

1989

West Valley City, a Municipal Corporation v.
MAJESTIC INVESTMENT COMPANY, a Utah
Corporation, The Lockhart. Co., a Utah
Corporation, Prudential Federal Savings and Loan
Association, a Federal Corporation; and Does 1
through 10, : Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *West Valley City v. Majestic Investment Company*, No. 890379 (Utah Court of Appeals, 1989).
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DOCKET NO. 890379-CA
IN THE UTAH COURT OF APPEALS

WEST Valley City, a Municipal
Corporation,

Plaintiff and Appellant

v.

MAJESTIC INVESTMENT COMPANY,
a Utah Corporation, The
Lockhart Co., a Utah
Corporation, Prudential Federal
Savings and Loan Association,
a Federal Corporation; and
Does 1 through 10,

Defendants and Respondents.

Case No. 890379-CA

Priority No. 16

REPLY BRIEF OF THE APPELLANT

Appeal from a Final Judgment of the
Third Judicial District Court of Salt Lake County
The Honorable Leonard H. Russon Presiding

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AUG 13 1990

| | | |
|--|---|--------------------|
| WEST Valley City, a Municipal Corporation, |) | |
| |) | |
| Plaintiff and Appellant |) | |
| |) | |
| v. |) | |
| |) | |
| MAJESTIC INVESTMENT COMPANY, |) | Case No. 890379-CA |
| a Utah Corporation, The |) | |
| Lockhart Co., a Utah |) | Priority No. 16 |
| Corporation, Prudential Federal |) | |
| Savings and Loan Association, |) | |
| a Federal Corporation; and |) | |
| Does 1 through 10, |) | |
| |) | |
| Defendants and Respondents. |) | |
| |) | |

Appeal from a Final Judgment of the
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SUMMARY OF ARGUMENTS

The City believes that Majestic's Brief requires a response in several areas. First, Majestic suggests that their award of compensation for an interest in the land was supported by substantial competent evidence. Acceptance of this argument would result in Majestic being compensated twice for the value of the buildings and improvements. Close examination of the evidence put forth in both Appellant's and Respondents' Brief reveals that only the evidence cited by the City refers to land value. The evidence which Majestic would have the court rely on clearly applies to not only land value, but also the value of the buildings and improvements on the land. Majestic had already received compensation for these buildings and improvements and to include them again in an analysis of land value is clearly erroneous.

The second issue involves the standard of review in this case. Although it is correct that for certain issues the "clearly erroneous" standard of review should be used, it is also important for the court to note that other issues should be reviewed upon a "correctness" standard. More specifically, the trial court's failure to value the property as if unencumbered, and the trial court's interpretation of the condemnation clause contained in the lease, are both Conclusions of Law. This court should review those Conclusions under a "correctness" standard and give no preferential treatment to the trial court's decision. Furthermore, the evidence demonstrates that the

incorrect Conclusions of Law by the trial court resulted in Majestic being awarded excess value.

It is also important that this Court note that West Valley City has not waived any rights with regard to this appeal. Majestic has suggested that a letter offering Partial Satisfaction of Judgment, which was specifically rejected by Majestic, has somehow bound the City into waiving its rights to appeal portions of the Judgment. Majestic has completely misstated the facts regarding the Partial Satisfaction of Judgment, which is clearly demonstrated by correspondence from Majestic and the language of the Partial Satisfaction itself.

Finally, Majestic's contention that the City's Brief does not comply with the Utah Rules of Appellate Procedure is without merit. The City's Brief is concise and complete, and provides the court with an understanding of the errors that were made, where in the record those errors were found, and why relief is necessary. Attempts, such as this, to put form over substance should not be considered by this court.

ARGUMENT

POINT I

THE APPELLANT HAS MET ITS BURDEN OF MARSHALLING ALL EVIDENCE REGARDING MAJESTIC'S SHARE OF THE VALUE OF THE LAND. THAT EVIDENCE CLEARLY DEMONSTRATES THAT MAJESTIC HAD NO BONUS VALUE IN THE LAND.

Majestic asserts that the finding of a compensable interest in the value of the land was supported by substantial competent

evidence at trial. Without close examination of the testimony, this may appear to be true; however, Majestic has missed the point of this argument and their reliance on their appraiser, Mr. Webber's testimony, is misplaced.

Majestic cites several pages in the transcript wherein Mr. Webber testified as to Majestic's compensable interest in the "land". Upon closer examination, his testimony concerns a bonus value based upon Majestic's "land, buildings and improvements". Majestic has even conceded as much in their Brief. (Majestic Brief, p. 27)

The extensive quotations from the record contained in West Valley City's Brief present evidence on the issue of land value only. The value of the buildings and improvements is not considered at that point. That is clearly the correct analysis in this case. Majestic's interest in the buildings and improvements upon the land is specifically allocated under the terms of the lease. That allocation was taken into account by the trial court which awarded Majestic the sum of \$223,665.00 as their compensable interest in the buildings and improvements. Majestic is now suggesting that the inclusion of the value of buildings and improvements in a determination of land value was proper. The portions of the transcript cited by Majestic are inapplicable to a discussion of the issue of land value only.

With one exception, West Valley City's Brief sets forth all of the evidence put forth at trial regarding the value of the

land only. That exception was a portion of redirect examination of Mr. Webber in which he stated that:

"Under that scenario the contract rent as called for between the Pickrell, as lessor, and Majestic, as lessee, is equal to the contract length as called for in the Majestic to the Prudential leases, therefore, there is no measurable interest." (R. 375, p. 79)

Mr. Webber went on to say that his determination of total value changed because of the buildings and improvements constructed by Majestic. Based upon this analysis of the evidence, it is clear that there exists no evidence whatsoever that Majestic had a compensable interest in the land. Majestic's compensable interest in this case is derived solely from the buildings and improvements which they constructed upon the property and the trial court awarded them compensation for those buildings and improvements based upon the lease provisions. While West Valley City certainly agrees that Majestic is entitled to compensation for the buildings and improvements, it is equally important that there should be no recovery where there has been no loss. (Great Atlantic and Pacific Tea Company, Inc., v. State of New York, 22 N.Y.2d 75, 238 N.E.2d 705, 291 N.Y.S.2d 299, 210 (1968)) Majestic has utterly failed to demonstrate any evidence that they have a compensable interest in the land. All their evidence pertains to compensable interest in the buildings and improvements, and Majestic is not entitled to receive compensation twice for the same buildings and improvements; therefore, the trial court's awarding compensation to Majestic for land value was clearly erroneous.

ARGUMENT

POINT II

THE STANDARD IN THIS CASE MUST VARY WITH THE ISSUES.

CERTAIN ISSUES SHOULD BE REVIEWED ON A CORRECTNESS
STANDARD.

Majestic is correct in its analysis of the use of the "clearly erroneous" standard with regard to contracts interpreted by use of parol evidence. However, other issues in this appeal should be reviewed under the "correctness" standard.

A. The Trial Court's Failure to Value the Property As a Whole Unit, As If Unencumbered, Prior to Apportioning the Value Between the Fee Holder and Lease Holders, Should Be Reviewed Under the Correctness Standard.

The trial judge's decision not to value the property as if unencumbered is clearly a legal conclusion and not a finding of fact, and therefore does not fall within the "clearly erroneous" standard set forth in Rule 52A, Utah Rules of Civil Procedure. Judge Russon, in his Conclusions of Law, stated that the value of the property should be determined as a whole and then the same apportioned among the several owners according to their respective interests or estates. (R. 356-357) While this is not a misstatement of the law, it is an incomplete statement of the law. It is not just the value of the whole that should be determined, but it is the value of the unencumbered whole.

The law in the State of Utah is clear that the leased property should be valued as though it were held in a single

ownership, rather than by separately evaluating the interests of the lessor and the lessee. This concept is set forth at 29A C.J.S. "Eminent Domain", §198, and has been specifically adopted by the Utah Supreme Court. (Ogden City v. Stephens, (Utah 1975) 445 P.2d 703, (1968) 21 Utah 2d 336; see also State Road Commission v. Brown, 531 P.2d 1294 (Utah 1975)) A detailed discussion of the law is found in Appellant's Brief at pages 23 and 24. Utah does not stand alone in taking this view. Even cases cited as authority in Respondent's Brief state that, "...where there are two or more interests or estates in a condemned parcel, the proper mode of assessing damages is to ascertain first the damage to the fee as if it were unencumbered, and then to apportion that amount among all of the estates and interests which are held in the property. (citations omitted)" (emphasis added) (Great Atlantic and Pacific Tea Company, Inc., *supra*)

The trial judge not only omitted the "unencumbered" factor from the determination, but specifically held that the Majestic-Prudential and Majestic-Lockhart leases "should and must be taken into consideration in determining the fair market value of the property and the property interests in question." (R. 313, 354) (Also see Page 5 of Ruling, attached as Addendum 1.)

This clear error by the trial judge renders the Brown concept that the parts shall never exceed the unencumbered whole meaningless. Obviously if the parts, in this case the Majestic-Prudential and Majestic-Lockhart leases, are included when

determining the value of the whole, then the whole will become the sum of the parts. In this scenario, where the value of the parts are used to help determine the value of the whole, there will never be a situation in which the parts exceed the whole and the rules as set forth in the Ogden City and State Road Commission v. Brown cases will be rendered useless.

It is also clear from the evidence that Majestic's appraiser, Mr. Webber, took the leases into account during his appraisal process. In his direct examination, while describing his various appraisal methods, he responded as follows:

Q And did you take into account the leases that were on the property, on the subject property?

A Yes, I did.

Q What leases? Would you identify them just by general description, please, that you took into account?

A There were actually three leases on the property. There was a land lease with a Pickrell or Granger Shopping Center as the lessor, and Majestic Investment Company as the lessee. That lease secured Majestic's position in the property. there were also individual leases from Majestic as the lessor to the Lockhart Company as lessee, and Majestic as lessor to Prudential as lessee.

Q And what importance did those leases have to you?

A Those leases because they were, No. 1, they were encumbering the fee estate. The land lease was encumbering the fee estate. Also Majestic in a leasehold position was secured by those leases. They had great importance to the valuation of this particular property.

Q In what regard?

A In the value of income producing property. the basic premise is that an income producing property sales in relationship to its capacity or its capability to produce income. The higher the income stream a property can produce, the higher its value. If the property has a low income stream, it would have a lower value. So, the income

stream is a very important consideration in the appraisal of real estate.

Q Were the particular parties as to whom the leases involved, I think you mentioned them. Were they of interest to you in your assignment of determining fair market value of both the total properties and Majestic's interest?

A Yes, they were.
(R. 374, pp. 85-86)

Also, Mr. Webber, upon questioning by the court, testified that the value may have been different if the leases had been for a shorter term. (R. 374, pp. 146-153)

If his determination of value of the property is dependent upon the term of the leaseholds, then the leaseholds must have been used in the calculation of value. Obviously, if he uses the leaseholds to determine value, then he is finding the value of the encumbered whole, rather than the unencumbered whole.

Mr. Webber later testifies that what he has calculated is the "property in fee" as if "the underlying land and improvements were owned by one person", and "This is for the total property." (R. 374 p. 154, lines 13-15, 19-20) However, his earlier testimony, quoted and cited above, certainly reveals that he did not value the property as if unencumbered. In fact, immediately after testifying that this was fee value, "...the total property", he agreed that "total property" meant the underlying ownership of Pickrell, together with that of Majestic. (R. 374, p. 154, lines 21-25) As this testimony clearly demonstrates, Mr. Webber not only took the leases into account, but contrary to law, he also considered the specific

identity of the lessee's as he determined the "fair market value of both the total properties and Majestic's interest". This approach, which was allowed by the trial court's interpretation of law, is in direct conflict with the law of this State. Should this ruling be allowed to stand, the Ogden City and Brown cases will have been circumvented and the total value of the property inflated. The ruling by the trial court was an improper application of the law which lead to improper valuation and should be reviewed by this court under the correctness standard.

B. The Trial Court's Interpretation of the Lease Condemnation Clause Should Be Reviewed Under a Correctness Standard.

The trial court ruled that the condemnation clause in the ground lease between Majestic and the landowner did not operate to terminate the rights of Majestic upon condemnation by West Valley City. The court received no parol evidence on this issue, and therefore it should be reviewed under a correctness standard. The terms and provisions of the contract were interpreted as a matter of law and the trial court's interpretation should be accorded no particular weight. (Kimball v. Campbell, 699 P.2d 714 (Utah 1985))

Majestic, in its Brief, focuses only on the first sentence of the condemnation clause, and based upon that sentence suggests that Majestic's right to share in the compensation award did not terminate. However, in interpreting the meaning

of the condemnation clause, the court must read the entire clause, giving effect to all of its terms. (Pepsi Cola Metropolitan Bottling Company v. Romley, 587 P.2d 994 (Ariz. App. 1978)) Upon reading the express language of the entire condemnation clause, which takes up almost a page of the lease, it becomes clear that the purpose of this clause is to terminate the rights of Majestic as to any interests in the land and to preserve the rights of Majestic as to interests in the buildings and improvements which they constructed on the property. In particular, the court should note the final sentence of the condemnation clause which provides that:

"If land only is condemned, with no effect upon the improvement or rentals, lessor and any secured party holding a lessee mortgage on the above-described premises that is affected by such condemnation shall share in such award as their interests may appear."

This demonstrates that the clear intent of the parties was that Majestic not participate in any award of compensation for land value. The middle portion of the condemnation clause contains a formula by which Majestic shall share in the compensation award that represents the value of the buildings.

When read as a whole, the only way to harmonize all of the provisions of the condemnation clause is to determine that it was the intent of the parties that Majestic share in only the value of the buildings erected on the property and not the value of the land that is being condemned. This is further evidenced by the fact that Majestic specifically designed the ground lease

portions of the Prudential and Lockhart leases so that they provided the exact same rental to Majestic as Majestic was paying to the landowner. This pass-through arrangement of rent on the land clearly shows that it was the intent of the parties that Majestic have no interest in the land, but only in the buildings and improvements.

With no other evidence offered defining the terms of the condemnation provision, the plain terms of the lease provision apportioning the award should govern. The trial court's interpretation of the condemnation clause and award of compensation for Majestic's "land value" was clearly in error and should be reviewed by this court under the correctness standard. Majestic's claim is limited to its value in the buildings and improvements as allocated by the express provisions of the lease.

ARGUMENT

POINT III

WEST VALLEY CITY HAS NOT WAIVED ANY RIGHTS WITH REGARD TO THIS APPEAL.

West Valley City has not waived any rights with regard to this appeal.

Majestic has asserted that West Valley City has waived its rights to appeal certain portions of the trial court's judgment because of a partial satisfaction of that judgment. As Majestic is well aware, this is not the case.

To substantiate its claim that West Valley City has waived its rights, Majestic attached a letter from J. Richard Catten, dated November 3, 1989, offering a Partial Satisfaction of Judgment. (Respondent's Brief, Addendum 6) This offer for partial satisfaction was specifically rejected by the letter of Majestic's counsel, Robert S. Campbell, Jr., of November 18, 1989, which is attached to this Brief as Addendum 2. The basis for rejection was that a partial satisfaction of judgment could not be made for a specific portion of the judgment. Majestic is now attempting to rely on a document that they specifically rejected for the very reasons they now embrace, in order to support their spurious argument that the City has waived its rights.

Following negotiation, all language with regard to buildings and improvements was deleted from the Partial Satisfaction of Judgment. Furthermore, the final paragraph of that document states specifically that, "It is further acknowledged that this Partial Satisfaction of Judgment shall have no effect on the rights, standings or obligations of the parties with respect to the appeal filed in this case with the Utah Court of Appeals, as Case No. 890379-CA." (Attached as Addendum 3.) This version of the Satisfaction was accepted and signed by counsel for Majestic.

This argument is not well founded, is wholly without merit, and should be rejected by the court.

ARGUMENT

POINT IV

WEST VALLEY CITY'S BRIEF COMPLIES WITH THE UTAH RULES OF APPELLATE PROCEDURE.

Majestic's assertion that West Valley City's Brief does not comply with the rules and should therefore be dismissed is wholly without merit. It is an attempt to put form over substance, and should not be considered by this court. (Lawrence v. Valley National Bank, 478 P.2d 79 (Ariz. 1970))

Contrary to the contentions contained in Majestic's argument, an analysis of the West Valley City Brief reveals seventeen separate citations or references to the record, including ten quotations, some more than a page long. The Brief gives a fair representation of the facts relating to the issues presented. Certainly, the Brief meets the goal of enabling the appellate court to understand what particular errors were allegedly made, where in the record those errors can be found, and why under the applicable authorities those errors are material ones necessitating reversal or other relief. (Demetropoulos v. Vreeken, 754 P.2d 960, 962 (Utah Ct. App. 1988)) Majestic takes particular issue with the Statement of Facts in West Valley City's Brief. The City's Statement of Facts in the present case is concise as to the factual basis of the case. This court has stated its displeasure with Statements of Fact which are mere catalogues of pleadings and papers and burdened with minutiae. (Demetropoulos at 961)

Majestic's contention that the City has failed to marshall all the facts supporting Majestic's position is also unfounded. With regard to the bonus value that the trial court awarded to Majestic for their interest in the land, West Valley City did, in fact, marshall all the evidence on that issue in its Brief. A discussion of that issue is contained elsewhere in this Reply Brief. The remaining issues raised by West Valley City are questions of law rather than fact, and West Valley City carries no burden in that case. The marshalling of evidence and application of the clearly erroneous standard only apply to factual determinations by the trial court and are therefore inapplicable when reviewing questions of law. (Mountain States Broadcasting v. Neale, 776 P.2d 643, 646 (Utah App. 1989); Schindler v. Schindler, 776 P.2d 84, 88 (Utah App. 1989); Bell v. Elder, 782 P.2d 545, 547 (Utah App. 1989))

CONCLUSION

Based on the foregoing, it is clear that the trial court made significant errors in determining the compensable interest in this case. It is also clear that Majestic is unable to adequately explain or justify those errors. There was no evidence presented which supports an award to Majestic for the value of the land. In all of the evidence presented by Majestic, the bonus value that was awarded is clearly derived from the value of the buildings and improvements rather than the land. Majestic is suggesting that it is proper that the

buildings and improvements be counted not only in determination of the land value, but that they also receive compensation for the buildings and improvements under the clear provisions of the lease. Majestic's own appraiser found that, as to land value only, Majestic had no compensable interest. The trial court's determination that Majestic receive compensation for the value of the land is clearly erroneous and this court should reverse that finding.

It is also clear that the trial court's failure to value the property as if unencumbered and the trial court's interpretation of the condemnation clause in the lease should be reviewed on a "correctness" standard. When reviewed under this standard, the evidence and the case law plainly reveal that the trial court's rulings were incorrect. These incorrect rulings lead to Majestic receiving compensation they were not entitled to. By incorrectly interpreting the condemnation clause, the trial court awarded Majestic value in the land even though the plain terms of the lease require otherwise. This court should reverse that ruling and restrict Majestic to the compensation allowed in the lease, namely the apportioned share of the buildings and improvements.

The trial court's failure to value the property as if unencumbered led to an incorrect total value. If this court should find that Majestic is entitled to a compensation award for interest other than that awarded for buildings and improvements, then the court should find that the value of the

encumbering leasehold interests were improperly used to find the fee value of the "unencumbered whole" and should, therefore, remand the case with instructions to reduce the judgment by that amount the leasehold value contributed to the value of the whole parcel.

Finally, Majestic's contentions that West Valley City has failed to comply with the Rules of Appellate Procedure and that the City has waived its rights with regard to certain portions of the appeal, are not based on fact, are without merit, and should not be entertained by this court.

DATED this 13th day of August, 1990.

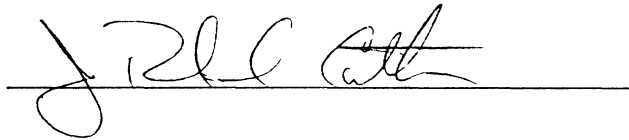


Attorney for Appellant, West
Valley City

MAILING CERTIFICATE

I, the undersigned, certify that on August 13th, 1990, I mailed, postage prepaid, four true and correct copies of the foregoing Appellant's Reply Brief to the following parties:

Robert S. Campbell, Jr., Esq.
Clark W. Sessions, Esq.
Paul T. Moxley, Esq.
Matthew C. Barneck, Esq.
CAMPBELL MAACK & SESSIONS
Attorneys for Majestic Investment Co., Respondent
170 South Main Street, Suite 400
Salt Lake City, UT 84101

A handwritten signature, likely of Robert S. Campbell, Jr., is written over a horizontal line. The signature is in cursive and appears to read "RSC".

ADDENDUM 1

RULING

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | | |
|---|---|---------------------|
| WEST VALLEY CITY, a municipal corporation, | : | RULING |
| | : | CIVIL NO. C-87-6899 |
| Plaintiff, | : | |
| vs. | : | |
| | : | |
| MAJESTIC INVESTMENT COMPANY, a Utah corporation, THE LOCKHART CO.; PRUDENTIAL FEDERAL SAVINGS AND LOAN ASSOCIATION, a Federal corporation, and DOES 1 through 10, | : | |
| Defendants. | : | |

This is a condemnation action wherein West Valley City seeks to condemn the interests of Majestic Investment Company, lessee of the property in question. West Valley City has already settled with the owner of the property. The lessee, Majestic, was not a party to, nor participated in that settlement.

The property in question was leased by the owner to Majestic, and consisted of vacant and unimproved land and rights of way. The lease was executed in April of 1975 for a term of 35 years at \$750.00 per month, with various CPI escalations. The lease permitted the lessee to construct office buildings with a required minimum value, and the lease contained a condemnation clause which read in part:

. . . The term herein demised and all rights and obligations of the lessee hereunder shall immediately cease and be adjusted as of the time of such condemnation. Lessee shall have claim and right to share in and receive that amount of such award as represents that portion of the buildings and improvements erected on the demised premises by lessee of which the number of months from the date of such taking by condemnation to the date of expiration of this lease bears to the total number of months, whether the term herein demised, to wit: 420 months.

Shortly after execution of the lease, Majestic constructed a building and leased the same on a long-term 25 year lease to Prudential at \$375.00 per month for 300 months, plus a determined amount in regards to the building and costs therein for a total rental amount of \$1,112.00, subject to certain periodic adjustments. That lease contained a condemnation clause providing that the sublease terminated upon condemnation and Prudential would not share in the proceeds, except for a pro-rata share of any improvements Prudential might have made.

At approximately the same time, Majestic constructed a building and leased the same on a long-term 25 year lease to Lockhart for \$375.00 per month for 300 months, plus a determined amount in regards to the building and costs, for a total amount of \$961.10 per month for 300 months. This lease also contained a condemnation clause terminating Lockhart's rights in the event of condemnation, and prohibiting Lockhart from any share in the

condemnation, except as to any pro-rata share for any improvements made by Lockhart.

This matter is scheduled for trial on December 13, 1988. Both parties have requested a preliminary ruling by the Court as to the methodology by which Majestic's interest is to be evaluated in this condemnation action.

The City's position is that in condemnation, property must be valued as a whole unit as if unencumbered, and then apportioned between the owner and the lessees, with the owner receiving value of his reversionary interests and the lessee receiving value for his leasehold interest. However, such may be changed by agreement and the City claims that in this case Majestic is limited in what it may recover by the lease with the owner. More specifically, the City claims that the condemnation clause of the lease does not provide the lessee with a share in the compensation award, or any interest that it may have, except as to an interest in the buildings as set out in the lease. Particularly, it is argued that the lessee is not entitled to a share in regards to future lost rents.

The lessee, Majestic, takes the position that it has a constitutional and compensable interest in property which cannot be ignored by the condemning authority (West Valley City), and for which Majestic must be paid just compensation. It argues that while in many cases the fair market value of only single

ownership is equivalent to the fair market value of other interests in the property, where premises are subject to a strong, enduring leasehold with prime rated tenants, the fair market value of the property must take into account and consider the value which the prime leases add to the fee simple estate. Majestic claims it is entitled to fair compensation for the value of its leasehold, and that value should take into consideration the subleases. Majestic further claims that such rights are not limited by the primary lease, that in order to be excluded from its just share of the compensation, the lease must clearly and unequivocally state such, and that the lease in question does not by clear and specific language exclude the lessee from its share in the compensation. Majestic claims that its 35 year primary lease, its construction of two bank buildings, its 25 year subleases to Triple A tenants, and the fixed rentals over the 25 year period give the property added value that would not otherwise have been present but for the subleases, and that such should be taken into consideration. Otherwise, the City will have reaped illegal and an unjust windfall.

The Court has given this matter careful consideration, and rules as follows:

The owner is entitled to just compensation for the taking of its reversionary interest in the property in question. It has already settled with West Valley City.

The lessee is entitled to just compensation for the taking of its leasehold rights to the property in question. The value of Majestic's leasehold must take into consideration all leases because of the particular facts in this case, to wit: the length of the primary lease, the provision for and contemplation that Majestic would improve the property with minimum value requirements, the construction of buildings and improvements by Majestic, and Majestic's long-term 25 year leases with substantial lessees with rent certain.

There must be a determination of the fair market value of the property as a whole, taking into consideration the value of the land, the buildings and improvements, and the leases, including the subleases. From this determination there must be an apportionment as to the owner's interest and Majestic's interest.

Majestic is also entitled to a share of the buildings constructed and improvements made by it as provided in the condemnation clause of the lease.

The lease does not preclude Majestic from recovering its fair share of the award for its leasehold interest. There is no language in the lease that precludes or limits Majestic from sharing in a compensation award. To preclude such recovery, the preclusionary language must be clear and unequivocal. This lease merely states that in the event of condemnation, the rights and

obligations of Majestic shall cease "and be adjusted as of the term of such condemnation." This is not sufficient to terminate Majestic's rights to its fair compensation. The fact that the lease further provides Majestic with a share in the buildings which it constructed does not limit Majestic's rights to also share in the compensation award as to its other interests.

In this case West Valley City has already made a settlement with the owner of the fee. Majestic was not a party to that settlement. And, that settlement cannot limit or otherwise affect the amount to which Majestic is entitled. There still must be a determination of the fair market value of the property, taking into consideration the land, buildings and improvements, and leases as well as a determination of the portion of such value to which Majestic is entitled.

Dated this 30 day of November, 1988.

15/ Leonard H. Russon
LEONARD H. RUSSON
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Ruling, postage prepaid, to the following, this____ day of November, 1988:

Robert S. Campbell, Jr.
H. Dickson Burton
Attorneys for Majestic Investment Co.
310 S. Main, Suite 1200
Salt Lake City, Utah 84101

Harold A. Hintze
3319 N. University Ave., Suite 200
Provo, Utah 84604

Paul T. Morris
J. Richard Catten
2470 S. Redwood Road
West Valley City, Utah 84119

Joseph J. Palmer
Wayne G. Getty
15 East 100 South, Suite 600
Salt Lake City, Utah 84111-1915

ADDENDUM 2

LETTER OF ROBERT S. CAMPBELL DATED NOVEMBER 18, 1989

VID K. WATKISS
BERT S. CAMPBELL, JR.
MES P. COWLEY
RSCHEL J. SAPERSTEIN
WAYNE WADSWORTH
LLIAM VOGEL
ILIP C. PUGSLEY
EN E. DAVIES
BERT D. MAACK
REGORY B. MONSON
LAN T. BRINKERHOFF
ESTON L. HARRIS
BARNEY GESAS
NGDON T. OWEN, JR.
VID B. WATKISS
REN C. JENSON
IZABETH T. DUNNING
RNON L. HOPKINSON
RANDALL TRUEBLOOD
NCENT C. RAMPTON
SEPH T. DUNBECK, JR.
ACY H. FOWLER
L. KNUTH
ENNIS J. CONROY

STEVEN T. WATERMAN
KEN P. JONES
DEBRA J. MOORE
CASS C. BUTLER
STUART W. HINCKLEY
STEVEN G. FORSYTH
PERRIN R. LOVE
H. DICKSON BURTON
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STEVEN E. MCCOWIN
CAROLYN COX
WILLIAM H. CHRISTENSEN
C. SCOTT BROWN
LESLIE J. RANDOLPH
LAWRENCE R. DINGIVAN
MATTHEW C. BARNECK
STEVEN W. CALL
PAUL A. HOFFMAN
JON C. MARTINSON
ROBERT W. COTTLE

LAW OFFICES
WATKISS & CAMPBELL
A PROFESSIONAL CORPORATION
TWELFTH FLOOR
310 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84101-2171

November 18, 1989

NOV 22 1989

OF COUNSEL
ZAR E. HAYES

TELEPHONE
(801) 363-3300

TELECOPIER
(801) 350-3892

WRITER'S DIRECT NUMBER:

J. Richard Catten, Esq.
Assistant City Attorney
2470 South Redwood Road
West Valley City, Utah 84119

Re: West Valley City v. Majestic Investment, et al.
Court Appeal No. 89-0379-CA

Dear Mr. Catten:

Under date of November 3, 1989, I received without prior notice your letter together with a West Valley City warrant in the sum of \$181,961.32 and a form for Partial Satisfaction of Judgment which you requested that I sign.

I have consulted with my client upon his return to Utah and I am authorized to advise you that your proposed tender of monies and Partial Satisfaction of Judgment is invalid and rejected.

The bases for our determination is simple. The tender has been made on the premise that the judgment of the district court was severable or somehow bifurcated in specific, departmentalized components, viz., Majestic's share in the Prudential and Lockhart buildings and improvements vis-a-vis the land. The amended judgment of Just Compensation makes no such distinctions. It is not a severable judgment but rather one which merges all facets of the trial into a single non-severable judgment upon which interest at 8% ran to the date of judgment with 12% post-judgment interest presently running.

The case law is clear that a tender of part payment of judgment which attempts to sever the judgment into segregated parts, is invalid and improper. Accordingly, I return to you your proposed form of Partial Satisfaction of Judgment which I decline to sign, as well as your warrant dated November 3, 1989 in the sum of \$181,961.32.

WATKISS & CAMPBELL

J. Richard Catten, Esq.
November 18, 1989
Page 2

As I indicated to you by telephone, if you wish to make a non-conditional tender of payment and partial satisfaction of the Amended Judgment of Just Compensation, we will have no objection to that and will accept the same and acknowledge such further partial satisfaction.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert S. Campbell, Jr.", with a stylized flourish at the end.

ROBERT S. CAMPBELL, JR.
Attorneys for Majestic
Investment

RSC/dd

cc: Majestic Investment
Harold A. Hintze, Esq.

ADDENDUM 3

PARTIAL SATISFACTION OF JUDGMENT

Harold A. Hintze, P.C. A-1400
OLSEN, HINTZE, NIELSON & HILL
3319 No. University Ave., Suite 200
Provo, Utah 84604
Telephone: (801) 375-6600
Attorney for Plaintiff

Paul T. Morris, #3738
West Valley City Attorney
J. Richard Catten, #4291
Assistant City Attorney
2470 South Redwood Road
West Valley City, Utah 84119
Telephone: (801) 974-5501

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY, STATE OF UTAH

| | | |
|--|---|-------------------------|
| WEST VALLEY CITY, a Municipal Corporation, | : | |
| | : | |
| Plaintiff, | : | PARTIAL SATISFACTION |
| | : | OF JUDGMENT |
| vs. | : | |
| | : | |
| MAJESTIC INVESTMENT COMPANY, | : | Civil No. C87-6899 |
| a Utah Corporation; and DOES | : | |
| 1 THROUGH 10, | : | Judge Leonard H. Russon |
| | : | |
| Defendants. | : | |

I, Robert S. Campbell, Jr., Attorney for Majestic Investment Company, in this action, acknowledge a parcel satisfaction of a judgment rendered against Plaintiff in the Third District Court, Salt Lake County, Utah, in an eminent domain action.

Judgment was entered by the Court on February 15, 1989, on the following parcel of property:

PARCEL 1.

Beginning at a point on the West side of 2700 West Street, said point being South 865.72 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian, and running thence: S 00°00'44" W. 90.67 feet along the

West line of 2700 West Street; thence S. 89°56'20" W. 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building for the next three courses and distances: N. 00°00'44" E. 2.33 feet; thence N. 00°00'44" E. 88.34 feet; thence N. 89°56'20" E. 129.22 feet to the point of beginning.

Contains: 0.270 acres

Parcel 2.

Beginning at a point on the West side of 2700 West Street, said point being South 956.39 feet and West 50.00 feet from the N.E. corner of the N.W. 1/4 of Section 33, T. 1 S., R. 1 W., Salt Lake Base and Meridian and running thence: S. 00°00'44" W. 90.67 feet along the West line of 2700 West Street; thence S. 89°56'20" W. 156.22 feet to a point 30.00 feet East of an existing building; thence running parallel to and 30.00 feet away from the said building N. 00°00'44" E. 90.67 feet; thence N. 89°56'20" E. 156.22 feet to the point of beginning.

Contains: 0.325 acres

TOGETHER with an easement for sewer, water and other utility purposes, and a right of way for ingress and egress over the following described property: Beginning at a point on the West side of 2700 West Street, said point being South 1047.06 feet and West 50.00 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°00'44" West 18.0 feet along the West line of 2700 West Street; thence South 89°56'20" West 482.16 feet; thence North 00°00'44" East 18.0 feet; thence North 89°56'20" East 482.16 feet to the point of beginning.

ALSO TOGETHER with an easement for sewer, water and other utility purposes, and a right of way for ingress and egress over the following described property: Beginning at a point South 865.72 feet and West 179.22 feet from the Northeast corner of the Northwest quarter of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 89°56'20" West 30.0 feet to an existing brick building; thence along said building for the next three courses and

distances: South 00°00'44" West 58.34 feet;
thence South 89°56'20" West 27.0 feet; thence
South 00°00'44" West 123.0 feet; thence North
89°56'20" East 30.0 feet; thence North
00°00'44" East 93.0 feet; thence North
89°56'20" East 27.0 feet; thence North
00°00'44" East 88.34 feet to the point of
beginning.

BEGINNING at a point on the West side of 2700
West Street, said point being South 865.72
feet and West 33.0 feet from the Northeast
corner of the Northwest quarter of Section 33
Township 1 South, Range 1 West, Salt Lake Base
and Meridian, and running thence South 0°0'44"
West 181.34 feet along the West line of 2700
West Street; thence South 89°56'20" West 17
feet; thence North 0°0'44" East 181.34 feet;
thence North 89°56'20" East 17 feet to the
point of beginning.


This Partial Satisfaction of Judgment acknowledges that judgment was entered in favor of Majestic Investment Company on the 15th day of February, 1989 for the sum of \$364,888.36, less the sum of \$69,198.00 tendered incident to the order of immediate occupancy, or a net deficiency judgment of \$295,690.36, together with interest at the rate of 8% per annum from the date of occupancy to the date of judgment in the sum of \$31,108.80. Accordingly, there was a net deficiency judgment, inclusive of interest through February 15, 1989 in the sum of \$326,799.16, together with taxable costs, as the Just Compensation payable to Majestic Investment Company.

This Partial Satisfaction of Judgment further acknowledges that as of the 3rd day of November, 1989 there was due and owing as the Just Compensation, inclusive of post-judgment interest at 12% per annum, the sum of \$356,130.28. As of said date, West Valley City paid to Majestic Investment Company and its counsel the sum of \$181,961.32 by City warrant No. 40368, leaving a net and

outstanding judgment due and owing to Majestic Investment Company of \$174,168.96, which judgment will continue to bear interest at the rate of 12% per annum on the net principal judgment, which calculates to \$47.62 per day from November 3, 1989, until full satisfaction is paid by West Valley City in the matter.


It is further acknowledged that this Partial Satisfaction of Judgment shall have no effect on the rights, standing or obligations of the parties with respect to the appeal filed in this case with the Utah Court of Appeals, as Case No. 890379-CA.


DATED this 11th day of December, 1989.


ROBERT S. CAMPBELL, JR.
Attorney for Majestic Investment
Company

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 11th day of December, 1989, personally appeared before me Robert S. Campbell, Jr., signer of the foregoing instrument, who duly acknowledged to me that he executed the same.


NOTARY PUBLIC
Residing in Salt Lake County, Utah


My Commission Expires:
MY COMMISSION EXPIRES
12-21-89