for opening streets to serve written or printed notice upon each and every party or parties assessed for damages, caused by the condemnation and opening of any public highway; provided, however that the service of such notice shall not be so construed as to be one of the prerequisites to the condemnation and opening of any street under any ordinance heretofore passed, or hereafter to be passed.”

And section 179 provides that:

“The mayor and city council of Baltimore or any person or persons, or corporations, who may be dissatisfied with the assessment of damages or benefits, as hereinbefore provided, may, within thirty days after the first publication of the notice provided in section 177, appeal by petition, in writing, to the Baltimore city court, praying the said court to review the same,” etc.

It appears from the record and the evidence produced by the city and the appellant at the hearing in the court below of the motion to dismiss the appeal that the appellant received, on or about the 19th of August, 1913, a notice from the commissioners of the amount of damages awarded and benefits assessed in reference to his property, which also stated that the commissioners would meet at their office on the 26th of August, 1913, at 11 o'clock a.m. to review the same, “continuing 10 days”; that in pursuance of said notice the appellant and six other property owners who had received similar notices appeared before the commissioners and were given a hearing on the 28th day of August, 1913, at which hearing they, through John P. Lauber, who acted as their spokesman, made their protest and explained their objections to the awards and assessments made by the commissioners; that the final awards and assessments were completed and signed by the commissioners on the 22d day of January, 1914; that notice of the completion of the assessments by the commissioners, etc., and of the right of the parties interested to appeal therefrom by petition in writing to the Baltimore city court within 30 days after the first publication of said notice was published in the Baltimore American and German Correspondent; that the first publication of said notice was on the 23d of January, 1914; that the appellant's appeal from the action of the commissioners was not taken until the 3d of March, 1914, and that at that time the grade of Gwynn's Falls Parkway had not been established.

The grounds upon which the appellant claims that the order appealed from should be reversed are: (1) That the commissioners for opening streets cannot assess benefits against property affected by the opening of a street before the grade of the street has been established; (2) that the notice provided for in section 178 of the city charter was not served on the appellant by the clerk of the commissioners; and (3) that his failure to file his appeal within the time prescribed by the charter

was due to misleading statements made to him by one of the commissioners.

[1] If we assume the correctness of the first proposition, the fact that the grade of Gwynn's Falls Parkway was not established at the time the commissioners assessed *1032 the benefits objected to would not extend the time within which the appellant was allowed to appeal, or relieve him, in this case, of the consequences of his delay. On the contrary, it furnished an additional reason why he should have been diligent in pursuing the remedy the law provided. In the case of [Mayor and C. C. of Baltimore v. Johnson](#), 123 Md. 320, 91 Atl. 156, where a bill was filed by a property owner, who had appealed to the Baltimore city court from the action of the commissioners for opening streets, to enjoin the city from "proceeding with the trial and hearing of the appeal *** until the establishment of the grade of Park Hill avenue," the court, in dismissing the bill, said:

"In cases like the one before us, section 179 of the Local Laws of Baltimore City (section 10, art. 48, of the Baltimore City Code of 1893) provides for an appeal by 'any person or persons or corporation who may be dissatisfied with the assessment of damages or benefits,' etc., by petition in writing to the Baltimore city court, and that court is given 'full power to hear and fully examine the subject and decide upon said appeal.' The appellee had the right to have her appeal heard by the Baltimore city court, to which she appealed, and it was within the jurisdiction of that court to hear and determine all questions connected with those proceedings in which she was interested ([Baltimore v. Coates](#), 85 Md. 535, 37 Atl. 18, including the question here presented-that is, whether or not the grade of the street opened through the lands of the appellee should be first established by the city before it be permitted to assess the appellee with benefits to her adjacent lands, caused by the opening of said street-and from the action of

that court in ruling upon this question a further appeal will lie to this court. The appellee had her adequate remedy in the Baltimore city court, or in this court on appeal from its action, and thus the equity court was without jurisdiction to grant the relief sought."

Johnson's Case was followed in the later case of [Patterson v. Baltimore City](#), 124 Md. 153, 91 Atl. 966. The Baltimore city court on appeal could have reviewed the action and proceedings of the commissioners complained of, and in order to secure that review, it was incumbent upon the appellant to take his appeal within the time allowed. [Hopper v. Jones](#), 64 Md. 578, 4 Atl. 273.

The argument of the appellant in his brief that the Baltimore city court cannot "entertain an appeal from the commissioners for opening streets until the grade of the street has been established" would lead to the conclusion that the appeal was premature. If that were so, there could be no error in the order of the court below dismissing his appeal.

[2] In regard to the second proposition, it is only necessary to say that section 178 expressly declares "that the service of such notice shall not be so construed as to be one of the prerequisites to the condemnation and opening of any street under any ordinance heretofore passed, or hereafter to be passed," and that in section 179 the time allowed for an appeal is "within thirty days of the first publication of the notice provided in section 177."

[3] The question raised by the remaining contention of the appellant is not so free of difficulty. While we will not stop, in disposing of it, to consider how far and under what circumstances the city may be estopped from enforcing the provisions of its charter by statements or promises of its officers or city officials, it may be well to observe that the provisions of the charter with which we are

concerned in this case were not only intended to safeguard the rights of those interested in property affected by the opening of a street, but to insure accurate and prompt performance of the duties imposed upon the commissioners for opening streets, and that the city ought not to be bound or estopped by any statement or promise made by them except such as are made in connection with and relate to the discharge of those duties.

[4] We may also state that where there is a claim such as is here made, it is not sufficient to show that the party was actually misled, but it must further appear that the statements or promises relied upon were such as were calculated to mislead.

[5] As we have said, the appellant and other property owners interested appeared before the commissioners and had a hearing on the 28th of August, 1913. The appellant's and the city's witnesses all testified to that fact, which further appears from the entry in the "minute book" of the commissioners. The misleading statements and promises relied upon by the appellant are claimed to have been made by Mr. Grannan, one of the commissioners, at that hearing. We have carefully examined the evidence offered by the appellant and by the city, and in our view it fails to show any statement or promise by the commissioners that were calculated, under the circumstances, to lead the appellant or others present to believe that they would receive a further notice from the commissioners before the final awards and assessments were made by them, or that they would receive from the commissioners any other notice than that prescribed by section 177 of the completion of the assessments. That some of them understood and believed that they would receive such a notice cannot be doubted, but such understanding was not, under the circumstances, warranted by anything the commissioners said. While the witnesses for the appellant testified at length to their understanding of what occurred,

the testimony of those who attempted to repeat what Mr. Grannan said rather tends to confirm the entry in the "minute book" of the commissioners, and the testimony of the two commissioners to the effect that after the commissioners heard their protest and objections, Mr. Grannan told them that when the commissioners made their final return, there would be a "notice of it in the newspapers." For instance, George L. Lang testified that after Mr. Lauber had stated that *1033 the grounds of their objection to the awards and assessments Mr. Grannan said:

"Gentlemen, do not give yourself any concern, for I feel that the proposition [opening of the street] won't go through; but, should it go through, when the commissioners make their final awards, you will be notified."

On cross-examination the witness said that he "understood the commission to mean that a personal notice would be mailed to each of them; that the commissioners did not so state to them, but the first notice was in writing, and they expected the final notice to be in writing." The testimony of the appellant and John Broening, Jr., is practically to the same effect. There is not a word in the testimony of these witnesses to suggest that they were to have a further hearing before the commission. All of the witnesses for the appellant state that Mr. Grannan expressed the view that, owing to the opposition to the opening of the street, it would probably be abandoned, and, under the circumstances, his statement that if "it should go through, when the commissioners make their final return, you will be notified" evidently had reference to the notice provided for in section 177, and the only reason it was not so understood was, as stated by the witness Lang, that they had received a "personal notice" of the first awards and assessments.

Carville D. Benson, Esq., who also testified in the case, was not present at the hearing referred to. He stated that he represented the property owners on

Mt. Holly street; that after seeing a notice like the one received by the appellant on the 19th of August, 1913, he went to the office of the commissioners to see the plats, etc., and to ask for a hearing; that Mr. Grannan told him that they were ready to set the objections down for a hearing; that he relied upon Mr. Grannan to let him know when the hearing would take place, and that he did not see the newspaper notices of the final awards. There is no evidence to show that Mr. Grannan knew in advance that the hearing of the objection of the appellant and others would take place on the 28th of August, 1913, or that he had an opportunity to let the witnesses know of it in time to be present. But this witness knew that the notice he saw stated that the commissioners would meet for 10 days in order to complete their review of awards and assessments, and must have known of the provisions of section 177 of the city charter, requiring the commissioners to complete the assessments and to give the notice therein provided for.

The exceptions to the evidence were not pressed in this court, and as we find nothing in the several contentions of the appellant to justify a reversal of the ruling of the court below, we will affirm the order appealed from.

Order affirmed, with costs to the appellee.

Md. 1916.
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