

SUPREME COURT OF LOUISIANA

NO. 2020-C-01017

BAYOU BRIDGE PIPELINE, LLC
Plaintiff/Petitioner

vs.

38.00 ACRES, MORE OR LESS, LOCATED IN ST. MARTIN PARISH;
BARRY SCOTT CARLINE, ET AL.
Defendants/Respondents

CIVIL PROCEEDING

WRIT OF REVIEW TO THIRD CIRCUIT COURT OF APPEAL
NO. 19-00565-CA

FROM THE 16TH JUDICIAL DISTRICT COURT
PARISH OF ST. MARTIN
CIVIL CASE NO. 87011-E

HONORABLE KEITH COMEAUX, PRESIDING

RESPONDENT-LANDOWNERS' SURREPLY IN OPPOSITION
TO APPLICATION OF BAYOU BRIDGE PIPELINE, LLC
FOR WRIT OF CERTIORARI

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LAW AND ARGUMENT

I. Bayou Bridge Mischaracterizes Respondents' Position and Argument and Misstates this Court's Holding in *Rivet*.

In its Reply Brief, Applicant Bayou Bridge Pipeline, LLC (“Bayou Bridge”) suggests that Respondent-Landowners seek to appeal the lower court’s just compensation award for the expropriation, which it argues Respondents waived. App. Reply Br. at 1. Bayou Bridge’s argument is an attempt to distract this Court from the fact that Art. I, Sec. IV of the Louisiana Constitution provides a basis for the fee award for the violation at issue here. Damages for the violation of due process that arose out of the unlawful taking are encompassed by the just compensation clause of the Louisiana Constitution. Article I, Sec. IV of the Louisiana Constitution provides in pertinent part,

In every expropriation or action to take property . . . the owner shall be compensated **to the full extent of his loss**. Except as otherwise provided in this Constitution, **the full extent of loss shall include, but not be limited to**, the appraised value of the property and all costs of relocation, inconvenience, and **any other damages actually incurred by the owner** because of the expropriation.

La. Const. Art. I, Sec. IV(B)(5). (emphasis added). In addition to damages incurred for Bayou Bridge’s unlawful taking and willful violation of the landowners’ rights to due process, the Louisiana Constitution’s just compensation clause likewise includes attorney’s fees. La. Const. Art. I, Sec. IV(B)(5); *Pipeline Tech. VI, LLC v. Ristroph*, 07-1210, p. 8 (La. App. 1 Cir. 5/2/08); 991 So.2d 1, *writ denied*, 2008-1676 (La. 10/24/08); 992 So.2d 1037 (finding specific legislative intent “to increase the level of compensation beyond that provided by existing state law” and include costs of litigation and attorneys’ fees).¹ *See also, Wilson v. State, Dep’t of Transp. & Dev.*, 464 So.2d 343, 345 (La. App. 5 Cir. 1985), *writ denied*, 468 So.2d 1207 (La. 1985) (basing award of attorneys’ fees for “unconstitutional expropriation” on La. Const. Art. I, Sec IV(B)(5)); *Gravolet v. Bd. of Comm’rs for Grand Prairie Levee Dist.*, 598 So.2d 1231, 1236 (La. App. 4 Cir. 1992) (awarding attorneys’ fees for “wrongful taking[s] in violation of both the Louisiana and United States Constitutions”); *Pointe Coupee Elec. Membership Corp. v. Mounger*, 447 So.2d 1104, 1111 (La. App. 1 Cir. 1984) (“There can be no doubt that legal costs of an

¹ Contrary to the Bayou Bridge’s assertions, Respondents did not raise the constitutional compensation clause as a basis for the award of fees for the first time in their opposition brief. *See* App. Reply Br. at 1. Rather, Respondents raised the significance and relevance of Art. I, Sec. 4(B)(5) in their initial opposition memorandum to the Applicant’s application for writ of certiorari. *See* Defendant-Landowners’ Memorandum in Opposition to Application of Petitioner Bayou Bridge Pipeline, LLC for Writ of Certiorari, at pp. 4-5 (“The legislative history of Art. I § 4 of the Louisiana Constitution of 1974 reveals that compensation for a legal taking was intended to include attorney’s fees. *See Pipeline Tech. VI, LLC v. Ristroph*, 2007-1210, p. 8 (La. App. 1 Cir. 5/2/08); 991 So.2d 1, *writ denied*, 2008-1676 (La. 10/24/08); 992 So.2d 1037.”).

expropriation proceeding come within the constitutional guarantee of just and adequate compensation to the landowner.”).

Bayou Bridge’s suggestion that Respondents have waived their right to point to the constitutional basis for the award of fees is a distortion of the record and Respondents’ arguments. Respondent-Landowners appealed the trial court’s error in failing to rule on their reconventional demand, which directly relates to a determination of the full extent of their loss caused by the taking. The landowners cannot have “waived any challenge to the amount of [the trial court’s just compensation] award, including a challenge to the trial court’s failure to include attorney’s fees as an element of just compensation,” when one of the errors raised on appeal included the trial court’s complete failure to rule on a claim implicating these findings. App. Reply Br. at 1. For the same reason, Bayou Bridge’s attempt to apply the waiver rule in *Mosing v. Domas* is inapplicable and unavailing because this is not a situation where Respondent-Landowners are raising an issue for the first time before this Court. 02-0012 (La. 10/15/02); 830 So.2d 967, 976-977; App. Reply Br. at 1.

A. Contrary to Bayou Bridge’s Urging, the Louisiana Constitution of 1974 is the Supreme Law of the State to Which Legislative Acts Must Yield.

In its reply, Bayou Bridge asserts that “attorney’s fee awards are governed by statutory law rather than the constitutional ‘just compensation’ provision.” App. Reply Br. at 3. This position ignores the fact that “the constitution is the supreme law of this state, to which all legislative acts must yield.” *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 07-2371 (La. 7/1/08); 998 So.2d 16, 32. Setting aside Bayou Bridge’s casual dismissal of the relevance of the Louisiana Constitution to this matter, the rule that attorneys’ fees are governed by statute or contract is a jurisprudential one and comes with its own exceptions. *See e.g., Hernandez v. Harson*, 237 La. 389, 409; 111 So.2d 320, 327 (1958) (discussing exceptions to the jurisprudential rule that attorneys’ fees are not allowed except where authorized by statute or contract).

The fees awarded by the Third Circuit in this matter are authorized, indeed required, by Art. I, Sec. IV(B)(5) of the Louisiana Constitution standing alone as the supreme law of the state, or as applied through La. R.S. 13:5111. If a statute is susceptible of two constructions, one of which would render it unconstitutional or raise grave constitutional questions, a court will adopt the interpretation of the statute which, without doing violence to its language, will maintain its constitutionality. *M.J. Farms, Ltd.*, 998 So.2d at 31-32. Because it is presumed that the Legislature acts within its constitutional authority in enacting legislation, a court must construe a

statute so as to preserve its constitutionality when it is reasonable to do so. *State v. Fleury*, 01–0871 (La.10/16/01); 799 So.2d 468, 472.

The Third Circuit’s award of fees under La. R.S. 13:5111 is an application of the statute that is consistent with the constitutional requirement that landowners are to be “compensated to the full extent of [their] loss” for expropriations by public or private expropriators and the Legislature’s intent that attorneys’ fees be included.

B. *Rivet* Does Not Question the Constitutional Requirement of Attorneys’ Fees Incurred Because of the Taking; It Merely Reaffirms Courts’ Discretion in Determining the Amount.

In its Reply Brief, Bayou Bridge also suggests that this Court’s holding in *Rivet* stands for the proposition that the just compensation clause in the Louisiana Constitution excludes attorneys’ fees in takings cases. App. Reply Br. at 2 (claiming that the *Rivet* Court “rejected the argument that the ‘just compensation’ clause of the Louisiana Constitution governs the issue of attorney’s fees in the expropriation/takings context.”). See *Rivet v. Dept. of Transp. & Dev.*, 01–0961 (La. 11/28/01); 800 So.2d 777, 782.

However, *Rivet* does not address whether or to what extent Art. I, Sec. IV(B)(5) of the Louisiana Constitution is intended to include attorneys’ fees and legal costs in the compensation awarded for a taking. This Court simply held that the *amount* of fees to be awarded to compensate a landowner for the full extent of their loss is within the discretion of the Court. *Rivet*’s reliance on statutory provisions as the sole support for its reasoning that “[a]ttorney’s fees have traditionally been regarded as being distinct from the compensation due to the landowner” reinforces that the statutes regulating attorneys’ fees in takings cases give effect to, and should be applied to be consistent with, the constitutional compensation requirement. *Rivet*, 800 So.2d at 782; see also App. Reply Br. at 2, fn 2.

Respondents did not address *Rivet* in their original opposition brief because the case neither stands for the position that attorneys’ fees for takings cases are not required by the constitutional compensation requirement, nor sheds new light on the question before this Court. On the contrary, *Rivet* can be viewed as reinforcing the constitutional mandate and intent to compensate landowners to the full extent of their loss, including costs of litigation, which was achieved through application of La. R.S. 13:5111. Similarly, in the present case, this Court may uphold the court of appeals’ award of fees as consistent with and giving full effect to the constitutional compensation requirement.

CONCLUSION

The legislative history of Art. I, Sec. IV(B)(5) of the Louisiana Constitution makes clear the drafters' intent to include attorneys' fees and costs of litigation in takings cases to compensate landowners the full extent of their loss. Neither *Rivet* nor the mischaracterization of Respondents' arguments provide support for Bayou Bridge's position that the Third Circuit Court of Appeal erred in awarding attorneys' fees and expert costs to Respondent-Landowners. Respondents appropriately appealed the trial court's failure to rule on their constitutional due process demand arising out of Bayou Bridge's unlawful taking of their property other than through an expropriation proceeding.

The Third Circuit's award of fees is consistent with the constitutional compensation requirement applicable to the present case under both La. Const. Art. I, Sec. IV(B)(5) and La. R.S. 13:5111. The Third Circuit's award of attorneys' fees and costs should be affirmed.

February 4, 2021
Lafayette, Louisiana

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Respectfully submitted,



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CERTIFICATE OF SERVICE

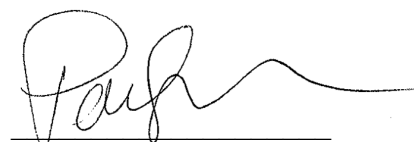
I hereby certify that a copy of the foregoing has been transmitted via electronic means to all known parties of this record this 4th day of February, 2021 to the following counsel of record:

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