

IN THE SUPREME COURT OF THE STATE OF NEVADA

MONUMENT POINTE, LTD., A
NEVADA LIMITED LIABILITY
COMPANY,
Appellant/Cross-Respondent,
vs.
COUNTY OF CLARK, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent/Cross-Appellant.

No. 40054

FILED

DEC 21 2004

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. R. Rade*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant/cross-respondent Monument Pointe, LLC (Monument) appeals from a judgment in a condemnation action and an order denying its motion for a new trial. Respondent/cross-appellant Clark County appeals from the district court's denying its motion for attorney fees. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

The County initiated an eminent domain action on September 4, 1997, to condemn real property located within a residential subdivision owned by Monument in Henderson, Nevada. At trial, Monument asserted that the County caused damages to Monument's developing subdivision, when it announced at a public hearing on September 12, 1995, that it planned to build an interchange through the subdivision, suggesting that several lots would be condemned. Monument maintains that this announcement caused home sales in its subdivision to drop. Thereafter,

the County condemned 549 square feet of one lot of the subdivision and a temporary easement of 618 square feet for construction purposes.

Monument contends that it was entitled to summary judgment on liability as a matter of law under State, Department of Transportation v. Barsy.¹ We disagree. The issue of whether the County unreasonably and excessively delayed and the other Barsy factors are questions of fact to be resolved at trial.

Monument also contends that the district court abused its discretion when it denied Monument's motion to exclude evidence that Monument knew that the County planned to condemn the property before Monument purchased it. Monument contends that the district court erred in permitting this prior knowledge evidence during opening and closing statements and during cross-examination because it is irrelevant and prejudicial to this case.

"The district court enjoys broad discretion in determining whether evidence should be admitted."² Courts in other jurisdictions have held that evidence and arguments concerning the landowner's prior knowledge of the government's plan to condemn property should be excluded at trial because they are irrelevant and prejudicial.³ Relevant

¹113 Nev. 712, 941 P.2d 971 (1997), overruled on other grounds by GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11 (2001).

²Prabhu v. Levine, 112 Nev. 1538, 1548, 930 P.2d 103, 110 (1996).

³See Department of Transportation v. Newmark, 341 N.E.2d 133, 136 (Ill. App. Ct. 1975) (holding that in a case "[w]here the landowner has counterclaimed for [severance] damages to land not taken. . . . [t]he

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evidence should focus on the value of the property that the government condemned and damages to the remaining property,⁴ and not on the landowner's prior knowledge of the government's proposed condemnation or on the financial risks the landowner assumed.

Here, the district court provided the jury with the following instruction, "[k]nowledge of a government project prior to purchasing property has nothing to do with just compensation and shall not be considered by you for that purpose." While evidence concerning Monument's prior knowledge was improperly admitted, we conclude that the district court's jury instruction to disregard Monument's prior knowledge cured this error.

... continued

admission of evidence and counsel's arguments on the questions of defendant's 'prior knowledge,' other property holdings, and business acumen, were improper because they were totally irrelevant to the issues before the jury" and manifestly prejudicial); see also Babinec v. State, 512 P.2d 563, 572 (Alaska 1973) (holding that "[p]roperty owners who are aware of a proposed condemnation nevertheless may make reasonable improvements to their property and are entitled to the value of the improvements made with such knowledge before the taking. The evidence of prior knowledge is ordinarily irrelevant and inadmissible" to claims for original property value and severance damages.); Boehm v. Backes, 493 N.W.2d 671, 673 (N.D. 1992) (stating that "[t]he irrelevance of knowledge of the expected improvement is confirmed by precedents elsewhere" for recovery of business loss resulting from the government permanently impairing access to the business property).

⁴See NRS 37.110.

Monument next argues that the district court abused its discretion in excluding Monument's expert witness, Randle Phelps, who planned to testify that the County's proposed beltway construction through Monument's subdivision and possible condemnation of subdivision land negatively impacted Monument's home sales.

"A decision concerning the competency of a witness to offer an opinion as an expert is within the sound discretion of the trial court and the ruling will not be disturbed unless a clear abuse of the court's discretion is shown."⁵ Here, the County presented evidence of Monument's actual home sales. Expert testimony concerning planned sales was unnecessary and cumulative. Therefore, the district court did not abuse its discretion in excluding Phelps' testimony.

Monument further alleges that the district court abused its discretion in ruling on numerous other evidentiary issues. We disagree. "The district court enjoys broad discretion in determining whether evidence should be admitted."⁶


We have considered all other issues raised by both parties on appeal and cross-appeal and find them to be without merit.


⁵Cheyenne Construction v. Hozz, 102 Nev. 308, 311, 720 P.2d 1224, 1226 (1986).


⁶Prabhu, 112 Nev. at 1548, 930 P.2d at 110.


Accordingly, we ORDER the judgment of the district court
AFFIRMED.⁷

 _____, C.J.
Shearing

 _____, J.
Agosti

 _____, J.
Becker

 _____, J.
Maupin

 _____, Sr.J.
Young⁸

⁷The Honorable Mark Gibbons, Justice, and the Honorable Michael L. Douglas, Justice, voluntarily recused themselves from participation in the decision of this matter.

⁸The Honorable Cliff Young, Senior Justice, was appointed by the court to sit in place of the Honorable Robert E. Rose, Justice. Nev. Const. art. 6, § 19; SCR 10.

cc: Eighth Judicial District Court Dept. 11, District Judge
Law Offices of Kermitt L. Waters
Michael G. Chapman
Clark County District Attorney David J. Roger/Civil Division
Clark County Clerk