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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2400**

Metropolitan Airports Commission, petitioner,
Respondent,

vs.

Thomas W. Noble,
Appellant,

Speedway SuperAmerica LLC,
a Delaware corporation,
Respondent,

Northern States Power Company,
n/k/a Xcel Energy,
Respondent,

State of Minnesota,
Respondent,

County of Hennepin,
Respondent,

City of Bloomington,
Respondent.

Filed February 19, 2008

Reversed

Kalitowski, Judge

Concurring in part, dissenting in part, Randall, Judge

Hennepin County District Court
File No. CD-2753

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Considered and decided by Kalitowski, Presiding Judge; Randall, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

In this eminent-domain proceeding, appellant-lessor Thomas W. Noble challenges the district court's summary-judgment determination that respondent-lessee Speedway SuperAmerica LLC was entitled to the part of the Metropolitan Airports Commission takings award that was allocated as compensation for "immovable fixtures." Appellant argues that (1) respondent is precluded from sharing in the award because the lease agreement contained a condemnation clause terminating respondent's interest in the condemned property following a taking by eminent domain; and (2) even if the lease

agreement preserved some interest for respondent in the property post-condemnation despite the condemnation clause, respondent is not entitled to share in the award because the conditions within the clause were not satisfied. Appellant also contends the district court erred in ordering him to pay the interest respondent was owed on its part of the award. We reverse.

D E C I S I O N

In reviewing a district court's grant of summary judgment this court must determine whether there are any genuine issues of material fact and whether the law was applied erroneously. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Where, as here, the material facts are not in dispute a reviewing court need not defer to the district court's application of the law. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989).

Under the United States and Minnesota Constitutions the government must provide just compensation for the taking of private property for a public use. U.S. Const. amend. V; Minn. Const. art. I, § 13. A party seeking compensation in a condemnation action must prove that (1) it had an interest in the property at the time of the taking; (2) the government took that interest pursuant to the condemnation; and (3) the interest is compensable. *Hous. & Redev. Auth. of the City of St. Paul v. Lambrecht*, 663 N.W.2d 541, 545-46 (Minn. 2003). Here it is undisputed that the government, through the Metropolitan Airports Commission (MAC), took an interest in the subject property by condemning the property and that this interest is compensable. Thus, we must determine

whether respondent-lessee had an interest in the property's immovable fixtures at the time of the taking.

Respondent claims an interest in the immovable fixtures based on language in the parties' lease agreement. The construction and effect of a contract presents a question of law, unless an ambiguity exists. *Trondson v. Janikula*, 458 N.W.2d 679, 681 (Minn. 1990). A contract is ambiguous if its language is reasonably susceptible to more than one interpretation. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). In interpreting a contract, the language is to be given its plain and ordinary meaning. *Employers Mut. Liab. Ins. Co. v. Eagles Lodge*, 282 Minn. 477, 479, 165 N.W.2d 554, 556 (1969). We read contract terms in the context of the entire contract and will not construe the terms so as to lead to a harsh and absurd result. *Id.* at 477-78. Additionally, we are to interpret a contract in such a way as to give meaning to all of its provisions. *Current Tech.*, 530 N.W.2d at 543. Because a contract must be interpreted to determine if respondent had an interest in the condemned property's immovable fixtures at the time of the taking, it presents a question of law to be reviewed de novo. *Lambrecht*, 663 N.W.2d at 546.

The parties were bound by a lease agreement that contains the following relevant provisions:

18. EMINENT DOMAIN

(a) Entire Premises. If substantially all of the leased premises shall be taken by any public authority under the power of eminent domain then the term of this Lease shall cease as of the day possession shall be taken by such public authority and the rent shall be paid up to that day with a

proportionate refund by Landlord or such rent as may have been paid in advance.

. . . .

(c) Damages. In any event all damages awarded for such taking under the power of eminent domain whether for the whole or a part of the leased premises shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises; provided, however, that Landlord shall not be entitled to any award made to Tenant for the fair value of, and cost of removal of stock and fixtures, provided a separate award is permitted by the taking authority directly to Tenant.

20. SURRENDER. On the last day of the term demised or on the sooner termination thereof, Tenant shall peaceably surrender the leased premises On or before the last day of the term or the sooner termination thereof, Tenant shall at its expense, remove its trade fixtures, signs, and carpeting from the leased premises and any property not removed shall be deemed abandoned All alterations, additions, improvements and fixtures (other than Tenant's trade fixtures, signs and carpeting) which shall have been made or installed by either Landlord or Tenant upon the leased premises and all hard surface bonded or adhesively affixed flooring and all lighting fixtures shall remain upon and be surrendered with the leased premises as a part thereof, without disturbance, molestation or injury, and without charge, at the expiration or termination of this Lease. Upon expiration or sooner termination, Tenant shall remove any and all underground storage tanks, and compact and fill in the hold and grade and pave or blacktop the surface in accordance with applicable laws or regulations regarding removal (all at Tenant's cost and expense). In the event such tanks are not so removed, Landlord shall have the right to treat such property as abandoned or remove such tanks and Tenant shall reimburse Landlord for any and all costs of tank removal and surface restoration.

In September 2004, the MAC filed a petition for condemnation and motion for transfer of title and possession pursuant to its "quick take" eminent-domain powers found

within Minn. Stat. § 117.042 (2004). MAC's petition was granted by the district court on November 1, 2004. On December 14, 2004, MAC deposited \$2.38 million with the district court, acquiring title to and possession of the subject property. This \$2.38 million was based on MAC's appraisal of the property: \$2 million allocated for the land and \$380,000 for the immovable fixtures on the property, which included a car wash, a canopy, gas tanks, and gas pumps. After court-appointed commissioners appraised the property, they altered MAC's figures, awarding appellant \$2.4 million for the land and its improvements and awarding to either appellant or respondent \$360,000 for the immovable fixtures. The commissioners specified that the legal right to the immovable-fixtures part of the award would later be determined by the district court. The parties filed cross-motions for disbursement, stipulating that their motions should be treated as cross-motions for summary judgment. This appeal follows from the district court's summary-judgment determination in favor of respondent.

I.

Appellant argues that the lease's condemnation clause contained within 18(a), providing that the lease "shall cease" on the day a public authority takes possession of the subject property by eminent domain, automatically extinguished all of respondent's interest in the subject property. Minnesota courts have consistently held that a lessee is not entitled to share in an award for takings damages when a lease agreement contains a condemnation clause. *See Lambrecht*, 663 N.W.2d at 546; *Naegele Outdoor Adver. Co. v. Village of Minnetonka*, 281 Minn. 492, 503, 162 N.W.2d 206, 214 (1968); *Korengold v. City of Minneapolis*, 254 Minn. 358, 362, 95 N.W.2d 112, 115-16 (1959); *In re*

Widening Third Street, St. Paul, 178 Minn. 552, 556, 228 N.W. 162, 164 (1929); *City of Rochester v. Nw. Bell Tel. Co.*, 431 N.W.2d 874, 877-79 (Minn. App. 1988), *review denied* (Minn. Jan. 13, 1989); *In re Condemnation by the Minneapolis Cmty. Dev. Agency*, 417 N.W.2d 127, 129 (Minn. App. 1987), *review denied* (Minn. Feb. 24, 1988).

Respondent argues that the cases cited by appellant are not dispositive here because the provisions of 18(c) carved an exception to the general rule that where a lease contains a condemnation clause, a lessee cannot share in a takings award. Respondent contends that this clause merely did what *Lambrecht* “explicitly recognized” by retaining the lessee’s rights in the property after condemnation pursuant to the lease agreement. Respondent cites the language in *Lambrecht* that “[h]ad [the lessee] intended to retain some rights in the property after condemnation, it could have retained those rights through the lease agreement.” *Lambrecht*, 663 N.W.2d at 547. We do not find respondent’s arguments to be persuasive.

First, because the lease at issue predated the *Lambrecht* decision by over a decade, we cannot assume that the parties drafted 18(c) to follow *Lambrecht*’s guidance. Moreover, it is not clear that the language in *Lambrecht* cited by respondent was suggesting that a lease’s condemnation clause could be overcome by an additional clause. Rather, the language can be read to suggest that the parties could agree that a lessee could retain its rights to a future takings award by not including a condemnation clause in the lease. This interpretation is supported by the conclusion in *Lambrecht* “that [the lessee] contracted away *all its rights* in the property” because the lease included a condemnation clause. 663 N.W.2d at 547 (emphasis added).

In addition, in *Lambrecht* the lessee was attempting to recover loss of going-concern damages. *Id.* at 543. Notably, the lessee did not challenge a separate summary-judgment determination which dismissed its claim for recovery on the fixtures “concluding that the lease . . . clearly and unequivocally terminated [the lessee’s] interest in the property, and award[ed] all condemnation proceeds for fixtures to [the lessor].” *Id.* at 544 n.1. And the case stated that “[w]hether the claim [by the lessee] is *for fixtures, equipment, or loss of going concern*, the condemnation clause unequivocally terminates [the lessee’s] rights in the property at the time of condemnation.” *Id.* at 547 (emphasis added). Because it is unclear what, if any, guidance *Lambrecht* offers here, we decline to accept respondent’s theory that it compels affirming the district court.

Turning to the specific facts of this case, it is less than clear that 18(c) was designed to permit the lessee to share in a takings award. Appellant argues that because 18(c) refers to damages “for the fair value of, *and* cost of removal of stock and fixtures” that this clause does not permit recovery here, for damages related to *immovable* fixtures. Respondent sought a separate damage award for its relocation damages, unchallenged by appellant, which may have been what the parties contemplated when they entered into the lease agreement.

Moreover, we are not convinced that rejecting respondent’s argument leads to a harsh or absurd result. Because Article 18 dealt specifically with eminent domain, we disagree with appellant’s alternative argument that this matter is controlled by the “surrender clause” found in Article 20 of the lease. But we note that pursuant to the surrender clause, if the lease had terminated by any means *except* through eminent

domain, any fixtures not removed by the lessee would have been “deemed abandoned,” becoming the property of the lessor. Respondent admitted that it was cost-prohibitive to remove these fixtures. Thus, our similar interpretation of Article 18 precluding respondent’s recovery for the value of the property’s immovable fixtures is neither unexpected nor unfair.

II.

In the alternative, appellant argues that even if this case is not controlled by the language in 18(a), because the conditions precedent within Article 18(c) were not satisfied here, the district court erred in awarding respondent damages related to the condemnation. Specifically, appellant argues that respondent is not entitled to this part of the takings award because it was not a “separate award” as required by 18(c). We agree.

Where commissioners award condemnation-related damages in gross, an apportionment does not convert a single award into two separate awards. *County of Hennepin v. Holt*, 296 Minn. 164, 170, 207 N.W.2d 723, 727 (1973). Here, pursuant to the lease’s language, respondent was only entitled to damages made in “a separate award.” Although the district court repeatedly stated that because the parties involved were sophisticated and should be bound to their lease, it did not address whether it considered the part of the award for immovable fixtures to be a separate award. Here, the commissioners’ single award of \$2.76 million was allocated between the values of the “land and improvements” and its “immovable fixtures.” We conclude that the district court’s summary-judgment determination was erroneous because the part of takings damages it awarded respondent did not constitute a separate award.

In addition, the requirement in 18(c) that the separate award be “permitted by the taking authority directly to Tenant” lends itself to an interpretation consistent with our discussion above regarding moving expenses. Here, respondent argues that because MAC takes no position as to which party is entitled to the immovable fixture award, it has “permitted” it directly to respondent. But under Minnesota law, the taking authority does not have a role in permitting the commissioners’ award. *See* Minn. Stat. § 117.075, subd. 2 (2004). Rather, the taking authority only has the power to award relocation payments as provided in Minn. Stat. § 117.52 (2004). It is undisputed that the award at issue here was authorized by court-appointed commissioners and not MAC. Thus, the language in 18(c) is not applicable here.

III.

Finally, appellant argues that the district court erred in ordering that he pay the interest respondent was due on its part of the award. We agree. The district court reasoned that, because Article 18(c) of the lease was structured as a condition precedent, “[i]n order for [appellant] to receive compensation for the taking, [respondent] must be given a separate award for fixtures and stock removal . . . [Appellant] ought to have received nothing until [respondent] had received its compensation for the fixtures and stock removal.” We reject the district court’s reading of the lease.

Although conditions precedent within 18(c) must be satisfied before respondent-lessee receives an award – and we concluded that they were not met here – no conditions were attached to appellant-lessor’s receipt of any other part of the condemnation award. Here, respondent did not dispute that appellant was entitled to the part of the award

allocated for “land and improvements.” Appellant was entitled to this part, and he was entitled to it regardless of the status of any other part owed to respondent. Thus, we reject the district court’s conclusion that payment of accrued interest is appellant’s responsibility.

Reversed.

RANDALL, Judge (concurring in part, dissenting in part)

I agree with the majority, for the reasons given above, that the district court erred in ordering that appellant pay the interest respondent was due on its part of the award. However, I disagree with the majority's reversal of respondent's award. The district court's commonsense interpretation of a debated contract should be affirmed by this court. Therefore, I respectfully dissent in part.

“Absent ambiguity, the terms of a contract will be given their plain and ordinary meaning and will not be considered ambiguous solely because the parties dispute the proper interpretation of the terms.” *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004). “[W]hen a contract is unambiguous, a court gives effect to the parties’ intentions as expressed in the four corners of the instrument, and clear, plain, and unambiguous terms are conclusive of that intent.” *Id.* When the meaning is open to debate, the construction of a contract becomes a question of fact. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). The district court’s findings of fact shall not be overturned on review unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

18(c) of the lease, and the last part in particular, is essential to resolving this dispute:

In any event all damages awarded for such taking under the power of eminent domain whether for the whole or a part of the leased premises shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises; *provided, however*, that Landlord shall not be entitled to any award made to Tenant for the fair

value of, and cost of removal of stock and fixtures, *provided* a separate award is permitted by the taking authority directly to Tenant.

(Emphasis added.)

Centered around 18(c), appellant and respondent present differing views on lessor-lessee rights when the lease agreement contains a condemnation clause. Many of the cases cited are old with both sides pointing to *Hous. & Redev. Auth. of the City of St. Paul v. Lambrecht*, 663 N.W.2d 541 (Minn. 2003). *Lambrecht* stated that “[h]ad [the lessee] intended to retain some rights in the property after condemnation, it could have retained those rights through the lease agreement.” 663 N.W.2d at 547. This is what the parties contracted to do here. Although the majority is correct that the lease predates *Lambrecht*, I do not find the timing dispositive to this issue. *Lambrecht* did not guide the parties, but they may have anticipated that a condemnation clause does not hamstring a lessee’s ability to retain some share in a condemnation award by way of a more-specific lease provision. It is long-recognized that lessors and lessees are entitled to negotiate for exceptions to “boilerplate” generalities. Generally, in the absence of a condemnation clause, lessees share in the condemnation award. *See United States v. Petty Motor Co.*, 327 U.S. 372, 377-79, 66 S. Ct. 596, 599-600 (1946). A condemnation clause, standing alone, may strip away a lessee’s default rights. *Lambrecht*, 663 N.W.2d at 547. But no Minnesota case forbids what happened here: the parties simply negotiated a middle-ground. I conclude that the drafters of the lease got enough of this “*Lambrecht* language” to affirm the district court.

The contingencies within 18(c) were satisfied: respondent was entitled to the damages awarded “for the fair value of, and cost of removal of stock and fixtures . . . [because] a separate award [was] permitted by the taking authority directly to [respondent-lessee].” Unlike the majority, I am not convinced that because respondent is entitled to damages “for the fair value of, *and* cost of removal of stock and fixtures” that 18(c) was designed to provide only the lessee’s relocation costs. (Emphasis added.) The “and” does not require that the fixtures be moveable, but rather that the lessee is entitled to an award for the fair value of its fixtures *and* costs related to their removal, if any. At the time the parties entered into the lease, Minnesota law provided a right to relocation-related damages. Minn. Stat. § 117.52, subd. 1 (1992). There was no need for the parties to create a right in the lease that already existed pursuant to statute.¹

The common meaning of “separate” is “distinct.” *The American Heritage College Dictionary* 1264 (4th ed. 2007). And “permitted” means “[t]o allow the doing of.” *Id.* at 1037. The award was separate. Both MAC and later court-appointed commissioners distinguished between the condemnation damages for the property’s “land and improvements” and its “immovable fixtures.” MAC first awarded \$380,000 for the immovable fixtures and \$2 million for the land. Then the commissioners altered MAC’s appraisal: ultimately valuing the immovable fixtures at \$360,000 and the land at \$2.4 million. The taking authority, MAC, has “permitted” the immovable-fixtures award to be awarded directly to respondent because it did not take a side after the commissioners

¹ Appellant did not challenge relocation costs that respondent received in a separate proceeding.

specified that appellant *or* respondent was entitled to its value of \$360,000. By its terms 18(c) does not require the taking authority to order or direct payment to respondent, but merely to allow it.

Both sides were fairly compensated for their loss. It is simply that the lessor wants “it all.” But, as the district court concluded, appellant “contracted away his right to full compensation in the event of a taking.” The district court was persuaded that the “sophisticated parties” here “entered into a detailed lease . . . replete with mechanisms should various contingencies come to pass.” Its conclusion that “[t]he Lease articulates, in clear an[d] ambiguous language, that should a taking occur and [appellant] receive some compensation for the taking, [respondent] should receive the value of the fixtures on the premises” should be affirmed.

I would affirm the district court’s award of immovable-fixtures damages to respondent, but reverse its disposition regarding the interest due.