

179-3 HIGHEST COURT OF MISSOURI HOLDS CONDEMNEE NOT ENTITLED TO COMPENSATION FOR IMPAIRMENT OF DIRECT ACCESS TO HIGHWAY NOR FOR LOSS OF VIEW FROM THE HIGHWAY

The Berkshire Lumber Company had acquired approximately two and one-half acres in 1910. It had operated a "cash and carry" lumber business on it until 1943 when the tract was leased to Jones Lumber Company for a similar operation. The main building, with signs "Jones Lumber Company" prominently displayed thereon, was, prior to the taking and construction of a viaduct, visible to approaching Truman Road traffic for about three blocks in both directions.

The city condemned some of the property and constructed a viaduct roadway from 12 to 32 feet above and south of the Berkshire tract. As a part of the project, ramps were constructed on either side of both the east and west approaches to the viaduct. These ramps, constructed at approximately the same grade as old Truman Road, permitted vehicles to travel beneath the viaduct on the old roadway which was widened approximately nine feet along the east portion of the Berkshire tract. The northwest ramp, 22 feet in width, adjoined the Berkshire tract on its south border for some 220 feet. The viaduct structure rested on T-shaped concrete piers placed at varying distances along the center of the old roadway. Five such piers, nine feet wide and three and one-half feet thick, were located in the old roadway in front of the Berkshire tract. A traffic control island was also constructed in the center of the roadway between the second and fourth piers in front of that tract. The island, some 150 feet in length, was 56 feet wide at its west end and approximately 20 feet wide at its east end. The island was in front of one of the three truck entrances to the main building on the tract and made the westbound traffic lane at that point approximately 22 feet in width.

The trial court awarded the condemnee \$11,300 and it appealed to the supreme court. The condemnee attacked instructions that the trial court gave to the jury. One charge was that no award was to be made "for loss of access or deprivation for loss of access to the viaduct structure." Another charge told the jury that they were not to consider "any evidence of alleged damages by any owner or claimant herein which may result in a loss of view or visibility of their respective private property from members of the traveling public passing along, on and adjacent to said respective properties on the roadway of the viaduct improvement." Another instruction told the jury that they should not take into consideration "any evidence of alleged damages which may result by reason of a change in the volume of traffic traveling along the existing grade of Truman Road."

The issue presented on the appeal was whether or not damages could be awarded in condemnation proceedings for a material decrease of direct access to and public view of an abutting retail business property caused by the city's erection of an elevated viaduct.

The supreme court stated it had previously held that an abutting property owner on a public highway was not entitled to compensation for impairment of access if he retained a reasonable right of ingress and egress to his property. Nor did an owner have a property right in the traffic on a highway so that he was not entitled to compensation if traffic was diverted from his

property. His property right of access extended no further than the right to enter upon the highway or leave it and have reasonable connection to the public road system. (See State ex rel. State Highway Comm'n v. Meier, 388 S.W. 2d 855 (1965), Memorandum 174-1, December 1965, Committee on Land Acquisition and Control of Highway Access and Adjacent Areas, Highway Research Circular No. 14.)

Since the owner in the instant case retained its previously existing right of access to the existing roadway and in turn to the city's streets and the highway system, it was not entitled to compensation for impairment of access to its property. Also it was not entitled to any compensation for denial of direct access from its property to the viaduct, both because the viaduct did not actually abut its property and because it never had any right of direct access to such roadway. The fact that such access was not granted did not deprive the owner of any right of access.

As regards the owner's claim for compensation based on its contention that it had an easement for public view of its property from the highway, the court stated that such claim was inextricably related to a property right in the traffic upon Truman Road. Since an owner was not entitled to have the same traffic continued on a street, it was not entitled to be compensated for loss of public view from a street. (Kansas City v. Berkshire Lumber Co., 393 S.W.2d 470, July 1965)