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132 Md. 290, 104 A. 429

Court of Appeals of Maryland.
MAYOR, ETC., OF **BALTIMORE** et al.
v.
GAMSE & BRO.
No. 98.

April 12, 1918.
Motion for Modification of Opinion Denied Aug. 3, 1918.

Appeal from Baltimore City Court; Carroll T. Bond, Judge.

Proceeding by the Mayor and City Council of Baltimore and others against Gamse & Bro., to condemn a leasehold under the right of eminent domain. An award was affirmed by the city court after a jury trial, and the City appeals. Reversed, and new trial awarded.

West Headnotes

Eminent Domain 148 ⚿147
148k147 Most Cited Cases
Where a leasehold is sought to be condemned under the power of eminent domain, the tenant is to be allowed the market value of his estate.

Eminent Domain 148 ⚿147
148k147 Most Cited Cases
In proceedings to condemn a leasehold, the expense and labor of dismantling, removing and reassembling machinery, held not allowable.

Eminent Domain 148 ⚿147
148k147 Most Cited Cases
In condemning a leasehold, improvements made by the tenant are only to be considered in ascertaining the extent to which the value of the use and occupation of the premises is enhanced thereby.

Eminent Domain 148 ⚿147
148k147 Most Cited Cases
In proceedings to condemn a leasehold, the compensation to which the tenants were entitled held to be the difference between the fair value of the use and occupation for the unexpired term, if exceeding the rent for such time, and the rent which the tenants had contracted to pay for the remainder of the term.

Eminent Domain 148 ⚿201
148k201 Most Cited Cases
In proceedings to condemn a leasehold, to which the city had acquired the reversion, the deed of such reversionary interest was admissible; the jury being entitled to know that the original landlord's interest had passed to the city.

Eminent Domain 148 ⚿202(1)
148k202(1) Most Cited Cases
In proceedings to condemn a leasehold, evidence as to the cost of constructing the leased buildings was inadmissible.

Argued before BOYD, C. J., and BURKE, PATTISON, URNER, STOCKBRIDGE, and CONSTABLE, JJ.

S. S. Field, City Sol., and Benjamin H. McKindless, Asst. City Sol., both of Baltimore, for appellants.
Edgar Allan Poe, of Baltimore (James Fluegel, of Baltimore, on the brief), for appellees.

PATTISON, J.
This is a proceeding by the mayor and city council of Baltimore to condemn, under the right of eminent domain, the leasehold interest of the appellees in a lot of land and the improvements thereon, situated on the northwest corner of Saratoga and Courtland streets, and occupied by them in the conduct of their business of lithographing and printing. The said lot of land, which fronts 50 feet on Saratoga street, with a depth of 100 feet on Courtland street, is improved***430** by a brick building of three stories

and a basement. The premises were first leased unto the appellees, Herman Gamse and Benno E. Gamse, trading as H. Gamse & Bro., by the Owners' Realty Company, by deed of lease dated the 9th day of December, 1910, for the term of five years, commencing on the 1st day of April, 1911, and ending on the 31st day of March, 1916, at and for the annual rental of $3,000. The said lease contained the following provision:

> "That at the expiration of the lease, and upon a previous notice of six months by H. Gamse & Bro., this lease shall continue in force for another period of five years, subject to the same conditions as herein set forth, but subject to an increased rental of $3,300 per annum."

Before the expiration of the lease it was agreed by the parties thereto that upon a renewal of it the lessors should make certain improvements upon the leased property, for which the lessees were to pay to the lessors, as rent, the sum of $210 per year, in addition to the said rental of $3,300 provided for by the original lease, making a total rental therefor of $3,510; and on the 27th day of March, 1916, a renewal lease was executed by the parties, in conformity with the agreement so made, for the term of five years, commencing on the 1st day of April, 1916, and ending on the 31st day of March, 1921. This lease contained no provision for its renewal.

It was to condemn the leasehold interest of the appellees in said property that these proceedings were instituted. The commissioners for opening streets awarded to the appellees $1,000 compensation therefor, and the appellees, being dissatisfied with said award, appealed therefrom to the Baltimore city court, where a trial by jury was had, which resulted in an award of $9,250 to the appellees, as compensation for the taking of their leasehold estate. From that award the city has appealed to this court.

At the conclusion of the evidence, both the city and the appellees asked for instructions to the jury as to the measure of damages applicable to the facts before them. The appellees' first and third prayers were refused, and its second was granted as modified. The appellant's first, fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth prayers were refused. Its second was granted, and its fourth A and sixth prayers granted as modified. In addition to the prayers granted, the court granted an instruction of its own.

The city, prior to the institution of these proceedings, had acquired the reversionary interest of the Owners' Realty Company in said property by a conveyance from it, and, as we have said, the controversy here relates only to the amount the appellees are entitled to be paid for their leasehold interest, taken from them under these proceedings. The appellees, as owners of the leasehold, and the city, as owner of the reversion, acquired from the Owners' Realty Company, together held the fee-simple estate, and the sum of the values of these interests is the value of the property taken. Gluck v. M. & C. C. of Baltimore, 81 Md. 321, 32 Atl. 515, 48 Am. St. Rep. 515. The value of the property is not enhanced by the fact that the entire title or estate in the property is not held by one and the same party. Lewis on Eminent Domain (3d Ed.) § 716.

In proceedings instituted to condemn the reversionary interest, as well as the leasehold interest, the rule is to ascertain the entire compensation to be allowed as though the entire title or estate in the property belong to one person, and then apportion the sum between the holders of the different interests, according to their respective rights. Baltimore City v. Latrobe, 101 Md. 629, 61 Atl. 203. As was said by this court, speaking through Chief Judge Boyd, in the case last cited:

> "The condemning party, as a rule, ought not to be required to pay for the two interests more than the portion taken would be worth if owned

> by one person. *** The jury, or other tribunal authorized to make the award, should always keep the value of the entire property in mind, and should limit the whole amount to be paid to that value, unless it is clearly shown that the lessee is entitled to more than the difference between what they allowed the reversioner and what the whole property would be worth in the market, if there had been no ground rent."

When the entire property included in a lease is taken, the question is one of comparatively easy solution, although there may be, as in this case, two separate estates therein, held by different parties. In such case the rule stated above may ordinarily be applied without difficulty.

[1] By the weight of authority, the rule as to the measurement of compensation in cases like the one before us is, generally speaking, precisely the same, whether the assessment of damages be to the tenant in fee, for life, or for years. The tenant should be allowed the market value of his estate. See note to Baltimore v. Latrobe, 4 Ann. Cas. 1005. In Baltimore City v. Latrobe, supra, Judge Boyd said:

> "The reversioner is undoubtedly entitled to what his interest is worth in the market and prima facie the leasehold is charged with that value." Gluck v. Baltimore City, supra.

In Baltimore City v. Rice, 73 Md. 307, 21 Atl. 181, the city was granted a prayer, by which the jury were instructed that they could award the owner of the leasehold estate "only the fair market value of his interest in the brickyard, less the fair market value of his interest in so much thereof as would remain after the opening of Clare street." This court held that prayer good, and said of it that it covered the whole question. It would thus seem that, in this state, at least, the measurement of compensation for the appropriation of an estate, in cases of this character, is ordinarily the market value of the estate.

***431** [2] The court's prayer instructed the jury:

> "That they are to estimate and allow to the lessees the value of the right to continue in undisturbed possession of the premises for the remainder of the term fixed in the lease now existing, and that this value so to be estimated is represented by the price at which a lessee in the situation of the present lessees willing but not compelled to sell would sell the right, and a buyer, if there should be any such, willing, but not compelled, to buy, would pay for the right; that in arriving at their estimate the jury should consider the extent to which the building has been specially equipped and adopted for the lessees and the labor and expense of dismantling, removing, and reassembling the machinery and appliances in another place at this time; not that the jury shall award to the lessees the items of expense of equipment and adaptation of the building and of moving the plant, but they shall bear such items in mind as possible factors, which might play some part in the value and selling price mentioned above in this instruction."

It is contended by the appellant that this prayer incorrectly states the law applicable to the facts and circumstances of this case as disclosed by the record, and should not have been granted. The building and improvements upon the leased premises were constructed for the appellees by the Owners' Realty Company, with special regard for the adaptability of the same to the purposes for which the premises were to be used by the appellees; and the lessees, at their own expense, made other improvements for the better adaptation and equipment of the premises for the use for which they were intended.

The terms and conditions, if any, upon which the improvements were made by the appellees, do not appear in the record. It is not shown that there was any agreement between the lessor and the lessee by which the latter were to be paid therefor, or

that such improvements were to be property of the lessees, to be removed by them at the expiration of the lease. The substantial or permanent character of some of the improvements made by the appellees indicates that they were not to be removed by them at the end of their tenancy, for they could not be removed without injury to the building. It may be that some of the improvements are of such a character as to entitle the lessees to remove the same at the end of their tenancy, without any agreement to that effect; if so, they are still entitled to remove them when they are required to quit the premises because of these proceedings. The city does not under such proceedings take the personal property of the tenants, but only their rights in the leasehold.

The appellees, as we have said, have not shown that they were to be paid for the permanent improvements made by them, or that such improvements were to be their property at the expiration of their tenancy, and therefore to allow them for said improvements, which they have not shown they are entitled to, might result in paying them for something to which they have no claim or right.

[3] Upon the facts of this case, as found in the record, the improvements made by the tenant upon the leased premises are only to be considered in ascertaining the extent to which the value of the use and occupation of the premises was enhanced or increased by reason of such improvements. In cases where it is shown that the value of the use and occupation of the leased premises has been increased by the improvements placed thereon by the lessee, proportionate to the amount expended therefor, the cost of such improvements may be submitted to the jury as an element of proof in arriving at the value of the use and occupation of the property after such improvements are made.

As the appellees placed improvements upon the leased premises, in addition to those placed thereon by the Owners' Realty Company, they are entitled to show, by proper evidence, of what the improvements consist, and the extent to which the value of the use and occupation of the premises is increased thereby, in ascertaining the value of their leasehold interest in the property. This prayer is faulty, in our opinion, in that it instructs the jury that in arriving at their estimate of the value of the lessees' right to continue in possession of the leased premises they should consider the labor and expense of dismantling, removing, and reassembling the machinery and appliances in another place at the time they are required under these proceedings to quit the leased premises.

If the tenants were to remain upon the premises for the full length of their term, the cost, labor, and expense of dismantling, removing, and reassembling the machinery and appliances in another place would fall upon them, or at least this is true so far as the record discloses; and the fact that they must, as a result of these proceedings, remove therefrom at an earlier time, and pay the costs of the same, does not, as shown by the record, impose upon them additional burdens. The effect of condemnation under these proceedings would be to hasten the removal of the appellees and to shorten the term of their tenancy, but not to place upon them any additional burden, in dismantling, removing, and reassembling the machinery and appliances in another place in consequence thereof, which they would be required to do at their own expense at the end of their tenancy, if not disturbed by these proceedings. It is said in Lewis on Eminent Domain, § 27:

> "The business conducted upon the property is not taken [under condemnation proceedings], and the owner can remove it to a new location. Any incidental loss or inconvenience in business which may result from removal must be borne for the sake of the general good in which he participates."

And in the case of New York, W. S. & B. R. R. Co., 35 Hun (N. Y.) 635, the court in discussing this question said:

> "The circumstances of this case do not present the question of compensation for the expense of removing personal effects from the premises in any different light than it would be if the appellant were the owner of the fee, ***432** instead of being tenant for a term of years. The company seeks to acquire a complete title to an entire parcel of land. It should not in fairness be compelled to pay more for the land than its market value, because the owner of the fee has carved out of it a leasehold estate."

See Hunter v. C. & O. R. R., 107 Va. 158, 59 S. E. 417, 17 L. R. A. (N. S.) 124, and other cases cited in note to Blincoe v. Choctaw, Okla. & Western R. R. Co., 16 Okl. 286, 83 Pac. 903, 4 L. R. A. (N. S.) 890, 8 Ann. Cas. 689.

[4] In this case the amount of compensation to which the appellees are entitled, upon the facts before us, is the difference between the fair value of the use and occupation of the leased premises for the unexpired term, (if such use and occupation exceeds the amount of rent contracted to be paid by the appellees for said premises for such time) and the rent which the appellees had contracted to pay for said premises for the remainder of the term.

The first and fourth prayers of the city are consistent with the views we have expressed as to the measurement of the compensation to which the appellees are entitled, and so was the city's four A prayer as offered. These prayers should have been granted.

The city's fifth prayer should have been granted, and the reason therefor is given in what we have said in holding the court's prayer defective.

The modifications of the city's sixth prayer was, we think, wrongfully made, in that it was thereby made subject to the finding of the jury under the court's prayer, which, as we have said, was defective.

The city's seventh, eighth, ninth, and tenth prayers were all refused, because, as the court stated, they were likely to confuse the jury in view of the instructions above referred to, which we have held to be defective. Upon the evidence offered these prayers should have been granted.

The eleventh, thirteenth, and fourteenth, prayers of the city were properly refused, because not qualified in conformity with the view we have expressed as to the measurement of compensation. The twelfth prayer should have been granted for the reasons we have stated in disposing of the court's instruction.

The first, second, eleventh, and fourteenth exceptions are to the admission of evidence as to the intentions of the landlord and tenant to renew the lease of the property mentioned in these proceedings. This testimony was first admitted, but afterwards stricken out, and the petitioner's prayer based upon this testimony was refused.

The third, fourth, seventh, and eighth exceptions are to the admission of evidence as to the cost of the improvements to the property placed upon the property by the appellees. This evidence was inadmissible, as it did not offered conform to the qualifications heretofore indicated as necessary to render such testimony competent.

[5] The fifth and sixth exceptions refer to the admission of evidence as to the present cost of constructing the leased buildings. For the purpose of this inquiry as to the value of the lessee's right to the use and occupation of the premises we think such evidence was inadmissible.

The ninth, tenth, twelfth, thirteenth, fifteenth, sixteenth, and seventeenth except to the admission of evidence in relation to the cost of dismantling

and removing the machinery of the appellees to another location and the rent they would be required to pay at such new location. This evidence should have been excluded for the reason given in disposing of the court's prayer.

[6] The eighteenth exception was to the refusal of the court to admit in evidence the deed of the Owners' Realty Company conveying to the city of Baltimore its reversionary interest in the leased property. The deed should have been admitted in evidence, as the jury were entitled to know that the interest of the Owners' Realty Company in said property had passed from it to the city. The fact that the city had become the owner of such interest in the property by virtue and in pursuance of Ordinance No. 513 approved October 3, 1914, and Ordinance No. 77, approved January 21, 1916, sets at rest the question of a renewal of the lease by the appellees at the expiration of its term. It was because of the court's errors in its rulings above stated that this court reached the conclusion announced in the per curiam opinion heretofore filed.

Rulings reversed, and new trial awarded, with costs to the appellants.

Md. 1918.
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