

STATE OF MICHIGAN
COURT OF APPEALS

CHARTER TOWNSHIP OF LYON,

Plaintiff-Appellant,

v

McDONALD’S USA, L.L.C.,

Defendant,

and

MILFORD ROAD EAST DEVELOPMENT
ASSOCIATES, L.L.C.,

Intervening Defendant-Appellee.

FOR PUBLICATION
May 24, 2011

No. 294074
Oakland Circuit Court
LC No. 2007-083871-CC

Advance Sheets Version

Before: O’CONNELL, P.J., and SAAD and BECKERING, JJ.

BECKERING, J. (*concurring in part*).

I concur in parts I and II, excepting footnote 4, of the majority opinion. I agree that defendant Milford Road East Development Associates, L.L.C. (Milford Road East), retained a compensable, albeit limited, property interest in easements for the water and sewer lines at issue in the Lyon Towne Center property, which was separate and distinct from the property interest owned by McDonald’s USA, L.L.C., in Unit 11 of that development. I also agree that, for the reasons set forth in the majority opinion, the record does not support a finding that Lyon Crossing, which is owned by Milford Road West Development Associates, L.L.C. (Milford Road West), is part of the “parcel” to be valued in this condemnation action as that term is defined in the Uniform Condemnation Procedures Act (UCPA), MCL 213.51(g).¹ The relevant

¹ To reiterate, as noted in part in the majority opinion, Lyon Towne Center and Lyon Crossing are owned by separate entities, are governed by separate master deeds and bylaws and are subject to separate Planned Development Agreements. Milford Road East owns Lyon Towne Center. Milford Road West owns Lyon Crossing. Although they are related entities in that the same individual signed both master deeds, Milford Road East has no property interest whatsoever in Lyon Crossing, and Milford Road West has no property interest whatsoever in Lyon Towne

determination is whether Milford Road East's retained property interest in the Lyon Towne Center property, as plainly defined by and derived from the Lyon Towne Center Master Deed and Bylaws, suffered any decrease in value resulting from the township's taking of the easement over a portion of the McDonald's property. Because Milford Road East's own expert testified that Lyon Towne Center suffered no change in value as a result of the township's taking of the easement, I join in the majority's conclusion that the trial court erred by awarding Milford Road East compensation for loss in the value of Lyon Crossing.

Having reached this conclusion, I find there to be no need to determine the nature or extent of the property interest retained by Milford Road East in the Lyon Towne Center property, nor whether Milford Road East would be entitled to recover damages for any loss caused by "outpositioning" in the marketplace or similar market-value loss suffered by Lyon Crossing. While these determinations would have been required had we instead concluded that Lyon Crossing was part of the "parcel" being valued under the UCPA, because we conclude otherwise, any discussion of these issues is unnecessary and hence, constitutes mere dicta. Thus, I respectfully decline to join in footnote 4 or in part III of the majority opinion.

/s/ Jane M. Beckering

Center. Most notably, neither entity's deed grants any interest to any parent corporation or related entity, and nothing in the record establishes that the specific easement was subject to common ownership.