IN THE COURT OF APPEALS OF IOWA

LASSIE'S RED BARN, INC., et. al.,	)
Plaintiffs-Appellees,	)
vs.	)
IOWA DEPARTMENT OF TRANSPORTATION, et. al.,	)
Defendants-Appellants.	)
MICHAEL OI LEUNG CHAN,	)
Plaintiff-Appellee,	)
vs.	)
LASSIE'S RED BARN, INC., et. al.,	)
Defendants-Appellees,	)
and	)
IOWA DEPARTMENT OF TRANSPORTATION,	)
Defendant-Appellant.	)

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Appeal from the Iowa District Court for Johnson County (Nos. 47830 & 47843) - Thomas M. Horan, Judge.

The State appeals a district court ruling modifying a condemnation commission award for partial taking of plaintiffs' property. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Thomas J. Miller, Attorney General, Charles J. Krogmeier, Special Assistant Attorney General, and John W. Baty, Assistant Attorney General, for defendant-appellant.

William L. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, for appellees Lassie's Red Barn.

Ralph L. Neuzil, Iowa City, for plaintiff-appellee Michael Oi Leung Chan.

Heard by Hayden, P.J., and Sackett, and Habhab, JJ.

SACKETT, J.

This is an appeal by the State from a trial court ruling modifying the condemnation commission's appraisement of damages resulting from a partial taking of plaintiffs' property.

Plaintiff Lassie's Red Barn, Inc., owned the property, which is located on Riverside Drive (Highway 6) in Iowa City. Lassie's leased the property to Plaintiff Michael Chan, who operated the Canton House restaurant on the premises.

The Iowa Department of Transportation condemned a portion of the property in order to widen and improve Riverside Drive. Chan's restaurant lost seven of its thirty-one parking spaces as a result of the taking. The condemnation commission met and on March 8, 1983, filed a written report assessing damages in the amount of $22,000 for Lassie's and $6,000 for Chan. See Iowa Code §472.14. Plaintiffs appealed the condemnation commission's award of damages to the trial court.

The case was tried to the court. The court awarded Lassie's $24,000 and Chan $42,000 in damages. The State appeals and raises the following issues:

1. The court erred in using an improper method to assess Chan's leasehold damages.

2. The court erred in failing to specify how it ascertained plaintiffs' damages.

3. The court erred in valuing the property by failing to determine the value of the property as a whole before and after the taking and apportioning the difference to the feeholder and lessee.

4. There was not substantial evidence to support the court's valuation of Chan's damages; the court should not have admitted evidence of lost profits.

5. The court erred in admitting evidence of a previous contract sales price of this property.

I.

The State claims the trial court erred in using an improper method to assess Chan's leasehold damages. The correct measure of damages for a partial taking of a leasehold is the difference in the value of the use of the premises immediately before and immediately after condemnation. In its Conclusions of Law the court states:

> The measure of damages for the taking of a leasehold interest by condemnation in Iowa is the market value of the unexpired term of the lease over and above the rent stipulated to be paid.

This definition is appropriate only for a total taking of a lessee's interest. See Batcheller v. Iowa State Highway Comm'n, 251 Iowa 364, 369, 101 N.W.2d 30, 33 (1960).

Our review is for corrections of errors of law. Iowa R. App. P. 4. We determine the trial court applied an erroneous rule of law that materially affected its decision. See Patterson v. Keleher, 365 N.W.2d 22, 24 (Iowa 1985). We reverse that part of the judgment of the trial court setting the amount of Chan's damages at $42,000; we remand for the trial court to make new findings of fact and conclusions of law in light of this opinion, and to enter judgment accordingly.

II.

The State argues the trial court erred in failing to specify how it ascertained plaintiffs' damages. The court found

> . . . that the fair and reasonable value of that portion of leaseholder's property taken by condemnation on March 8, 1983, was the sum of $42,000.
>
> The court further finds that the fair and reasonable value of that portion of titleholders' property taken by condemnation on March 8, 1983, was the sum of $24,000.

The court did not give figures to show how it calculated the amounts given.

There is no requirement the trial court make a specific finding of the before and after values used to arrive at the amount of damages incurred by

plaintiffs. We find no reason to remand on this issue. However, we agree it would be better practice for the trial court to include in its ruling adequate findings of fact to explain how it ascertained damages. Explicit findings in cases such as this would facilitate appellate review.

III.

The State suggests the court erred by failing to determine one value for the property as a whole before and after the taking and then apportioning the damages between the feeholder, Lassie's, and the lessee, Chan.

The Iowa Supreme Court has plainly rejected this argument. See Fritz v. Iowa State Highway Comm'n, 270 N.W.2d 835, 843 (Iowa 1978). The fee owner and tenant are entitled to have the damages to their respective interests assessed separately. Id.

The State's contention is without merit.

IV.

The State argues there was not substantial evidence to support the court's valuation of Chan's damages. In light of the fact we are reversing and remanding this case on the issue of Chan's damages, we need not address the substantial evidence question.

The State also argues the court erred in admitting evidence of Chan's lost profits. We hold the court may consider the evidence it received regarding Chan's lost profits, not as an independent element of damage, but as a proper item to be considered in determining the fair and reasonable market value of the leasehold. See Twin-State Eng'g & Chem. Co. v. Iowa State Highway Comm'n, 197 N.W.2d 575, 580 (Iowa 1972).

V.

The State claims the trial court erred in admitting evidence of a prior contract purchase price of the subject property. The State's objection was

the contract sales price distorted the market value of the property because of the low interest rate and low down payment.

While the issue is the value of the condemned land at the time of the taking, anything that reasonably bears on that question is admissible in evidence. See Crist v. Iowa State Highway Comm'n, 255 Iowa 615, 630, 123 N.W.2d 424, 432 (1963). Evidence of the price paid for condemned real property on a sale prior to the proceedings in which condemnation is sought is generally admissible. 27 Am. Jur.2d Eminent Domain §428, at 327-28 (1966). The decision whether the prior sale is probative of the issue of market value rests largely within the discretion of the trial court. Id. See Payton Apartments, Ltd. v. Board of Review 358 N.W.2d 325, 328 (Iowa App. 1984) (quoting Redfield v. Iowa State Highway Comm'n, 252 Iowa 1256, 1265, 110 N.W.2d 397, 402-03 (1961)).

We hold the trial court did not err in admitting evidence of the prior contract sales price.

We affirm the trial court's findings as to Lassie's damages. We reverse the trial court's findings as to Chan's damages and remand for the trial court to make new findings of fact and conclusions of law in light of this opinion, and to enter judgment accordingly. Costs of this appeal are taxed to Plaintiff Michael Chan.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.