IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

**PLAINTIFF-LANDOWNERS' RESPONSE TO THE GOVERNMENT'S SUPPLEMENTAL BRIEF AND REPLY IN SUPPORT OF THE LANDOWNERS' SUPPLEMENTAL BRIEF ON THE QUESTION OF WHAT INTEREST THE RAILROAD OBTAINED IN THE STRIP OF LAND BY CONDEMNATION**

## I. The parties agree – this Court should consider "extrinsic evidence" to determine what interest Tampa Southern Railroad acquired in the 1926 condemnation proceeding.

In its supplemental brief the government states, "[t]hough the Court may not vary the terms at issue by reference to this extrinsic evidence, it can consider such evidence 'to explain ambiguous terms.'" Gov. Suppl. Brief, ECF No. 50, pp. 1-2. Plaintiffs agree that this Court may (indeed should) consider extrinsic or parol evidence to determine whether Tampa Southern Railroad Company obtained title to the *fee simple estate* in the strip of land used for the railway line or whether the railroad was granted an *easement* across the strip of land.

Florida law directs this Court to interpret real estate conveyances to accomplish the intent of the parties. The Supreme Court of Florida held, "it is well established that conveyances in land must be construed to give effect to the parties' intent, and that this Court has the 'right to look to the subject-matter embraced in the instrument, and to the intention of the parties and the conditions surrounding them…[T]he intent, and not the words, is the principal thing to be regarded.'" *McNair & Wade Land Co. v. Adams*, 45 So. 492, 493 (Fla. 1907). Conveyances of land are not interpretated by "magical words" but by the intent the parties sought to accomplish when they

drafted and executed the documents. See Plaintiffs' Motion for Partial Summary Judgment, ECF No. 31-2, pp. 4-5.

This Court held that Florida law directs a court to "consider the language of the entire instrument in order to discover *the intent of the grantor*, both as to the character of estate and the property attempted to be conveyed, and to so construe the instrument as, if possible to effectuate such intent." *Rogers v. United States*, 90 Fed. Cl. 418, 429 (2009) (citing *Reid v. Barry*, 112 So. 846, 852 (Fla. 1927), and *Thrasher v. Arida*, 858 So.2d 1173, 1175 (Fla. Ct. App. 2003)) (emphasis added). See also *Castillo v. United States*, 952 F.3d 1311, 1322 (Fed. Cir. 2020) (quoting *Bischoff v. Walker*, 107 So.3d 1165, 1171 (Fla. Ct. App. 2013); *4023 Sawyer Road I LLC v. United States*, No. 19-757, ECF No. 111-1, p. 35 (of 97) (plaintiffs' memorandum in support of summary judgment) (same). The Supreme Court recently discussed canons of construction applicable to the interpretation of legal text in *Biden v. Nebraska*, 143 S.Ct. 2355 (2023). *Biden v. Nebraska* involved the interpretation of a statute, but the relevant canons of construction apply equally to deeds and pleadings in a condemnation proceeding. Concurring in *Biden v. Nebraska*, Justice Barrett emphasized the role that context plays when interpretating the meaning of text in statutes and legal documents, stating,

> The major questions doctrine situates text in context, which is how textualists, like all interpreters, approach the task at hand. C. Nelson, *What Is Textualism?* 91 Va. L. Rev. 347, 348 (2005) ("[N]o 'textualist' favors isolating statutory language from its surrounding context"); Scalia 37 ("In textual interpretation, context is everything"). After all, the meaning of a word depends on the circumstances in which it is used. J. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2457 (2003) (Manning). To strip a word from its context is to strip that word of its meaning.
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> Context is not found exclusively "'within four corners' of a statute." *Id.* at 2456. Background legal conventions, for instance, are part of the statute's context. F. Easterbrook, *The Case of the Speluncean Explorers: Revisited*, 112 Harv. L. Rev.

1876, 1913 (1999) ("Language takes meaning from its linguistic context," as well as "historical and governmental contexts").

*Id.* at 2378 (Barrett, J., concurring).

Applied here, the meaning of the condemnation proceeding and the nature of the interest taken from Bonnie Tankersley, Mattie Davis, and their heirs, and transferred to Tampa Southern Railroad Company and its successor-railroads must be considered in the *context* of the condemnation proceeding, in light of the *purpose* of the condemnation proceeding. As we discuss more fully below, the words "property" or "land" cannot be extracted from the entire text of the condemnation documents or the context in which these words were used and these documents were created.

Thus, on the question of whether this Court should consider "extrinsic evidence," the government and landowners are in accord.

But, while the plaintiffs agree with the government that this Court should consider the documents – including the Answer and Charge to the Jury – to determine the interest the railroad acquired, the plaintiffs do not necessarily agree that the condemnation pleadings and documents (the Charge to the Jury and the Answer filed in the condemnation case) are "extrinsic" evidence. "Extrinsic evidence" is evidence, such as parol evidence, offered "to alter or explain written agreements and other instruments." *Bank of U.S. v. Dunn*, 31 U.S. 51, 58 (1832). See also *Sylvania Electric Products, Inc. v. United States*, 458 F.2d 994, 1005 (Ct. Cl. 1972) ("Except as preventing the contradiction of written agreements, moreover, the parol evidence supplementing the terms of even a final written agreement by *consistent* additional terms.…") (emphasis added by the court). See also *McAbee Const., Inc. v. United States*, 97 F.3d 1431, 1434-35 (Fed. Cir. 1996). Florida holds likewise. See, *e.g.*, *Northstar Mortg. Co. v. Levine*, 216 So.3d 711, 715 (Fla. Ct. App. 2017).

Florida provides that the consideration of "extrinsic evidence" is proper when there is an ambiguity.

> Where either general language or particular words or phrases used in insurance contracts are "ambiguous," that is, doubtful as to meaning, or, in the light of other facts, reasonably capable of having more than one meaning so that the one applicable to the contract in question cannot be ascertained without outside aid, extrinsic evidence may be introduced to explain the ambiguity. *Hall v. Equitable Life Assur. Soc. of the United States*, 295 Mich. 404, 295 N.W. 204, 207.
>
> A contract is ambiguous when it is reasonably or fairly susceptible to different constructions. 17 C.J.S. Contracts § 294, p. 685.
>
> We, therefore, hold that the word 'purchased' in this contract and under the circumstances of this case is ambiguous, and that parol testimony may be received, not to vary or change the terms of the contract, but to explain, clarify or elucidate the word 'purchased' with reference to the subject matter of the contract, the relation of the parties, and the circumstances surrounding them, when they entered into the contract and for the purpose of properly interpreting, or construing, the contract. It was error to exclude parol testimony for this purpose.

*Friedman v. Virginia Metal Prod. Corp.*, 56 So.2d 515, 517 (Fla. 1952).

The Charge to the Jury and the Answer, which the government refers to as "extrinsic evidence," are documents that are pleadings in the federal district court condemnation proceeding. See **Exhibit 3**. As such, these pleadings are part of the record in the condemnation lawsuit and are not "extrinsic." But, whether properly described as "extrinsic" or not, the parties agree this Court should consider these documents in reaching its conclusion of what interest the railroad obtained in the strip of land.

They also do not find these documents read in their entirety and in the context and purpose for which those documents, including the condemnation proceeding documents, to be ambiguous. To the contrary, for those reasons plaintiffs explain in their principle summary judgment briefing and in the plaintiffs' supplemental brief, the plaintiffs believe the interest the railroad acquired by

the condemnation proceeding in the strip of land for a railroad "right of way" is unambiguously and unequivocally an easement, not title to the fee simple estate in the strip of land.

## II. The "extrinsic evidence" the government relies on in the government's supplemental brief demonstrates the railroad acquired an easement, not title to the fee estate.

The 1926 condemnation proceeding was a judicially-compelled transfer of private property from Bonnie Tankersley, Mattie Davis, and their heirs, to the Tampa Southern Railroad Company.[1] As such, Bonnie Tankersley and Mattie Davis (for themselves and their heirs) were the *reluctant grantors*. As the railroad stated in its sworn condemnation petition, Bonnie and Mattie did not intend to grant Tampa Southern Railroad any interest in their property and, to the extent the railroad took an interest by eminent domain, Bonnie and Mattie desired the railroad to acquire the least possible interest in their land. Federal district court judge Lake Jones's verdict provided, "[i]t is considered by the Court that the property therein described be appropriated by the Tampa Southern Railroad Company for use as a right of way for said Railroad Company…." **Exhibit 3, Tab 16**.

The government's supplemental brief references two documents from the condemnation proceedings – the railroad's requested *Charge to the Jury*, and Bonnie Tankersley and Mattie Davis's *Answer* to the railroad's condemnation petition. See **Exhibit 3, Tabs 11** and **7**. In its reply, the government supports its contention that Tampa Southern Railroad obtained title to the fee simple absolute estate in the strip of land because these two documents contain the phrases, "*the land*" or "*entire piece of property*." Gov. Suppl. Brief, ECF No. 55, p. 2 (emphasis in original). The government argues, "this '*entire piece of property*' language suggests that the

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[1] The condemnation pleadings and documents are collected in **Exhibit 3** to the plaintiffs' supplemental brief, ECF No. 56. The portions of these documents describing that interest the railroad acquired the condemnation to acquire and the court verdict are transcribed as **Exhibit 5**.

railroad intended to acquire all, and not just some, of the interest Bonnie K. Tankersley owned in the property at the time." *Id*. at p. 3 (emphasis added). The complete sentence from which the government extracts the "entire piece of property" phrase says,

> The court tells the jury that they will find for the defendants a fair equivalent for *the entire piece of property*, which finding should be its market value at present in money, and its market value is the price it would bring when it was offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of buying it; in other words, a fair market value means the fair value between one who wants to purchase and one who wants to sell.

**Exhibit 3**, **Tab 11** ¶6 (emphasis added).

The government's argument and the reliance the government places on the phrases "*the land*" and "*entire piece of property*" is flawed in three ways.

*First*, the government improperly extracts the words *land* and *piece of property* from the text of the whole document. Florida law and general principles of interpretation of legal texts direct the documents must be interpreted as a whole. See Scalia and Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) §24 (*Contextual Canons: Whole-Text Canon*). "The text must be construed as a whole." *Id.* at 167. Scalia and Garner instruct that

> Perhaps no interpretative fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts. ...
>
> Context is a primary determinant of meaning. A legal instrument typically contains many interrelated parts that make up the whole. The entirety of the document thus provides the context for each of its parts. ...
>
> Many of the other principles of interpretation are derived from the whole-text canon – for example, the rules that an interpretation that furthers the document's purpose should be favored (§4 [presumption against ineffectiveness]), that if possible no word should be rendered superfluous (§26 [surplusage canon]), that a word or phrase is presumed to bear the same meaning throughout the document (§25 [presumption of consistent usage]), that provisions should be interpreted in a way that renders them compatible rather than contradictory (§27 [harmonious-reading canon]), that irreconcilably contradictory provisions should be given no effect (§29

> [irreconcilability canon]), and that associated words bear on one another's meaning (*noscitur a sociis*) (§31 [associated-words canon]).

*Id.* at 167-68.

The government does not adhere to the whole-text canon but treats the Answer and Tampa Southern Railroad's Charge to the Jury like a kidnapper assembling a ransom note with select words and phrases cut from a magazine and pasted together. The government also takes no account of the stated *purpose* for the condemnation proceeding. Tampa Southern Railroad stated, "Petitioner further shows unto the Court that the taking of the said property by your petitioner is for the purpose of its use as a right of way for the construction of its railroad, and that the said property is necessary for that purpose." **Exhibit 3**, **Tab 2**, p. 4.

*Second*, the government argues the railroad intended to "acquire all, and not just some" of Bonnie Tankersley's interest in the land when, under Florida law, the interest the railroad could acquire by condemnation was limited to only that necessary to accomplish the public purpose of operating a railway line. See Gov. Suppl. Brief, ECF No. 55, p. 3. See Landowners' Suppl. Brief, ECF No. 56, pp. 20, 23, 25. The railroad needed to acquire only an easement to achieve the purpose of operating a railway line across the land. The railroad did not need to acquire the mineral rights in the land or the right to sell the strip of land to a non-railroad for uses other than a railway line.

The government's statement that "the railroad intended to acquire all, and not just some," of the interest in the strip of land is also directly contrary to Tampa Southern Railroad's sworn statement in the condemnation petition and the district court's verdict. In the Condemnation Petition the railroad's sworn statement provided, "the taking of the said property by your petitioner is for the purpose of its use as a right of way for the construction of its railroad, and that the said property is necessary for that purpose." **Exhibit 3**, **Tab 2**, p. 4. Similarly, the Condemnation

Judgment Judge Lake issued states that the "property...be appropriated by the [railroad] for use as a right of way for said Railroad Company...." **Exhibit 3**, **Tab 16**, p. 4.

*Third*, the government overlooks or ignores the text of the entire document and the related condemnation pleadings – including, most notably, Tampa Southern Railroad's Petition for Condemnation, **Exhibit 3, Tab 2**, the Verdict, **Exhibit 3, Tab 16**, and the Judgment, **Exhibit 3, Tab 17**. In Tampa Southern Railroad's condemnation petition the railroad's representative swears that Tampa Southern Railroad "has duly *located* its *line* of railroad and intends in good faith to construct the same *over and through* the property hereinafter described." **Exhibit 3**, **Tab 2**, p. 3 (emphasis added). And that it "desires to condemn *for use as a right of way* the following described property…." and "that the taking of the said property by [Tampa Southern Railroad] *is for the purpose of its use as a right of way for the construction of its railroad*, and that said property is *necessary for that purpose*." *Id.* at 3 (emphasis added). The use of the words, "*line of railroad*," mean that the railroad only needed and only wanted to condemn a property interest sufficient to run a railway *line* – not a depot or office or warehouse. The words "*over*" and "*through*" describe an *easement*, not title to the fee simple estate. The words *through* and *across* describe a route of transit. "Over the river and through the woods to grandmother's house we go," describes a route through the woods and over the river, not ownership of the river and woods themselves.

## CONCLUSION

The condemnation proceeding and the condemnation documents could not be more clear. The Tampa Southern Railroad Company condemned the strip of land "*over and through*" Bonnie Tankersley and Mattie Davis's land for the "*purpose*" of acquiring a "*right of way*" upon which to build and operate a railway "*line*." The strip of land was neither intended for, nor in fact used for, anything other than *railway line* with tracks, ties, and locomotives pulling railroad cars *over*

*and across* this strip of land. No one contemplated that the 1926 condemnation verdict granted Tampa Southern Railroad title to the fee simple absolute estate in the strip of land. This Court should grant the landowners' motion for partial summary judgment.

Respectfully submitted,

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