

STATE OF MICHIGAN
COURT OF APPEALS

THE PLYMOUTH DISTRICT LIBRARY,

Plaintiff-Appellee,

v

JOHN D. LAGROW, JR., and MARIE C.
LAGROW,

Defendants-Appellants.

UNPUBLISHED

June 23, 2000

No. 213758

Wayne Circuit Court

LC No. 96-639178-CC

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order of just compensation and mediation sanctions pursuant to MCL 213.66; MSA 8.265(16) and MCR 2.403(O). We reverse and remand.

In September 1996, plaintiff filed a complaint for condemnation against defendants pursuant to the Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq.*; MSA 8.265(1) *et seq.* Plaintiff sought to acquire defendants' property for the expansion of the Plymouth District Library. After defendants' unsuccessful challenge to plaintiff's claim of necessity, the trial court entered a order for payment of just compensation of \$110,000, and surrender of possession. The case was mediated on September 24, 1997, and resulted in an evaluation for defendants' property of \$160,000. Defendants rejected and plaintiff accepted the mediation evaluation and the case proceeded to trial.

At trial, Patricia Thomas, the Plymouth District Library Director, testified that, prior to litigation, plaintiff sent defendants a letter offering them \$130,000. Defendants did not personally respond to plaintiff's letter, but defendants' attorney rejected the offer several months later. Defendant John LaGrow testified that he was aware of plaintiff's \$130,000 offer. In June 1996, plaintiff sent defendants a "formal" written offer to purchase defendants' property for \$110,000.

At the conclusion of the trial, the trial court determined that the fair market value of defendants' property at the time of the taking was \$145,000. Plaintiff filed a motion for mediation sanctions and entry of judgment, and defendants filed a motion for taxation of costs, interests, attorney and witness fees. For purposes of determining appropriate attorney fees, the trial court found that plaintiff made a

good faith written offer of \$130,000, and awarded defendants \$5,000 in attorney fees. The trial court entered an adjusted judgment of \$159,570, and awarded plaintiff mediation sanctions with the amount to be determined at a later date.

Defendants argue on appeal that the trial court erred when it based its decision to award attorney fees on plaintiff's \$130,000 offer. We agree. This Court reviews a trial court's award of attorney fees under the UCPA for an abuse of discretion. *Michigan Dep't of Transportation v Robinson*, 193 Mich App 638, 643; 484 NW2d 777 (1992). An abuse of discretion occurs when an unprejudiced person, considering the facts upon which the trial court acted, would say that there was no justification or excuse for the trial court's ruling. *Detroit/Wayne Co Stadium Authority v 7631 Lewiston Inc*, 237 Mich App 43, 47; 601 NW2d 879 (1999).

In a condemnation case under the UCPA, the property owner is entitled to attorney fees if the final compensation award is greater than the agency's good faith written offer. MCL 213.66; MSA 8.265(16). The amount of the attorney fees, by statute, can be no greater than one-third of the difference between the ultimate award and the written offer as established in § 5 of the UCPA. MCL 213.66; MSA 8.265(16). Under § 5, an agency seeking to acquire property by condemnation must establish an amount of fair compensation for the property, and then submit to the property owner a "good faith written offer to acquire the property for the full amount so established." MCL 213.55(1); MSA 8.265(5)(1).

Here plaintiff argued, and the trial court agreed, that plaintiff's letter offering \$130,000 was the good faith written offer under § 5. We disagree. This is not a case like *Robinson, supra*, where there were two good faith written offers. Plaintiff's letter, not admitted into evidence, was clearly an effort to negotiate. The letter expressed a "wish to compromise" and stated that it was "prepared to offer \$130,000." The subsequent offer of \$110,000, which plaintiff refers to as the "formal good faith written offer," expressly indicated that there had been previous negotiations which had been unsuccessful. The \$110,000 offer contained a good faith deposit check of \$1.00. The \$110,000 offer was also the offer that was attached to plaintiff's complaint, and \$110,000 was the amount plaintiff actually paid defendants for the property prior to trial. We find that the final written offer of \$110,000 was the § 5 offer that should have been used in the trial court's calculations of attorney fees under MCL 213.66; MSA 8.265(16), and remand for recalculation of those fees.

Defendants also argue that the trial court erred in determining that plaintiff was entitled to mediation sanctions under MCR 2.403(O). This Court reviews a decision by a trial court to grant mediation sanctions de novo. *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997).

Pursuant to MCR 2.403(O)(1):

If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. However, if the opposing party has

also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the mediation evaluation.

Condemnation proceedings fall within the scope of MCR 2.403. *Great Lakes Gas Transmission Ltd Partnership, supra* at 134. In a condemnation action, however, mediation sanctions must be based on the amount actually in dispute. *City of Detroit v Kallow Corp*, 195 Mich App 227; 489 NW2d 500 (1992). Sanctions are based on the amount of additional compensation awarded, which is defined as the amount in excess of the estimated just compensation paid or deposited. *Id.*

In this case, plaintiff accepted and defendants rejected the mediation evaluation of \$160,000. Accordingly, the amount in dispute is \$50,000 (\$160,000 minus the \$110,000 that was paid). Because defendants rejected the mediation evaluation, they have the burden of improving their position. MCR 2.403(O)(3). For defendants to improve their position, they needed an adjusted award ten percent greater than the amount in dispute. See *Kallow, supra* at 232. For purposes of the mediation rule, the verdict is adjusted by adding assessable costs and interest. MCR 2.403(O)(3). Defendants were ultimately paid \$145,000 for their property and were given an adjusted verdict, which included costs, interest and attorney fees, of \$159,570. Although the award of mediation sanctions to plaintiff was appropriate on defendants' adjusted award of \$49,570 (\$159,570 minus \$110,000), the amount of defendants' adjusted award may change when the trial court reevaluates the attorney fee award on remand.¹ Accordingly, the trial court is directed on remand to also reconsider the appropriate mediation sanctions, if any, after it determines the appropriate award of attorney fees.

In light of plaintiff's good faith written offer of \$110,000, we reverse and remand for reconsideration of appropriate attorney fees and mediation sanctions, if any. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin

¹ Plaintiff claims on appeal that the interest award was also incorrect. It is unclear from the record how the interest was calculated, and the trial court may recalculate the amount on remand if it deems necessary.