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COVID-19's impact eminent domain, \$6 million for relocation, leasing issues - by Jason Scopa

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Now, several months into a moratorium on evictions, the housing market, rental market, and court system continue to stagger. At one end of the spectrum, facing quite a unique plight, is a group of dental practices in Lowell, Mass. They retained our services when the property in which they have practiced for decades was taken by eminent domain. The November 2018 taking was made by the city for its new high school.

In November 2019, they were notified that they must vacate the premises by May 1, 2020, as the shovel was supposedly going to hit the ground. Of course, before May 1, 2020 ever arrived, Coronavirus-related regulations and restrictions devastated the economy of the area and the country. With one such regulation being a moratorium on evicting small businesses, many unknowns were injected into the future of this massive public school project as well as the cost of relocation options available to the dentists.

As counsel for the dentists, we attempted to revisit the strategy with which we began the case. That is, make the taking authority understand and appreciate that it is in the best interest of all parties to reach a global agreement rather than get caught up in procedure, delay, regulation, unnecessary red tape, and expensive, lengthy litigation. However, once again the city was not willing to do so and curiously took the position that this situation was not subject to the ongoing, expansive COVID-19 restrictions, including federal and state eviction moratoriums, tolling of court time standards, acts of the Massachusetts School Building Authority, IRS mandates, and the like.

In June 2020, after additional delays related and unrelated to COVID-19 and also after extensive additional negotiations, the five dentists, some of whom had practiced in this downtown Lowell location for more than 25 years, received a total of nearly \$6 million as compensation for relocation expenses. Relocation is an integral part of an eminent domain taking. These benefits are separate and distinct from taking authority's payment for the value of the real estate. Those benefits in this particular case compensated for the disruption and relocation of approximately 8,000 s/f of office space and common areas. Related expenses included purchase and installation of replacement

dental equipment as well as code improvements.

Our clients were also represented by a relocation specialist, Steven Mollica, who provided a remarkable service in this highly-specialized area. The dentists are now in the process of vacating, and they may file supplemental claims for additional relocation expenses within 18 months after they vacate the premises. Additional costs may include, but are not limited to, expenses required to be done at replacement locations due to COVID-19 requirements for dental practices.

As far as the rest of the story of the Lowell dentists, with the taking authority not willing to streamline matters and save enormous time and expense, litigation will move forward with respect to the value of the property taken. Who knows when the parties will see a courtroom.

At the other, more commonplace end of the spectrum are those individuals that own rental property and rely upon the rent from residential tenants and small business tenants. These owners now lay in wait, not preparing to attack but, rather, just hoping that some method of demanding payment and enforcing the terms of leases is permitted by law before they go under. A current client of ours leases a small commercial property on the north shore of Boston. The tenant, an auto body shop that received significant Payroll Protection Plan funds, has stopped paying the rent as well as the real estate taxes, which are the tenant's responsibility under the lease.

While there is [deservingly so] nationwide sympathy and empathy for families and residential tenants that are unemployed and have no way of paying the rent, far less attention is given to property owners. Most owners are not conglomerates or millionaires. Rather, they worked tirelessly and saved for decades to own a rental property and count on the rent stream to pay their own living expenses. When the rent stops coming, back taxes begin to add up, and the law prohibits you from demanding payment or moving to evict, what recourse exists? For most, right now, it doesn't exist.

Who knows when property owners and renters alike will be afforded recourse. Once the courts are up and running in a "new normal" manner, who knows when juries will be assembled again. While there is a faint light now appearing at the end of some COVID-related tunnels, certainly many remain completely dark and uncertain.

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