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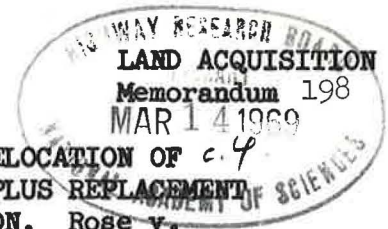
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198-1 APPROPRIATION OF RIPARIAN RIGHTS NECESSITATING RELOCATION OF c. 4
BUSINESS WARRANTS RECOVERY FOR RELOCATION COSTS PLUS REPLACEMENT
COSTS FOR THE MACHINERY USED AT THE PRIOR LOCATION. Rose v.
State, 289 N.Y.S.2d 553 (Sup. Ct. App. Div. 1968).

Claimants operated adjacent businesses in concrete and crushed stone located on the Chenango River near the city of Binghamton. The two operations were admittedly interdependent and the crushed stone business required enormous quantities of water which it had previously obtained from its frontage on the Chenango River. In order to facilitate the construction of a new interstate highway, as well as to straighten the river channel, the State appropriated a portion of the bed of the Chenango River and placed extensive fill along this area thereby separating claimants from the river and destroying their existing riparian rights. The appropriation was initiated in 1962 and was completed in 1964, at which time the claimants relocated their joint enterprises at a site some four miles distant which had the necessary water supply for the crushed stone business. The lower court had awarded compensation to the claimants for the temporary taking of the water supply between 1962 and 1964 as well as for permanent appropriation of the land based on the necessity to relocate. In valuing the land and improvements, the lower court had considered the salvage value of the improvements and the reproduction costs of the relocation.

In appealing the grant of \$208,615 for the permanent appropriation, the State challenged the lower court assessment on three grounds: (1) that relocation was an improper basis for valuation of the entire property; (2) that a salvage value test should not have been applied to the improvements after the taking; and (3) that reproduction costs less depreciation was an erroneous valuation of the property and improvements. No challenge was made to the award of \$45,000 for the temporary appropriation of the water.

The main objection voiced by the State was the lower court's acceptance of relocation as the only feasible alternative and its consequent concern with

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only that aspect of damages. The State urged that viable alternatives existed to relocation, or, at the very least, the cost of relocation should be offset to some extent by the enhanced commercial value of the old property due to the construction of the interstate highway. The appellate court's rejection of this threshold issue evidences the judicial unwillingness to blend different damage theories in formulating a compensation award.

In sustaining the selection of relocation cost as a departure point for estimation of damages, the Appellate Division observed that there were no economically feasible alternatives for obtaining the necessary water at the old location. The other methods suggested by the State were either prohibitively expensive or offered no guarantee of meeting minimum requirements with and degree of reliability. Further, since the needs of the business involved a quantity of water equal to 10 percent of the needs of the city of Binghamton, purchase of the water from that source was out of the question. Having approved the initial posture of the lower court toward damage to the claimants, the Appellate Division also approved the salvage value computation of loss.

In this regard, the lower court had assessed the value which the improvements would have to a third person seeking to buy and use them at the old location. Since the riparian rights were admittedly destroyed at that location, the value of the machinery at that site could only be computed on a salvage basis. To determine the loss to claimants, the lower court used reproduction cost less depreciation. From this figure was deducted the salvage value and the difference was the loss to claimants. This approach was sustained on appeal largely on the theory that the items being valued were essentially a specialty and destruction of the land's value would necessarily reduce the improvements to their salvage value. This naturally follows from the original determination that the land's value was destroyed by appropriation of the riparian rights and the consequent necessity to relocate. In other words, the destruction of the highest and best use originally ascribed to the land (crushed stone business employing riparian rights) limited remaining considerations to the damages incurred by claimant in relocating his businesses.

In a lengthy dissent, Judge Herlihy observed that the majority failed to consider the status of the old property after the appropriation in assessing claimants' loss. While the old property was no longer suitable for the crushed stone business, the proximity of an interstate highway would certainly increase its value for other commercial uses, and such benefit should be a set-off factor in ascertaining damage to the claimants. In stressing this point, Judge Herlihy noted that the valuation given to the land by the court contained a \$157,965 increase in value over purchase price with construction of the highway being the only intervening event likely to affect land values. This increase in value was completely ignored by both the lower court and the majority on appeal. If such increase is properly attributable to the highway construction, it would certainly constitute an appropriate subject for set-off.

The dissent also challenged the third-person approach to valuing the improvements. Since most of the improvements were largely portable, and were in fact transported to the new location, their value should be based on those diminishment incurred through relocation--i.e., their value to the same parties at the new site--rather than salvage value at the old site. As Judge Herlihy noted, "There is affirmative evidence that these items continued to have their prior utility in the testimony that many of them were put into operation at the new location and therefore were not 'salvaged'."

The case indicates the extreme disparity in result which can occur when different initial theories of damages are adopted. The conclusions of both the majority and the dissent follow logically from their threshold premise. For the majority, the claimants' damage was occasioned by appropriation of the riparian rights and the consequent relocation and diminished value of the property were therefore compensable damages. For the dissent, computation of the claimants' losses should be confined to the property and parties involved and relocation value should give way to the altered highest and best use of the property. It is suggested that the solution lies somewhere between. Relocation is a proper subject for damages since it was directly and solely caused by the appropriation of the riparian rights. This does not, however, warrant ignoring the fact that the appropriation has conferred an economic benefit on the property which the State has a right to have offset against any losses caused by the appropriation. Similarly, valuation of the improvements should correspond to the realities of their actual use. Where salvage is the future of the item, then it should also be its valuation. But where the item, in fact, will have a useful future employment by claimant, the loss should be measured on the basis of cost involved in preserving use. To this extent such property cannot be considered a specialty and consequently the reproduction cost approach would be inappropriate. Rather, the specialties are those improvements which prove to be nontransferrable, that is, they prove their specialty by their very uniqueness to the original property.

198-2 TRIAL COURT'S REFUSAL TO RECEIVE TESTIMONY CONCERNING MACHINERY ON
CONDEMNED PROPERTY CONSTITUTED SUFFICIENT GROUNDS FOR NEW TRIAL.
State v. Northeast Building Co., 421 S.W.2d 297 (Mo. 1967).

This is an appeal from a lower court grant of a new trial. The case involves condemnation of a single plot of land in Kansas City which contained three main buildings and a fourth structure containing boilers and other machinery used in the operation of the other three buildings. At trial, one witness was produced by the condemnee solely to testify as to the value of the machinery and boiler without any reference to the total valuation of the property. All other witnesses had made estimates of the total value of the property and some had included in their estimates a reference to the fact that they were including the machinery in their considerations. Other witnesses made no mention of the machinery. The testimony of the witness concerning valuation of the machinery was precluded upon objection by the State that such evidence constituted a piecemeal approach to valuation. Upon later consideration, the trial judge concluded that exclusion of this testimony was erroneous and a new trial was in order.