

LEXSEE 517 NW2D 872

**CITY OF NORTON SHORES, Plaintiff-Appellee, v. WHITECO METROCOM, a division of WHITECO INDUSTRIES, INC., Defendant-Appellant. CITY OF NORTON SHORES, Plaintiff-Appellee, v. OCI CORPORATION OF MICHIGAN, a/k/a MID-AMERICA COMMUNICATION, Defendant-Appellant. MICHIGAN DEPARTMENT OF TRANSPORTATION, Plaintiff-Appellee, v. OCI CORPORATION OF PORT HURON, Defendant-Appellant.**

No. 152447, Nos. 152448, 152449, 152450, No. 156802

## COURT OF APPEALS OF MICHIGAN

205 Mich. App. 659; 517 N.W.2d 872; 1994 Mich. App. LEXIS 287

March 17, 1994, Submitted

June 20, 1994, Decided

**DISPOSITION:** [\*\*\*1]

Reversed.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Appellant corporations challenged the decision of the trial court (Michigan), which, in an action for just compensation for private property taken for public use, ruled that they could not introduce into evidence estimates of their property's market value based upon capitalization of income.

**OVERVIEW:** The city condemned leaseholds that gave the corporations the right to locate on certain land several billboards they owned. The state condemned three billboards, and the easement belonging to one of the corporations. The corporations were paid for the costs of detaching and reattaching their signs somewhere else. They sought on appeal, to introduce evidence of the market value of the property taken. The court found that the leaseholds were real property and that income capitalization was a proper method of estimating the value of income-producing real property. The trial courts erred in excluding evidence of appraisals of the property's market value based on the income capitalization method. The judgment was reversed.

**OUTCOME:** The judgment denying the corporations the right to introduce into evidence estimates of their property's market value based upon capitalization of income was reversed.

**LexisNexis(R) Headnotes*****Real & Personal Property Law > Eminent Domain Proceedings***

[HN1] The Michigan constitution requires government to pay "just compensation" for all property taken for public use. Mich. Const. 1963, art 10, § 2; U.S. Const. amend. V. It is important to identify the property being taken before determining just compensation.

***Real & Personal Property Law > Eminent Domain Proceedings******Real & Personal Property Law > Estates, Rights & Titles > Fixtures & Improvements******Real & Personal Property Law > Estates, Rights & Titles > Equitable Interests***

[HN2] Billboards are trade fixtures. Thus, there is no disputing that the City has an obligation to pay the owners for the costs associated with moving their billboards to another location. However, merely paying the owners for the costs of detaching and reattaching their signs somewhere else is not just compensation for the leaseholds that have been taken from them, unless those leases were terminable at will.

***Estate, Gift & Trust Law > Valuation > Real Property******Real & Personal Property Law > Eminent Domain Proceedings***

[HN3] Income capitalization is a proper method of estimating the value of income-producing real property.

**COUNSEL:**

Frank J. Kelley, Attorney General, Thomas L. Casey, Solicitor General, Patrick F. Isom and Ronald F. Rose, Assistant Attorneys General, and David E. Oppliger, Special Assistant Attorney General, for Department of Transportation.

James J. Kobza, for City of Norton Shores. Muskegon.

Bodman, Longley & Dahling (by James J. Walsh and William L. Hoey), for the defendants. Detroit.

Amicus Curiae: Mika, Meyers, Beckett & Jones (by Mary L. Mason, William A. Horn, Neil P. Jansen, and Mary E. Conners), for Michigan Municipal League. Grand Rapids.

**JUDGES:** Before: Doctoroff, C.J., and Connor and E.E. Borradaile, \* JJ.

\* Circuit judge, sitting on the Court of Appeals by assignment.

**OPINIONBY:** MICHAEL J. CONNOR

**OPINION:** [\*661]

[\*\*872] CONNOR, J.

These consolidated cases are all concerned with the issue of just compensation for private property taken for public use, and they all involve billboards. Each defendant possessed [\*\*873] property that was condemned pursuant to the Uniform Condemnation Procedures Act, *MCL 213.51* et seq.; MSA 8.265(1) et seq. In each case, the trial court rulings that the defendants could not introduce into evidence estimates of their property's market value based upon capitalization of income [\*\*\*2] is appealed. We reverse.

[HN1] Our constitution requires government to pay "just compensation" for all property taken for public use. Const 1963, art 10, § 2; see also U.S. Const, Am V. As this case shows, it is important to identify the property being taken before determining just compensation.

Although these cases all involve billboards, it would be incorrect to say that the property taken was billboards. In fact, the City of Norton Shores did not expressly condemn any billboards. Rather, it condemned leaseholds that gave defendants OCI Corporation of Michigan and Whiteco Metrocom the right to locate on certain land several billboards they owned. The Department of Transportation did expressly condemn three billboards, but it also condemned the easement OCI Corporation of Port Huron owned that entitled it to place those three billboards on the top of a building at that precise location.  
n1

n1 Because the Department of Transportation condemned the three billboards belonging to OCI Corporation of Port Huron, there is no dispute that the department has the obligation to pay OCI Corporation of Port Huron the full value of the bill-

boards. There seems to be agreement that this can be determined by estimating the cost of the billboards as "new less depreciation."

[\*\*\*3]

There is no dispute that all [HN2] the billboards in [\*662] question are trade fixtures. Thus, there is no disputing that the City of Norton Shores has an obligation to pay defendants OCI Corporation of Michigan and Whiteco for the costs associated with moving their billboards to another location. See *In re Widening of Gratiot Avenue*, 294 Mich 569, 573; 293 NW 755 (1940). However, merely paying OCI Corporation of Michigan and Whiteco for the costs of detaching and reattaching their signs somewhere else is not just compensation for the leaseholds that have been taken from them, unless those leases were terminable at will. See *id.* at 575. The record shows that most of the leases in question were not terminable at will.

Regardless of whether a billboard is classified as personal property or a fixture, the leaseholds and air rights that were taken from defendants are real property. This Court has previously held that [HN3] income capitalization is a proper method of estimating the value of income-producing real property. *State Hwy Comm'r v Hessell*, 5 Mich App 559, 564; 147 NW2d 464 (1967). [\*\*\*4] Furthermore, the record reflects that the opposing experts agreed that income capitalization is one of several valid methods used to estimate the market value of real property. n2

n2 This is not surprising. In the real world beyond the courthouse walls, reasonable buyers deciding how much to pay for income-producing real property, and reasonable sellers deciding how much to sell income-producing real property for, necessarily must consider the property's ability to produce income.

Defendants are not seeking to recover profits lost as a result of the takings; they only desire to introduce evidence of the market value of the property taken. Plaintiffs' experts and defendants' experts may disagree about the best way of estimating [\*663] that market value, but their disagreement is a question of fact for the trier of fact to resolve, not a question of law for the courts to decide. The trial courts erred in excluding evidence of appraisals of the property's market value based on the income capitalization method. n3

n3 We have not determined the admissibility of any particular evidence. While the air rights of

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OCI Corporation of Port Huron were perpetual, the terms of the leases taken from OCI Corporation of Michigan and Whiteco varied considerably. We note that market value estimates, based on income, that do not take into account the finite terms of the leases in question might not be admissible because they lack relevance, MRE 402, or because the probative value is substantially outweighed by the danger of unfair prejudice, MRE 403.

[\*\*\*5]

Reversed.

Michael J. Connor

Martin M. Doctoroff

Earl E. Borradaile

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