

The Order of the Court is stated below:

Dated: June 24, 2016  
02:23:52 PM

/s/ KEITH KEENE  
District Court Judge



Proposed order prepared by:

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Attorneys for Defendant Bank of America, N.A., as Trustee for  
the registered holders of LB-UBS Commercial Mortgage Trust  
2008-C1, Commercial Mortgage Pass-Through Certificates,  
Series 2008-C1

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE: June 29, 2016  
Rathu Grotopas  
DEPUTY COURT CLERK



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03/29/2019 10:33 AM \$0.00  
Book - 10764 Pg - 9748-9757  
RASHELLE HOBBS  
RECORDER, SALT LAKE COUNTY, UTAH  
UT ST-DEPT OF TRANSPORTATION  
BOX 148420 ATT: MONE WARDLE  
SLC UT 84114-8420  
BY: SSA, DEPUTY - WI 10 P.

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

UTAH DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

FINAL JUDGMENT OF  
CONDEMNATION

Project No.: S-0154(52)16

FPA WEST POINT, LLC, a Delaware limited liability company; FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation; BANK OF AMERICA, NA, fka LaSALLE BANK, NA; K MART CORPORATION, a Michigan corporation; and NEW ALBERTSON'S INC., an Ohio corporation,

Defendants.

Parcel No.: 1005:2:A

Civil No. 100907779

Affecting Tax ID Nos.: 21-17-101-047,  
21-17-101-073, 21-17-101-074

Judge Keith A. Kelly

This matter came before Judge Keith A. Kelly for a nine-day bench trial on October 15, 19-22, and 26-29, 2015. Post-trial, the Court also considered additional briefing and argument by the parties, including hearings held on February 8, 18, and 24, 2016. Plaintiff Utah Department of Transportation (“UDOT”) was represented by Barbara H. Ochoa and James R. Soper of the Utah Attorney General’s Office. FPA West Point, LLC (“FPA”) was represented by Bruce Wycoff, Angus Edwards, and Kenneth Okazaki of Jones Waldo Holbrook & McDonough. Bank of America, NA (“Bank of America”) was represented by James L. Barnett of Holland & Hart. Kmart

Corporation (“Kmart”) was represented by Perrin R. Love of Clyde Snow & Sessions.

The Court, having made and entered its Findings of Fact and Conclusions of Law on January 6, 2016 and its Supplemental Findings of Fact and Conclusions of Law on June 24, 2016 now enters the following Final Judgment of Condemnation.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1.
  1. The interests of Defendants FPA, Bank of America, Kmart, and First American Title Insurance Company in the parcel of land hereinafter described in Paragraph No. 10 (“Subject Property”) are hereby condemned and acquired by UDOT for highway purposes.
  2. The purpose of said condemnation is a public use authorized by law and the Subject Property is necessary to that public use.
  3. Pursuant to Utah Code Ann. § 78B-6-511 and the Court’s Findings of Fact and Conclusions of Law, FPA and Bank of America are entitled to a joint award of just compensation in the principal sum of \$3,163,374.00, which amount was paid to Bank of America on February 23, 2016, to be applied according to the loan agreement documents between FPA and Bank of America.
  4. Pursuant to Utah Code Ann. § 78B-6-511 and the Court’s Findings of Fact and Conclusions of Law, Kmart is entitled to an award of just compensation in the principal sum of \$1,400,00.00, which amount was paid to Kmart on February 22, 2016.

5. Prior to occupancy, UDOT deposited the sum of \$1,250,00.00 with the Clerk of the Court on May 26, 2010. The Court issued its Order of Occupancy on June 8, 2010. After the Court issued its Findings of Fact and Conclusions of Law, UDOT deposited the additional sum of \$4,799,944.21 with the Clerk of the Court on January 15, 2016. And finally, consistent with the Court's Supplemental Findings of Fact and Conclusions of Law Regarding Interest on Pre-Occupancy Deposit and the Court's May 26, 2016 Order Directing Deposit and Disbursement of Additional Funds as Interest on the \$1.25 Million Occupancy Deposit, UDOT deposited the additional sum of \$478,082.19 with the Clerk of the Court on May 26, 2016.
6. Pursuant to Utah Code Ann. § 78B-6-510(5), and both the Court's original Findings of Fact and Conclusions of Law as well as the Court's Supplemental Findings of Fact and Conclusions of Law Regarding Interest on Pre-Occupancy Deposit, FPA, Bank of America, and Kmart are entitled to an award of interest.
7. Pursuant to Utah Code Ann. §§ 78B-6-510 and 511, FPA and Bank of America are entitled to a joint award of interest of \$1,361,897.04 on the principal sum, which amount has been paid to Bank of America to be applied according to the loan agreement documents between FPA and Bank of America. \$1,030,490.47 was paid on March 7, 2016 for interest on

the principal sum less the pre-occupancy deposit and \$331,406.57 was paid on June 21, 2016 for interest on FPA and Bank of America's pro-rata share of the pre-occupancy deposit.

1.

1.

1. Pursuant to Utah Code Ann. §§ 78B-6-510 and 511, Kmart is entitled to an award of interest of \$602,755.36 on the principal sum, which amount was paid to Kmart. \$456,079.74 was paid on March 7, 2016 for interest on the principal sum less the pre-occupancy deposit and \$146,675.62 was paid on June 21, 2016 for interest on Kmart's pro-rata share of the pre-occupancy deposit.
2. UDOT has deposited with the Clerk of the Court, and defendants have received, the amount of compensation to which defendants are entitled. Consequently, UDOT is entitled to this Final Judgment of Condemnation.
3. A copy of this Final Judgment of Condemnation shall be filed with the County Recorder of Salt Lake County, State of Utah, and thereupon the rights and interests of Defendants in and to the following described property, situated in Salt Lake County, State of Utah, shall vest in the Plaintiff, Utah Department of Transportation, pursuant to Utah Code § 78B-6-516:

Tax ID No.: 21-17-101-047-073 and 074

Parcel No. 0154: 2:A

Defendant, being the owner of an entire tract of property, lying west of the existing highway, situate in the NE1/4NW1/4 of section 17, T.2S., R.1 W., S.L.B.&M., in Salt Lake County, Utah. To forever close that certain access to an existing highway known as Project No. NM-1005(4) over and across the west right of way line, which had been provided for in that certain Warranty Deed recorded at Entry No. 6233607 in Book 7288 at Page 2013 in the office of the Salt Lake County Recorder, Utah, now made necessary by the widening of the existing highway known as Project No. S-0154(52)16 to-wit:

That 70-foot section which centers at a point directly opposite the center line of said project approximately at Engineer Station 285+12.0, said point is also approximately 1,590.70 ft., N. 89°56'30" E. and 776.00 ft., S. 00°03'30" E. from the Northwest corner of said Section 17.

1.
  1. As between UDOT on the one hand, and the defendants on the other hand, the Court does not award attorneys' fees and costs.

SO ORDERED BY THE COURT.

ENTERED BY THE COURT EFFECTIVE AS OF THE DATE THE COURT'S STAMP IS AFFIXED TO  
THE FIRST PAGE OF THIS DOCUMENT

(In accordance with Utah R. Civ. P. 10(e), this Order does not bear the handwritten signature of the Court, but instead displays an electronic signature at the top of the first page of this Order.)

Approved as to form and content:

HOLLAND & HART LLP

/s/ James L. Barnett

James L. Barnett

Steven E. Tyler

Holland & Hart LLP

*Attorneys for Bank of America, N.A. as Trustee for  
the registered holders of LB-UBS Commercial Mortgage Trust  
2008-C1, Commercial Mortgage Pass-Through Certificates,  
Series 2008-C1*

JONES WALDO HOLBROOK & McDONOUGH PC

/s/ Bruce Wycoff

Kenneth A. Okazaki

Bruce Wycoff

*Attorneys for FPA West Point, LLC*

*Signed with approval*

CLYDE SNOW & SESSIONS

/s/ Perrin R. Love

Perrin R. Love

*Attorneys for Kmart Corporation*

*Signed with approval*

UTAH ATTORNEY GENERAL'S OFFICE

/s/ Barbara H. Ochoa

Barbara H. Ochoa

James Soper

Assistant Attorneys General

*Attorneys for Utah Department of Transportation*

*Signed with approval*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 23rd day of June, 2016, a copy of the proposed **FINAL JUDGMENT OF CONDEMNATION** was filed with the Court via the Greenfiling system which sent notification of such filing to the following:



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*/s/ Melissa Thurgood*

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