

APPELLATE COURT CASE NO. A12-391

Trial Court Case No. 09-CV-10-913

**STATE OF MINNESOTA
IN COURT OF APPEALS**

CITY OF CLOQUET, petitioner,

Respondent,

vs.

JULIE CRANDALL et al.,

Appellants,

LYN JOHNSON, et al.,

Respondents Below.

RESPONDENT CITY OF CLOQUET'S REPLY BRIEF

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REPLY ARGUMENT

A. Minn. Stat. § 117.187 Does Not Use the Term “Fee Owner” as Advocated by Crandall, but Instead Defines “Owner” to be the “Holder of Fee Title.”

The Crandalls claim that for the purposes of statutory interpretation, it must be assumed that the Legislature was aware of the technical definition of the term “fee owner.” They argue at length, and for the better part of two pages, that the definition of “fee owner” was intended to include both a contract for deed vendee (purchaser) and a contract for deed vendor (seller). However, by accepting such an argument, one is led to the inescapable conclusion that in any given instance there could be multiple “fee owners” who could make a claim for minimum compensation damages; we disagree that such an assertion was intended or is legally permitted based upon the language adopted.

It is important to point out that the term “fee owner” is not a term to be found within the written statute, see Minn. Stat. §117.187. Rather an “owner” is defined as the person or entity that holds the *fee title* to the property. The statute does not refer to “persons or entities” in the plural and we would submit that it was intentionally narrowly written to make clear that only a single fee title owner could bring such a claim. Therefore, the Crandalls’ argument that as vendees on a contract for deed they are “fee owners” for purposes of the minimum compensation statute is inconsistent with any reasonable interpretation of the statutory language of Minn. Stat. §117.187. Therefore, what is evident is that when the strict definition of “owner” is applied to the Crandalls’ interest, they do not meet the meaning of the definition “owner” as was intended and created by the Legislature with regard to

application of the minimum compensation statute since they did not hold fee title at the time of taking. This Court should not allow them to maintain a claim for minimum compensation damages based upon an assignment of rights after the fact.

B. The Legislative History Clearly Indicates That at the Time of the Adoption of the Bill Into its Final Form, that it was Clearly Intended that the Minimum Compensation Statute Would Not Afford a Remedy to Purchasers Under a Contract for Deed.

The Crandalls attempt to rely upon the case of *Kollodge v. F. & L. Appliances, Inc.*, 80 N.W. 2d 62, 64 (Minn. 1956) for the legal proposition that “it is a cardinal rule of statutory construction that a particular provision of a statute cannot be read out of context but must be taken together with other related provisions to determine its meaning; such an interpretation cuts against their argument in this context. Crandalls cite the *Kollodge* decision, and then list a half page of law review articles regarding backlash to the Federal Supreme Court *Kelo* decision in an apparent attempt to show that the reform of eminent domain laws provides the necessary “context” for a liberal and an expansive interpretation of the terminology contained in Minn. Stat. §117.187.

However, the “context” referred to by the court in *Kollodge* is made up of the related provisions found in the surrounding statute or statutes passed as part of the same legislation which helps to provide a proper framework for understanding the Legislature’s intent (*also see Amcon Block & Precast, Inc. v. Suess*, 794 N.W.2d 386, 387 (Minn.App. 2011)). *Kollodge* clearly did not stand for the proposition that general public opinion or emotion would play a part in the statutory interpretation of those provisions.

The “context” to be considered in understanding the definition of “owner” found within this statute, is made up of the similar “owner” definitions found within the legislative package to which §117.187 was made a part. That analysis was thoroughly discussed in our primary Related Appeal Brief previously filed with this Court. That discussion makes clear that each succeeding definition of “owner” was intended to be more restrictive, with the definition of “owner” in §117.187 being the most restrictive. As we have previously and fully explained, it is evident that those provisions were clearly intended to apply only to the person who “holds fee title to the property” (the person in title by deed).

Crandall’s response to our specific discussion of the legislative history set forth at the Eminent Domain Conference Committee Hearing held on April 28, 2006, is to argue that the statements of Legislative Counsel as to what constitutes an “owner” are not instructive:

Mr. Chair I just wanted to add in my understanding as well that *fee owner would not include a purchaser under a contract for deed.*

(Transcript of Eminent Domain Conference Committee: Senate File No. 2750, April 28, 2006, at 1:53:03 to 1:56:58 of recording; R.ADD-17). Crandall’s claim that consideration of Ms. Beresovsky’s statement is impermissible, and cite to the case of *McKee-Johnson v. Johnson*, 444 N.W. 2d 259, 263 (Minn. 1989)(citing *Handle With Care, Inc. v. Dep’t of Human Services*, 406 N.W.2d 518, 522 (Minn. 1987), as support for that proposition. However, we would submit that the case clearly states that, “in referring to [legislative] history, [courts] may consider transcripts of taped legislative committee discussions and floor proceedings.” *Handle With Care* at 522. “While [courts] generally treat with caution statements made in

committee discussions or during floor debates we do afford some weight to those made by the sponsor of a bill or an amendment relative to the purpose or effect of the proposed legislation.” *Handle With Care* at 522 (citing *National Woodwork Mfrs. Ass’n v. N.L.R.B.*, 386 U.S. 612, 639-640 (1967)). Crandalls mistakenly assert that Ms. Berezovsky’s statement is impermissible to consider because she is a non-legislator, and that only the statement made by sponsor Rep. Jeff Johnson should be given any weight. However, *National Woodwork* makes clear that the statements made in committee discussions which should be treated with caution are those made by opponents of a provision. “We have often cautioned against the danger, when interpreting a statute, of reliance upon the views of its legislative opponents. In their zeal to defeat a bill, they understandably tend to overstate its reach.” *National Woodwork* at 639-640. Such caution does not apply to the statements of Ms. Berezovsky in this context since she was not an opponent to the legislation but was attending the hearing as Legislative Counsel, to provide advice to the Committee on the legal effect of the proposed legislation.

There is no requirement that our legislators have a legal education, and oftentimes legislators may not fully appreciate the legal effect of particular terminology in proposed legislation. Providing that understanding is the job of legislative counsel, so that legislators can adjust proposed language to accomplish what is truly intended. In this particular case, Crandall characterizes Ms. Berezovsky’s statement as an “off-hand, unanswered question of a non-legislator,” with the transparent intent to diminish its probative value. However, what

is clear from the transcript is that her statement was not “offhand,” since it was made in the course of advising the legislators of the full legal effect of the proposed amendment language. In addition, her statement was not an “unanswered question,” since it was clearly a statement clarifying her understanding of the legal effect of the proposed amendment language. Her comment was clearly provided to assist the legislators to understand the probable legal affect of the language adopted and to help answer *their* questions. Accordingly, even though she is not a “legislator,” at least in this context, it does not render consideration of her statement impermissible. Nowhere does National Woodwork, or Handle With Care, or McKee-Johnson v. Johnson, hold that consideration of statements made by legislative counsel are impermissible. In fact, Minnesota courts have consistently relied upon input from legislative counsel and legislative analysts, when helpful in determining legislative intent. (See Franke v. Fabcon, Inc., 509 N.W.2d 373, 376 (Minn. 1993)(audio tape comments of Senate Counsel in response to question from Senator Ranum relied upon to determine intent of amendment); State v. Kiminski, 474 N.W.2d 385, 388 (Minn.App. 1991)(audio tape of Senate Counsel statements made at Senate Judiciary Committee Hearing considered in determining legislature’s intent as to breadth of State lottery fraud statute); Concord Property Co. v. Otter Tail County, 1987 WL 19134 7 (Minn.Tax) (explanation of Senate Counsel Zopf-Sellner before Senate Tax Committee considered in determining legislative intent regarding ambiguity in statute); Miller v. Auto-Owners Ins. Co., 358 N.W.2d 477, 481 (Minn.App. 1984)(a summary of the No-Fault Act by a legislative analyst who played an important role in the conference committee relied upon as evidence of legislative intent); Krumm v. R.A.

Nadeau Co., 276 N.W.2d 641, 644 (Minn. 1979)(response by House legislative analyst to question from State representative at meeting of House Committee on Governmental Operations as to what change in language does, relied upon to show intent of amendment)).

Crandall further claims Ms. Berezovsky's statement was "unsolicited and never received an affirmation or even a response from any legislator," and further, "received no response from Rep. Johnson or anyone else in the committee." As to being "unsolicited," it is the job of legislative counsel to provide legal advice as appropriate, not only when requested. However at this particular hearing Senator Linda Higgins did ask the question with regard to the meaning of this new definition of "owner", asking Chair Johnson "what does that mean and what other kinds of title does that exclude?" (R.ADD-15). Chair Johnson's response made clear that he did not fully comprehend all of the other kinds of title that would be excluded, when he responded, "I believe it means that this would then not apply to renters, or lessors (pause) lessees rather." (R.ADD-15). Following a short intervening discussion on whether it is necessary to use plural or singular terms, Ms. Beresovsky was recognized by Chair Johnson and then responded to Senator Higgins question, providing her legal opinion that the definition of "owner" in §117.187 also "***would not include a purchaser under a contract for deed.***"

Ms. Beresovsky's statement did not require "affirmation" because she was the one giving legal counsel, not receiving it. There is a pause following her statement, in which it is reasonable to conclude that the legislators stopped to consider the full legal effect of this new definition as explained by Ms. Beresovsky. Chair Johnson then responds to her statement by

requesting whether there was any further discussion on the amendment language. (R.ADD-17). The fact that there was no response to Chair Johnson from any of the legislators provides support for the conclusion that they did not question Ms. Beresovsky's statement, but accepted it. Chair Johnson himself did not question Ms. Beresovsky's statement, or make a further amendment to his own wording of the definition of "owner" to correct for it, but instead, on seeing no further discussion on the amendment language, called for the vote which then passed. "In addition to all else, '(t)he silence of the sponsors of (the) amendments is pregnant with significance * * *.'" National Woodwork at 640 (citing National Labor Relations Board v. Fruit & Vegetable Packers, etc., 377 U.S. 58, 66(1964)). It is clear then that Chair Johnson, as well as the other legislators, on passing the amendment to include the restrictive definition of "owner" in §117.187 understood and unambiguously intended that it would not include a purchaser under a contract for deed.

We would therefore respectfully submit that our reliance on the statement made by Legislative Counsel Bonnie Berezovsky is permissible and should be given due consideration, because Ms. Berezovsky's statement was a direct response to a legislator's request for an interpretation of the legal effect of the amendment language. It is also evident that her response was unquestioned by legislators (including the chair of the committee and sponsor of the bill), who then immediately voted to adopt the definition of "owner" which had just been presented.

C. The Legislative Intent to Restrict the Definition of “Owner” in Minn. Stat. §117.187 to Exclude Purchasers Under a Contract for Deed Does Not Produce an Absurd Result.

The purpose of statutory construction by a Court is to determine the intent of the Legislature and to render a ruling that gives it proper and intended effect. *Amcon Block & Precast, Inc. v. Suess*, 794 N.W.2d 386, 387 (Minn.App. 2011). The Court has a different role in our democratic process separate from the legislative branch. Therefore, even if a Court determines that the proper application of intended legislation produces an absurd result, it is up to the Legislature, not the Court, to remedy the statute. *Amcon*. at 388. Fortunately, we are not faced with that situation in this context. In fact, we would submit that it is the implementation of the position advocated by the Crandalls that would produce an unintended and absurd result in this situation.

As we have consistently argued, by interpreting this section to include purchasers under a contract for deed, not only would the Court be adopting an interpretation that is unsupported by the legislative history, but the Court would be injecting its judgment that the legislature intended that multiple claimants (not just the fee title owner) could make a claim for minimum compensation damages in any eminent domain proceeding. This is necessarily so if the Court adopts the Crandalls’ argument that a fee title owner’s interest splits into two parts and the vendor AND vendee of a contract for deed each then hold their own fee title. Under that theory, it would be contractually possible to create additional interests. They argue that the vendor holds legal fee title and that the vendee holds equitable title. While we don’t dispute the assertion that a vendee holds an equitable interest referred to at times as equitable title, a

vendee clearly is not the holder of fee title, and since the statute was clearly drafted to apply to a singular interest, their attempt to strain the definition of fee title necessarily produces a potentially absurd result. It is quite evident that the Legislature did not intend that two or more parties could each claim separate damages under the minimum compensation statute. If that were the case, each claimant would be able to make a claim they are entitled to purchase their own building to meet their own needs, which would clearly be an absurd result.

D. Use of the Term “Contract Purchaser” in Minn. Stat. § 117.036 Clearly Refers to Purchasers Under a Contract for Deed Therefore the Legislature Could Have Clearly Included Them as Claimants for Minimum Compensation Damages if that had Been the Legislature’s True Intent.

Crandalls claim that the term “contract purchaser” found in Minn. Stat. §117.036 only refers to buyers with a purchase agreement, but that contract for deed purchasers fall under the description of “fee owner,” even though “contract purchaser” is the very definition of a purchaser under a contract for deed. It is obvious that “contract purchaser” includes purchasers under a contract for deed, and if the Legislature had intended to include such purchasers in the term “owner” in Minn. Stat. §117.187, they would have included them. However, Minn. Stat. §117.187 was intended to be limited to the “owner” who is the “holder of fee title” and not to contract for deed purchasers. In that regard, we would specifically cite the definition adopted in §117.036 Subd. 1a.:

Subd. 1a. Definition of Owner. For the purposes of this section, “owner” means fee owner, contract purchaser, or business lessee who is entitled to condemnation compensation under a lease.

As such, if the Legislature had intended to include purchasers on a contract for deed as claimants for minimum compensation damages it certainly could have done so by adopting the identical definition. The Legislature chose not to do so for all of the reasons we have fully explained above.

E. Liberal Rules of Construction Do Not Apply Where a Statute is Clear on its Face and Where There is No Ambiguity.

In this particular case the portion of the Statute which sets forth the definition of what constitutes an “owner” is clear, for purposes of the Minimum Compensation Statute the “owner” is “the person or entity who holds fee title to the property”. The intent is clear on its face, therefore the argument advanced by Crandall that the liberal rules of construction are ~~not~~ applicable should be rejected. See *Larson v. State*, 790 N.W.2d 700, 704 (Minn. 2010)(in response to a request for liberal construction of an eminent domain statute, the court stated that a rule of liberal construction does not apply where a statute is unambiguous on its face).

F. The City’s Discussion of the Terms and Payments Under the Contract for Deed Are Sound.

Crandalls claim that the City’s characterization of the nature of their interest as purchasers under the contract for deed at issue, is a red herring and irrelevant. We would submit that our characterization of the Crandalls’ interest as one akin to that of mere renters is accurate. Even though we would concede that the Crandalls did hold contractual rights under the applicable contract for deed, it is evident that up to the date of taking they were clearly in default even though the contract was never cancelled by the Johnsons. On these

facts, equity is not on the Crandalls' side. What is undisputed is that at the time of taking the Crandalls owed more on the contract than at its inception. The original Contract for Deed was a simple rental agreement with option to purchase for \$130,000 (see Appellant's Appendix APP-21). Ten years later, following the taking, Johnsons received a check for \$138,000 from the Court (made out to Johnsons and Queen City Savings Bank) in exchange for a signed copy of the Contract for Deed Satisfaction (see Appellant's Appendix APP-16). The taking allowed sufficient liquid assets to pay off the contract for deed and still provide excess funding to the Crandalls which could be used to continue the operation of their business. This is not a situation where the contract for deed purchaser had made all payments to date and had accrued substantial equity on property that was about to be paid off. Crandalls had been making interest only payments for 10 years and were still behind on those payments by \$8,000. This was clearly a case where the vendors could well have opted to cancel the contract and resell the property. Given the fact that such circumstances are not uncommon, it is understandable why the Legislature would choose not to allow purchasers under a contract for deed, such as the Crandalls, to act as "fee owners" for purposes of the Minimum Compensation statute.

G. Since the Crandalls Were Merely Vendees on a Contract for Deed at the Time of Taking, the Fact that the Vendors Subsequently Released Crandalls From Their Obligations Under the Contract for Deed, Without An Assignment of Rights, Gives Them No Greater Rights Than Existed at the Time of Taking, and Any Argument to the Contrary is Illusory.

The Crandalls argue that even if they concede to the interpretation being advanced by the City, that contract for deed vendees are not "fee owners", that they are nonetheless entitled

to claim such damages since, according to Crandalls “the respondents in this action, other than the Crandalls, stipulated and agreed that all their rights and interest in any proceeds from the condemnation [were] released to the Crandalls.” In support of this assertion they cite to the Stipulation and Order found in Appellant’s Appendix APP-14 (Appellant Crandalls Response-Reply Brief pg. 20, para. G). Crandalls claim, therefore, that they became “fee owners”. Unfortunately for the Crandalls, we believe their argument is without substance for a number of reasons.

The Stipulation (see Appellant’s Appendix APP-15) referenced by Crandalls for their claimed “assignment of rights” provides in paragraph 8, that upon full payment to the vendors, Rae and Lyn Johnson, that they “release Kerry Crandall and Julie Crandall from any and all obligations related to the Contract for Deed.” It further provides in paragraph 9, that upon payment to Rae and Lyn Johnson they (Johnsons) “stipulate and agree that they have no further interest in the above captioned matter.” It goes on to state in paragraph 10, that before funds will be released to Rae and Lyn Johnson, that they “must deliver a signed copy of the Contract for Deed Satisfaction attached hereto.” The Contract for Deed Satisfaction (see Appellant’s Appendix APP-28) simply states that the Contract for Deed has been fully paid and satisfied.

What is particularly significant is that nowhere in the document is there an assignment of rights from Johnsons to the Crandalls (or from any other Respondents) as is implied by the Appellants. It is conceded that Johnsons did release Crandalls from obligations under the Contract for Deed, because the Contract was then paid in full, Johnsons having received a

\$138,000 check from the Court (made out to Johnsons and Queen City Savings Bank) in exchange for a signed copy of the Contract for Deed Satisfaction (see Appellant's Appendix APP-16). As a consequence, the Johnsons acknowledged that they had no further interest in the condemnation action. Since the Contract was paid in full Johnsons were then able to pay on their mortgage on the property.

None of the actions taken by the Johnsons under the Stipulation involve an assignment of rights to the Crandalls. In releasing Crandalls from their obligations under the Contract, the Johnsons also acknowledged that they no longer had an interest in the condemnation action. In providing a Satisfaction stating the Contract was paid and satisfied, the Johnsons did not legally or effectively participate in an assignment of rights. Without a valid assignment of rights, the Crandalls did not step into the shoes of the Johnsons, and cannot claim to exercise rights that would have been personal to the Johnsons. See *Brooks Inv. Co. v. City of Bloomington*, 232 N.W.2d 911, 918 (Minn. 1975)(holding that a vested takings claim has the status of property, is personal to the owner, and does not run with the land if the original owner should subsequently transfer title without an assignment of such right).

Further, at the time of the Stipulation the Johnsons did not possess fee title since title had already transferred to the City by that time. As a result, by the time they received payment the Johnsons had no legal title to give, no fee title to give, or any kind of title to assign the Crandalls. We would therefore respectfully submit that the Crandalls cannot claim access to minimum compensation damages under a claim of title from the Johnsons. This is necessarily true since Crandalls were not fee title holders at the time of "taking" nor at the

time of transfer of title to the City. Again, since the contract could not be satisfied until payment was received from the City, the Johnsons no longer had title to give to the Crandalls at the time of satisfaction and that explains why there could be no effective or attempted assignment of title by Johnsons to Crandalls. The “purported assignment” that Crandalls reference did not occur for some four weeks **after** taking and transfer of title to the City.

And even the release was only obtained after the vendors had been paid in full and all arrearages and accumulated back interest had been taken from the proceeds payable at the time of taking. What is evident is that the Crandalls did not obtain the Johnsons’ (vendors) rights or interest as the holder of fee title at any salient time, before or after the taking. The law is clear that it is the time of taking that is legally determinative as to a claim for damages in an eminent domain case, which cannot be transferred without a valid assignment. *See United States v. Dow*, 357 U.S. 17, 20-21 (1958)(compensation is due at the time of taking, the owner at that time, not the owner at an earlier or later date, receives the payment.).

CONCLUSION

In conclusion, we would respectfully request that this Court deny the Appellants Appeal in all respects and properly rule on our Related Appeal to dismiss all claims for minimum compensation damages based upon the fact that the Appellants were not “fee title owners” of the property in question (did not “hold fee title to the property”) at the time of taking. In the alternative, we would respectfully request that the Trial Court’s decision be affirmed in all respects and for all the reasons properly articulated by Judge David Johnson.

Respectfully submitted,

Dated this 2ND day of July, 2012.



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