IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DEBORAH E. BARRON, *et al*., Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	No. 21-2181L Judge Edward H. Meyers

UNITED STATES' SUPPLEMENTAL BRIEF

The United States respectfully submits this supplemental brief pursuant to the Court's Order on May 23, 2024, ECF No. 52. In that order, the Court directed the parties to address what interest in property the Tampa Southern Railroad Co. acquired in a condemnation action in 1926 ("the 1926 Condemnation"). The parties have agreed that the Shumway claim turns on a proper reading of the 1926 Condemnation. For purposes of this supplemental brief, the United States will assume – without itself conceding ambiguity – that the Court has concluded that the four corners of the condemnation decree are ambiguous.

I. The Court May Consider Related Court Filings as Extrinsic Evidence to Determine What Interest the Railroad Acquired

Because the language in the condemnation decree is neither clear nor unambiguous, the Court "must attempt to ascertain the intention of the parties and may accept parol evidence." *Miller v. Kase*, 789 So. 2d 1095, 1098 (Fla. Dist. Ct. App. 2001)). Such evidence includes the filings by Tampa Southern Railroad Co. and Bonnie K. Tankersley and Mattie V. Davies that preceded the decree in the railroad's condemnation action. Though the Court may not vary the terms at issue by reference to this extrinsic evidence, it can consider such evidence "to explain ambiguous terms." *Id.*

Not unlike the *Miller* case, this one – at least with respect to the 1926 Condemnation – "presents the paradox of each side claiming that the [language] is clear and unambiguous, but each ascribes a different meaning to the 'unambiguous' language[.]" *Id.* To the extent the docket for the condemnation action may explain the otherwise ambiguous language in the decree – and the United States proffers that it does – the Court should consider it.

II. That Extrinsic Evidence Shows the Railroad Acquired a Fee Simple Interest in the Corridor Adjacent to the Shumway Property

Among the documents Plaintiffs produced in discovery was a 51-page PDF that included, among other things, the condemnation decree at issue here. *See* Def.'s Ex. 1 at 6, 7. Taken with the decree itself, those other documents show that Tampa Southern Railroad Co. acquired a fee simple interest in the corridor adjacent to the Shumway property.

a. Petitioner's Requested Charges

Petitioner's requested jury charges is one such document. *Id.* at 24, 25. In this instance, the petitioner was the railroad. Like the decree itself, the requested charges consistently refer to the interest to be acquired as "property" and "land," and not a narrower interest, such as a right-of-way through said property or land. *See, e.g.*, ¶1 ("On the other hand, the owner being compelled to part with *his property*, whether he desired to sell or not, the law allows him just compensation therefor.") (emphasis added); *see also* ¶3 ("The jury are instructed that, in considering the compensation to be paid to the defendant for *the land* about to be taken, they are to fix the actual cash market value of *the land* taken.") (emphasis added).

Were the breadth of property the railroad was to acquire by condemnation not made sufficiently clear earlier, the sixth requested charge reads: "The court tells the jury that they will find for the defendants a fair equivalent for the *entire piece of property*[.]" (emphasis added). Inapposite to the type of limiting language which would otherwise suggest the railroad acquired

a mere easement interest in the property, this "entire piece of property" language suggests that the railroad intended to acquire all, and not just some, of the interest Bonnie K. Tankersley owned in the property at that time. *See, e.g.*, Section 689.10, Florida Statutes (2014) (construing the transfer of the "whole estate or interest which the grantor had power to dispose of at that time" in the land at issue).

b. The Answer

Consistent with the descriptive language in the condemnation decree and the requested jury charges, Tankersley and Davies' answer refers not to a right-of-way for a railroad purpose but to "land" more generally. *See, e.g.*, Def.'s Ex. 1 at 33 ("… by reason of the appropriation and taking of *their said land* if the taking thereof be allowed.) (emphasis added).

Further, Tankersley and Davies distinguish the more general property interest here from existing railroad right-of-way elsewhere. Namely, they aver that "the land in said petition described is *no part of the right-of-way* of said railroad company from Tampa to Sarasota but lies *beyond the terminus* of said road in the City of Sarasota." *Id.* at 32 (emphasis added). The condemnees themselves appear to acknowledge here that not only is the railroad going to acquire the entirety of their property interest but that this interest is separate and apart from whatever rights-of-way the railroad owned elsewhere in Sarasota.

Not unlike petitioner's requested jury charges, the answer is, to Defendant's knowledge, the best available extrinsic evidence of the nature of the property interest the railroad acquired by condemnation. And this evidence suggests that the railroad acquired no less than the entirety of Tankersley and Davies' fee simple interest in the land at issue.

CONCLUSION

For the reasons set forth above, the United States' Motion for Partial Summary Judgment should be granted in full, including with respect to the Shumway claim.

Respectfully submitted this 10th day of June 2024,

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