

SUPREME COURT OF MISSISSIPPI

Eller Media Company v. Mississippi Transportation Commission

Eller Media · No. No. 2003-CA-01461-SCT · Decided July 22, 2003

SUMMARY

The Mississippi Supreme Court held that a settlement under threat of eminent domain did not constitute a sale under the billboard lease's termination provision. The court concluded that the lease was not terminated and that Eller Media had a compensable interest in the condemnation proceeding. It reversed the judgment requiring Eller Media to repay \$42,000 and remanded for determination of the value of its compensable interest.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Waller, Presiding Justice; Waller, P.J.; Easley, J.; Carlson, J.; Cobb, P.J.; Dickinson, J.; Randolph, J.; Graves, J.; Smith, C.J.; Diaz, J.
JURISDICTION	Mississippi
DECIDED	July 22, 2003
DOCKET	No. 2003-CA-01461-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Eller Media appealed from a judgment of the DeSoto County Special Court of Eminent Domain determining that it had no compensable interest in the condemned property and ordering it to return \$42,000.
STANDARD OF REVIEW	The opinion does not expressly identify a standard of review; it reviewed the special court's legal conclusions concerning interpretation of the lease and the existence of a compensable eminent-domain interest.
PRECEDENTIAL VALUE	precedential
PARTIES	Eller Media Company v. Mississippi Transportation Commission

TOPICS

- eminent domain
- contracts
- real estate
- appellate procedure
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a settlement under threat of condemnation constituted a sale under the terms of the lease.
2. Whether Eller Media had a compensable interest in the condemned billboard structure and leasehold.

HOLDINGS

1. A condemnation settlement between the landowner and the governmental condemning authority did not constitute a sale under the lease's termination provision; consequently, the lease was not terminated.
2. Eller Media had a compensable interest in the condemnation proceeding because its billboard was a structure adversely affected by the acquisition.

KEY QUOTATIONS

“Any structure which is adversely affected by an acquisition “shall be acquired” and is compensable “notwithstanding the right or obligation of the tenant . . . to remove such” structure or improvement.” (¶13)

FACTUAL BACKGROUND

The South Mississippi Electric Power Association leased land along U.S. Highway 61 in DeSoto County to Eller Media for installation of a billboard, with the parties sharing billboard revenues. The lease required Eller Media to remove its structure and terminate the lease within 45 days after written notice if the lessor sold the property and the new owner did not want to continue the lease. The Transportation Commission acquired the property for a road project through condemnation proceedings, and the landowner accepted a settlement to avoid litigation rather than because it was willing to sell. The special court treated the condemnation settlement as a sale and ruled that Eller Media had no compensable interest.

PROCEDURAL HISTORY

The Mississippi Transportation Commission condemned property owned by the South Mississippi Electric Power Association and paid compensation into the court registry, including a \$42,000 payment to Eller Media for its billboard-related interest. The Commission later moved to try title, arguing that the lease had terminated under a provision triggered by a sale of the property to a new owner unwilling to continue the lease. The special court found that the lease had terminated and that Eller Media had no compensable interest, entered judgment requiring repayment of \$42,000, and Eller Media appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for a determination of the value of Eller Media's compensable interest and any other necessary proceedings consistent with the opinion.

CASES CITED

- Brown v. Miss. Transp. Comm'n, 749 So. 2d 948, 957-58 (Miss. 1999)
- State Hwy. Comm'n v. Hyman, 592 So. 2d 952, 957 (Miss. 1991)
- Morley v. Jackson Redevelopment Auth., 632 So. 2d 1284, 1291 (Miss. 1994)
- United States Fid. & Guar. Co. v. Knight, 882 So. 2d 85, 92 (Miss. 2004)
- Miss. State Hwy. Comm'n v. Taylor, 293 So. 2d 9, 10-11 (Miss. 1974)
- Eller Media Co. v. Miss. Transp. Comm'n, 882 So. 2d 198, 201, 204 (Miss. 2004)
- State v. Card, 413 N.W.2d 577 (Minn. Ct. App. 1987)
- Lamar Corp. v. State Hwy. Comm'n, 684 So. 2d 601, 604 (Miss. 1996)

OPINION

Eller Media Company v. Mississippi Transportation Commission

PER CURIAM.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2003-CA-01461-SCT

ELLER MEDIA COMPANY

v.

MISSISSIPPI TRANSPORTATION COMMISSION

DATE OF JUDGMENT: 07/22/2003

TRIAL JUDGE: HON. MILLS E. BARBEE

COURT FROM WHICH APPEALED: DESOTO COUNTY SPECIAL COURT OF
EMINENT DOMAIN

ATTORNEYS FOR APPELLANT: MARK D. HERBERT

LISA A. REPPETO

ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: BILLY HALL

BARRY S. ZIRULNIK

HOLLAMAN M. RANEY

NATURE OF THE CASE: CIVIL - EMINENT DOMAIN

DISPOSITION: REVERSED AND REMANDED - 03/10/2005

MOTION FOR REHEARING FILED: MANDATE ISSUED: BEFORE WALLER, P.J., EASLEY
AND CARLSON, JJ. WALLER, PRESIDING JUSTICE, FOR THE COURT: ¶1. This appeal
arises from a ruling by a special court of eminent domain that a billboard company did not have a
compensable interest in eminent domain proceedings because the owner of the land terminated its
lease with the billboard company. Finding that the attempted termination of the lease was not valid
under Mississippi law and that the billboard company does have a compensable interest, we
reverse and remand.

FACTS

¶2. The South Mississippi Electric Power Association¹ owned certain land which ran along United States Highway 61 in DeSoto County. It entered into a lease with Eller Media Company so that Eller Media could install a billboard on the land. Under the lease, the Power Association and Eller Media split the revenues from the billboard 50/50 after certain expenses were paid. The lease provided: “Lessee agrees that it will remove its structure and terminate the lease no later than forty-five (45) days after written notice from the Lessor, if Lessor should sell the property and the new owner does not want to keep the lease in force.” ¶3. The Mississippi Transportation Commission filed a complaint in the DeSoto County Special Court of Eminent Domain against the Power Association and Eller Media to condemn the land, in order to relocate and reconstruct State Road 304 from U. S. 61 to State Road 301. An order was entered granting the Commission immediate title and possession of the land and adopting an appraisal of \$189,000 as just compensation. The order also acknowledged that an additional \$25,000 had been agreed upon prior to the assessment, so that the “total pretrial independent appraisal” was \$214,000. The special court stated, “This Order does not determine whether Eller Media Company has any interest in the proceeds.” After the Commission made a payment into the registry of the Court, a check in the amount of \$225,900 was disbursed to the Power Association, and a check in the amount of \$42,000² was disbursed 1 The Power Association is not a party to this appeal. 2 The disbursement memorandum from the clerk’s office uses the figure of \$37,500; however, later pleadings and the final judgment use the figure of \$42,000. 2 to Eller Media. Eller Media alleges that it, at all times, rejected the Commission’s settlement offer.³ ¶4. After the Commission became aware of the termination provision in the lease, however, it filed a motion to try title, alleging that Eller Media had no compensable interest in the property because a sale of the land had taken place and the new owner did not wish to renew the lease. Therefore, it claimed, the lease terminated under its own terms. Eller Media responded that (1) as a result of the Commission’s actions, it had lost all of its right, title and interest to the lease and the billboard; (2) the Commission wrongfully asserted that Eller Media had no interest in the property; and (3) the Commission wrongfully seized its property and refused to pay just compensation, constituting an inverse condemnation. ¶5. The special court ruled that the termination provision in the lease between the Power Association and Eller Media was dispositive and found that James Compton, the attorney for the Power Association’s board of directors, “reviewed the lease . . . and he, and he alone without urging or conspiring with anyone from [the Commission], recommended to [the Power Association] that it terminate the lease.” Further, there was “absolutely no proof that [the Commission] had any involvement in the termination of the lease and no proof that [the Commission] indicated or, indeed wanted to keep the [lease] in effect.” Therefore, Eller Media had no compensable interest in the condemnation proceeding. ¶6. With this ruling, the Commission then sought a return of the \$42,000 it had paid Eller Media. Eller Media responded by alleging that judicial estoppel barred the taking of 3 Under standard industry practice, by depositing the settlement check, Eller Media did not waive any of its objections to the settlement. 3 inconsistent positions in a proceeding

inasmuch as after the Commission paid Eller Media, it then filed proceedings to find that Eller Media had no compensable interest. After judgment was entered in favor of the Commission and against Eller Media for \$42,000, Eller Media filed this appeal.

DISCUSSION

I. WHETHER A SETTLEMENT UNDER THREAT OF CONDEMNATION CONSTITUTED A “SALE”

UNDER THE TERMS OF THE LEASE. ¶7. The Power Association’s settlement over the value of the land with the Commission and the subsequent payment of the settlement amount to the Power Association did not constitute a “sale” under the terms of the lease; and therefore, the special court erred in finding that Eller Media’s interest in the lease was terminated by the settlement. ¶8. On numerous occasions, we have rejected attempts to use eminent domain settlement prices for comparable sales in eminent domain valuations. See *Brown v. Miss. Transp. Comm’n*, 749 So. 2d 948, 957-58 (Miss. 1999) (Sales to an agency with condemning authority are not admissible as comparable sales because they are more in the nature of a compromise and are not fair indicators of market value) (citing *State Hwy. Comm’n v. Hyman*, 592 So. 2d 952, 957 (Miss. 1991)). See also *Morley v. Jackson Redevelopment Auth.*, 632 So. 2d 1284, 1291 (Miss. 1994) (same). In so ruling, we recognized the inherent differences between a settlement price and a true sale. To be enforceable, a contract must be negotiated at arms’ length. *United States Fid. & Guar. Co. v. Knight*, 882 So. 2d 85, 92 (Miss. 2004). A contract is not an arms’ length transaction when the landowner has knowledge that the purchaser has the 4 power of eminent domain. *Miss. State Hwy. Comm’n v. Taylor*, 293 So. 2d 9, 10-11 (Miss. 1974). ¶9. Evidence of record shows that the Power Association did not wish to sell its property. It attempted to persuade the Commission to move the road project. Its motivation for accepting the settlement was to avoid litigation, not its willingness to sell the property. On the other hand, the Commission produced no evidence of the Power Association’s willingness to sell. ¶10. The Commission relies heavily on the recent case of *Eller Media Co. v. Miss. Transp. Comm’n*, 882 So. 2d 198 (Miss. 2004) (“*Eller Media I*”), as the basis of its argument that we should affirm the special court’s finding that there was a sale. There, we held that the owner of a billboard on leased property was not entitled to compensation in eminent domain proceedings instituted by the Commission for loss of the leasehold interest where the lease provided that it terminated upon condemnation. *Id.* at 204. However, *Eller Media I* is distinguishable because the lease under consideration provided that “[i]f all or a substantial part of the Premises shall be taken by right of eminent domain, this Lease shall terminate” *Id.* at 201 (emphasis added). In the present case, the lease was silent as to its status if eminent domain proceedings were filed against the property. The lease only provided that the lease would terminate upon the sale of the property and the new owner did not wish to lease the property. 4 4 The Court in *Eller Media I* cited a Minnesota case, *State v. Card*, 413 N.W.2d 577 (Minn. Ct. App. 1987), where an appeals court held that, under a lease termination clause similar to the one at bar, a direct sale of the land by the lessor to the State terminates the lease. We are not bound by a foreign

jurisdiction's ruling on this issue; however, more importantly, 5 ¶11. The Eller Media I lease demonstrates that, if the Power Association and Eller Media wished to condition the 45-day termination clause upon the institution of eminent domain proceedings, they could have done so. There, the lease's 45-day termination clause only pertains to true sales of the land. ¶12. Therefore, we find that a sale, as contemplated by the lease, did not occur between the Power Association and the Commission, and the lease was not terminated. The special court erred in concluding otherwise.

II. WHETHER THE SPECIAL COURT ERRED IN FINDING THAT ELLER MEDIA DID NOT HAVE A

COMPENSABLE INTEREST. ¶13. We have answered this issue affirmatively in *Lamar Corp. v. State Hwy. Comm'n*, 684 So. 2d 601 (Miss. 1996). There, we held: This issue may be decided by referring to the clear language of the statutes involved. Any structure which is adversely affected by an acquisition "shall be acquired" and is compensable "notwithstanding the right or obligation of the tenant . . . to remove such" structure or improvement. Miss. Code Ann. § 43-37-11 (1972). The sign is clearly a structure under any ordinary meaning of that term.

684 So. 2d at 604.

¶14. Therefore, the special court erred when it found that Eller Media did not have a compensable interest. Mississippi precedent holds that a contract is not an arms' length transaction when the landowner has knowledge that the purchaser has the power of eminent domain. *Miss. State Hwy. Comm'n v. Taylor*, 293 So. 2d 9, 10-11 (Miss. 1974). 6

CONCLUSION

¶15. The special court erred in finding that the lease was terminated and that Eller Media did not have a compensable interest. We reverse the special court's judgment against Eller Media for \$42,000, and we remand for a determination of the value of Eller Media's compensable interest and any other necessary proceedings consistent with this opinion. ¶16. REVERSED AND REMANDED.

COBB, P.J., EASLEY, CARLSON, DICKINSON AND RANDOLPH, JJ.,

CONCUR. GRAVES, J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION. SMITH, C.J., AND DIAZ, J., NOT PARTICIPATING. 7