IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 6-073 / 95-0054

WATERLOO FISH CO., An Iowa Corporation, and **WATERLOO FISH PARTNERSHIP,** Composed of Hugh M. Field, John R. Walker, Jr., and William C. (Cam) Bolick,
Appellants,

vs.

BLACK HAWK COUNTY, IOWA, and the **NATIONAL BANK OF WATERLOO, IOWA,** An Iowa Banking Corporation,
Appellees.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Appeal from district court judgment affirming condemnation award.

AFFIRMED.

Eric W. Johnson of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C., Waterloo, for appellants.

Sydney A. Thomas and John J. Hines of Dutton, Braun, Staack, Hellman & Iversen, Waterloo, for appellees.

Heard by Sackett, P.J., Cady, J., and McCartney, S.J.* Vogel, J., takes no part.

*Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

This is an appeal from the condemnation award for property owned by the appellants. They challenge the amount of the damages awarded and argue they are entitled to damages caused by the delay of the appellee in commencing the condemnation proceedings. We affirm.

In 1984 Hugh Field, John Walker, Jr., and Dr. William (Cam) Bolick began negotiations to purchase a fish market which included wholesale and retail sales and a restaurant. They formed a corporation, Waterloo Fish Company, to acquire the assets of the business.

In November 1984 an asset purchase agreement was executed. The Waterloo Fish Company agreed to pay the owner of the fish market, Joseph Koeppel, $70,150 for the market, including: $52,000 for fixtures, equipment and leasehold improvements; $18,000 for inventory; $100 for customer lists; and $50 for the trade name. The corporation did not purchase the building in which the business was located. The building continued to be owned by Koeppel, and he leased it to the corporation.

After the purchase, the wholesale business of the fish market declined. The appellants attributed the decline to misrepresentations by Koeppel. At that time they still owed $20,000 on the purchase price of the business. To resolve the dispute between the parties, Koeppel signed over ownership of the building in which the fish

market was located. The appellants paid the remaining balance due on the asset purchase agreement. The real estate was conveyed to the Waterloo Fish Partnership, a partnership consisting of Field, Walker and Bolick, and not to their corporation. As a result, the appellants acquired both the business assets and the building for the original contract price of $70,150.

In 1990, Black Hawk County voters approved a referendum to construct a new jail which was to be located on several properties including the fish market property. The county pursued site acquisition and arranged to have the sites appraised. Separate appraisals were prepared for the building owned by the appellants in partnership and the fixtures and equipment located therein owned by their corporation.

On December 21, 1990, the county by letter offered to purchase these properties for $24,970, but the offer was rejected. In March 1991, a representative for the county indicated to the appellants the target date for condemnation would be in April 1991. However, the December 21, 1990, letter informed Field the premises did not need to be vacated until the appellants received written notification. The fish market ceased operations in late April or early May of 1991. Although condemnation proceeded, it was delayed until early 1992 due to environmental concerns.

On April 2, 1992, the Compensation Commission awarded Waterloo Fish Partnership $22,000 for the real estate, and it awarded Waterloo Fish Company $6,000 for the fixed assets and $500 for moving expenses. The appellants filed a notice of appeal and petition at law in the district court alleging the compensation award was inadequate and the county acted negligently due to an unreasonable delay in the condemnation process. The district court rejected the arguments and affirmed the award of the Compensation Commission.

The district court action was tried as an action by ordinary proceedings. Iowa Code § 6B.21 (1993). We review on errors assigned, and the findings of the trial court have the standing of a special verdict. *Skaff v. Sioux City*, 168 N.W.2d 789, 793 (Iowa 1969). If supported by substantial evidence, the findings will not be disturbed. *Id.*

First, appellants claim the district erred in upholding the award of the Compensation Commission because the appraisal methods employed resulted in undervaluation of the building and the fixtures. They set forth several arguments in support of this claim, including: (1) the building should have been valued as a special use building with its fixtures included in the appraisal, rather than as an ordinary building whose value is determined without reference to the fixtures or personalty; (2) the appraisers should have compared the fish market to the sales of other similarly situated and fixtured commercial buildings; and, (3) appraisers should have

considered the 1984 offers to purchase the property and the price actually paid for it by appellants.

The measure of damages in eminent domain proceedings is the reasonable market value of the property at the time of the taking which is the date upon which the condemnation commission views the premises and fixes the damages to which the condemnee is entitled. *Heldenbrand v. Executive Council of Iowa*, 218 N.W.2d 628, 632-34 (Iowa 1974). A condemnee is entitled to compensation for personal property as well as real property. *See Forst v. Sioux City*, 209 N.W.2d 5, 6-7 (Iowa 1973).

In its ruling, the trial court rejected the arguments of the appellants. We find the trial court was correct in doing so. The value attributed to the real estate was consistent with the value of similar downtown properties in Waterloo. The appellants had segregated ownership of the building from ownership of the fixtures, and utilizing separate appraisals for these properties was not wrong as a matter of law. Finally, the trial court was correct in rejecting the claim the fixtures were worth as much in 1992 as they were when acquired by the appellants in 1984.

The appellants claim the district court erred in refusing to award damages for the unreasonable delay in condemning the fish market property. They assert the county failed to exercise due diligence in ascertaining the nature and level of contaminants before beginning the acquisition process. They also assert the county

was aware they had perishable inventory and needed guidance as to when to close the business. The appellants argue that after they were out of business, but prior to the condemnation, they continued to suffer expenses, including: insurance costs, accrual of interest on the mortgaged premises, and real estate taxes.

Once again we agree with the findings and analysis of the trial court. The appellants had been informed they would not have to vacate the premises until directed to do so in writing. Other businesses in the area to be condemned continued their operations after the environmental issues arose. This was not a case in which bad faith by the county caused delay in commencing the condemnation proceedings. *See Nadler v. City of Mason City*, 387 N.W.2d 587, 591 (Iowa 1986). Substantial evidence supported the finding of the trial court that there was no unreasonable delay in the condemnation.

The appellants request this court award them $2,500 in appellate attorney fees. They cite no authority in support of this request, Iowa R. App. 14(a) (3), and it is denied.

The brief of the appellee indicates it filed a cross-appeal requesting the trial court costs be assessed to the appellants. An order of the district court disposed of this issue making it a moot question on appeal.

AFFIRMED.