

Ohio Court Defines When Property Owner in Eminent Domain Case Can Pursue Appeal

By Jeremy S. Young

For the past several years, the hot topic in Ohio eminent domain law has been the ability of a property owner to challenge a taking based on whether it is necessary for a public purpose, or if the appropriating authority otherwise has the legal right to appropriate. Under Ohio Revised Code Section 163.08, in order to effectively raise such a challenge, a property owner must deny the necessity or legal right to appropriate in its answer and set forth specific facts supporting the denial. If there is no denial, or the denial is generic, then the challenge is not effectively raised and the court will rule in favor of the appropriating authority on the issue.

If a challenge to the taking is properly raised and succeeds, then the land cannot be taken, and the eminent domain lawsuit is dismissed. If the challenge is properly raised but unsuccessful, then Ohio Revised Code Section 163.09(B)(3) permits the property owner to pursue an immediate appeal of that decision. In the meantime, the issue of the amount of just compensation for the taking is put on hold in the trial court.

This is different from typical civil litigation, where such “interlocutory” appeals—before the entry of a “final order”—are typically not permitted. This policy exists for reasons of efficiency, to avoid piecemeal appeals with their attendant delays.

What constitutes a “final order” is set forth in Ohio Revised Code Section 2502.02(B), and, under Section 2502.02(B)(7), it includes “[a]n order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.” The meaning of this language was recently interpreted by Ohio’s 12th District Court of Appeals in the case of *Martin Marietta Real Estate Investments, Inc. v. City of Trenton, Ohio*.

In *Martin Marietta*, the property owner did not raise a challenge to the taking in its answer. Instead, it waited until a few months before the scheduled trial date on the issue of the amount of just compensation and then attempted to raise a challenge by seeking leave of court to amend its answer.

In general, Ohio law liberally allows such an amendment upon a showing of good cause, but in this case the trial court denied leave to amend because it would have caused undue delay to the resolution of the case and prejudice to the city. The property owner then attempted to pursue an immediate appeal of the denial of leave to amend.

The court of appeals dismissed the appeal for lack of a final order, and the property owner filed a motion for reconsideration. In its motion, the property owner argued that a final order existed pursuant to Ohio Revised Code Sections 2502.02(B)(7) and 163.09(B)(3). More specifically, it argued that the trial court’s denial of leave to amend in order to raise a challenge to the taking was effectively the same thing as an order in favor of the city on the merits of the challenge.

The court of appeals rejected that argument and narrowly interpreted the statutes to provide that the ability to pursue an immediate appeal depends on the property owner first properly raising its challenge to the taking. In other words, the challenge had to be properly raised in the answer or an amended answer. A mere

denial of leave to file an amended answer that seeks to raise a challenge is not enough to entitle an owner to an immediate appeal.

This decision demonstrates the importance of using the proper procedure to raise any available challenge to a taking early in the case. If a property owner fails to do so, then they run the risk of either (1) losing the opportunity to raise the challenge altogether; or (2) having to keep litigating in the trial court, at potentially great expense, until all issues in the case—including just compensation—are resolved, before being able to pursue their challenge on appeal.

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