

In the
Supreme Court of Ohio

GORDON PROCTOR, Director,
Ohio Department of Transportation,

Plaintiff-Appellee,

v.

KATHY KARDASSILARIS, *et al.*,

Defendants-Appellants,

and

RICHARD L. BLANK, *et al.*,

Defendants-Appellants.

: Case No. 2006-1242
: Case No. 2006-1243
:
: On Appeal from the
: Trumbull County
: Court of Appeals,
: Eleventh Appellate District
:
: Court of Appeals Case
: No. 2005-T-0026

**MOTION OF APPELLEE, GORDON PROCTOR, DIRECTOR, OHIO DEPARTMENT
OF TRANSPORTATION TO REFER CASES TO MEDIATION AND TO STAY
APPEAL**

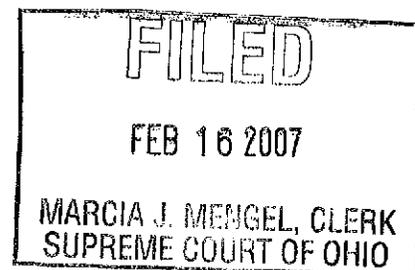
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MOTION

Under S. Ct. Prac. R. XIV, Section 6(A), Appellee, Gordon Proctor¹, Director, Ohio Department of Transportation, moves the Court for an order referring each of these consolidated cases to a mediation attorney for a settlement conference. The Director further moves the Court, under S. Ct. Prac. R. XIV, Section 6(C), to stay the cases pending mediation.

The narrow issue before the Court is solely a legal question of jurisdiction, and the parties will continue to face trial, regardless of outcome. The property owners' counterclaims ultimately seek money damages, and therefore, even though they have not agreed to it, mediation would resolve the whole case immediately without the time, energy, and expense associated with trial. Regardless of proper forum, money claims need finality, and not further litigation.

A memorandum in support follows.

MEMORANDUM IN SUPPORT

This appeal arises from an appropriation case brought by the Director for a state highway improvement in Trumbull County. The issue presented by the defendant-appellant property owners is the narrow legal question of whether the limitation of subject matter jurisdiction over claims brought against the Director under R.C. 5501.22 applies to a counterclaim for property damages which are alleged to have occurred during construction of the highway improvement. Ultimately, the remedy sought by the property owners is compensation in money. The Director proposes that each set of parties mediate that ultimate issue of reasonable compensation or money damages to achieve a final resolution of the litigation. Although the owners do not join in this request for mediation, as is reflected in correspondence from their attorney, the Director

¹ Effective January 8, 2007, Gordon Proctor is no longer Director of the Ohio Department of Transportation. Keith C. Swearingen, P.E., was appointed Acting Director effective that date and under Civ. R. 25(D) he should be substituted as Plaintiff-Appellee in these actions.

believes that bringing the parties together to discuss compensation for both the appropriation and the construction damage claims will save time and expenses to both parties and could head off all future courtroom proceedings.

The Kardassilarises and Blanks each own commercial property on State Route 5 in Cortland. The Director planned a widening of the road and needed a small part of these commercial properties. When the parties could not agree to a purchase of the land, the Director filed his appropriation cases in Trumbull County in 2001 and deposited \$1,425, which was the value he determined for the Kardassilaris taking, and \$4,650, which was the value he determined for the Blank taking. The Director proceeded with construction of the improvement while the cases were both pending.

On the eve of trial in the Kardassilarises' appropriation case in August 2004—and nearly two years after the Director's construction work had been completed—the Kardassilarises and Blanks each filed a counterclaim seeking a writ of mandamus to compel the filing of an additional appropriation to pay for physical damage to their remaining property. Both of their counterclaims alleged tortious conduct by the Director and his contractor related to physical construction activity, but not damages to the value of the remaining property as the result of the Director's appropriation. The trial court dismissed the counterclaims because subject matter jurisdiction over such claims against the Director is vested in the courts of Franklin County under R.C. 5501.22. The appellate court affirmed, holding that the statutory assignment of jurisdiction over such counterclaims for a completed, uncompensated taking is not superseded by Civil Rule 13 concerning compulsory counterclaims. This Court first declined to review the decisions, but granted a motion for reconsideration to review the proposition of law that subject

matter jurisdiction over a counterclaim for writ of mandamus brought against the Director in a pending appropriation case is governed by Civil Rule 13 and not R.C. 5501.22.

The parties have litigated this narrow issue of jurisdiction over the mandamus counterclaims for more than two years. In the meantime, the Director's five-year-old appropriation actions, each involving a small taking with relatively low financial value, remain untried. The construction-related claims may hold more value, but would not be determined by a merits decision in this appeal.

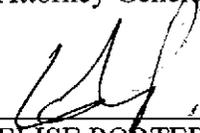
Even if the property owners are successful before this Court, the parties would have to return to the trial court for litigation of their mandamus claims. If the owners are successful at that stage, the parties would still have to proceed with jury trials to ultimately determine compensation for the Director's initial appropriations and damages for any additional taking determined by the mandamus. All the while, the parties will incur fees and expenses.

By setting aside the dispute over the point of law to mediate, the parties could avoid all this additional expense and delay and achieve total resolution of the ultimate issue of how much money the owners should be paid. This would be in the best interests of both sides of this case.

Accordingly, under S. Ct. Prac. R. XIV, Section 6(A), the Director moves the Court for an order referring the cases to mediation attorneys for settlement conferences. Under S. Ct. Prac. R. XIV, Section 6(C), the Director also moves the Court for an order to stay the appeal to permit mediation to proceed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion of Appellee, Gordon Proctor, Director, Ohio Department of Transportation to Refer Cases to Mediation and to Stay or Extend Briefing Deadlines was served by U.S. mail this 16th day of February, 2007, upon the following counsel:

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