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' REPLY IN SUPPORT OF ITS SUPPLEMENTAL BRIEF AND RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEF ON THE CONDEMNATION JUDGMENT ISSUE

On May 23, 2024, 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 Action"). ECF No. 52. The Court issued its Order in the context of a wider discussion that occurred during a status conference on May 16, 2024. During that discussion, the Court asked the parties to address, among other things, whether it was appropriate for the Court to consider parol evidence such as other documents relevant to the condemnation judgment in determining what interest the railroad acquired in 1926. The Court noted that it asked the parties this question because it believed the condemnation judgment itself was ambiguous as to the property interest the railroad acquired.

In its supplemental brief, the United States represented that it *was* appropriate for the Court to consider parol evidence – principally the parties' filings in the action. *See* Def.'s Supp. Brief, 1-2, ECF No. 55. More specifically, the United States noted that the language employed in (1) the railroad's requested jury charges and (2) Tankersley and Davies' answer were consistent with the acquisition of a fee simple interest. *Id.* at 2-3. Considered together with the

condemnation judgment itself, these documents show that Tampa Southern Railroad Co. acquired a fee simple interest in the subject property. Thus, with respect to the Shumway claim which is dependent upon this reading of the condemnation judgment, and the other claims at issue, the Court should grant Defendant's motion for partial summary judgment.

ARGUMENT

In their supplemental brief, Plaintiffs reasserted arguments regarding supposed limitations Florida law imposed on railroads acquiring property by condemnation and, separately, for the purpose of building a railroad. *See* Pls.' Supp. Mem., 15-24, 24-27, ECF No. 56. Yet relatively recent decisions by this Court and the Supreme Court of Florida, respectively, clearly contravene both assertions. By reference to these two cases, the United States will briefly address those assertions first. Plaintiffs then assert that repeated references to a "right-of-way" in the pleadings and related filings in the 1926 Condemnation Action show that the railroad acquired an easement and not a fee interest in the subject property. Yet these references to the "right-of-way" are not unlike the way the United States, if not the parties, have referred to the right-of-way here – namely, as a description of the land, where it serves as a shorthand for the land acquired. The United States will address this assertion second.

I. Florida Law Did Not Prohibit Tampa Southern Railroad Co. from Acquiring its Fee Simple Interest by Condemnation

Plaintiffs assert that when railroads acquire property in Florida by condemnation their interest in that property is limited to an easement by state law. Relatedly, Plaintiffs also assert – by reference to Missouri law – that when a railroad company acquires property for the purpose of building a railroad Florida law limits the interest to that of an easement.

Neither of Plaintiffs' assertions find support in the law. More specifically, this Court's 2020 decision in *Mills v. United States* contravenes Plaintiffs' assertion that Florida law provides

that railroads cannot acquire and hold fee simple title by condemnation. *See* 147 Fed. Cl. 339 (2020). This Court made plain in *Mills* that railroads could acquire fee simple title in property by condemnation. *Id.* at 347 ("[W]e agree with defendant that, under Florida statutes applicable at the time, a railroad *could* acquire fee simple title in property by either purchase or condemnation[.]"). In 2015, the Supreme Court of Florida similarly made plain that "Florida law recognizes that railroads may hold fee simple title to land acquired for the purpose of building railroad tracks." *Rogers v. United States*, 184 So. 3d 1087, 1095 (Fla. 2015) (citing, *e.g.*, *Atlantic Coast Line R.R. Co. v. Duval Cnty.*, 114 Fla. 254 (1934)).

Because the United States has already addressed these assertions in full, it will direct the Court to the relevant portion of its reply brief for further support. *See* Def.'s Reply in Support of Its Cross-Motion for Part. Summ. Judg., 5-6, ECF No. 43.

II. That the Court and the Parties Use "Right-of-Way" as Shorthand to Describe the Property Acquired Does Not Mean the Railroad Acquired an Easement

Without providing examples of this use in the documents themselves, Plaintiffs also assert that because the district court and the parties use "right-of-way" to refer to the property Tampa Southern Railroad Co. acquired by condemnation, the railroad must have acquired an easement and not a fee simple interest. Neither Florida law nor the relevant documents support this assertion.

First, as previously noted, Florida law did not prohibit Tampa Southern Railroad Co. from acquiring a fee simple interest in property for the purpose of constructing a railroad. *See Rogers v. United States*, 184 So.3d 1087, 1095 (Fla. 2015) (citing, *e.g.*, *Atlantic Coast Line R.R. Co. v. Duval Cnty.*, 114 Fla. 254 (1934)) ("The fact that railroads in Florida have also conducted their operations using rights of way which they held by virtue of easements … does not change this fact."). Thus, whether "everyone concerned … all referred to the railroad's interest as a

'right-of-way' for the 'purpose' of constructing" a railroad is not in itself decisive. Pls.' Supp. Mem., 28, ECF No. 56. Instead, the analysis is fact-specific.

Second, the way in which the district court and the parties themselves refer to the property acquired here evince an understanding that Tampa Southern Railroad Co. acquired the whole, and not just part of, Tankersley and Davies' fee simple interest. Though Plaintiffs' reliance on *Barlow v. United States* – which concerned Illinois and not Florida law – is misplaced, the Federal Circuit noted in that case that Illinois courts consider whether the railroad acquired "a designated *strip or piece of land*" or "a right or privilege with respect to the described premises." 86 F.4th 1347, 1353-54 (Fed. Cir. 2023) (emphasis added). Even assuming Florida courts made this same consideration: the condemnation judgment here refers to "all that certain piece, parcel or strip of land;" the railroad's requested jury charges refer to "his property," "the land," and "the entire piece of property;" Tankersley and Davies' requested jury charges refer to "this land;" and the answer refers to "the property" and "certain land" that is "no part of the right-of-way of said railroad." Def.'s Supp. Brief, Ex. 1, 6-7, 24-25, 28, 31-33, ECF No. 55-1.

This parol evidence shows an intent to acquire nothing less than the *entirety* of Tankersley and Davies' fee simple interest in the subject property. *See Miller v. Kase*, 789 So.2d 1095, 1098 (Fla. Dist. Ct. App. 2001) ("[T]he court must attempt to ascertain the intention of the parties and may accept parol evidence, not to vary the terms … but to explain ambiguous terms."). If the railroad had intended to acquire something less than the fee simple interest, it is unlikely that it would have referred to "the entire piece of property." Nor would Tankersley and Davies have likely distinguished the rest of the railroad's "right-of-way" from this "certain land." That these descriptions are consistent with the judgment itself, which refers to "all that certain

piece, parcel or strip of land," shows that in 1926 Tampa Southern Railroad Co. acquired Tankersley and Davies' fee simple interest.

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 21st day of June 2024.

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