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Eminent Domain - Just Compensation - Cost of Moving Personal Property

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cial expression of this view is that of Judge Cardozo in *Loucks v. Standard Oil Co.*[6] Nevertheless, a number of courts have held that the public policy of each state is found in its constitution, statutes and case law[7] and any substantial difference between those of the forum and those of the state where a transaction occurred justifies a refusal to entertain an action predicated upon the application of sister-state law.[8]

In numerous cases the right of the courts of the forum to decide a conflicts of law problem according to its local public policy has been tacitly assumed, without regard to constitutional provisions.[9] The "full faith and credit" clause of the federal constitution abolished in large measure the principle of international law by which local policy may dominate rules of comity as among the states of the Union.[10] Many rights acquired under the laws of another state are now protected by the "full faith and credit" clause,[11] the "equal privileges and immunities" clause[12] and the "due process" clause[13] of the United States Constitution.

The instant case seems to represent a strict application of the public policy concept. Even though advance payments for personal services to avoid garnishment are illegal in the forum, this type of arrangement has been held valid in a number of other courts as not being contrary to the good morals of the public.[14] It is felt that such a literal application of this concept of public policy, when constitutional restrictions are considered, will severely curtail the enforcement of sister-state law on a reciprocal basis.

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EMINENT DOMAIN — JUST COMPENSATION — COST OF MOVING PERSONAL PROPERTY. — The Circuit Court awarded defendant full compensation for condemnation of his land which included reasonable cost of moving personal property, where such condemnation of defendant's property necessitated vaca-

27 Yale L. J. 656, 663-64 (1918). But see Nussbaum, *Public Policy and the Political Crisis in the Conflict of Laws*, 49 Yale L. J. 1027, 1052-55 (1940).

6. 224 N.Y. 99, 111, 120 N.E. 198, 201-02 (1918). "We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home . . . [T]he courts . . . do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

7. See Harding v. American Glucose Co., 182 Ill. 551, 55 N.E. 577 (1899), *writ of error dismissed*, 187 U.S. 651 (1902); Continental Supply Co. v. Syndicate Trust Co., 52 N.D. 209, 202 N.W. 404 (1924); International Harvester Co. v. McAdam, 142 Wis. 114, 124 N.W. 1042 (1910).

8. *E. g.*, Farmers & Merchants Nat. Bank v. Anderson, 216 Iowa 988, 250 N.W. 214 (1933); Davis v. Ruzicka, 170 Md. 112, 183 Atl. 569, *cert. denied*, 298 U.S. 671 (1936); Poling v. Poling, 116 W. Va. 187, 179 S.E. 604 (1935).

9. *E. g.*, *cf.* Nonotuck Silk Co. v. Adams Exp. Co., 56 Ill. 66, 99 N.E. 893 (1912); Hanson v. Great Northern Ry. Co., 18 N.D. 324, 121 N.W. 78 (1909).

10. Broderick v. Rosner, 294 U.S. 629 (1935); *cf.* Hughes v. Fetter, 341 U.S. 609 (1951) (wrongful death action). The courts of the District of Columbia and the states are equally bound by the commands of the full faith and credit clause. See Suydam v. Ameli, 46 A.2d 763 (D.C. Mun. App. 1946).

11. See Broderick v. Rosner, *supra* note 10; Smithsonian Institute v. St. John, 214 U.S. 19 (1909); Cole v. Industrial Comm'n, 353 Ill. 415, 187 N.E. 520 (1933); Roller v. Murray, 71 W. Va. 161, 76 S.E. 172 (1912) *writ of error dismissed*, 234 U.S. 738 (1914).

12. See Blake v. McClung, 172 U.S. 239 (1898); *cf.* Missouri *ex rel* Southern Ry. Co. v. Mayfield, 340 U.S. 1 (1950).

13. See Hartford Acc. & Indem. Co. v. Delta & P. Land Co., 292 U.S. 143 (1934).

14. *E. g.*, Hall v. Armour Packing Co., 102 Ga. 586, 29 S.E. 139 (1897); Campagna v. Automatic Electric Co., 293 Ill. App. 437, 12 N.E.2d 695 (1938); Bump v. Augustine, 154 N.W. 782 (Iowa 1915).

tion of entire property and equipment and supplies had to be moved to a new location. On appeal the Supreme Court of Florida *held,* one justice dissenting, that the judgment be affirmed. *Jacksonville Express. Auth. v. Henry G. Du Pree Co.,* 108 So.2d 289 (Fla. 1959).

When property is taken by eminent domain, the owner is entitled under the Federal Constitution to just compensation,[1] which is held to be the market value of the property only[2] and not the cost of moving personal property or other consequential losses.[3] Such a consequental loss, is a damage to, or destruction of, property not actually taken,[4] but which results indirectly from a lawful act of taking.[5] This general rule is applicable when the entire interest in the leasehold is condemned[6] or when the fee simple is taken in federal condemnation proceedings.[7] When only part of the leasehold period is condemned, with no option to take the remainder, the courts make an exception to the general rule and allow the lessee reasonable costs of removal of his property and its subsequent return to the premises.[8] Although the weight of authority in federal condemnations excludes payments for consequential losses, the Supreme Court has recognized the harshness of its interpretation of the fifth amendment in certain instances and has allowed recovery for such losses.[9] These decisions are a step in the right direction, although they have been limited to temporary takings.[10]

Many state jurisdictions follow the federal rule that "just compensation" does not include cost of moving personal property and disallow the consideration of such cost as a separate item;[11] however, some states have allowed moving costs on the theory that it constituted an element of market value or damage to the property condemned.[12] Other states allow them on the basis

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1. U.S. Const. amend. V.

2. United States v. Petty Motor Co., 327 U.S. 372 (1946); Olson v. United States, 292 U.S. 246 (1934); New York v. Sage, 239 U.S. 57 (1915); Monongahela Navigation Co. v. United States, 148 U.S. 312 (1893) (the Court said that just compensation was payment for the property and not payment to the owner. It also argued that every other clause of the fifth amendment was personal except the eminent domain provision and that therefore the constitution only requires payment for property taken and nothing more).

3. United States v. Westinghouse, 339 U.S. 261 (1950); Bothwell v. United States, 254 U.S. 231 (1920).

4. See Sanguinetti v. United States, 264 U.S. 146 (1924).

5. Omnia Commercial Co. v. United States, 261 U.S. 502 (1923).

6. United States v. Petty Motor Co., 327 U.S. 372 (1946).

7. Joslin Co. v. Providence, 262 U.S. 668 (1923); Bothwell v. United States, 254 U.S. 231 (1920).

8. United States v. General Motors Corp., 323 U.S. 373 (1945) (the concurring opinion states that this is also an analogous argument for allowing removal costs where the entire fee is taken, since the owner would never have to move out but for the condemnation).

9. United States v. General Motors Corp., 323 U.S. 373 (1945); *accord,* Kimball v. United States, 338 U.S. 1 (1949).

10. *Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses,* 67 Yale L.J. 61 (1957-58) presents an excellent discussion on the merits of allowing recovery of consequential losses and the dubious logic—the presence of a willing buyer and a voluntary seller, that the losses are too speculative, and that these losses are inherent in any sale—on which the Court formulated its present rule. See also 36 Ore. L. Rev. 180 (1956-57) which supports the proposition that a distinction must be made between the condemnation of land held in fee and that which is held under lease because a lessee will eventually move upon expiration of the lease. He therefore suffers no additional expense of moving personal property, whereas the same is not true of an owner in fee.

11. United States v. Building Known as 651 Brannan Street, 55 F. Supp. 667 (N.D. Cal. 1944); *In re* Slum Clearance in City of Detroit, 332 Mich. 485, 52 N.W.2d 195 (1952); *In re* Widening 3rd St. in St. Paul, 223 N.W. 458 (Minn. 1929).

12. *E.g.,* Harvey Textile v. Hill, 135 Conn. 686, 67 A.2d 851 (1949); Metropolitan West Side R.R. v. Siegel, 161 Ill. 638, 44 N.E. 276 (1896); *In re* Widening of Gratiot

of constitutional provisions which differ from those of the United States Constitution.[13]

The North Dakota Constitution[14] provides that private property shall not be "taken or damaged" for public use without just compensation, and this has been held to be broader than the guarantee of the fifth amendment to the United States Constitution.[15] Just compensation should then include not only the value of the property condemned but also consequential losses attributable thereto so that the owner would be put in as good a position pecuniarily as he would have been had the property not been taken.[16]

In the dissenting opinion of the instant case, moving costs are considered consequential damages.[17] A North Dakota statute[18] has been interpreted to provide for consequential losses arising from injuries to other property in condemnation proceedings.[19] Also, under the North Dakota constitutional provision which requires payment of compensation when property is damaged, consequential losses may be recovered.[20]

Therefore, it would appear that with the authority from the interpretation of the constitution and statutes by the North Dakota courts, there should be no difficulty in disregarding the much criticized general rule and allowing moving costs as an element of fair market value. This would follow the spirit of the constitutional requirements for the payment of "just compensation."

G. EUGENE ISAAK.

LABOR RELATIONS — LABOR RELATION ACTS — PUBLIC EMPLOYMENT — RIGHT OF POLICE OFFICERS TO UNIONIZE. — Officers of the Little Rock Policemen's Union brought suit to enjoin the city officials from enforcing an act requiring that persons be denied employment because of membership in a labor union,[1] contending the act was unconstitutional due to Ark. Const.

Avenue, 294 Mich. 569, 293 N.W. 755 (1940); General Ice Cream Co. v. State, 99 N.Y.S.2d 312 (Ct.Cl. 1950).

13. Ill. Const. art. II, § 13, and Ill. Ann. Stat. c. 47, § 1 (Smith-Hurd 1950) provide that "private property shall not be taken or damaged for public use without just compensation . . . ." See Chicago v. Taylor, 125 U.S. 161 (1888).

14. N. D. Const. art. I, § 14; see also, N. D. Rev. Code § 32-1501 (1943). In cases where state constitutions provide that compensation must be paid for property "taken or damaged," consequential damages may be recovered, 2 Nichols, *Eminent Domain* § 6.4432 (2) (1950).

15. Donaldson v. Bismarck, 71 N.D. 592, 3 N.W.2d 808 (1942).

16. See Walker v. United States, 64 F. Supp. 135 (Ct.Cl. 1946); Martin v. Tyler, 4 N.D. 278, 60 N.W. 392 (1894); Donaldson v. Bismarck, 71 N.D. 592, 3 N.W.2d 808 (1942). N.D. Rev. Code § 32-1532 (Supp. 1957) allows, at the discretion of the court, attorney's fees to the defendant condemnee, the general rule being that attorney's fees are not allowed under condemnation statutes unless specifically provided for.

17. See United States v. Petty Motor Co., 327 U.S. 372 (1946).

18. See N.D. Rev. Code § 32-1522 (3) (1943).

19. See Little v. Burleigh County, 82 N.W.2d 603 (N.D. 1957).

20. See Otter Tail Power Co. v. Von Bank, 72 N.D. 497, 8 N.W.2d 599 (1943); Hamilton v. Bismarck, 71 N.D. 321, 300 N.W. 631 (1941); King v. Stark County, 67 N.D. 260, 271 N.W. 771 (1937) (North Dakota allows recovery when a person has sustained direct, physical damages to his property in excess of that sustained by the public generally).

1. Ark. Stat. Ann. (1947), Act 30 (1957) § 19-1715. Union membership by police officers is inconsistent with the discipline which their employment requires and § 19-1716 of the same act provides that no person who is a member of a policemen's union shall be eligible to serve on any municipal police force and that the union members currently serving shall be dismissed unless they sever their relationship with the union within thirty days.