STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant,

v

ALBERT ALFONSI, CAROL A. ALFONSI and THE CORNER STORE,

Defendants-Appellees.

UNPUBLISHED
October 8, 1996

No. 175584
LC No. 91-001359

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals by right the portion of the jury verdict awarding defendants $51,740 as business-interruption damages. We reverse and vacate the challenged $51,740.

Plaintiff argues that, because defendants recovered for going-concern damages for the loss of their business as a result of the taking, the jury should not have been allowed to consider and act upon evidence of defendants' alleged business-interruption damages. We agree. This Court reviews this issue de novo. *Attorney General v Lake States Wood Preserving Inc*, 199 Mich App 149, 155; 501 NW2d 213 (1993).

In *City of Detroit v Larned Associates,* 199 Mich App 36; 42; 501 NW2d 189 (1993), this Court held that a property owner "shall not be allowed to recover both business-interruption damages and going-concern value [in a condemnation case] because the two theories are mutually exclusive." We are bound by this decision pursuant to Administrative Order 1996-4. In addition, we agree that this is a logical premise because one theory assumes the continuation of the business (business-interruption), while the other assumes the loss of the business (going-concern). See *Detroit v Michael's Prescriptions,* 143 Mich App 808, 819 n 2; 373 NW2d 219 (1985). It was, therefore, improper to allow the jury to consider evidence of defendants' business-interruption damages.

In view of the foregoing, we need not address plaintiff's argument concerning payment under the federal regulations.

Reversed and ordered vacated as to $51,740 of the jury's award for business-interruption damages.

/s/ Martin M. Doctoroff
/s/ Harold Hood
/s/ Richard A. Bandstra