STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant,

v

PAVLOV PROPERTIES, L.L.C., and MARYSVILLE TRUCK EQUIPMENT, INC.,

Defendants-Appellees,

and

BANK ONE, f/k/a NBD, J. P. MORGAN CHASE BANK, N.A., PORT HURON BUSINESS BANKING, L.P., and ANDRE SIGNS,

Defendants.

UNPUBLISHED
December 16, 2010

No. 286926
St. Clair Circuit Court
LC No. 06-001905-CC

Before: GLEICHER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

In this condemnation dispute, a jury awarded defendants-appellees, Pavlov Properties, L.L.C. (Pavlov Properties), and Marysville Truck Equipment (Marysville) $193,077.58 as just compensation for a partial taking of real property by plaintiff Michigan Department of Transportation (MDOT). MDOT appeals as of right, and we affirm.

I. UNDERLYING FACTS AND PROCEEDINGS

Pavlov Properties owns a 3.4-acre parcel of land in St. Clair County, with a street address of 4685 Gratiot Avenue. Marysville, a truck equipment company owned by Timothy and Kenneth Pavlov, operates a business on the property. The property consists of several contiguous platted lots numbered 255 through 261. The western boundary of lot 255 borders Eileen Avenue, and the eastern edge of lot 261 abuts Marion Avenue. Marion Avenue is a platted, but undeveloped, street.

Before the taking at issue, the property's northern boundary line encompassed between 280 and 290 feet of Gratiot Avenue frontage. Two driveways gave Marysville access to Gratiot Avenue. One driveway was located at the easternmost edge of the property, adjacent to Marion

Avenue. The parties dispute whether this driveway ran over lot 261, or comprised an unimproved portion of Marion Avenue. A larger driveway lay to the west, within lot 258. Large trucks accessing Marysville entered through the western driveway and exited from the eastern driveway. This traffic flow pattern eliminated any need for trucks with trailers to back up or turn around on the property.

In February 2005, MDOT representatives advised Timothy Pavlov that MDOT sought to acquire the entirety of defendants'[1] Gratiot Avenue frontage. MDOT planned to reconstruct a freeway interchange at Gratiot Avenue and I-94, and intended to eliminate all Gratiot Avenue access from defendants' property. Although MDOT denies any awareness of the eastern driveway near Marion Avenue, a "draft" drawing labeled "Row Sheet Construction Sheet" depicts a driveway running through a portion of lot 261, with the annotation, "Consent to close drive."

Defendants initially anticipated that the loss of their Gratiot Avenue access would force Marysville to relocate. In July 2005, Pavlov Properties purchased for $145,000 a five-acre parcel of vacant land on Range Road in Port Huron Township suitable for Marysville's operations. On October 21, 2005, MDOT made a good-faith offer to purchase for $75,000 the fee interest in a "strip of land 10 feet wide off the North end of lots 255, 256, 257, 258, 259, 260 and 261 . . . lying South of Gratiot Avenue." The offer described the intended conveyance as encompassing "all rights of ingress and egress, if any there be, to, from and between the highway to be constructed . . . ." Defendants rejected the offer, and the parties commenced negotiations.

On January 18, 2006, defendants' counsel submitted a claim for just compensation damages, as contemplated in MCL 213.55(3),[2] a portion of the Uniform Condemnation Procedures Act (UCPA), MCL 213.51 *et seq*. Paragraph three of the claim letter asserted as follows:

> On behalf of my clients, claim is hereby made for just compensation for potential damages arising from the taking due to loss in value of the remainder of the real estate caused by loss of Gratiot Avenue frontage and access, and damages due to business interruption, loss of business value, compensation for fixtures, costs to cure and related damages.

The letter continued with a list of contemplated damages, including, "1. Costs associated with the adjustment of business operations at the subject property due to the loss of Gratiot frontage.

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[1] Because Bank One, J.P Morgan Chase Bank, N.A., Port Huron Business Banking, L.P., and Andre Signs are not parties to this appeal, future plural opinion references to "defendants" will refer solely to Pavlov Properties and Marysville.

[2] This subsection formerly directed a property owner to notify the condemning agency concerning "items of compensable property or damage" not included in the good-faith written offer, for which the owner intended to pursue a claim for compensation. MCL 213.55(3). As discussed in greater detail, *infra*, the Legislature substantially amended this requirement in 2006 PA 439, which became effective in December 2006.

2. If the business cannot reasonably adjust to the loss of its Gratiot frontage, then the costs associated with the relocation of the business." The list also specifically identified as a claimed item of damage the "[l]oss of access to and from Gratiot via Marion" Avenue. Defense counsel attached to the letter a report authored by O. Fredrich Pertner, a financial consultant. Pertner's report summarized, in pertinent part, "Marysville operates a business on the south side of Gratiot Ave. just west of I-94. The business has direct access to Gratiot Ave. The taking by MDOT results in Marysville not having direct access rights to Gratiot Ave."

On January 24, 2006, MDOT presented defendants with a revised good-faith offer to purchase for $21,000 a 10-foot-wide strip of land across the northernmost edge of defendants' contiguous lots, while preserving limited access to Gratiot Avenue through a portion of lot 258. Defense counsel responded with a second claim letter, dated April 11, 2006, which referenced defendants' desire to recover just compensation for their loss of access to Gratiot Avenue and business interruption costs:

> On behalf of my clients, claim is hereby made for just compensation for the value of the part taken (which we don't believe your appraisal accurately values), for potential damages arising from the taking due to loss in value of the remainder of the real estate caused by loss of Gratiot Avenue frontage and access, and damages due to business interruption, loss of business value, compensation for fixtures, costs to cure and related damages.
>
> * * *
>
> This claim is intended to include all damages that may be caused by the following:
>
> 1. Costs associated with the adjustment of business operations at the subject property due to the loss of more than one-half of its current Gratiot frontage and limitation of access to and from Gratiot via its existing frontage and via Marion Street [sic], due to the project.
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> * * *
>
> These costs and damages include but are not limited to the following:
>
> 1. Loss in value to the remainder caused by the taking and the project as it affects conformance or non-conformance to zoning requirements for the current and other potential uses as a result of no longer having access to and from Gratiot Avenue over the majority of the current frontage and via Marion.
>
> * * *
>
> 10. Loss of access to and from Gratiot via Marion Street [sic].
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> * * *
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> 14. Damages and costs as a result of having to redesign and/or reconfigure or relocate the building for ingress and egress to and from Eileen

> Avenue and change in flow of traffic on the site, by reason of loss of access to and from Gratiot via Marion. Damages and costs may include new construction.

On July 31, 2006, MDOT filed a condemnation action. Defendants did not contest the necessity of the taking, and on September 25, 2006 the trial court entered an order vesting in MDOT fee simple title to the property MDOT sought in its condemnation complaint. Marysville remained in business at the Gratiot Avenue location, but moved some equipment to the previously purchased Range Road relocation site. On September 29, 2006, defense counsel faxed MDOT a timely supplemental claim for compensation under MCL 213.55(3)(a), notifying MDOT that defendants

> had to acquire an additional parcel of property in an attempt to avoid the interruption of their business operations. While we believe that our prior letter covered these matters, we provide the following in addition thereto and to clarify and notify you that my clients intend to claim a right to just compensation for the following, *related to acquisition of the second site in an attempt to continue their business activities uninterrupted*.
>
> *1. Costs associated with the acquisition, holding, and use thereof and the future disposition thereof.*
>
> 2. Costs incurred by my clients due to the project and incurred in order to attempt to avoid the interruption of their business (such as, but not limited to, insurance, taxes, attorney fees, the owners' time, interest on the mortgage and real estate commission).
>
> 3. Additional operating costs associated with the use of the second site. [Emphasis added.]

In January 2007, defendants supplied MDOT with an appraisal authored by Pertner, which included an estimate of defendants' business interruption damages. The appraisal observed that "Marysville requires for its business operations substantial storage space for trucks and trailers." Pertner explained that before MDOT's acquisition of defendants' Gratiot Avenue frontage, Marysville "had sufficient parking, movement, and work area to accommodate its needs," but that the taking "chang[ed] . . . traffic flows on the site," necessitating defendants' purchase of the Range Road site. Pertner further opined in the appraisal, "Marysville will need the Range property until it can expand its parking at Gratiot. Because of the uncertainties caused by the taking it is expected that Marysville will have to hold the Range property until at least the end of 2007."

The balance of Pertner's appraisal addressed the "specific costs that have been incurred and are expected to be incurred by Marysville in an attempt to avoid the interruption of its business." Pertner categorized those costs as: (1) acquisition and holding costs totaling $30,207; (2) site costs of $5,469; (3) disposition costs amounting to $15,800; and (4) dual facility costs totaling $23,700. The Range Road cost total, according to Pertner, was $75,176. Pertner's appraisal also identified costs associated with adding parking to the Gratiot Avenue location, and "owner costs" associated with acquiring the Range Road property and "dealing with construction events . . . ." Pertner added together the costs related to the Range Road property ($75,176),

$59,000 in Gratiot Avenue modification expenses, $5,600 in owner time expended, for a grand total of $140,276 in business interruption costs.[3]

In April 2007, MDOT moved to strike defendants' business interruption claim, contending that defendants did not timely give MDOT adequate details about this claim. MDOT characterized defendants' April 11, 2006 and September 29, 2006 claim letters as conditional, speculative, and nonspecific, and invoked as primary support for its position this Court's opinion in *City of Novi v Woodson*, 251 Mich App 614; 651 NW2d 448 (2002). In a bench opinion, the trial court ruled as follows:

> Plaintiff's motion asserts that the claim for damages submitted by the Defendants Pavlov and . . . Marysville Truck contains insufficient detail to allow Plaintiff to evaluate the validity of the claims. Defendants['] initial response to the good-faith offer in April of 2006 was not detailed in nature and contained numerous potential claims for damages. However, as discovery progressed Defendants were able to provide more detail and specific damages sought. Now, the Court has reviewed the reports of the Defendants' experts dated January of 2007 and amended March of 2007 and find[s] that they contain sufficient detail to satisfy the statutory requirements.
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> * * *
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> While the original reservation of claims by Defendants would most likely be deemed insufficient under the statutory—or the statute prior to trial, through the process of discovery Defendants have been able to narrow down and flesh out their claims for damages in this case. Plaintiff was provided with sufficient detail, in this Court's opinion, to attempt the settlement of this matter or in the alternative prepare for trial. Plaintiff's Motion to Strike Defendants' Claim for Business Interruption damages is denied.

In May 2007, MDOT filed a motion for partial summary disposition under MCR 2.116(C)(10), seeking judgment as a matter of law with respect to defendants' claims for damages arising from the closure of the Marion Avenue-Gratiot Avenue intersection. MDOT insisted that defendants could not recover any damages from this portion of the closure, given that the closure affected the public as a whole and thus did not constitute a taking of defendants' property. Defendants replied that their claim for just compensation solely stemmed from the loss of their access to Gratiot Avenue from lot 261, not via Marion Avenue. Defendants further averred that

> if MDOT would have only closed the platted Gratiot/Marion intersection, and not taken Defendant's [sic] access rights over Lot 261 (and other of its lots), Defendant[s] would not have suffered any business interruption damages resulting

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[3] In a subsequent report, Pertner supplied a higher total cost figure, $212,311, which took into account additional costs associated with Marysville's parking expansion at 4685 Gratiot Avenue.

> from a change in traffic flow patterns on the site. Its traffic flow would have continued unabated from what it had been in the past.

The trial court denied MDOT's motion. The court adopted defendants' position that they had adequately presented their claim for damages concerning a loss of access to Gratiot Avenue, and found that MDOT had notice of defendants' claim relative to the eastern driveway on lot 261 of their parcel.

Before trial, MDOT supplemented its earlier good-faith offer by adding $29,290.11 "for damages related to costs associated with the acquisition, holding, use and the future disposition of the Range Road property." Defendants rejected this offer. More than a year later, in June 2008, a jury awarded defendants $193,077.58.[4] On appeal, MDOT challenges only the trial court's summary disposition rulings regarding defendants' business interruption claims, particularly as they relate to the disputed eastern driveway.

II. ANALYSIS

On appeal, MDOT reiterates its position that *City of Novi*, 251 Mich App at 623-625, supports that defendants' business interruption claim, as set forth in the 2006 claim letters and reports, lacked sufficient detail. *City of Novi* interpreted a prior version of MCL 213.55(3). As we will explain in detail *infra*, our Legislature's enactment of 2006 PA 439, which amended the UCPA's notice provisions, has superseded this Court's holding in *City of Novi*, 251 Mich App at 621-627, regarding the adequacy and timeliness of a just compensation claim for damages. Contrary to MDOT's argument, the amended version of MCL 213.55(3) does not apply prospectively only.

In *City of Novi*, 251 Mich App at 621-627, this Court construed MCL 213.55(3), which then read:

> If an owner believes that the good faith written offer made under subsection (1) did not include or fully include 1 or more items of compensable property or damage for which the owner intends to claim a right to just compensation, the *owner shall, for each item, file a written claim with the agency. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file all such claims within 90 days after the good faith written offer is made pursuant to section 5(1) or 60 days after the complaint is filed, whichever is later.* Within 60 days after the date the owner files a written claim with the agency, the agency may ask the court to compel the owner to provide additional information to enable the agency to evaluate the validity of the claim and to determine its value. For good cause shown, the court shall, upon motion filed by the owner, extend the time in which claims may be made, if the rights of

[4] The final judgment entered by the trial court reduced the jury's award by $50,290.11, representing the amount MDOT previously had paid as estimated just compensation.

> the agency are not prejudiced by the delay. Only 1 such extension may be granted. After receiving a written claim from an owner, the agency may provide written notice that it contests the compensability of the claim, establish an amount that it believes to be just compensation for the item of property or damage, or reject the claim. If the agency establishes an amount it believes to be just compensation for the item of property or damage, the agency shall submit a good faith written offer for the item of property or damage. The sum of the good faith written offer for all such items of property or damage plus the original good faith written offer constitutes the good faith written offer for purposes of determining the maximum reimbursable attorney fees under section 16. *If an owner fails to file a timely written claim under this subsection, the claim is barred.* If the owner files a claim that is frivolous or in bad faith, the agency is entitled to recover from the owner its actual and reasonable expenses incurred to evaluate the validity and to determine the value of the claim. [Emphasis added.]

After receiving a condemnation complaint from the City of Novi, the defendants apprised the city by mail that they "reserve[d] the right to claim just compensation" for several categories of damages, including "business interruption avoidance damages." *Id*. at 619, 623-624. This Court held, in pertinent part as follows, that the defendants had not complied with MCL 213.55(3):

> . . . [A] letter that simply "reserves" the right to make a future claim or challenge to a good-faith offer is, by its own terms, not a claim or a challenge, but a statement of intent to do so in the future. The reservation of a claim simply expresses the possibility that a claim may or may not be asserted at a later time. Were we to hold that the Woodsons' "reservation" satisfies the statute, which requires a written claim that provides "sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value," we would place the city in the untenable position of being unable to amend its good-faith offer before going to trial and having to prepare to defend against various "potential" claims that might or might not arise. Also, the plain language of MCL 213.55(3) makes it clear that its purpose is not simply to put the city on "notice" but, more importantly, to provide the city with sufficient *detail* to evaluate the value of the property and reevaluate its good-faith offer. A letter that simply states that the landowner "reserves the right" to make a claim is, on its face, insufficient under the plain language of the statute. [*Id*. at 624-625 (emphasis in original).]

In *Carrier Creek Drain Drainage Dist v Land One, LLC*, 269 Mich App 324, 327-329; 712 NW2d 168 (2005), this Court revisited preamendment MCL 213.55(3), and again held that the defendant property owners had failed to adequately apprise the condemning authority of an element of its claim for damages.

The Michigan Legislature made effective, on December 23, 2006, 2006 PA 439, which substantially altered the statutory notice requirements in MCL 213.55(3):

> (3) In determining just compensation, all of the following apply:

(a) If an owner claims that the agency is taking property other than the property described in the good faith written offer or claims a right to compensation for damage caused by the taking, apart from the value of the property taken, and not described in the good faith written offer, *the owner shall file a written claim with the agency stating the nature and substance of that property or damage. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value.* The owner shall file the claim within 90 days after the good faith written offer is made pursuant to section 5(1) or 180 days after the complaint is served, whichever is later, unless a later date is set by the court for reasonable cause. If the appraisal or written estimate of value is provided within the established period for filing written claims, the owner's appraisal or written estimate of value may serve as the written claim under this act. If the owner fails to timely file the written claim under this subsection, the claim is barred.

* * *

(c) *For any claim that has not fully accrued or is continuing in nature when the claim is filed, the owner shall provide information then reasonably available that would enable the agency to evaluate the claim, subject to the owner's continuing duty to supplement that information as it becomes available. The owner shall provide all supplementary information at least 90 days before trial, and the court shall afford the agency a reasonable opportunity for discovery once all supplementary information is provided and allow that discovery to proceed until 30 days before trial.* For reasonable cause, the court may extend the time for the owner to provide information to the agency and for the agency to complete discovery. If the owner fails to provide supplementary information as required under this subdivision, the court may assess an appropriate sanction in accordance with the Michigan court rules for failing to comply with discovery orders, including, but not limited to, barring the claim. In addition, the court also shall consider any failure to provide timely supplemental information when it determines the maximum reimbursable attorney fees under section 16. [Emphasis added, footnote omitted.]

The amended, current MCL 213.55(3) renders obsolete the holdings in *City of Novi*, 251 Mich App at 623-627, and *Carrier Creek Drainage Dist*, 269 Mich App at 327-329. Instead of burdening a property owner with the obligation to set forth for a condemning agency "sufficient *detail* to evaluate the value of the property and reevaluate its good-faith offer," *City of Novi*, 251 Mich App at 624-625, the amended MCL 213.55(3)(a) and (c) demand only that a property owner notify the condemning agency of "reasonably available" information describing "the nature and substance of . . . [a] property or claimed damage." The amendment extended the period in which a property owner must provide notice from 60 days after the condemning agency's filing of a complaint, to 180 days after the complaint is served. MCL 213.55(3)(a).

MDOT maintains that defendants' letters and attachments, dated April 11, 2006 and September 29, 2006, consisted entirely of "vague and conditional information," stated no "specific or itemized value[s]" for the damages claimed, and failed to notify MDOT of any "details necessary to make th[e requisite] analysis." However, defendants' January 2007

supplemental claim would qualify as sufficient under either the preamendment version of MCL 213.55(3), or the current language in subsection 5(3). And if 2006 PA 439 has retroactive effect, defendants would have timely given MDOT the January 2007 claim supplement detailing asserted business interruption damages.

Whether a statute applies retroactively presents a question of statutory construction that we consider de novo. *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001). "Under Michigan law, the general rule of statutory construction is that a new or amended statute applies prospectively unless the Legislature has expressly or impliedly indicated its intention to give it retrospective effect." *Seaton v Wayne Co Prosecutor (On Second Remand)*, 233 Mich App 313, 316; 590 NW2d 598 (1998). "However, an exception to the general rule exists where a statute is remedial or procedural in nature." *Id*. at 317. A statute is remedial in nature when it corrects an existing oversight in the law, redresses an existing grievance, introduces regulations conducive to the public good, or intends to reform or extend existing rights. *Tobin v Providence Hosp*, 244 Mich App 626, 665; 624 NW2d 548 (2001). "'The same connotation [remedial] is given to those statutes or amendments which apply to procedural matters rather than to substantive rights.'" *Id*., quoting *Rooklege v Garwood*, 340 Mich 444, 453; 65 NW2d 785 (1954) (emphasis omitted). In *Rooklege*, *id*., our Supreme Court cited favorably the following passage from 50 Am Jur, Statutes, § 15, pp 33, 34, which elucidates the meaning of remedial and procedural statutes:

> "Legislation which has been regarded as remedial in its nature includes statutes which abridge superfluities of former laws, remedying defects therein, or mischiefs thereof implying an intention to reform or extend existing rights, and having for their purpose the promotion of justice and the advancement of public welfare and of important and beneficial public objects, such as the protection of the health, morals, and safety of society, or of the public generally. Another common use of the term 'remedial statute' is to distinguish it from a statute conferring a substantive right, and to apply it to acts relating to the remedy, to rules of practice or courses of procedure, or to the means employed to enforce a right or redress an injury. It applies to a statute giving a party a remedy where he had none or a different one before."

Irrespective whether a statute qualifies as procedural or otherwise remedial, a court may not retroactively apply the statute if this application would abrogate or impair vested rights, create new obligations, or "attach[] new disabilities regarding transactions or considerations that already occurred." *Grew v Knox*, 265 Mich App 333, 339; 694 NW2d 772 (2005). In *Detroit v Walker*, 445 Mich 682, 699; 520 NW2d 135 (1994), the Supreme Court defined a vested right as "an interest that the government is compelled to recognize and protect of which the holder could not be deprived without injustice." The Supreme Court in *Walker* considered whether to give retroactive effect to an amended real property tax statute permitting the city to utilize in personam tax collection methods. *Id.* at 685. The Court held that it would apply the statute retroactively effect, reasoning:

> . . . [A]llowing an in personam action does not change the character of the tax because the amount of the tax itself has not been altered. The taxes assessed against defendants' property were never forgiven and then reinstated as a result of the new enforcement procedure. Quite the opposite. They are debts defendants

> elected not to pay. Thus, its character as a property tax has never been affected. [*Id*. at 700.]

The Supreme Court added, "As a matter of policy, it is imperative that taxpayers do not hide behind the facade of vested rights in an attempt to evade their financial responsibilities." *Id*. at 702.

"The ultimate purpose of the . . . [UCPA] is to ensure the guarantee of just compensation found in Const 1963, art 10, § 2, which provides, 'Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law.'" *Dep't of Transportation v Frankenlust Lutheran Congregation*, 269 Mich App 570, 576; 711 NW2d 453 (2006). A careful review of the plain language comprising 2006 PA 439 indisputably reflects the Legislature's intent to remedy a perceived injustice created by this Court's decisions in *City of Novi*, 251 Mich App at 623-627, and *Carrier Creek Drainage Dist*, 269 Mich App at 327-329, which barred property owners' just compensation claims on the ground that they lacked detail concerning the value of items of damage. By enacting 2006 PA 439, the Legislature intended to enhance a property owner's opportunity to obtain just compensation for a condemning agency's taking of private property, and to cure the mischiefs to which *City of Novi* and *Carrier Creek* gave rise, namely a condemning authority's avoidance of its constitutional just compensation responsibility merely because a property owner makes a claim for compensation and neglects to append sufficient supporting detail within "90 days after [receiving] the good faith written offer . . . or 90 days after [receiving] the complaint . . . ." Former MCL 213.55(3). Accordingly, 2006 PA 439 constitutes remedial legislation.

Furthermore, the notice requirements adopted in 2006 PA 439 concern entirely procedural matters. "[T]he UCPA does not confer upon a city the power of eminent domain, but rather 'provides standards for the acquisition of property by an agency, the conduct of condemnation actions, and the determination of just compensation.'" *City of Lansing v Edward Rose Realty, Inc*, 442 Mich 626, 632; 502 NW2d 638 (1993). In *State Hwy Comm v Biltmore Inv Co, Inc*, 156 Mich App 768, 777; 401 NW2d 922 (1986), this Court similarly referred to the UCPA as "a procedural act." "It is firmly established that there is no vested right in any particular procedure or remedy." *Detroit*, 445 Mich at 703.

MDOT asserts that retroactive application of 2006 PA 439 would revive a claim that defendants had otherwise forfeited by failing to adhere to the claim specificity standards set forth in *City of Novi*, 251 Mich App at 623-627. In MDOT's view, "[b]ecause the trial court allowed the deficient business interruption claim to continue onto trial, [defendants] continued to manipulate that claim into a new theory of recovery well after the section 5(3) deadline of September 29, 2006 . . . ." But a statutory defense to a portion of a just compensation claim hardly qualifies as a vested right. "It is the general rule that that which the [L]egislature gives, it may take away. A statutory defense, or a statutory right, though a valuable right, is not a vested right, and the holder thereof may be deprived of it." *Lahti v Fosterling*, 357 Mich 578, 589; 99 NW2d 490 (1959). In *Minty v Bd of State Auditors*, 336 Mich 370, 390; 58 NW2d 106 (1953), the Supreme Court elaborated:

> It would seem that a right cannot be considered a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title,

> legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from a demand made by another. [Internal quotation omitted.]

MDOT possessed no vested right to withhold just compensation for defendants' business interruption damages. A retroactive application of 2006 PA 439 allows defendants to enjoy their constitutional right to compensation for business interruption damages caused by MDOT, without diminishing or impairing MDOT's right to defend the extent or substance of the claim.

MDOT next theorizes that because the prior version of MCL 213.55(3) functions as a statute of repose, the retroactive application of the amendments "would give [defendants] a claim against MDOT that did not exist when the statute was amended in December 2006." MDOT posits that subsection 5(3) contained "substantive protections" for the condemning agency, and that a retroactive application of the amendments would prejudice MDOT's right to consider defendants' business interruption claim forfeited. MDOT's analogy to the notice terms as embodying a statute of repose derives from *City of Novi*, 251 Mich App at 628, in which this Court stated in *dicta*, "MCL 213.55(3) acts as a statute of repose because it prohibits making a claim after a specified period and is designed to relieve the city from open-ended liability." However, in *City of Novi*, the property owners at no point ever supplied the city with item-specific, detailed information substantiating their business interruption damage claim, and the city thus was placed "in the untenable position of being unable to amend its good-faith offer before going to trial and having to prepare to defend against various 'potential' claims that might or might not arise." *Id*. at 624. Compounding the city's difficulties, the trial court ruled that it "was estopped from challenging the Woodsons' claim for business interruption damages because the city waited for almost a year" before challenging the property owners' business interruption damage claim. *Id*. at 628. Here, unlike in *City of Novi*, defendants made an initially delayed but adequate disclosure of the nature of their business interruption claim for damages. More importantly, MDOT responded to the business interruption claim by submitting a supplemental good-faith offer directly addressing a portion of defendants' business interruption claim for damages.

Furthermore, the facts of this case illustrate that statutory notice conditions like those in MCL 213.55(3) function in a manner fundamentally different from a statute of repose. The statute's notice terms compel a property owner to provide timely information enabling the condemning agency to investigate a claim, evaluate the property, identify a fair compensation figure, and perhaps avoid a trial. Essentially, the notice terms are intended to limit or minimize prejudice to the condemning authority, in a manner similar to the function of dates for closing discovery in civil cases. To the contrary, a statute of repose operates to define a point at which *all* expectations of recovery become settled and immutable. See *Davis v Farmers Ins Group*, 86 Mich App 45, 47; 272 NW2d 334 (1978) ("Notice provisions have different objectives than statutes of limitation. Notice provisions are designed, *inter alia*, to provide time to investigate and to appropriate funds for settlement purposes. Statutes of limitation are intended to prevent stale claims and to put an end to fear of litigation."). As applied in the instant case, subsection 5(3) simply does not function as a statute of repose. Here, the parties continued to exchange information until shortly before trial, despite defendants' initial noncompliance with subsection 5(3). Because MDOT has failed to demonstrate that the retroactive application of 2006 PA 439 would impose a new obligation or create a new disability, the retroactive application of

subsection 5(3) in no way offends the retroactivity limitations described in *Grew*, 265 Mich App at 339.

We lastly note that the record similarly does not support MDOT's assertion that it endured prejudice arising from the admission of untimely evidence regarding the eastern driveway on defendants' Gratiot Avenue property. The driveway on or near Marion Avenue appears on site plans prepared at the outset of MDOT's condemnation efforts. Additionally, MDOT's appraiser noted in report dated July 31, 2006 that "two gravel surfaced drives extending south from Gratiot Avenue" served defendants' property. The record thus belies MDOT's suggestion that it received inadequate notice of the second driveway located on or near lot 261.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder