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Real Property

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REAL PROPERTY

In *Ohio Valley Advertising Corp. v. Linzell*[1] the plaintiff sought damages against the Director of Highways by virtue of a written contract with a named landowner for billboard rights, which rights were abrogated by appropriation of the land for a public purpose. Defendant's demurrer was sustained by the court of common pleas which entered final judgment for the defendant. This judgment was affirmed by the court of appeals and the Supreme Court of Ohio.

The essential missing allegation in plaintiff's petition was a failure to allege that any estate in land was conveyed to petitioner by said contract. In fact it was not contended by plaintiff that its agreement with the landowner gave plaintiff any estate or interest in the real estate. The holding by the court was that the assertion by the state of its ownership rights in real estate so as to prevent the exercise of contractual rights does not constitute a taking by the state of such contractual rights. Needless to add, the plaintiff was not entitled to share in the appropriation proceeds.

The theory of the court was that in exercising its power to appropriate, the government may have rendered the performance of the contract impossible, but this merely ends or terminates the contract, and does not constitute an appropriation of the contract.

The obvious caveat to the parties to such a contract is that they provide for an estate in land, such as a term for years renewable, if it be the intention of the parties that the proceeds of any appropriation are to be shared.

In *The Masonic Temple Co. v. Adams*,[2] the court of appeals construed an option agreement "Within ten days after the purchaser elects to exercise this option and make the final payment (said sum to be paid by April 1, 1957), we agree to furnish said purchaser a guaranteed title. . . ." Time was of the essence by express provision in the option. The purchaser put the purchase money in escrow prior to April 1, 1957 with instructions to pay on presentment of a warranty deed and a guaranteed title report.

In an appeal of law and fact, the court of appeals rendered a decree for appellants on the theory that the requirements of the option must be literally complied with, and the deposit of the purchase money in escrow to be paid on condition is not the equivalent of payment by April 1, 1957.

In *Civilian Defense, Inc. v. Ross*,[3] the plaintiff sought to enjoin defendants from interfering with plaintiff's egress and ingress over defend-

1. 168 Ohio St. 259, 153 N.E.2d 773 (1958).
2. 153 N.E.2d 198 (Ohio Ct. App. 1958).
3. 152 N.E.2d 160 (Ohio Ct. App. 1958).