

SUPREME COURT OF NEVADA

State, Dep't of Transp. v. Cowan, 120 Nev. 851

103 P.3d 1 (2004) · No. No. 39188 · Decided December 17, 2004

SUMMARY

The Supreme Court of Nevada affirmed a condemnation judgment awarding Stuart and Barbara Cowan \$260,000 for the goodwill of their gas station business, which was destroyed when the leased property was condemned for highway expansion. The court held that, under the circumstances, the undivided-fee rule did not provide just compensation and that business goodwill was an appropriate measure of damages. The court also upheld the district court’s evidentiary rulings and award of attorney fees and costs.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Shearing, C.J.; Agosti; Becker; Gibbons; Maupin; Shearing; Rose; Douglas
JURISDICTION	Nevada
DECIDED	December 17, 2004
DOCKET	No. 39188
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal and cross-appeal from a district court judgment awarding condemnation damages, including business goodwill, and attorney fees and costs to the lessees.
STANDARD OF REVIEW	Evidentiary rulings and attorney-fee and cost awards are reviewed for abuse of discretion; exclusion or admission of evidence under NRS 48.035 is reversed only when manifestly wrong. The jury's damages determination is generally left undisturbed absent passion or prejudice.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Nevada, decided en banc.
PARTIES	State of Nevada, Department of Transportation v. Stuart A. Cowan, Barbara L. Cowan, d/b/a Lou's Texaco

TOPICS

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QUESTIONS PRESENTED

1. Whether the Cowans could maintain an inverse-condemnation counterclaim when the State had formally exercised eminent-domain power.
2. Whether a lessee whose business was destroyed by condemnation and could not be relocated was entitled to compensation for business goodwill.
3. Whether lost business opportunity, anticipated profits, or lost income were compensable in this condemnation action.
4. Whether the district court abused its discretion by admitting the Cowans' 1994 purchase price for the business-goodwill interest.
5. Whether the district court abused its discretion by excluding comparable California sales and appraisals and evidence of uninstalled gaming value.
6. Whether the district court abused its discretion in awarding attorney fees and costs.
7. Whether the district court erred in denying the Cowans' post-trial motions and in entering judgment on the jury's verdict.

HOLDINGS

1. An inverse-condemnation counterclaim is inappropriate when the government has formally exercised eminent-domain power by filing a condemnation action and naming the affected parties.
2. When condemnation destroys a lessee's existing business and the business cannot be relocated because its value is uniquely tied to the condemned location, just compensation may include the value of the business's goodwill in addition to the leasehold value.
3. Business goodwill is an appropriate measure of damages when a condemned business cannot be relocated, while anticipated profits and lost business opportunity are generally not compensable.
4. The district court did not abuse its discretion by admitting evidence of the Cowans' 1994 purchase price for the business-goodwill interest in valuing the business taken in 1999.
5. The district court did not abuse its discretion by excluding comparable California sales and appraisals that it found insufficiently probative of Nevada property conditions and potentially confusing or misleading to the jury.
6. The district court did not abuse its discretion in awarding attorney fees and costs, rejecting the Cowans' reliance on inverse-condemnation fee provisions, or denying their motions for judgment notwithstanding the verdict, a new trial, or an additur.

KEY QUOTATIONS

“Thus, an inverse condemnation counterclaim by the Cowans was inappropriate in this case, and the arguments based on the finding of inverse condemnation are without merit.” (103 P.3d at 4)

“In this situation, we conclude that the undivided-fee rule does not adequately compensate the lessee for what was taken.” (103 P.3d at 5)

“Therefore, the State must compensate the Cowans for the destruction of their business.” (103 P.3d at 5)

“We agree with these authorities that business goodwill is the appropriate measure of damages in cases such as this one; accordingly, the district court did not err in admitting evidence of business goodwill.” (103 P.3d at 5)

FACTUAL BACKGROUND

In November 1999, Nevada condemned a one-half-acre parcel in Las Vegas to expand Interstate 15. Stuart and Barbara Cowan operated Lou's Texaco, a gasoline-station franchise and convenience store, on the parcel under a lease whose value was closely tied to the property's location. The Cowans were unable to locate a comparable gas-station franchise in the Las Vegas area because oil companies were no longer extending new franchise leases. The jury awarded \$260,000 for lost business goodwill.

PROCEDURAL HISTORY

NDOT condemned a one-half-acre parcel occupied by the Cowans' gasoline station and convenience store. The Cowans asserted an inverse-condemnation counterclaim and sought compensation for lost business opportunity and goodwill. The district court allowed goodwill evidence, excluded lost-business-opportunity evidence, and entered judgment on a jury award of \$260,000 for goodwill, together with attorney fees and costs. Both sides appealed.

DISPOSITION

affirmed

CASES CITED

- Thornburg v. Port of Portland, 233 Or. 178, 376 P.2d 100 (1962)
- United States v. Clarke, 445 U.S. 253 (1980)
- Clark County v. Sun State Props., 119 Nev. 329, 72 P.3d 954 (2003)
- National Advertising Co. v. State, Dep't of Transp., 116 Nev. 107, 993 P.2d 62 (2000)
- Kimball Laundry Co. v. United States, 338 U.S. 1 (1949)
- Michigan State Highway Commission v. L & L Concession Co., 31 Mich. App. 222, 187 N.W.2d 465 (1971)
- City of Lansing v. Wery, 68 Mich. App. 158, 242 N.W.2d 51 (1976)
- City of Elko v. Zillich, 100 Nev. 366, 683 P.2d 5 (1984)
- Schlotfeldt v. Charter Hosp. of Las Vegas, 112 Nev. 42, 910 P.2d 271 (1996)
- Daly v. State, 99 Nev. 564, 665 P.2d 798 (1983)

- Winooski Hydroelectric Co. v. Five Acres of Land, 769 F.2d 79 (2d Cir. 1985)
- Orange Cty. Flood Cont. Dist. v. Sunny Crest Dairy, Inc., 77 Cal. App. 3d 742, 143 Cal. Rptr. 803 (1978)
- K-Mart Corp. v. Washington, 109 Nev. 1180, 866 P.2d 274 (1993)
- Ringle v. Bruton, 120 Nev. 82, 86 P.3d 1032 (2004)
- Epstein v. City & County of Denver, 133 Colo. 104, 293 P.2d 308 (1956)

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