

STATE OF MINNESOTA
IN COURT OF APPEAL

Dean Oliver and Delores Oliver,

Appellants,

v.

Appellate Case No. A08-0646

State of Minnesota, by its Commissioner
of Transportation,

Respondent.

APPELLANTS' REPLY BRIEF

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**I. THE STATE'S RECITATION OF FACTS DOES NOT PORTRAY
THE EVIDENCE MOST FAVORABLY TO OLIVER AS IS REQUIRED
IN REVIEW OF A SUMMARY JUDGMENT**

The State chronicles ten pages of facts gleaned from depositions and Affidavits of various witnesses. (Respondent's Brief and Appendix, pp. 2-12) The naked recitation of facts, even if accurately stated, does nothing to highlight the inferences to be drawn from them. All inferences from the facts must be viewed most favorably to Oliver. Factual inferences, credibility, and the weight of the evidence constitute factual questions for a jury. *Couillard v. Charles T. Miller Hospital, Inc.*, 253 Minn. 418, 92 N.W.2d 96 (1958). All factual inferences and conclusions must be construed in favor of the party opposing summary judgment. *Grondahl v. Bulluck*, 318 N.W.2d 240 (Minn. 1982).

The State's recitation of facts violates the principle that facts are to be construed most favorably to the nonmoving party. By way of an example of how the State's recitation of facts violate this principle, one need only refer to the State's characterization of the initial 1954 negotiations between Oliver and the State of Minnesota for the opening of a gravel pit and construction of the gravel haul road. The State describes the deal as follows:

“Dean Oliver has testified that he wanted ten cents per yard but agreed to accept eight cents instead in exchange for the State putting in an access road to the east side of the Oliver Parcel. A.A. 19. He acknowledges that this purported deal is not reflected in the written agreement or in any other agreement, but rather states that when the deal was reached, the parties

'shook hands'. A.A. 21."

(Respondent's Brief and Appendix p. 4) Dean Oliver's unrefuted testimony, on the other hand, reveals a quite different scenario. Dean Oliver testified

"A: Well, the purpose of this agreement [referring to the 1954 indenture] was that I had the gravel that they needed when they made number 10 into a four-lane highway. And they agreed—they wanted to pay me 10 cents a yard, and I talked with this Mr. Sandman, his name was, that represented the State, and we finally agreed upon 8 cents a yard and the State build the haul road in. And there was no time limit. It was to be the outlet for my gravel pit. They also had the option to go down my south line and they chose to go straight south to number 10. And by taking 8 cents a yard, I more or less gave up 2 to 4 cents per yard to pay for that road."

(A-19)

In further explaining the 1954 deal with the State of Minnesota for the construction of a haul road, Oliver stated

". . .I'm sure if you look hard enough in the files of State pit 4140, you will find something to that effect because it's—you probably don't remember this. You're just a young man. But back in the '50s when a deal was made, we shook hands and that was the deal. That was what was agreed upon. And Mr. Sandman, he agreed to this—my taking 8 cents a yard and the State would build the road, put in the easements or whatever, as an outlet for my

pit and there was no time limit. There was nothing mentioned about 25 years or 50 years, no time limit. It was to be a road for an outlet for my pit.”

(A-21-22)

Oliver’s version of the original agreement is a crucial fact underlying his claim of damages for loss of access. If Oliver had a right of access to Highway 10 over the haul road, the State of Minnesota agrees that condemnation would be proper.

Oliver’s credibility as to the agreement is buttressed by his proper identity of the individual representing the State of Minnesota in the negotiations, i.e. a “Mr. Sandman”, who is a signatory on the indenture between Dean Oliver and the State of Minnesota, (A-78), and a signatory on all of the easements obtained to construct the haul road. (A-82-84)

Based on the unrefuted testimony of Mr. Oliver, the State of Minnesota would be estopped from denying the existence of a right of access on the haul road. Promissory estoppel would apply in this case. Promissory estoppel requires the analysis of three elements: (1) whether there was as clear and definite promise (you build me an access haul road and I will charge you only 8 cents per yard); (2) whether the promissor intended to induce reliance, and whether such reliance occurred (written contract between Oliver and State grants easements across Oliver’s property to construct a haul road); and (3) whether the promise must be enforced to prevent injustice (Oliver will need to expend \$150,000 to \$250,000 to construct a haul road as a direct consequence of the State

closing the haul road it constructed). *Olson v. Synergistic Technologies Business System, Inc.*, 628 N.W.2d 142 (Minn. 2001). The Doctrine of Promissory Estoppel prevents the State from denying the existence of a right of access to the haul road. On this issue, there remain disputed issues of material fact which Oliver has a right to present at trial.

It would serve little purpose to individually highlight each objection to the State's Brief and recitation of facts. Suffice it to say that in 1954, Dean Oliver was approached by the State to open a gravel pit to accommodate the expansion of TH10. In good faith, Oliver bargained with representatives of the State. He agreed to lesser royalty for each yard of gravel in exchange for the State's construction of a haul road. The haul road was to remain in place to provide an outlet to gravel deposits on Oliver's land. The agreement in large part is contained in the 1954 indenture where the State agreed to construct a haul road on Oliver's property to allow marketing of aggregate deposits. (A-76-79) To allow the State some 50 years later to block the haul road without giving compensation to Oliver, would work an injustice. Oliver paid for the original haul road by agreeing to accept reduced royalties for aggregate removed and now will be burdened with the expense of \$150,000 to \$250,000 of constructing a haul road to access a public highway as a direct result of the State's closure of the haul road. The State should not be permitted to treat its citizens in such a callous manner.

CONCLUSION

There are factual issues which must be determined at trial. This Court should reverse the grant of summary judgment, find that a taking has occurred, and remand for a trial on the issue of damages.

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