

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
January 31, 2011 Session

**CHARLES S. PESCE v. EAST TENNESSEE  
CONSTRUCTION SERVICES, INC.**

**Appeal from the Circuit Court for McMinn County  
No. 25444 J. Michael Sharp, Judge**

---

**No. E2010-01071-COA-R3-CV - Filed February 28, 2011**

---

D. MICHAEL SWINEY, J., concurring.

Given the record presented to us on appeal, I concur fully in the majority's Opinion. I write separately, however, to express my concern as to the diminution in value damages of \$382,000 awarded to the Owner. I agree with the majority that, given the record presented to us, this result is correct. I also agree with the majority that the Owner is "in possession of a fully operational, profitable, dental office..." which the Owner had used for several years by the time of trial. As stated by the majority, the Owner incurred "construction cost of approximately \$460,000..." in constructing this building. The diminution in value award of \$382,000, with which I concur given the record presented to us, means that the owner will end up with construction costs of only approximately \$78,000 for "a fully operational, profitable, dental office."

I find it more than a little troubling that the result of our decision is that the Owner ends up with a building that has functioned for years as his "fully operational, profitable, dental office" for a construction cost of only approximately \$78,000. This bothersome outcome results from the proof presented to the Trial Court that even though the Owner had only approximately \$460,000 in construction costs, the building somehow would have been worth over \$700,000 if it had been constructed as it should have been for approximately \$460,000. I believe, however, that the record as presented to us leaves us no choice but to do exactly what the majority has done, and I, therefore, fully concur with the majority Opinion.

---

D. MICHAEL SWINEY, JUDGE