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State of Minnesota
In Supreme Court

Metropolitan Airports Commission,

Respondent,

v.

Thomas W. Noble,

Respondent,

Speedway SuperAmerica LLC,

Appellant,

Northern States Power Company, n/k/a Xcel Energy;
State of Minnesota; County of Hennepin;
City of Bloomington,

Respondents.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF ISSUES

I. WHETHER A LEASE CONDEMNATION CLAUSE DEPRIVES APPELLANT AS TENANT OF ANY RIGHT TO EMINENT DOMAIN DAMAGES, EVEN WHEN THE LEASE INCLUDES AN EXPRESS RESERVATION BY TENANT FOR RECOVERY OF DAMAGES FROM THE TAKING OF FIXTURES?

Court of Appeals held: Yes. The court of appeals concluded that the existence of a lease condemnation clause, regardless of the qualifying language of the clause, strips appellant of all rights to eminent domain damages.

Apposite authorities:

City of St. Paul v. Lambrecht, 663 N.W.2d 541, 546 (Minn. 2003)
Korengold v. City of Minneapolis, 254 Minn. 358, 95 N.W.2d 112 (1959)
In re Widening Third Street in City of St. Paul, 178 Minn. 552, 228 N.W. 162 (1929)

II. WHETHER EMINENT DOMAIN DAMAGES MUST BE "SEPARATELY AWARDED" AS DEFINED IN *COUNTY OF HENNEPIN V. HOLT*, 296 MINN. 164, 207 N.W.2D 723 (1973), TO ENTITLE APPELLANT TO RECOVER DAMAGES FOR THE TAKING OF FIXTURES UNDER A LEASE CONDEMNATION CLAUSE ALLOWING RECOVERY OF SUCH DAMAGES "PROVIDED A SEPARATE AWARD IS PERMITTED BY THE TAKING AUTHORITY DIRECTLY TO TENANT"?

Court of Appeals held: Yes. The court of appeals concluded that the condemnation commissioners' apportionment of a specific damages award for fixtures was not a "separate award" under *Holt*; accordingly, appellant was not entitled to recover fixtures damages separately apportioned by the commissioners and permitted by the taking authority.

Apposite Authorities:

County of Hennepin v. Holt, 296 Minn. 164, 207 N.W.2d 723 (1973)

STATEMENT OF THE CASE

This case asks the Court to decide whether a tenant may be deprived of its constitutional right to just compensation for a governmental taking when the tenant explicitly contracts under its lease to retain a portion of that right. In September 2004, the Metropolitan Airports Commission (the "MAC") filed a petition in Hennepin County District Court seeking to acquire by eminent domain a SuperAmerica gas and convenience store located at 2400 East 79th Street, Bloomington, Minnesota (the "Property"). *See Petition for Condemnation and Motion for Transfer of Title and Possession* pp. 1-8. The MAC condemned the Property because it was within the Runway Protection Zone for a proposed runway expansion at the Minneapolis-Saint Paul International Airport ("MSP"). *Id* at p. 2. According to the MAC's petition, the following parties had or may have had an interest in the Property: respondent Thomas W. Noble ("Noble"), appellant Speedway SuperAmerica, LLC ("SA"), and respondents State of Minnesota, Hennepin County, City of Bloomington, and Northern States Power n/k/a Xcel Energy. *Id* at Exhibit A. Noble was fee owner and landlord of the Property and SA was Noble's tenant under what amounted to a 20-year Lease Agreement dated May 1, 1992 (the "Lease"). Appendix at p. A27 ("A27").

The MAC sought title to and possession of the Property through the expedited "quick-take" procedure under Minn. Stat. § 117.042, which allows government entities to take title to property before the judicial determination of "just compensation." On November 1, 2004, the district court (Hon. Pamela G. Alexander) approved the MAC's quick-take petition, appointed commissioners to determine taking damages and ordered

that upon the MAC's direct payment of its approved appraisal amount, or upon deposit of this amount with the court administrator, "title to and possession of the Property shall immediately vest in the [MAC]." *See Order Granting Petition for Condemnation, Appointing Commissioners, and Transferring Title and Possession* pp. 1-4.

The MAC appraised separately the damages to the Property at $2,000,000.00 for the land and improvements and $380,000.00 for the immovable fixtures. A49. On December 14, 2004, the MAC acquired immediate title to and possession of the Property by depositing $2,380,000.00 with the district court administrator. *See Receipt of Deposit by District Court* pp. 1-2. In February 2005, Noble moved the district court to disburse $2,000,000.00 for the land and improvements. A63. Noble argued that $2,000,000.00 "is the amount deposited by [the MAC] for the real property taken, excluding immovable fixtures." *Id.* (emphasis added). On February 28, 2005, the district court (Hon. Pamela G. Alexander) ordered disbursement of the $2,000,000.00 to Noble. A66.

In May 2006, SA moved the district court for disbursement to SA of the remaining $380,000.00 on deposit for immovable fixtures, both pursuant to the Lease and as the owner of the fixtures at the time of the taking. A68. In June 2006, Noble also moved the district court to recover the $380,000.00, claiming that it was deposited by the MAC for "the real property including immovable fixtures." A70 (emphasis added).

On June 22, 2006, before the district court heard the cross-motions for disbursement, the commissioners filed their damages award for the MAC's taking of the Property. A71-A72. The commissioners found that the total amount of taking damages was $2,760,000.00. A71. Of this amount, the commissioners awarded $2,400,000.00 to

Noble for "Land and Improvements" and $360,000.00 to either "Thomas W. Noble or Speedway Superamerica LLC" for "Immovable Fixtures." A72. The commissioners expressly acknowledged in their fixtures award that they only determined the amount of damages and that "[a] hearing to determine the legal right to said damages will be held on June 30, 2006 before the Honorable William R. Howard, Judge of Hennepin County District Court." *Id.* The commissioners awarded no other damages to any other party and no party appealed this aspect of their award.

The district court heard SA's and Noble's cross-motions for disbursement on June 30, 2006. On October 20, 2006, the district court (Hon. William R. Howard) filed its Findings of Fact, Conclusions of Law, Order and Memorandum of Law, concluding that under the undisputed facts and the plain language of the Lease, SA was entitled to compensation for the value of its immovable fixtures taken by the MAC. A20.[1]

Noble appealed the district court ruling to the Minnesota Court of Appeals, which reversed the district court in a split, unpublished decision on February 19, 2008. A1-A15. SA petitioned this Court for review on March 20, 2008, and on April 29, 2008, this Court granted the Petition for Review.

FACTS

The record in this matter consists of affidavits and affidavit exhibits submitted to the district court pursuant to SA's and Noble's cross-motions for disbursement of the

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[1] The district court also ordered that Noble pay SA interest on the award "from the time funds were put in escrow since Noble should not have had access to the compensation until SA had received its compensation." A21. This portion of the ruling was reversed by the court of appeals and is no longer at issue in this case.

damages award for fixtures. Pursuant to the parties' stipulation, the district court treated the parties' motions as cross-motions for summary judgment. A20. Neither the district court, nor the court of appeals identified any genuine issues of material fact in this case. A22, A3.

SA had been operating a SuperAmerica gas and convenience store with car wash on the Property, located at the corner of Interstate 494 and 24th Avenue South, pursuant to the Lease from 1992 until the time of the taking. *See* A27-A48 (the Lease) and *Petition for Condemnation and Motion for Transfer of Title and Possession*, Ex. A. The Lease commenced on May 1, 1992 and its term totaled 20 years, which included a ten-year base term, plus two automatic five-year extension terms. A27. The rent under the Lease was three-fold: minimum rent, percentage rent and Gallonage Rent. A27-A30. Minimum rent for the first five years of the Lease was slightly more than $128,000.00 per year; minimum rent increased every subsequent five years based on percentage increases in the Consumer Price Index. A27. Percentage rent was payable at a rate of one percent of SA's gross annual sales of merchandise or services (excluding fuel) in excess of $1,100,000.00. A28. Gallonage Rent was payable at a rate of one cent per gallon of fuel sold in excess of 2.4 million gallons sold annually. *Id.*

When the MAC determined in 2004 that the SuperAmerica store would be within the Runway Protection Zone, the MAC commissioned an appraisal in preparation for exercising its eminent domain power. *See* A49. The appraisal separately valued the real estate from the immovable fixtures/equipment. *Id.* The appraiser's summary report dated July 1, 2004, stated as follows:

> **This real estate appraisal includes an estimated market value of the real estate itself i.e., the underlying land, convenience store building and site paving. The estimated use value of the immovable fixtures/equipment such as the canopy, multi-function dispensers, underground fuel tanks, pumps, piping, pump islands, signage and other fixtures related to the convenience store operation was provided by C.R. Pelton & Associates and is incorporated into this appraisal analysis. C.R. Pelton estimated the use value of the immovable fixtures at $379,618 as of February 23, 2004. The valuation was rounded to $380,000. In this appraisal analysis, *market* value and *use* value are considered equivalent since the highest and best use of the subject property as improved is for its continued use as a convenience store, car wash and gasoline outlet. This appraisal does not include the estimated value of any movable items or personal property.**

A50 (emphasis in original).[2] The appraisal report included a schedule itemizing each component of the immovable fixtures. A54-A55. The separate Immovable Fixture Appraisal report allocated the entire value of the fixtures to "LESSEE" and allocated no value to "FEE OWNER". A60. At the summary judgment hearing, Noble's counsel admitted that SA was the owner of the immovable fixtures "up to the time of termination of the lease." A75.

The MAC's condemnation triggered the provisions of Section 18 of the Lease, which stated the parties' rights and obligations in the event of a condemnation. A35-

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[2] In May 2006 when entitlement to the fixtures award was in dispute between SA and Noble, fixtures appraiser CR Pelton & Associates clarified that the original fixtures valuation from 2004 of $380,000.00 had been adjusted downward to $357,104.00 to account for additional depreciation of the fixtures; in turn, this adjusted valuation was rounded to the final amount at issue here: $360,000.00. A61. Neither party disputes this revision to the award.

A36. As the district court found, "The Lease is a detailed document which set forth the parties' intentions should a partial or full taking of the property occur." A17, ¶ 8. Section 18 states in its entirety as follows:

> 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 of such rent as may have been paid in advance.
>
> (b) Partial Taking. If, under eminent domain, a portion of the leased premises is taken such that the leased premises are no longer substantially suitable for Tenant's stated use hereunder, Tenant shall have the right of termination as hereinafter in this Section set forth, to continue in possession of the remainder of the leased premises and Tenant shall notify Landlord in writing, after such taking of Tenant's election. In the event Tenant elects to remain in possession, all the terms herein provided shall continue in effect, except that the minimum rent and the amount of gross sales in excess of which the Tenant is required to pay percentage rent and the sales of gallons of Motor Fuels in excess of which Tenant is required to pay Gallonage Rent shall be reduced in proportion to the amount of the leased premises taken and Landlord shall at its own cost and expense make all necessary repairs or alterations to the building, store front and interior work so as to constitute the remaining leased premises a complete architectural unit.
>
> (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.*
>
> (d) Definition. The term "eminent domain" shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation.

A35-A36 (emphasis added).

The district court found that "Noble and SA are sophisticated parties who entered into a detailed lease." A22. The court also found that "[Section] 18 of the Lease, titled 'Eminent Domain', articulates the mechanism for allocating compensation in the event of a taking by a governmental authority in subpart (c)." *Id.* The district court concluded that Section 18 articulates in clear and unambiguous language SA's entitlement to the award for immovable fixtures. A20. Accordingly, the district court ordered that SA was entitled to the award of $360,000.00 for its immovable fixtures. A21.

In a split decision, the court of appeals reversed and held that Noble was entitled to the fixtures award on account of the existence of a condemnation clause in the Lease. *Metropolitan Airports Comm'n v. Noble*, 2008 WL 474321 (Minn. App. Feb. 19, 2008), *review granted* (Minn. April 29, 2008, and A1-15. The majority agreed with Noble's argument that Section 18(a) "automatically extinguished all of [SA's] interest in the subject property." *Id.* at *3. The majority justified this conclusion by stating that, "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." *Id.* (citations omitted). The dissenting opinion, like the district court, concluded that under the express language of the Lease, SA was entitled to the fixtures award. A12-A15.

STANDARD OF REVIEW

On appeal from summary judgment, this Court determines whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law. *Christensen v. Milbank Ins. Co.*, 658 N.W.2d 580, 584 (Minn. 2003). When the material facts are not in dispute, this Court reviews the lower court's application of the law de novo. *Leamington Co. v. Nonprofits' Ins. Ass'n*, 615 N.W.2d 349, 353 (Minn. 2000). This Court "views the evidence in the light most favorable to . . . the party against whom summary judgment was granted" and draws all factual inferences in favor of that party. *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 630 (Minn. 2007).

A lease is a form of contract. *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999). "The interpretation of a contract is a question of law if no ambiguity exists, but if ambiguous, it is a question of fact . . .." *Trondson v. Janikula,* 458 N.W.2d 679, 681 (Minn. 1990). Whether a contract is ambiguous is a question of law that this Court reviews *de novo*. *Bank Midwest, Minn., Iowa, N.A. v. Lipetzky,* 674 N.W.2d 176, 179 (Minn. 2004). This Court also reviews *de novo* the lower courts' conclusions on questions of law, such as interpretation of unambiguous contract provisions. *City of St. Paul v. Lambrecht,* 663 N.W.2d 541, 546 (Minn. 2003). Notwithstanding that they reached opposite conclusions on which party is entitled to the fixtures award, both the district court and the court of appeals concluded that there were no genuine issues of material fact and that Section 18 of the Lease was unambiguous. *Metropolitan Airports Comm'n v. Noble*, 2008 WL 474321 *1; A20. Based on the

above-stated legal principles, this Court reviews the legal conclusions of the court of appeals as applied to the undisputed facts under a *de novo* standard of review.

ARGUMENT

SUMMARY OF ARGUMENT

This case asks the Court to revisit and clarify its prior decisions on the rights of a tenant to share in a condemnation award resulting from the governmental taking of the leased premises. The effect of the decision by the court of appeals is to deprive the tenant of its freedom to contract and to dictate that a tenant has relinquished or waived its right to just compensation despite contract provisions expressing the exact opposite intent.

The courts below reached opposite conclusions on the meaning and legal effect of Section 18 of the Lease. The district court distinguished earlier lease condemnation clause cases decided by this Court because in those cases, "the leases contained no language which imparted rights to the Tenant regarding compensation in the event of a taking." A24 (Mem. at 9). This led the district court to conclude that "both Noble and SA intended to address the damages that would arise for a taking" and that "[s]ince MAC chose to award compensation to SA, SA has a contractual right from Noble to receive the compensation." A25-26 (Mem. At 10-11).

Conversely, the majority decision of the court of appeals, relying on *Lambrecht* and earlier Minnesota appellate decisions, stated that "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." *Metropolitan Airports Comm'n v. Noble*, 2008 WL 474321 *3 (citations omitted). The court of appeals rejected the argument that

the Lease language allowing the tenant to recover a fixtures award under specified circumstances was consistent with *Lambrecht's* dictum 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.'" *See id.* (quoting *Lambrecht*). Adopting an all or nothing approach, the court of appeals declared that "it is unclear what, if any, guidance *Lambrecht* offers here ...", yet speculated that this dictum "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." *Id.*[3]

Squarely before the Court is the following question: what qualifies as a lease "condemnation clause" sufficient to deprive a tenant completely of its constitutional right to just compensation in the event of a governmental taking? The majority decision of the court of appeals held that "automatic termination" language—*i.e.*, lease language merely stating that upon a taking, the tenant's lease is automatically terminated—is sufficient to work a complete constitutional deprivation—even where, as here, the lease contains additional express language that provides for the allocation of a portion of the taking award to the tenant. *See id.* at *3-4. The better authority and reasoning dictate, however, that because forfeiture of a constitutional right is at stake, lease language purporting to deprive a tenant of just compensation must be clear and explicit in stating unreservedly the parties' intent that the landlord take all and the tenant take nothing from a

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[3] The court of appeals stated that its conclusion was "supported by the conclusion in *Lambrecht* 'that [the lessee] contracted away *all its rights* in the property.'" *Id.* (emphasis in original).

condemnation award. Moreover, where lease language is present allocating a portion of a taking award to the tenant, not only as a constitutional matter, but also as a matter of simple application of universally-recognized rules of contract construction, such language must be given meaning and must be enforced. The argument and authorities below support these propositions, which SA respectfully requests that this Court recognize and apply in reversing the decision of the court of appeals.

I. APPELLANT POSSESSED A COMPENSABLE INTEREST IN THE CONDEMNED PROPERTY UNDER BOTH THE LAW AND THE LEASE.

This Court in *Lambrecht* stated the following three-part test for determining whether a party has a compensable interest from a condemnation:

> A party seeking compensation in a condemnation action must prove that (a) they had an interest in the condemned property; (b) the interest was taken by the government in the course of the condemnation; and (c) the interest taken is compensable. *See State v. Saugen,* 283 Minn. 402, 169 N.W.2d 37, 39 (1969).

663 N.W.2d at 545-46. It is undisputed that there was a total taking of the Property by the MAC. Accordingly, as in *Lambrecht*, the two issues before the Court here are whether SA had an interest in the Property and whether that interest is compensable.

A. Appellant as Tenant Under a Long-Term Real Property Lease Held a Constitutionally-Protected Property Interest at the Time of the Taking.

Both the Fifth Amendment to the United States Constitution and Article I, § 13 of the Minnesota Constitution mandate that the government pay just compensation for the taking of private property. U.S. Const., 5th Amend. ("nor shall private property be taken for public use, without just compensation."); Minn. Const., Art. I, §13 ("Private property

shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured."). The Supreme Courts of both the United States and the State of Minnesota have long recognized that tenants under real property leases are entitled to just compensation under these constitutional provisions.

Recognition of such an interest dates back at least to Justice Holmes in *A. W. Duckett & Co. v. United States,* 266 U.S. 149, 151, 45 S.Ct. 38, 38 (1924). In *Duckett*, it was self-evident to Justice Holmes and the Court that compensation for loss of a tenant's interest from the governmental exercise of eminent domain flowed from the nature of condemnation as an *in rem* proceeding. *Id.* Upon a taking of the fee interest, all previous rights are extinguished and the extinguishment of these rights begets the right to compensation by both the owner of the fee and the owner of the leasehold. *Id.*

> In such a case we no more should expect to hear it argued that leaseholds were not to be paid for than that the former fee simple should not be, on the ground that it was gone and a new fee begun. A right may be taken by simple destruction for public use. * * * We can see no ground for attributing to the United States the extraordinary intent to recognize and pay for other interests but to exclude the claimant [a tenant]. The order made no such distinction but promised fair compensation, seemingly to all, and the subsequent appointment of a board of appraisers contemplated payment to tenants.

Id. The same principles prevail under Minnesota law, as demonstrated by the following statement in *Naegele Outdoor Adv. Co. v. Village of Minnetonka,* 281 Minn. 492, 162 N.W.2d 206, 214 (1968):

> If a property right is taken for a public use, compensation by payment of its fair market value is required. In the case of a taking of a leasehold interest, this amount "is the fair rental

> value of the premises less the amount of the rent for the remainder of the term."

Id. (citing *In re Widening of Third Street,* 178 Minn. 552, 228 N.W. 162 (1929)). Most recently, this Court acknowledged in *Lambrecht* the general principle that "upon condemnation of property by a government body, a tenant is entitled to share in the award of the property to the extent of the valuation of such leasehold." 663 N.W.2d at 546.

Accordingly, the starting point in determining the respective rights of a landlord and tenant following a taking through eminent domain must be the recognition that each of these parties possesses a constitutionally-protected property interest that entitles the party to just compensation.

B. Parties to a Lease May Contractually Alter the Entitlement to Constitutional Just Compensation After a Taking.

Just as both federal and state constitutions recognize a tenant's right to just compensation, so, too, do both federal and state law recognize that parties to a lease may contractually define their respective constitutional rights to just compensation, including the tenant's relinquishment of its right.

In *United States v. Petty Motor Co.,* 327 U.S. 372, 66 S.Ct. 596 (1946), the Court denied a tenant just compensation after a total taking by the United States government by enforcing the following lease language:

> [Upon a total or partial taking] the term hereby granted and all rights of the Lessee hereunder shall immediately cease and terminate, and the Lessee shall not be entitled to any part of any award that may be made for such taking, nor to any damages therefor except that the rent shall be adjusted as of the date of such termination of the Lease.

Id. at 376, 66 S.Ct. at 599. The Court reasoned that,

> [Tenant] had contracted away any rights that it might otherwise have had. We are dealing here with a clause for automatic termination of the lease on a taking of property for public use by governmental authority. With this type of clause, at least in the absence of a contrary state rule, the tenant has no right which persists beyond the taking and can be entitled to nothing.

Id. While the Court's rationale pointed to the "automatic termination" language in the lease, the lease provision went beyond simply automatic termination and made clear the consequence for purposes of just compensation upon such termination: that the tenant "shall not be entitled to any part of any award that may be made for such taking." *Id.* at 375 n. 4, 66 S. Ct. at 598 n. 4.

In *In re Widening Third Street in St. Paul,* 178 Minn. 552, 228 N.W. 162 (1929), Minnesota first recognized the ability of parties to a lease to alter contractually entitlement to just compensation following a taking. The lease provided, "[Upon a total or partial taking] then this lease and the term demised shall, at the option of either party, terminate." *Id.* at 553, 228 N.W. at 163. This Court stated that the parties "were not willing to let their rights rest upon the settled law applicable when property under lease is taken under the right of eminent domain. So the quoted clause was inserted." *Id.* The Court construed the clause's election to terminate to be applicable only to a partial taking and concluded that upon a total taking, the clause operated as an automatic termination under which landlord was entitled to all compensation. *Id.* . at 554, 228 N.W. at 163.

> Its fair meaning appears to us to be that the term should end if and when the city took the entire leased premises, but, if only part were taken then either party had the option to end the

> term. If the whole demised premises were taken, nothing remained upon which either party could predicate an election or option.

Id. Consequently, the Court held that since there was a total taking, "the whole compensation therefor should go to the lessor." *Id.* at 556, 228 N.W. at 164. Of course, the lease in *In re Widening of Third Street* did not contain any express language by which the tenant sought to retain a portion of its right to just compensation.

In *Korengold v. City of Minneapolis,* this Court again held that a tenant had no right to participate in a condemnation award based on lease language providing that upon a total or partial taking, "this lease and the term demised shall thereupon terminate." *Id.* 254 Minn. 358, 359-60, 95 N.W.2d 112, 114 (1959). The Court explained that the question was controlled by *In Re Widening of Third Street*, "which involved a condemnation clause practically identical with the one under consideration on the present appeal." *Id.* at 362, 95 N.W.2d at 115. The Court also observed that the lease clause was similar to the clause interpreted by the United States Supreme Court in *Petty Motor*, quoted favorably *Petty Motor's* characterization of the clause as "a clause for automatic termination" under which the tenant takes nothing upon condemnation, and stated that this "is the general rule not only in Minnesota but in a majority of other state jurisdictions." *Id.* at 363, 95 N.W.2d at 116. As noted above, the *Petty Motor* condemnation clause contained more than automatic termination language and further disclaimed any tenant benefit by expressly providing that the tenant "shall not be entitled to any part of any award ...." 327 U.S. at 375 n.4, 66 S.Ct. at 598 n.4.

In *Lambrecht*, this Court again examined the force and effect of a lease condemnation clause upon a tenant's right to just compensation. The Court recognized the general rule that "upon condemnation of property by a government body, a tenant is entitled to share in the award of the property to the extent of the valuation of such leasehold." *Id.* 663 N.W.2d at 546. The operative language of the lease in *Lambrecht* contained both automatic termination and benefit disclaimer language, directing that upon a total or partial taking, "this lease shall terminate as of the date of such appropriation *and all condemnation proceeds shall be the sole property of Lessor*." *Id.* (emphasis added). Relying upon *Petty Motor* and *Korengold*, this Court concluded that

> the condemnation provision in the lease agreement terminated [tenant's] interest in the property at the time of condemnation and therefore it did not have an interest in the condemned property.

Id. at 547. The Court rejected the tenant's attempt to distinguish the nature of the interest for which the tenant sought just compensation (going concern damages), from the interest for which the tenant in *Korengold* sought recovery (fixtures), stating that

> The condemnation clause in [the] lease was designed to describe the rights of each party upon the occurrence of certain events. Had [the tenant] intended to retain some rights in the property after condemnation, it could have retained those rights through the lease agreement. We conclude that [the tenant] contracted away all its rights in the property, including any claim for loss of going concern.

Id.[4] The above-quoted language ("[h]ad [the tenant] intended to retain *some rights in the property after condemnation* it could have retained those rights through the lease agreement" (emphasis added)) suggests that parties to a lease have the ability to agree upon the distribution of portions of a condemnation award. SA argued to the court of appeals that the true meaning of *Lambrecht* is a recognition of the long-standing rule that the lease language controls; accordingly, if the tenant retained rights to compensation under the lease—as SA did here—then the tenant is entitled to that compensation. The court of appeals rejected this, believing it "unclear, what, if any, guidance *Lambrecht* offers here ...." *Metropolitan Airports Comm'n v. Noble*, 2008 WL 474321 *3.

What is clear is that none of the Minnesota cases in the line of authority leading to the case now before this Court addresses a lease condemnation clause in which the parties expressly provided for and set out the circumstances allowing for distribution of a portion of the condemnation award to the tenant. Enforcing such a provision upon undisputed facts showing the tenant's entitlement to a portion of the award is not at odds with the above authorities. Moreover, enforcement comports with longstanding principles of law concerning contract construction and forfeiture that this Court has consistently recognized in other contexts and that this Court should adopt and apply here: namely, that the law requires clear and explicit language to deprive a tenant of its constitutional right to just compensation.

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[4] In 2006, the Minnesota Legislature adopted amendments to Minn. Stat. Ch. 117, Eminent Domain, which included a provision allowing for the recovery of going concern value in specified circumstances. 2006 Minn. Laws Ch. 214.

C. Courts Across the Country Have Recognized that the Constitutional Dimension to the Tenant's Property Interest, Coupled with the Longstanding Precept that the Law Abhors Forfeiture, Compel the Requirement that Lease Provisions Purporting to Deprive Tenants of Just Compensation After a Taking Must Be Clear and Explicit.

The United States Supreme Court recognized that, "The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness [citation omitted] as it does from technical concepts of property law." *Almoto Farmers Elevator and Warehouse Co. v. United States,* 409 U.S. 470, 478, 93 S.Ct. 791, 797 (1973) (just compensation for condemnation of leasehold must be measured by market value of improvements made by tenant regardless of whether remainder of lease term was exceeded by remaining useful life of improvements). Consistent with this recognition that the constitutional concept of just compensation is closely linked with concepts of equity, it has been observed that "courts do not look with favor on clauses causing the forfeiture of the tenant's interest on condemnation, and ... a lease contract will be construed not to have that effect if its language and the circumstances possibly permit that construction." J. Zitter, *Validity, Construction, and Effect of Statute or Lease Provision Expressly Governing Rights and Compensation of Lessee upon Condemnation of Leased Property,* 22 ALR5th, § 2[a] (citing Am.Jur.2d, *Eminent Domain,* § 250 and *Belmont Clothes, Inc. v. Pleet,* 184 A.2d 731 (1962)).

Accordingly, courts across the country have increasingly come to the conclusion that a lease condemnation clause consisting of nothing more than automatic termination language is insufficient to deprive a tenant of its constitutional right to just compensation for a taking, and have explicitly recognized that an automatic termination provision

cannot deprive a tenant of compensation in the face of an express contractual reservation of that right. The highest courts in New York, Wisconsin and Nevada reject the notion that a condemnation clause limited only to automatic termination of the lease upon condemnation is insufficient to deprive a tenant of its constitutional right to just compensation following a taking. *Musser v. Bank of America,* 964 P.2d 51 (Nev. 1998); *Maxey v. Redevelopment Auth. of Racine,* 288 N.W.2d 794 (Wis. 1980); *Marraro v. State*, 12 N.Y.2d 285, 189 N.E.2d 606 (1963).

The New York Court of Appeals held more than 40 years ago that, notwithstanding the presence of an automatic termination clause in a lease, the absence of lease language expressly terminating the tenant's interest in the fixtures upon condemnation entitled the tenant to recover a condemnation award for fixtures. *Marraro*, 12 N.Y.2d at 291-93. In *Marraro*, the New York Court of Appeals awarded tenants recovery for the loss of removable fixtures under leases that provided for automatic termination upon vesting of title in the condemning authority, with no portion of the award payable to the tenant for the leasehold damages. *Id.*, *see also Universal Empire Indus., Inc. v. State,* 566 N.Y.S.2d 442 (N.Y. Ct. Cl. 1990) (reaching the same conclusion).

In *Maxey*, the Wisconsin Supreme Court recognized not only that "under ordinary circumstances, a lessee is entitled to some portion of the condemnation award", but also that "by a properly drawn lease provision, a lessee may be barred from sharing in the proceeds." *Id.* at 806. The court held that the lease, which provided that a total taking "shall terminate the further liabilities of both the lessors and lessees under this lease",

was not effective to deny the tenant a share of the condemnation award. *Id.* This conclusion followed from the court's recognition that "Wisconsin law, like the law generally, abhors a forfeiture unless stated in most explicit terms." *Id.* at 807. The court looked to *Petty Motor* as an example of an explicitly-stated condemnation clause which was effective in manifesting the intent of the parties that the tenant take nothing from the condemnation award:

> In [*Petty*] the condemnation clause provided: "(T)he Lessee shall not be entitled to any part of any award ..." [citation omitted]. That language is explicit, and it is abundantly clear why the United States Supreme Court, under that language, determined that the lessee was entitled to nothing.

Id. at 806. The *Maxey* court contrasted unfavorably the condemnation clause language before it:

> To construe the words, "condemnation shall terminate the further liabilities of both the lessors and lessees" as working a forfeiture of [the tenant's] considerable interest in the condemned property is as strained as it is inequitable. The lease provision merely terminates the respective liabilities of the lessors and lessee. The clear intent of the provision is that liabilities to each other are terminated. There is nothing which purports to abridge the lessee's right to share in a just portion of the compensation upon condemnation.

Id. *Maxey* then favorably quoted a Maryland Supreme Court decision as representing a "good statement of the general premise for the construction of condemnation clauses of this nature ..." as follows:

> "In support of our conclusion in this case, it may be added that: 'The decisions show that the courts did not look with favor on clauses causing the forfeiture of the lessee's interest on condemnation, and that a lease covenant will be construed

> not to have that effect if its language and the circumstances possibly permit that construction."

Id. (quoting *Belmont Clothes, Inc. v. Pleet,* 184 A.2d 731, 736 (Md. 1962)).

In *Musser*, the Nevada Supreme Court held that condemnation clauses in leases of condemned property consisting of both automatic termination language and explicit language preserving the tenant's right to a portion of the condemnation award[5] did not extinguish the tenant's right to compensation. 964 P.2d at 53-4. The court distinguished other cases construing condemnation clauses containing only automatic termination language from the lease clauses before it, stating,

> while the present leases contain a clause to the effect that the leases will terminate upon total condemnation, *they also include language dictating how any compensation award should be allocated between the Owners and Lessees in such event.*

Id. at 53 (emphasis added). The court reasoned that the language dictating the distribution of taking damages "must be given effect" to honor the "basic rule of contract interpretation ... that '[e]very word must be given effect if at all possible.'" *Id.* at 54 (citation omitted).

An array of state appellate decisions from across the United States has reached the same conclusion as the highest courts of New York, Wisconsin and Nevada. In *Santa Fe Trail Neighborhood Redev. Corp. v. W.F. Coen & Co.,* 154 S.W.3d 432 (Mo. App. W.D.

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[5] The multi-part condemnation clause in *Musser* provided, among other things, that (a) if there is a total taking, then "the lease term shall cease as of the date of taking"; and (b) after certain other allocations of damages, the tenant "shall receive any portion of the award then remaining attributable to a diminution in the value of its leasehold interest ... ." *Id.* at 53.

2005), the Missouri Court of Appeals held that the tenant had a right to a portion of the condemnation award because the tenant had lease rights at the time the condemnation petition was filed and because clarifying language in the condemnation clause expressly recognized that the tenant's right to recover compensation from the condemning authority was not prejudiced by the lease termination. *Id.* at 442-43.

In *Winn-Dixie Stores, Inc. v. Dept. of Transp.,* the Florida District Court of Appeal, Second District, stated that

> the law in Florida is ... clear that the contract language cannot extinguish the lessee's right to just compensation for the taking of its leasehold interest unless that language expressly states that the lessee will not share in the eminent domain award in the event of a taking ... the lease must express this intent in clear terms.

Id. 839 So.2d 727, 729 (Fla. Dist. Ct. App. 2 Dist. 2003). The court stated that the underlying rationale for requiring clear and explicit statements of intent in the lease language is that the "law looks with disfavor on clauses forfeiting a lessee's interest in condemnation proceeds, and therefore lease covenants will be construed against forfeiture if their language in the circumstances possibly permit." *Id.* at 730 (quoting *Trump Enters., Inc. v. PublixSupermarkets, Inc.,* 682 So.2d 168, 170 (Fla. Dist. Ct. App. 4 Dist. 1996); *see also Elmore v. Broward County,* 507 So.2d 1220 (Fla. Dist. Ct. App. 43 Dist. 1987) (upholding tenant's right to portion of condemnation award under lease containing both automatic termination language and provision calling for "just and equitable" division of proceeds between landlord and tenant upon a taking).

In *Holland v. Dept. of Transp.*, the Louisiana Court of Appeals rejected the argument that bare automatic termination language in a lease condemnation clause was sufficient to deprive the tenant of any right to just compensation for the taking, stating as follows:

> We cannot reason, as the State argues here and as the court reasoned in *Orleans Oil*, that a lessee whose lease is terminated because of the taking has no legal interest or right to claim the constitutional compensation. That would be reasoning that the lease terminates because of the taking and that because the lease has terminated, the lessee has no right to claim compensation. Such paralogistic reasoning would preclude claims against the State by lessees under all circumstances ....

Id. 554 So.2d 727, 731 (La. App. 2 Cir. 1989). The U.S. Supreme Court castigated similar "paralogistic reasoning" in *Duckett, supra,* 266 U.S. at 151 ("[W]e no more should expect to hear it argued that leaseholds were not to be paid for than that the former fee simple should not be, on the ground that it was gone and a new fee begun."), as did the Wisconsin Supreme Court in *Maxey*, 288 N.W.2d at 806 (to construe an automatic termination clause "as working a forfeiture of [tenant's] considerable interest in the condemned premises is as strained as it is inequitable").

These courts properly reject bare automatic termination language as sufficient to deprive the tenant of just compensation, in part because the same reasoning could apply equally to any interest holder in a condemned property, including the fee owner, since it is the very fact that the party no longer has its property interest that triggers the constitutional right to just compensation. In short, a bare automatic termination provision

merely begs, and fails to answer, the questions of whether and how taking damages are to be allocated between landlord and tenant.

In *Franco's Pizza & Delicatessen, Inc. v. Dept. of Transp.,* the Georgia Court of Appeals held that a lease condemnation clause containing automatic termination language, but further stating that "[s]uch termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by the condemnation from the condemnor" allowed the tenant to seek and recover taking damages. *Id.* 343 S.E.2d 123, 125 (Ga. Ct. App. 1986).

The Oregon Court of Appeals held a condemnation clause that contained both automatic termination language and provision for the tenant to recover against the condemnor "all relocation costs and other expenses necessary to equip another building," ambiguous on whether the tenant was entitled to recover the value of its leasehold. *Urban Renewal Agency of City of Salem v. Wieder's Inc.,* 632 P.2d 1334, 1335 (Or. Ct. App. 1981). The court "declined to hold that the [automatic termination language] is sufficient as a matter of law to terminate the lessee's interest in the remaining term of its leasehold and to foreclose participation in the lump sum award." *Id.* at 1337. The court noted that the condemnation clause did not "specifically exclude the lessee" from participating in the award and that "[a]s a matter of policy ... we think it preferable to require that, if the parties intend that the lessee not share in any award made as compensation for the taking, that intent should be specifically spelled out." *Id.*

The New Jersey Superior Court Appellate Division reached the same conclusion concerning a lease with a condemnation clause which provided in part that it

automatically terminated upon a taking and that all damages recoverable by the tenant were assigned to the landlord. *Wayne Co. v. Newo, Inc.,* 182 A.2d 369 (N.J. Super. Ct. App. Div. 1962). The New Jersey court held that the tenant was entitled to recover for loss of his leasehold because the condemnation clause further provided that all taking damages recovered by the landlord would be apportioned between the landlord and tenant in proportion to their interests and their damages sustained. *Id.* at 371.

The conclusions in all these cases are consistent with principles of construction recognizing that lease provisions purporting to require forfeiture by the tenant of the constitutionally-protected right to just compensation must be strictly construed in favor of the tenant and against the landlord—that is, in favor of preservation of the constitutional right and not its forfeiture. Minnesota law on forfeiture and contract construction is no different and proper application of the law compels the conclusion that SA, not Noble, is entitled to the $360,000.00 fixtures award.

D. Proper Application of the Rules of Contract Construction, Giving Due Regard to the Constitutional Nature of the Interest, Compels the Conclusion that Under the Condemnation Clause Here, Appellant was Entitled to the Separate Award for Fixtures.

The SA-Noble Lease, as a contract, must be construed according to the standard rules of contract construction. *Minneapolis Pub. Hous Auth. v. Lor,* 591 N.W.2d 700, 704 (Minn. 1999); *Amoco Oil Co. v. Jones*, 467 N.W.2d 357, 360 (Minn. App. 1991). When 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 such intent. *Metro. Sports Facilities Comm'n v. General Mills, Inc.,*

470 N.W.2d 118, 123 (Minn. 1991); *Knudsen v. Transport Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Feb. 25, 2004). If the wording of the contract is clear and unambiguous, the reviewing court cannot go beyond the language of the contract in interpreting it. *Telex Corp. v. Data Prods. Corp.*, 271 Minn. 288, 295, 135 N.W.2d 682, 696-97 (1965); *Kauffman Stewart, Inc. v. Weinbrenner Shoe Co.*, 589 N.W.2d 499, 502 (Minn. App. 1999). Neither the district court, nor the court of appeals concluded that any ambiguity was present in the SA-Noble condemnation clause.

In addition, and of great importance in this case, courts must "construe a contract as a whole and attempt to harmonize all clauses of the contract." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990). Courts attribute the plain and ordinary meaning to contractual language. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). Because of the presumption that the contracting parties intend the language to have effect, "[a] contract *must* be interpreted in a way that gives *all of its provisions meaning.*" *Current Tech*, 530 N.W.2d at 543 (emphasis added).

Moreover, Minnesota law, like the law generally as reflected in the above-cited authorities from across the country, endorses "the well-recognized principle that forfeitures are not favored either in law or equity." *Naftalin v. John Wood Co.*, 263 Minn. 135, 147-48, 116 N.W.2d 91, 99 (1962). Accordingly, "[w]henever reasonably possible, a construction against a forfeiture will be adopted." *Id.* (citation omitted). For purposes of contract construction, this means that

> a contract will be construed not to provide for a forfeiture unless there is a clear expression or manifestation of the intent of the parties in this respect; and, where the contract does so provide, the provision will be strictly construed.

Id. (citation omitted). Ultimately, these principles mean that in Minnesota, "[o]ne claiming forfeiture carries a heavy burden of establishing his right thereto by clear and unmistakable proof." *Id.*

The SA-Noble condemnation clause contains three key aspects. First, it provides in Section 18(a) for automatic termination of the lease upon a total taking: "If substantially all of the leased premises shall be taken ... then the term of this Lease shall cease as of the day of possession ...." A35. Second, it provides for benefit disclaimer in Section 18(c), disclaiming, subject to a qualifying proviso, tenant's right to taking damages: "In any event, all damages awarded for such taking ... 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 ...." A36. Third, it qualifies the disclaimer of tenant's right to any taking damages by expressly allocating fixtures damages to tenant: "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." A36.

The majority decision of the court of appeals erred by focusing exclusively on only one of the three aspects to the SA-Noble condemnation clause—the automatic termination clause. SA submits that the constitutional magnitude of the property right at stake compels the conclusion that *more than* simple automatic termination language must

be present to deprive a tenant of its right to just compensation. SA further submits that not only the constitutional dimension of the right, but also proper application of the rules of contract construction require that all aspects of the SA-Noble condemnation clause must be considered, applied and given meaning.

It is undisputed (and indisputable) that the MAC, "the taking authority," has permitted "a separate award" for the immovable fixtures on the Property.[6] This is evident from the report of the MAC appraiser, which identified and valued the immovable fixtures at $380,000.00, later revised to $360,000.00, and which allocated the entire value to SA as "LESSEE", with no value allocated to Noble as "FEE OWNER". A54-55, A60, A61, (fixtures inventory and appraisal report). Throughout the litigation the MAC has taken no position on whether the fixture award should be disbursed to SA or to Noble, demonstrating that an award to SA "is permitted by the taking authority" under Section 18(c) of the Lease. Further, the MAC took no exception to the commissioners' award that contained a separate apportionment of damages for the immovable fixtures.

Application of the longstanding, conventional rules of contract construction to the plain and unambiguous language of the Lease's Eminent Domain Section compels the conclusion that SA is entitled to the separate damages award for immovable fixtures. This conclusion is the only way to uphold the controlling principles of harmonizing all clauses of the contract, giving all clauses meaning and construing the contract strictly to

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[6] SA separately addresses in Part II below the error of the court of appeals in concluding that there was no "separate award" for fixtures.

avoid forfeiture—particularly where the forfeiture concerns the potential loss of the constitutional right to just compensation.

II. APPELLANT WAS ENTITLED TO THE SEPARATELY-DETERMINED AND APPORTIONED AWARD OF DAMAGES FOR IMMOVABLE FIXTURES NOTWITHSTANDING THE IRRELEVANT *HOLT* DECISION.

The majority decision of court of appeals further erred in misapplying *County of Hennepin v. Holt,* 296 Minn. 164, 207 N.W.2d 723 (1973), as an additional bar to SA receiving the award for fixtures. *Holt* concerned a jurisdictional question not at issue here: whether an appeal from a portion of a gross commissioners' award that was apportioned between a landlord and tenant conferred jurisdiction on the district court over the entire award.

In *Holt*, the condemnation commissioners made a $200,000.00 gross condemnation award and apportioned $170,000.00 of the award to the landlord and $30,000.00 of the award to the tenant. *Id.* at 166-67, 207 N.W.2d at 725. Both the landlord and the condemning authority appealed the award to district court. The tenant argued that the district court lacked jurisdiction to disturb the commissioners' $30,000.00 apportionment of the gross award to the tenant, because this "constituted a separate award to [tenant] which was independent in law and fact from the total award ...." *Id.* at 168, 207 N.W.2d at 726. This Court rejected tenant's argument as contrary to the "unit rule."

The Court first acknowledged, "It is elementary that the right of appeal from condemnation proceedings is strictly statutory, and unless the statutory provisions are followed, the court obtains no jurisdiction." *Id.* (citations omitted). Since the applicable

eminent domain statute spoke in terms of allowing "any party" to appeal from "any award", the tenant argued in *Holt* that its award required a separate appeal to confer jurisdiction on the district court. *Id.*

Holt analyzed the jurisdictional question by examining the "community of interest" among the holders of the property interests that were the subject of the awards. . *Id.* at 168-70, 207 N.W.2d at 726-27. *Holt* alluded to earlier cases where (a) there was a single appeal from two awards on two parcels made to two different fee owners, and (b) there was a single appeal from five awards on five parcels made to a single fee owner. *Id.*, at 169, 207 N.W.2d at 727. In the former case, there was no community of interest between the two separate fee owners and two separate appeals were required to confer jurisdiction on the district court over the two awards. In the latter case, the community of interest of a single fee owner of five parcels was obvious and only one appeal was necessary to confer district court jurisdiction over the five awards.

Viewed in these terms, *Holt* reasoned that "Since Minnesota has consistently followed the 'unit rule' in determining the value of real property subject to separate estates, the 'community of interest' between the fee owner and a leaseholder is obvious." *Id.* at 169, 207 N.W.2d at 727. *Holt*, citing a prior authority, explained the meaning of the unit rule as follows:

> Properly interpreted, (the unit) rule means that regardless of whether the award is more or less than the total actual damage, it must be apportioned to each interested party in the ratio that his actual damage bears to the total actual damage. To illustrate, if the actual damage to the leasehold were $2,000 and to the fee $1,000, then, regardless of the amount of the award, whether more or less than $3,000, it should be

> apportioned two-thirds to the lessee and one-third to the fee owner.

Id. at 170, 207 N.W.2d at 727(quoting *Hockman v. Lindgren,* 212 Minn. 321, 324, 3 N.W.2d 492, 493 (1942)). Accordingly, *Holt* held that "there was sufficient community of interest between the fee owners and [the tenant] to allow a single appeal." *Id.*

Holt held *for purposes of district court jurisdiction* that the commissioners' apportionment of a gross award between a landlord and a tenant did not result in "separate awards" requiring separate appeals of each award to the district court. *Id.* at 168-70, 207 N.W.2d at 726-27. This holding has no application to a lease clause allowing a tenant to share in a condemnation award for fixtures where "a separate [fixtures] award is permitted by the taking authority directly to Tenant." Principles of construction of lease language, as with any other contract language, mandate that the words used be given their plain and ordinary meaning. *Current Tech.*, 530 N.W.2d at 543. In fact, the majority's application of *Holt* to interpret the meaning of the Lease provision renders the provision meaningless.

As recognized by the dissenting opinion in the court of appeals decision, the "common meaning of 'separate' is 'distinct'" and "'permitted' means 'to allow the doing of.'" *Metropolitan Airports Comm'n v. Noble*, 2008 WL 474321 *6 (J. Randall, dissenting). Here, the commissioners made a distinct award of damages for immovable fixtures—fixtures which were indisputably SA's, not Noble's. A71 (commissioners award), A75 (transcript excerpt), A 60 (immovable fixtures appraisal). Additionally, as argued *supra*, the MAC separately valued the fixtures, its appraiser asserted that the full

value of the fixtures should go to SA, not Noble and throughout the judicial proceedings, the MAC has steadfastly maintained neutrality on the fixtures award dispute. Under the applicable Lease language, the MAC has "permitted"—i.e., "allowed the doing of"—the separate fixtures award to go directly to SA as tenant.

Construction and application of the Lease language does not require the Court to look to the irrelevant authority of *Holt*. Rather, all the Court must look to is the intent of the parties as expressed by the language of their contract (the Lease), which provides in clear and ordinary language that SA is to receive damages for the taking of immovable fixtures if the MAC permits an award for those fixtures that is distinct from the taking of the Property. This is exactly what occurred in this case. Moreover, application of *Holt* to this case leads to a harsh and absurd result. Harsh because the installer and owner of the immovable fixtures receives no compensation for their taking. Absurd because applying the reasoning of *Holt* will result in the tenant never recovering an award, since *Holt* held in deference to the unit rule that for jurisdictional purposes the nature of the landlord-tenant relationship precludes the issuing of a "separate award" to a landlord and a tenant. *Id.*

CONCLUSION

The fundamental error of the court of appeals was its failure to give meaning to all language in the Lease condemnation clause before this Court. SA's express reservation as tenant of its right to receive just compensation for the taking of its immovable fixtures, which the MAC has permitted to go to SA as a distinct award, must be enforced. Recognition of both the constitutional dimension to the tenant's rights upon

condemnation, and the universal abhorrence of the law to forfeiture mandate such a result. For all the above-stated reasons, appellant Speedway SuperAmerica LLC respectfully requests this Court to reverse the decision of the court of appeals and order that the immovable fixtures award rightfully belongs to the tenant, SA.

Dated: 29 May 2008

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