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Personal And Real Property—The Formula For Compensation In Condemnation Proceedings—Reproduction Cost Less Depreciation

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tradition of interpreting "public purpose" on an *ad hoc* basis[35] to meet the dynamic needs of the community.

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THE FORMULA FOR COMPENSATION IN CONDEMNATION PROCEEDINGS—REPRODUCTION COST LESS DEPRECIATION

The instant appeal is a consolidation of four cases concerning the claims for the value of trade fixtures by the tenants of a building being taken in condemnation. Each tenant owns a separate and different business. In each claim, the tenants seek to have the value of their trade fixtures determined by their reproduction cost less depreciation. In the first two cases, one concerning a pharmacy[1] and the other concerning a dress cutting shop,[2] the Court of Claims dismissed the claims of the tenants. The Appellate Division reversed this decision and allowed the claims. In the second two cases, concerning a supermarket[3] and a dry cleaning shop,[4] and which were decided subsequent to the Appellate Division's disposition of the first two cases, the Court of Claims allowed the claims for compensation for the trade fixtures based on their reproduction cost less depreciation. This decision of the Court of Claims was affirmed by the Appellate Division. From the adverse rulings of the Appellate Division, the State of New York appealed to the Court of Appeals. *Held*, affirmed unanimously, the means of evaluating the fixtures depends upon the facts of the case under consideration and in the present case, the fixtures being attached to the realty and either custom built or expressly adapted thereto, it was proper to evaluate the fixtures according to their reproduction cost less depreciation; it is also proper to consider the fixtures apart from the realty as a whole for the purposes of evaluation. *Marraro v. State of New York*, 12 N.Y.2d 285, 189 N.E.2d 606, 239 N.Y.S.2d 105 (1963).

The law of fixtures gradually became established in order to lessen the harsh effect of the old common law rule[5] that everything attached to the fee became part of it and that a person having an interest amounting to less than a fee in the land would lose the value of any improvements he had made thereon.[6] It is now established that, even when the buildings or fixtures are so attached to the land that title would pass with a conveyance of the land, as between the landlord and the tenant, they remain the personal property of the tenant, and, in the absence of an agreement to the contrary, the fixtures may

35. Matter of New York City Housing Authority v. Muller 270 N.Y. 333, 1 N.E.2d 153 (1936).

1. Marraro v. State, 15 A.D.2d 707, 223 N.Y.S.2d 556 (3d Dep't 1962).
2. Caruso v. State, 15 A.D.2d 687 (3d Dep't 1962).
3. Aber-Dulberg, Inc. v. State, 15 A.D.2d 712, 223 N.Y.S.2d 853 (3d Dep't 1962).
4. East Hills Cleaners & Dyers, Inc. v. State, 15 A.D.2d 713, 223 N.Y.S.2d 853 (3d Dep't 1962).
5. Matter of the Mayor, 39 App. Div. 589, 57 N.Y. Supp. 657 (1st Dep't 1899).
6. 2 Kent, Commentaries 343 (12th ed. 1873).

be removed by the tenant at any time during the term of the lease or at the expiration thereof unless the removal of the fixtures could not be accomplished without injury to the freehold.[7] The benefits and protections of this rule are intended to inure solely to the tenant and cannot be relied upon by the condemnor. Fixtures must be treated as part of the real property in determining the value of the land being condemned and as such the value of the fixtures must be included in the award.[8] It being established that the condemnor of real property must provide compensation for all buildings and fixtures attached to the land, the only question remaining is that of evaluation. Generally, the unit rule is followed in establishing the value of fixtures and buildings. This rule is just what it implies: The value of the buildings and fixtures is determined by the amount by which the value of the land is enhanced by the presence of the buildings and fixtures thereon. In other words, the value of the land without the fixtures and buildings is subtracted from the value of the land with the fixtures and buildings, and the difference is the value of the buildings and fixtures.[9]

In New York, the prevailing view is that the value of fixtures must be included in a condemnation award in accordance with the unit rule.[10] Though New York has generally observed the unit rule, the courts have not always felt constrained to do so. The following is an example of the court's reluctance to be committed to any single mode of evaluation: "Each case necessarily involves different facts and must be considered by itself. Only a few general rules apply on the question of valuation in condemnation proceedings, and even these may yield to exceptional circumstances."[11] It has also been held in New York that, in determining the amount to which fixtures enhance the value of land, evidence of the reproduction cost of the fixtures less depreciation is admissible.[12] It is also clearly established that if the fixtures taken by the condemnor in a condemnation proceeding are owned by the tenant, then the tenant is entitled to compensation for them.[13]

In the instant case the Court deviated slightly from the established law in the State of New York by allowing the trade fixtures of the claimants to be evaluated as separate entities rather than as part of the building, *i.e.*, by how much they enhance the value of the building. The Court recognized the unusual

7. Matter of City of New York, 192 N.Y. 295, 84 N.E. 1105 (1908); Baker v. McClurg, 198 Ill. 28, 64 N.E. 701 (1902); Collamore v. Gillis, 149 Mass. 578, 22 N.E. 46 (1889).

8. *E.g.*, United States v. Lot 27, 157 F. Supp. 179 (S.D.N.Y. 1958); Gilbert v. State of Arizona, 85 Ariz. 321, 338 P.2d 787 (1957); Bales v. Wichita Midland Valley R.R., 92 Kan. 771, 141 Pac. 1009 (1914); Cornell-Andrews Smelting Co. v. Boston & P.R. Corp., 209 Mass. 298, 95 N.E. 887 (1911); Poillon v. Gerry, 179 N.Y. 14, 71 N.E. 262 (1904).

9. See, *e.g.*, United States v. Seagren, 50 F.2d 333 (D.C. Cir. 1931); Matter of City of New York (Allen St.), 256 N.Y. 236, 176 N.E. 377 (1931); Los Angeles v. Hughes, 202 Cal. 731, 262 Pac. 737 (1927).

10. Matter of City of New York (Allen St.), *supra* note 9.

11. Banner Milling Co. v. State, 240 N.Y. 533, 546, 148 N.E. 668, 672 (1925).

12. Matter of City of New York, 198 N.Y. 84, 91 N.E. 278 (1910).

13. Matter of City of New York (Allen St.), 256 N.Y. 236, 176 N.E. 377 (1931).

circumstance present in this case: that there were a number of tenants having diverse businesses in the same building. Generally, cases involving evaluations of fixtures have been concerned with situations in which the building condemned was occupied by one type of business such as a factory or warehouse. The Court found that the unique situation existing in this case warranted a departure from the established methods of evaluation in eminent domain actions. Support for this position can be found in the following statement:

> Indeed, we think that it is an undue simplification to extract from the books any "Unit Rule" whatever, in the sense of general authoritative directions. What has happened, so far as we can see is that, as different situations have arisen, the courts have dealt with them as the specific facts demanded.[14]

In view of the above statement, combined with the obvious injustice that would result to the claimants if the unit rule were adhered to, the Court was drawn to the conclusion that it would be just and proper in the present cases to evaluate the fixtures separately, and that in determining their value evidence of the reproduction cost less depreciation was sufficient.

Though the decision in the instant case does not stray far from former decisions regarding the evaluation of fixtures, it does create a new rule. The results obtained in the instant case do seem just and proper, but the same result could have been reached without developing a new rule of law. If the issues had been viewed as involving the admission of evidence, the Court could have resolved the case by relying upon existing decisions. The Court has previously held that a tenant, if the owner of the fixtures, is entitled to recover their value,[15] and it has also held that, in determining the amount by which the fixtures enhance the value of the land, evidence of their reproduction cost less depreciation is admissible.[16] By combining these two propositions the same result could have been reached. Nevertheless, the present decision indicates that the Court is not disposed toward inertness. The Court has probably reached an adequate solution to the ever growing problem of determining condemnation awards in situations where there are a number of distinct businesses being conducted on one parcel of condemned land by various tenants.

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REFERENDUM UNNECESSARY FOR ACQUISITION OF PROPERTY PURSUANT TO LOCAL FINANCE LAW

On July 14, 1959, the town board of Islip, passed a resolution to acquire certain real property within the town limits for the purpose of establishing a public parking lot and bathing beach. Concurrently, the board resolved to finance the acquisition by the issuance of town bonds in the amount of $12,000

14. United States v. City of New York, 165 F.2d 526, 528 (2d Cir. 1948).
15. Matter of City of New York (Allen St.), 256 N.Y. 236, 176 N.E. 377 (1931).
16. Matter of City of New York (Allen St.), *supra* note 15.