

MASSACHUSETTS Lawyers Weekly

Injuries alleged: Taking of various easements and a portion of the fee ownership

Name of case: 355 Church Street Limited Partnership v. MBTA

Court/case: Bristol County Superior Court 2173-cv-00452

Judge or jury trial: Jury

Name of Judge: Hon. Katie Cook Rayburn

Amount of Verdict: \$450,000.00

Date: March 22, 2024

Attorney for plaintiff: Jason R. Scopa, Esq., Law Offices of Peter E. Flynn, PC

Attorney for defendant: Withheld

Most helpful experts: Robert L. Coleman, SRPA, General Certified Appraiser, Waltham, MA

Other useful information: In connection with a public improvement project, namely the construction of the MBTA's Church Street station along its South Coast Rail Project, MBTA acquired portions of the plaintiff's property via eminent domain takings. More specifically, on October 10, 2019, MBTA took 18,796 s.f. of the plaintiff's property in fee and also took two permanent easements and one temporary easement along two of the property lines.

At the time of the taking, the property was a 254,917 s.f. site improved with a 59,093 s.f. industrial building. The building housed the plaintiff's commercial equipment and uniform laundering business. MBTA constructed a commuter rail station next door and, with the rights and area taken from the plaintiff landowner, MBTA installed a passenger platform behind the plaintiff's property as

well as a pedestrian access walkway on the permanent easement area taken along the property's sideline.

The MBTA's appraiser determined that the fair market value of the areas taken was a total of \$102,300 at the time of the taking, and he concluded that no reduction in value was caused to the remainder of the property. He concluded that the property's highest and best use was industrial, consistent with the zoning and use that was actually in effect at the time of the takings. The plaintiff engaged an appraiser as well as counsel to challenge the compensation determined by MBTA.

While there was no dispute as to the property's highest and best use, the plaintiff's appraiser opined that the compensation paid by MBTA was well-below fair market value in two respects. First, the plaintiff maintained that MBTA under-valued the square footage actually taken. Second, the plaintiff maintained that the takings and the project for which they were made caused severance damage to the plaintiff's remainder parcel by reducing its fair market value.

The jury heard four days of evidence, mostly from the two respective appraisers. General Certified Appraiser Robert L. Coleman testified on behalf of the plaintiff landowner. Mr. Coleman testified that the appraisal industry and the Massachusetts eminent domain statute both require that damages be awarded pursuant to the "before and after" methodology, by which the value of entire parcel before the taking is determined and the value of entire parcel after the taking is determined. The plaintiff is due the difference between same. Mr. Coleman opined that the value of the various parts taken exceeded the opinion of the MBTA's appraiser. He also testified that, after the takings and solely as a result of the takings, the plaintiff's remainder property which was not taken would be worth substantially less to the hypothetical willing buyer in the open market. Mr. Coleman relied heavily on the fact that the permanent easements that were taken – despite being located along the outermost edges of the property and encumbering only a very small portion of the parcel – provided MBTA with the right to use the easement areas forever and at MBTA's sole discretion. Since this would give a buyer pause, fair market value is negatively affected.

MBTA relied heavily on the fact that MBTA did not take any buildable or useable portions of the property. That is, all of the takings were made along the property lines and entirely within the areas designated by applicable zoning regulations as side and rear setback areas. Therefore, MBTA's appraiser opined, the remainder property was unaffected and severance damages in this case would be pure speculation. However, MBTA's appraiser admitted on the witness stand that he did not perform the traditional "before and after" appraisal and, rather, simply assigned a per-square-foot value to the parts taken. Also, on cross-examination it was revealed that, in a previous trial concerning the taking of the abutting property, it was his testimony that comparable real estate in the area sold in the market for more than the amount at which he had just testified in this case.

After a one-week trial, the jury rendered a verdict for the plaintiff in the amount of \$450,000.00. This was nearly five times the original MBTA award, and the verdict consisted of \$220,000 in direct damages and \$230,000 in severance damages. The Judgment has been paid in full.