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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-697

No. COA22-192

Filed 18 October 2022

Mecklenburg County, No. 20 SP 1749

PIEDMONT NATURAL GAS COMPANY, INC., Petitioner,

v.

MALLARD CREEK ASSOCIATES #1, LLC and GOLDEN TRIANGLE #3, LLC,
Respondents.

Appeal by Respondent Mallard Creek Associates #1, LLC from order entered
25 October 2021 by Judge Donnie Hoover in Mecklenburg County Superior Court.
Heard in the Court of Appeals 24 August 2022.

*Lincoln Derr PLLC, by R. Jeremy Sugg, for Respondent-Appellant Mallard
Creek Associates #1, LLC.*

No brief filed on behalf of Respondent Golden Triangle #3, LLC.

No brief filed on behalf of Petitioner.

JACKSON, Judge.

¶ 1

Mallard Creek Associates #1, LLC (“Respondent”) appeals from the trial court’s
order distributing payment of condemnation proceeds. For the reasons detailed
below, we affirm the trial court’s order.

I. Background

¶ 2 Respondent and Golden Triangle #3, LLC (“GT3”) are parties to a ground lease in GT3’s favor, entered into on 5 January 1972. The lease is for a term of 99 years, beginning on 15 February 1972, and terminating on 14 February 2071. Per the lease, the property was to be used for residential rental apartments. At the beginning of the tenancy there were a number of residential apartments on the site. These apartments were subsequently demolished.

¶ 3 On 19 November 1997, the lease was amended. Relevant here, paragraph 11 of the lease was amended to read:

If all or any portion of the premises be taken by condemnation or appropriation to public use under the right of eminent domain, the amount awarded for the taking shall be apportioned between Lessors and Lessee as follows: Lessors shall receive the value of the land taken and Lessee shall receive the value of the buildings taken except that if the taking occurs during the last 25 years of the lease term an equitable portion of the building value shall also be paid to Lessors to give effect to the fact that at the end of the lease term such buildings would have become the unencumbered property of Lessors.

¶ 4 On 18 September 2020, Piedmont Natural Gas Company, Inc. (“PNC”) filed a petition for condemnation of right-of-way to construct and maintain a natural gas pipeline on the land owned by Respondent and leased by GT3. This petition sought condemnation of both a permanent easement and a temporary construction easement. On 17 February 2021, the parties entered into a consent judgment

agreeing to just compensation in the amount of \$8,580.00 for the permanent easement and \$15,902.00 for the temporary construction easement.

¶ 5 On 30 March 2021, Respondent filed an application for payment of the condemnation proceeds with the Clerk of Mecklenburg County Superior Court. Respondent contended that it was entitled to the entirety of the \$24,482.00 allocated as just compensation, relying on the lease’s amended paragraph 11. At the time of PNC’s condemnation action, there were no apartments or buildings on the subject property, therefore, according to Respondent, the only value “taken” was the value of the land, to which it was entitled under paragraph 11.

¶ 6 On 1 April 2021, GT3 filed its own application for payment of condemnation proceeds as well as an objection to Respondent’s application. GT3 asserted that it was entitled to the \$15,902.00 allocated as just compensation for the temporary construction easement, as the temporary construction easement prevented GT3’s use and enjoyment of the land as lessee.

¶ 7 The competing applications for payment of condemnation proceeds were heard by Judicial Hearing Officer Alicia D. Brooks on 18 May 2021. On 25 May 2021, Hearing Officer Brooks ordered that the full judgment amount of \$24,482.00 be paid to Respondent. GT3 appealed Hearing Officer Brooks’s order to the Mecklenburg County Superior Court.

¶ 8 The appeal came on for *de novo* review on 5 August 2021, before the Honorable Donnie Hoover. On 25 October 2021, the trial court ordered that GT3 was entitled to the condemnation proceeds for the temporary construction easement in the amount of \$15,902.00 and Respondent was entitled to the condemnation proceeds for the permanent easement in the amount of \$8,580.00.

¶ 9 Respondent filed a timely notice of appeal on 23 November 2021.

II. Analysis

¶ 10 Respondent makes two arguments on appeal: (1) the trial court erred in finding that the lease between Respondent and GT3 does not apply in the context of a temporary construction easement; and (2) the trial court erred in finding that GT3 was entitled to a portion of the condemnation proceeds awarded for the taking of the temporary construction easement.

A. Standard of Review

¶ 11 Respondent's arguments on appeal dispute the trial court's interpretation of the lease between Respondent and GT3. Matters of contract interpretation are questions of law. *Harris v. Ray Johnson Const. Co., Inc.*, 139 N.C. App. 827, 829, 534 S.E.2d 653, 654 (2000). We review questions of law *de novo*. *Id.*

B. Application of the Lease to a Temporary Construction Easement

¶ 12 Respondent contends that the lease between it and GT3, specifically paragraph 11, applies to temporary construction easements, and therefore governs the

appropriation and distribution of condemnation proceeds. We disagree.

¶ 13 A lease is a contract and, as such, is subject to our normal rules of contract interpretation. *Wal-Mart Stores, Inc. v. Ingles Markets, Inc.*, 158 N.C. App. 414, 418, 581 S.E.2d 111, 115 (2003). Like any other contract, a lease must be “construed to achieve the intent of the parties at the time the lease was entered into.” *Id.* at 419, 581 S.E.2d at 115. Per our Supreme Court:

it is proper to seek for a rational purpose in the language and provisions of the [lease], and to construe it consistently with reason and common sense. If there is any doubt entertained as to the real intention, we should reject that interpretation which plainly leads to injustice, and adopt that one which conforms more to the presumed meaning, because it does not produce unusual and unjust results.

Meroney v. Cherokee Lodge, 182 N.C. 739, 746, 110 S.E.2d 89, 92 (1921).

¶ 14 The trial court made the following relevant finding of fact:

17. During the hearing, the undersigned found that paragraph 11 of the Lease provided for who received the proceeds for permanently taking the land, but the Lease did not provide for who should be compensated for the value of the [Temporary Construction Easement].

¶ 15 The trial court made the following relevant conclusions of law:

20. Paragraph 11 of the Lease applies in the context of permanent takings.

21. Neither Paragraph 11, nor any other portion of the Lease, addresses the parties’ current [Temporary Construction Easement].

22. A temporary construction easement is a taking and

denies a property owner the full use of the property for a finite period, and requires that just compensation be paid for the property's use during such temporary taking.

¶ 16 Respondent correctly asserts that a temporary construction easement is a taking, as acknowledged by the trial court in its order. *City of Charlotte v. Combs*, 216 N.C. App. 258, 261, 719 S.E.2d 59, 62 (2011). However, temporary construction easements are unique due to their limited duration. *Id.* Unlike permanent easements, which forever deprive the landowner of the use and enjoyment of the property, temporary easements are relatively brief, and the land reverts back to the landowner in the same condition that it was in when the easement began. *See Colonial Pipeline Co. v. Weaver*, 310 N.C. 93, 107, 310 S.E.2d 338, 346 (1984). For that reason, when a property is subject to a temporary easement, it is the interests of the occupier—the lessee—that are impacted, rather than the interest of the non-occupying lessor.

¶ 17 Particularly under facts as we have in this case, where the land is subject to a 99-year lease that is not due to terminate for another 50 years, by the time the property returns to the possession of the lessor, the temporary easement will have ceased, and the lessor's interest will be wholly unaffected. In contrast, the permanent easement will remain and the lessor's interest in that property will continue to be abrogated.

¶ 18 Paragraph 11 provides that, if all or any portion of the premises is taken by

condemnation or appropriation for eminent domain, “Lessor shall receive the value of the land taken and Lessee shall receive the value of the buildings taken[.]” Paragraph 11 does not specifically delineate between permanent and temporary takings. We apply our contractual interpretation principles to avoid unjust or absurd results. *See Meroney*, at 746, 110 S.E.2d at 92. To interpret paragraph 11 to apply to temporary easements would lead to such a result, wherein Respondent is compensated for a loss it did not sustain, while GT3 remains uncompensated for the temporary deprivation of its interest in the leased property. During the pendency of the temporary easement, GT3 will be unable to exercise its leasehold rights on the subject property such as, for example, constructing new apartment complexes.

¶ 19 We therefore hold the trial court correctly found that paragraph 11 did not apply to the appropriation of funds for temporary construction easements.

C. Apportionment of the Condemnation Proceeds

¶ 20 Respondent contends that it is entitled to the entirety of the condemnation proceeds from both the temporary construction easement and the permanent easement. We disagree.

¶ 21 As discussed *supra*, a temporary taking is one that deprives the landowner or tenant of the use of his property for a finite period. *City of Charlotte* at 261, 719 S.E.2d at 62. This type of taking requires just compensation for the “use of the land during the period of the taking.” *Id.*

¶ 22 Because the tenant of a property is considered an “owner of [the] property in the constitutional sense,” *City of Durham v. Eastern Realty Co.*, 270 N.C. 631, 634, 155 S.E.2d 231, 234 (1967), “[w]hen condemned land is subject to a leasehold estate the tenant is entitled to share in the award[.]” *Ross v. Perry*, 281 N.C. 570, 576, 189 S.E.2d 226, 229 (1972). “As a consequence, the owner is required to account to his lessee for the value of his lease.” *Id.*

¶ 23 The trial court made uncontested findings that GT3 is the tenant of the subject property under the 99-year lease that is not set to expire until 14 February 2071. The trial court further concluded that “GT#3, as the Property’s lessee under a recorded lease, is deemed a property owner for purposes of eminent domain and is constitutionally entitled to just compensation upon a taking.”

¶ 24 Having held, as above, that paragraph 11 of the lease does not govern apportionment of the condemnation proceeds for the temporary easement, we hold that GT3 is entitled to the \$15,902.00 already stipulated as just compensation for the temporary construction easement.

III. Conclusion

¶ 25 For the foregoing reasons, we affirm the trial court’s order apportioning condemnation proceeds.

AFFIRMED.

Judges COLLINS and HAMPSON concur.

PIEDMONT NAT. GAS CO., INC. v. MALLARD CREEK ASSOCS. #1, LLC

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Opinion of the Court

Report per Rule 30(e).