

1951
Sept. 28, 29
Oct. 1
Nov. 7

BETWEEN :

HIS MAJESTY THE KING.....PLAINTIFF;

AND

ALVIN M. DAVIS AND JAMES H. }
REID } DEFENDANTS.

Expropriation—Value of land expropriated—Defendant not entitled to recover in expropriation action architect's fees incurred by him.

Held: That the defendant in an expropriation action is not entitled to recover from the Crown architect's fees incurred by him for plans for a building proposed to be erected on the land expropriated.

INFORMATION by the Crown to have the amount of compensation payable to the owner of expropriated property determined by the Court.

The action was tried before the Honourable Mr. Justice Hyndman, Deputy Judge of the Court, at Edmonton.

F. J. Newson K.C. and *K. E. Eaton* for plaintiff.

W. G. Morrow for defendant Davis.

No one for defendant Reid.

The facts and questions of law raised are stated in the reasons for judgment.

HYNDMAN D.J. now (November 7, 1951) delivered the following judgment:

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The Information herein, filed on the 20th day of July, 1951, discloses that the lands hereinafter described, were taken by His Majesty the King, in the right of Canada, under the provisions of the Expropriation Act, ch. 64, under the Revised Statutes of Canada, 1927, for the purpose of a public work of Canada by depositing of record, under the provisions of sect. 9 of the Expropriation Act, on the 12th day of October, 1949, a plan and description of such lands in the office of the Registrar of the North Alberta Land Registration District, in which district the lands are situate, whereby the said lands have become and now remain vested in His Majesty the King, in the right of Canada.

The said lands are described as follows:

The most southerly eight-six (86) feet in depth throughout of lot one (1) and a strip two (2) feet wide of lot two (2), extending eighty-six (86) feet from the southeast corner of said lot two (2) along the eastern boundary thereof, both said lots being in block two (2) in the townsite of Leduc plan T in the province of Alberta.

Lot three (3) in block two (2) in the townsite of Leduc plan T in the province of Alberta.

His Majesty the King offered to pay the sum of \$4,875 by way of compensation for the said expropriated property which offer was refused.

At the date of the expropriation, the said lot 1 was registered in the name of the defendant, James H. Reid, in the said Land Titles Office. Reid had been registered owner of the lands, but taxes not having been paid, his title was forfeited to the municipality of Leduc, who thus became the owner. Subsequently, on the 11th January, 1946, but before title had been registered in the name of the Town, Alvin M. Davis offered to purchase lot 1 from the municipality, the offer being as follows:

I wish to tender a bid for the corner lot where the Royal Bank formerly stood. There will be a considerable amount of expense clearing away the debris before building can be commenced, therefore, I submit to you my offer of one hundred dollars (\$100) for the clear title of this lot, upon completion of contract, which I will roughly outline hereunder:

I will put up a fully modern two-storey building, brick or stucco, approximately 46 ft. by 86 ft. suitable for offices for doctors, dentists and lawyers. I plan to commence work as soon as contracts can be let and material is available for completion. Hoping this will meet with your approval.

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The Town of Leduc agreed to the above offer, and on the 8th June, 1948, issued the following building permit:

No. 131. Town of Leduc.

Permission is hereby granted A. M. Davis for the erection of a brick office building, size 37 ft. by 40 ft. on lots 1 and 2, plan T, Leduc, at an estimated cost of \$20,000. This permit is issued on condition that work is done in compliance with the Town by-laws and subject to inspection and approval of Town officials.

Davis then proceeded to make preparations for building, but about this time the Department of Public Works, which was looking for post office accommodation, began to negotiate with Davis to possibly rent a portion of the building which he contemplated erecting, suitable for a post office. Considerable negotiations both orally and in writing, were carried on, and on the 25th June, 1948, one D. A. Freze, a District Resident Architect at Calgary, wrote Davis, in part as follows:

May I therefore request that you forward me a set of plans, together with a statement of the terms and conditions on which you are prepared to rent to us at the earliest date possible.

In connection with the post office accommodation, news items have appeared in Alberta papers recently which might lead you to believe that the Department were considering the erection of a public building at Leduc. Although \$25,000 was provided in the estimate, I can assure you that it is not the intention of the Department of Public Works to proceed with this project. You may rest assured that if suitable accommodation is provided in your building it will be rented by the Department of Public Works for many years to come.

On the 21st July, 1948, Davis wrote to Freze as follows:

Please find enclosed sketch of proposed building which the architect will be working on this week and will be ready in ten days. If there is any suggestions or alterations you would like to make, contact Mr. Campbell-Hope at once. I hope to commence building about August 15. Kindly return enclosed sketches.

Plans were prepared by the said architect, for which he charged \$250, which was paid by Davis on the 24th September, 1948. Nothing further was done with regard to the leasing of the property, and on the 3rd November, 1948, the District Resident Architect wrote to Davis as follows:

Re part of lot 1, lot 2, plan T, Leduc, Alberta.

The Department of Public Works are desirous of purchasing property in Leduc for the purpose of erecting a post office building. If you are willing to sell the above property to the Crown will you please let me know by return mail if possible,

(a) the lowest price for which you will sell the property,

(b) a statement that you are the sole owner of the property and that the same is unencumbered, or what mortgages are against the land. I believe an offer was made verbally some time ago by Mr. Freze for this lot. I also understand that there is an option on this property which however, will be dealt with later if the Department is interested in this site.

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On the 20th May, 1949, the District Architect wrote Davis as follows:

Re: Leduc, Alberta, proposed public building.

This is to advise you that the Department contemplates commencing on the construction of a public building on the Main Street of Leduc in the early part of June. It is expected that it will be completed around the 1st of May, 1950. The Department will therefore be communicating with you regarding the property which you have offered for sale.

On the 18th June, 1949, Davis wrote the Public Works Department at Ottawa, as follows:

I have a piece of property in the town of Leduc, Alberta, which the Dominion Government wishes to purchase for a post office site. I posted a \$1,000 bond guaranteeing to build on it before May 15 on the strength of a letter from the Public Works Department, Calgary, stating that they would commence building the early part of June. The town of Leduc granted me an extension of time until June 20. To date, the Public Works Department has done nothing, I therefore am compelled to start building immediately, unless the Town Council has some assurance that the Government is going to build. At present Leduc is putting in water and sewerage and hope to have gas this fall. Please reply by wire immediately.

According to Ex.J., Davis offered to sell the property for \$8,000.

As stated above, the sale of the land to Davis from the municipality, was conditional on his erecting a substantial building, and the low price of \$100 was due to this condition, but as Davis delayed carrying out his part of the arrangement, owing to the above negotiations, the Town threatened to cancel the agreement. So, on the 14th January, 1949, Davis executed a bond for \$1,000 in favour of the municipality, conditional on his commencing to erect and carry to completion, or to arrange for some other person or persons to commence to erect and carry to completion, without delay or interruption, a fully modern two-storey brick or stucco building, approximately 80 ft. by 46 ft., which building was to be commenced by the 14th May, 1949. The building not having been commenced as stipulated, the bond of \$1,000 was forfeited, and was paid by Davis, and although he might have lost title to the land, the municipality consented to give him a clear title in consideration of the payment of the \$1,000.

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He claims, in addition to compensation for the land, that he should also be recouped the fees which he paid the architect, namely, \$250, and blames the attitude of the Crown for his failure to live up to his first agreement with the Town of Leduc. As to this claim, I am of the opinion that it is not such as can be related to the land, but is a collateral matter which can only be dealt with separately. The substance of the claim is really that owing to the conduct or attitude of the Crown's officials in leading Davis to believe that if he should erect a building the Government would lease it, which of course did not materialize, caused this expenditure which was fruitless to him.

[The learned judge here reviews the evidence of values and continues.]

There will therefore be judgment declaring that the property described in paragraph 2 of the Information is vested in His Majesty the King, in the right of Canada, as of the 12th October, 1949, that the amount of compensation money to which the defendant is entitled, subject to the usual conditions as to all necessary releases and discharges of claims, is the sum of \$6,020, together with interest at the rate of 5 per cent per annum from the 12th October, 1949, to this date, together with costs of the action.

Judgment accordingly.
