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DISTRICT II

December 16, 2015

To:

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1101-FT

The Lamar Company, LLC v. Country Side Restaurant, Inc.
(L.C. #2008CV1908)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Country Side Restaurant, Inc. appeals from a judgment awarding \$86,400 to The Lamar Company, LLC as Lamar's share of the proceeds from a department of transportation (DOT) eminent domain proceeding involving Country Side's property. Lamar leased a section of Country Side's property and erected a billboard that had to be relocated due to the eminent domain proceeding. Pursuant to a presubmission conference and this court's order of June 18, 2015, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we affirm.

The history of this case is set out in *Lamar Company v. Country Side Restaurant, Inc.* (*Lamar III*), No. 2013AP2215, unpublished slip op. (WI App June 25, 2014). We refer to that history only as required to decide this appeal.

The dispute between the parties arose from the DOT's 2008 acquisition of land owned by Country Side; a portion of the land was leased to Lamar for constructing and maintaining a billboard. *Lamar Co. v. Country Side Rest., Inc.* (*Lamar II*), 2012 WI 46, ¶7, 340 Wis. 2d 335, 814 N.W.2d 159. Lamar and Country Side have been litigating the allocation of eminent domain proceeds between them and the value of Lamar's interest in the leased property and the billboard. In *Lamar III*, we remanded to the circuit court to determine Lamar's share of the eminent domain proceeds. *Lamar III*, unpublished slip op. ¶11.

As we made clear in *Lamar III*, "Lamar is still entitled to just compensation for its leasehold and permit interests in [Country Side's] property." *Lamar III*, unpublished slip. op ¶9. Our charge to the circuit court on remand was to "assign[] Lamar's share of the just compensation award for the loss of this sign site, i.e. the leasehold and permit interests." *Id.*, ¶10. We observed that the record suggested several approaches available to the circuit court on remand for making this determination. *Id.* We noted that the circuit court had already determined the fair market value of the sign was \$120,100. *Id.* We observed that on remand to determine Lamar's damages for the value of its sign leasehold and permit, the circuit court had the option of relying upon Lamar's expert's opinion that the value of the sign site was \$86,400. *Id.*

On remand, the circuit court found that the value of the sign site was \$86,400 based upon the opinion of Lamar's expert, Dr. Rodolfo Aguilar, a real estate appraiser and consultant. The

circuit court deemed Aguilar credible. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (credibility is for the circuit court as the finder of fact).

On appeal, Country Side challenges the circuit court's determination that the sign site's value was \$86,400. Country Side argues that the \$75,175¹ Lamar received to relocate the sign reduced the damages available to Lamar on remand from *Lamar III*. In other words, Country Side suggests that the \$75,175 in relocation damages should be considered in calculating the value of Lamar's sign site. As we noted in *Lamar II*, the portion of the relocation payment for the cost to rebuild the sign, made directly from the DOT to Lamar, is done. *Lamar II*, 340 Wis. 2d 335, ¶2. The supreme court made clear that Lamar is still entitled to just compensation for its leasehold and permit interests in the property. *Id.*, ¶40. Any perceived overpayment for the cost to rebuild the sign structure in the DOT settlement cannot be used to short Lamar of its fair share of the DOT's joint just compensation award. The circuit court did not erroneously exercise its discretion in accepting Aguilar's valuation of the sign.

Country Side next argues that because Lamar leased the sign site from Country Side, the value of the sign site should be apportioned between Country Side and Lamar and the valuation on remand should have taken into account Lamar's above-market lease. The circuit court on remand specifically rejected these lease-related arguments, as it was free to do. Furthermore, Aguilar considered the value of Lamar's above-market lease when he valued the sign structure at \$33,700. Aguilar calculated the fair market value of the sign at \$120,100. He valued the sign

¹ The relocation expense payment to Lamar totaled \$83,525, which "consisted of \$75,175 for the in-place value of the billboard, i.e. the cost to build the billboard new; \$2,500 for relocation expenses; and \$5,850 for take-down cost." *Lamar Co. v. Country Side Rest., Inc. (Lamar III)*, No. 2013AP2215, unpublished slip op. ¶2 (WI App June 25, 2014).

site at \$86,400 after subtracting the value of the sign structure of \$33,700 from the overall fair market value.

The circuit court's finding that Lamar is due \$86,400 in damages for its sign site fulfilled this court's *Lamar III* mandate to determine the value of Lamar's sign leasehold and permit. The finding is not clearly erroneous. WIS. STAT. § 805.17(2) (2013-14).

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is affirmed.

Diane M. Fremgen
Clerk of Court of Appeals