

SUPREME COURT OF CONNECTICUT

City of New London v. Foss & Bourke, Inc.

276 Conn. 522 (2005) · Decided December 27, 2005

SUMMARY

The Connecticut Supreme Court dismissed a certified appeal as improvidently granted in an eminent domain dispute involving the valuation of property, fixtures, and trade fixtures. The court declined to decide whether the assembled economic unit doctrine applies in Connecticut because the record lacked sufficient factual findings and evidence establishing the doctrine’s prerequisites. The court stated that the issue could be resolved in a future case presenting facts that squarely require its consideration.

CASE DETAILS

COURT	Supreme Court of Connecticut
JURISDICTION	Connecticut
DECIDED	December 27, 2005
DISPOSITION	dismissed
PROCEDURAL POSTURE	Certified appeal from the Appellate Court's affirmance of a Superior Court judgment in an eminent-domain valuation and compensation proceeding.
STANDARD OF REVIEW	The Supreme Court reviewed the certified legal issue after examining the entire appellate record, but declined to decide the issue because the factual record was inadequate.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court opinion; precedential as to the procedural effect of dismissing a certified appeal as improvidently granted, but not a merits determination on the assembled economic unit doctrine.
PARTIES	Foss and Bourke, Inc. v. City of New London

TOPICS

- eminent domain
- eminent domain municipal
- real estate
- appellate procedure
- writ of certiorari

PRACTICE AREAS

- eminent domain
- real estate
- municipal law
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether the assembled economic unit doctrine applied to the determination of the value of property taken by eminent domain.
2. Whether the certified appeal should be dismissed as improvidently granted because the record lacked findings and evidence establishing the factual predicates of the assembled economic unit doctrine.

HOLDINGS

1. The certified appeal should be dismissed as improvidently granted because the record did not contain sufficient findings or evidence to establish that the factual predicates of the assembled economic unit doctrine were satisfied.
2. Dismissal of a certified appeal as improvidently granted does not constitute approval or disapproval of the Appellate Court's decision.

KEY QUOTATIONS

“Therefore, prudence suggests that we postpone our determination of the certified issue “until we are presented with facts that squarely and necessarily require us to address the question. We are more likely to answer the question soundly when the actual outcome of the case is likely to depend on the answer to the legal question.”” (525)

“The appeal is dismissed. The assembled economic unit doctrine is "a principle of Pennsylvania state law which requires the state to include in eminent domain awards an allowance for machinery, equipment and fixtures which cannot be economically moved to a new location.”” (526)

FACTUAL BACKGROUND

New London condemned property owned by Foss and Bourke for public development and valued the taking at \$336,000. Foss and Bourke claimed that additional fixtures and trade fixtures had been taken and that compensation should be calculated under the assembled economic unit doctrine, which can treat machinery, equipment, and fixtures as part of condemned real estate when a business requires a unique, nonreplaceable building. The trial court found the doctrine inapplicable and applied traditional fixture principles.

PROCEDURAL HISTORY

The City of New London, acting through the New London Development Corporation, condemned property owned by Foss and Bourke and determined compensation to be \$336,000. The Superior Court rejected application of the assembled economic unit doctrine and used a traditional fixture analysis; the Appellate Court affirmed. The Supreme Court granted certification but dismissed the appeal as improvidently granted because the record did not establish the factual predicates necessary to apply the doctrine.

DISPOSITION

dismissed

CASES CITED

- New London v. Foss & Bourke, Inc., 85 Conn. App. 275, 279-284, 857 A.2d 370 (2004)
- Singer v. Oil City Redevelopment Authority, 437 Pa. 55, 67, 261 A.2d 594 (1970)
- Clarke v. Commissioner of Correction, 249 Conn. 350, 357-358, 732 A.2d 754 (1999)
- State v. Doscher, 172 Conn. 592, 376 A.2d 359 (1977)
- New London v. Foss & Bourke, Inc., 271 Conn. 946, 861 A.2d 1177 (2004)

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