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2013 IL App (3d) 120249-U

Order filed February 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE VILLAGE OF NORTH PEKIN, a municipal corporation,)	Appeal from the Circuit Court of the 10 th Judicial Circuit, Tazewell County, Illinois,
Plaintiff-Appellant,)	
v.)	Appeal No. 3-12-0249
)	Circuit No. 04-OV-979-982
)	(Consolidated case)
ADAMS OUTDOOR ADVERTISING, a Minnesota corporation,)	
Defendant-Appellee.)	Honorable Paul P. Gilfillan, Judge Presiding.
)	
ADAMS OUTDOOR ADVERTISING, INC.,)	
Plaintiff-Appellee,)	Circuit No. 04-MR-45
v.)	
THE VILLAGE OF NORTH PEKIN,)	
Defendant-Appellant.)	Honorable Paul P. Gilfillan, Judge Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* North Pekin's Ordinance 221 is invalid because it mandates removal of billboards without just compensation to sign owners and is contrary to the Eminent Domain Act.

¶ 2 The Village of North Pekin (North Pekin) enacted Ordinance 221, on May 22, 1972, prohibiting placement of billboards within a certain zone of regulation and requiring removal of all nonconforming signs by a date certain in 1973. The three signs at issue in this appeal existed in 1972, were located within the zone of regulation, but were not removed by the owners of record in 1972 or thereafter. Decades later, Adams Outdoor Advertising (Adams), who did not own or operate the signs at issue in 1972, acquired ownership of three nonconforming signs and operated the three signs for many years, after 1989, based on annual permits issued by North Pekin to Adams. However, in 2003, North Pekin sent notice to Adams indicating that North Pekin would not renew the permits for Adams to operate the three signs after April 30, 2004, and advising Adams to remove these three signs by midnight of April 30, 2004.

¶ 3 On April 30, 2004, Adams filed a complaint asking the trial court to declare that North Pekin was estopped from forcing Adams to remove its signs; requesting mandamus relief by ordering North Pekin to file an eminent domain action and justly compensate Adams for the signs; and requesting equitable injunctive relief barring North Pekin from removing or forcing the removal of the signs. Adams filed a motion for summary judgment asking the trial court to find North Pekin's Ordinance 221 invalid because the ordinance's requirement for sign owners to remove the signs by a date certain constituted a taking of Adams' property without just compensation in violation of the Eminent Domain Act.

¶ 4 The trial court allowed Adams motion for summary judgment after finding Ordinance

221 to be invalid because the ordinance did not provide for just compensation to be paid to a sign owner when North Pekin mandated the removal of the sign. North Pekin appeals the judgment of the court finding the ordinance invalid. We affirm.

¶ 5 BACKGROUND

¶ 6 I. Ordinance

¶ 7 On August 24, 2003, North Pekin notified Adams that North Pekin would not renew Adams' annual license permits for three billboards because the three billboards, subject to those permits, did not comply with Ordinance 221. The letter advised Adams to remove the non-compliant billboards by midnight on April 30, 2004.

¶ 8 North Pekin enacted Ordinance 221 on May 22, 1972, which is designated as "Title 8, Public Ways and Property, Chapter 9, Billboards; Signs," and was in effect on all dates relevant to this appeal. Ordinance 221 established that billboards could not be erected, after the effective date of the ordinance, within a "zone of regulation" extending 330 feet horizontally along a line perpendicular to the center of any street or highway within North Pekin. The ordinance also addressed all nonconforming signs actually located within the zone of regulation as of May 22, 1972, the effective date of Ordinance 221.

¶ 9 In addition, the ordinance allowed a small class of 1972 owners of non-compliant signs a grace period for removal until June 1, 1973, or until the owners valid leases, that pre-dated May 1, 1972, expired as set forth below:

8-9-5: EXISTING AND NEW NONCONFORMING SIGNS: Owners of signs which do not conform to this Chapter or the rules promulgated hereunder shall remove all such signs from the zone of regulation not later than August 1, 1972, provided,

however, that any signs occupying property under a lease entered into prior to May 1, 1972, may remain in place until the expiration of such lease without renewal or until June 1, 1973, whichever is the latter. No new signs, not conforming to this act, may be erected subsequent to the date of publications of this Chapter.” North Pekin Village Code § 8-9-5 (approved May 22, 1972).

¶ 10

II. Three Pre-existing Signs

¶ 11 The three signs at issue in this appeal existed in their present locations in 1972, but were not owned by Adams when Ordinance 221 went into effect. Erected in 1966, the first sign was located on the west side of Route 29 just south of River Drive (the “North Billboard”) and owned by Dolson Outdoor Advertising Company (Dolson).¹ In 1992, Adams acquired exclusive ownership rights and operated the North Billboard under a continuous renewable lease with a subsequent landowner, Dingeman. The terms of the Adams’ lease made the billboard the personal property of Adams. At the time North Pekin notified Adams to remove the billboard by April 30, 2004, Adams’ four-year lease for the North Billboard was not due to expire until December 31, 2004.

¶ 12 The second sign was located on the east side of Route 29 between West Lane and Edgewater Drive (the “South Billboard”), in 1972, and Robert Wallin owned the South Billboard real estate. At that time, Wallin had continued an existing five-year lease with Dolson giving

¹ Sometime after 1966, Dolson leased the exclusive right to own and maintain the North Billboard to Dingeman L.L.C. (Dingeman), who eventually became the landowner of the property, as well as the sign owner.

Dolson the exclusive rights to own the South Billboard with an automatic renewal clause.² Later, Adams leased the South Billboard under a similar renewable five-year lease, beginning in 1989, and, on September 29, 1997, Adams entered into an exclusive lease for the South Billboard with the subsequent and current landowner, Richard Huebner, making the South Billboard Adams' personal property. The parties continuously renewed that lease since that date.³ On April 30, 2004, when North Pekin mandated Adams to remove the South billboard, Adams' lease for the South Billboard was not due to expire until October 1, 2005.

¶ 13 In 1971, the third sign was erected on real property owned by the Pekin Union Railway Company (Railway Company), and was situated on the east side of Route 29 south of Elm Street (the "Middle Billboard").⁴ Twenty years later, in 1992, Adams entered into a license agreement with the Railway Company, as successor in interest, exclusively giving Adams the right to own and operate the Middle Billboard with an automatic renewal clause, and Adams has continuously owned and operated the sign since that date. At the time North Pekin notified Adams to remove the billboard by April 30, 2004, Adams' lease with the Railway Company had been automatically renewed and was still valid because neither party gave notice they were terminating the lease.

² Prior to the Wallin lease, the record contains a five-year lease between Dolson and landowner Donald Magnet for the South Billboard granting exclusive rights to own and operate the South Billboard to Dolson from October 1957 through 1962, with an automatic renewal clause for five-year periods.

³ In 1989, Herget National Bank became the owner of the real estate who entered into the initial five-year lease with Adams with an automatic renewal clause for five year periods. By 1997, Richard Huebner became the landowner and entered into two-year leases with Adams, again making the sign Adams' personal property, and the Huebner leases were continuously renewed for two-year periods since then.

⁴ In 1971, Dolson entered into a license agreement with the Railway Company to construct, own, and maintain the Middle Billboard. Dolson owned and operated the Middle Billboard with an automatic renewable clause until 1992.

The record indicates that the leases for all three signs continued to be renewed by Adams beyond 2004 and 2005, while this lawsuit was pending.

¶ 14

III. Procedural History

¶ 15 On August 24, 2003, North Pekin sent a letter to Adams stating North Pekin would not re-issue annual license permits for Adam's three billboard sign structures, effective on May 1, 2004, claiming Adams' leases had expired and the signs did not comply with Ordinance 221.⁵ Further, the letter advised Adams, if the billboards were not removed by midnight on April 30, 2004, Adams' signs would be deemed nuisances and would be subject to a fine of up to \$500 per day for each sign that remained at each location.

¶ 16 On April 30, 2004, Adams filed a three-count complaint, in Tazewell County case No. 04-MR-45, requesting declaratory judgment, mandamus relief, and injunctive relief. In count I, Adams alleged it had continuous leases with landowners to own and operate the billboard signs as Adams' personal property; Adams paid annual fees for license permits for the operation of these signs; and North Pekin had acquiesced in allowing Adams' continued operation of the billboard structures until 2004. Adams asked the court to estop North Pekin from enforcing the ordinance as it related to the sign structures currently owned by Adams and to grant other and further relief.

¶ 17 In count II, a mandamus action, Adams alleged that North Pekin's demand for Adams to remove the sign structures was a taking of Adams' private property without just compensation as required by the Eminent Domain Act (the Act). 735 ILCS 5/7-101 *et seq.* (West 2002). Adams

⁵ From the time Adams acquired the rights to the billboards until May 1, 2004, Adams paid annual fees and North Pekin issued annual license permits for Adams to use his three pre-existing nonconforming billboards within the Village of North Pekin.

requested the court to order North Pekin, as a governmental agency, to institute a proper eminent domain action under these circumstances. In count III, Adams asked the court to grant injunctive relief enjoining North Pekin from removing Adams' sign structures and proceeding on any ordinance violation charges against Adams.

¶ 18 In North Pekin's answer to Adams' complaint, in 04-MR-45, North Pekin admitted Adams owned the billboard structures but denied Adams possessed a current vested property interest in those sign structures claiming Adams' leases had expired. Thereafter, on August 9, 2004, North Pekin charged Adams with violations of Ordinance 221 for Adam's signs in Tazewell case Nos. 04-OV-979, 980, 981, and 982. On February 2, 2005, the court consolidated case No. 04-MR-45 with case Nos. 04-OV-979, 980, 981, and 982.

¶ 19 On December 29, 2011, Adams filed a motion for summary judgment, in case No. 04-MR-45, claiming it was entitled to summary judgment, as a matter of law, because Ordinance 221 avoided or denied just compensation for owners of condemned signs, contrary to the provisions of Eminent Domain Act, and was, therefore, invalid. In a response dated February 1, 2012, North Pekin agreed "if [North Pekin] had sought to remove the signs while [Adams] had a legal right and valid lease for the sign, then [Adams] would be entitled to compensation" under the Eminent Domain Act (735 ILCS 30/1-1-1 *et seq.* (West 2002)). However, North Pekin submitted that, "[a]t the time [Adams was] required to remove their signs, they no longer had any legal right to keep their sign as their lease had expired" and, on this basis, asserted Adams no longer had an ownership interest requiring just compensation. Therefore, North Pekin argued Ordinance 221's amortization period was appropriate.

¶ 20 Adams filed a reply to North Pekin's response to the motion for summary judgment. In

that reply, Adams claimed that, when North Pekin's attorney sent a letter to Adams stating the sign structures had to be removed, by April 30, 2004, Adams' leases had not expired and were still valid.⁶

¶ 21 On February 29, 2012, the court made certain findings based on the pleadings, exhibits, and affidavits. The court found that Ordinance 221 provided amortization as the only remedy available to an owner of an existing, but nonconforming, sign which existed at the time North Pekin enacted Ordinance 221 in 1972. The court also found that Adams' leases to own and operate the sign structures were valid and had not expired as of midnight of April 30, 2004, while recognizing Adam's license permits pertaining to each sign, issued annually by North Pekin, did expire on that date.

¶ 22 Further, the court found the facts in the instant case were consistent with those in the case of *City of Oakbrook Terrace v. Suburban Bank and Trust Co.*, 364 Ill. App. 3d 506 (2006). After applying the case law, the court determined Ordinance 221 violated the mandates of the Eminent Domain Act (735 ILCS 30/1-1-1 *et seq.* (West 2002)) by allowing the Village to take ownership of the billboards without providing just compensation to the sign owner. Consequently, the court agreed the ordinance was invalid and granted summary judgment in favor of Adams and against North Pekin. In addition, the court dismissed the pending ordinance violation charges against

⁶ The record shows, on April 30, 2004, Adams had three separate leases in place for each of three sign structures. The North Billboard's current four-year lease was not due to expire until December 31, 2004; the South Billboard's current 2-year lease was not due to expire until October 1, 2005; and the Middle Billboard's lease with the Railway Company automatically renewed on a year-to-year basis unless or until either party terminated the lease with 90 days notice. The record indicates that the leases for all three signs continued to be renewed beyond 2004 and 2005, while this lawsuit was pending.

Adams, and ordered that the signs should remain undisturbed.⁷

¶ 23 North Pekin filed a timely notice of appeal challenging the court's order granting summary judgment in favor of Adams and finding that Ordinance 221 was invalid. We affirm.

¶ 24 ANALYSIS

¶ 25 On appeal, North Pekin challenges the trial court's ruling on Adams' motion for summary judgment that Ordinance 221 is invalid, as applied to Adams, as a matter of law. Summary judgment is appropriate whenever the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, show there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-115(c) (West 2010). We review the trial court's ruling granting summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992); *Kibort v. Westrom*, 371 Ill. App. 3d 247, 251 (2007).

¶ 26 The trial court must strictly construe the record in favor of the nonmovant regarding a motion for summary judgment, and against the movant, drawing all reasonable inferences in favor of the nonmovant. *Shuttlesworth v. City of Chicago*, 377 Ill. App. 3d 360, 366 (2007). On review, this court is not bound by the trial court's reasoning and it may sustain the trial court's decision on any basis appearing in the record. *Kibort*, 371 Ill. App. 3d at 251.

¶ 27 For the purposes of this appeal, the parties agree that the facts in this case are not in dispute and the only issue before this court is whether Ordinance 221 is valid as a matter of law. Therefore, we first consider the language of the Eminent Domain Act, which constitutes the foundation for Adams' challenge to the validity of North Pekin's ordinance. The Eminent

⁷ North Pekin has not challenged the dismissal of the OV cases in this appeal.

Domain Act, in effect in 2003 when North Pekin notified Adams of the alleged ordinance violation, provides, in part:

“The right to just compensation as provided in this Article applies to the owner or owners of any lawfully erected off-premises outdoor advertising sign that is compelled to be altered or removed under this Article or any other statute, or under any ordinance or regulation of any municipality or other unit of local government, and also applies to the owner or owners of the property on which that sign is erected.” 735 ILCS 5/7-101 (West 2002).

The relevant portions of section 8-9-5 of Ordinance 221, addressing pre-existing nonconforming signs, are set out below for the convenience of the reader:

“Owners of signs which do not conform to this Chapter or the rules promulgated hereunder shall remove all such signs from the zone of regulation not later than August 1, 1972, provided, however, that any signs occupying property under a lease entered into prior to May 1, 1972, may remain in place until the expiration of such lease without renewal or until June 1, 1973, whichever is the latter. No new signs, not conforming to this act, may be erected subsequent to the date of publications of this Chapter.” North Pekin Village Code § 8-9-5 (approved May 22, 1972).⁸

¶ 28 Similar ordinance provisions were considered by the court in the *Oakbrook Terrace* case.

⁸ Based on the plain language of section 8-9-5, it appears the only owners required to remove signs were those owners of record, or sign owners under a valid lease, in 1972 when the ordinance went into effect. Since it is undisputed that Adams’ did not own or hold a valid lease for these signs in 1972, it appears Ordinance 221, arguably, may not even apply to Adams once North Pekin failed to pursue the removal of the signs when the ordinance went into effect after the 1973 deadline for removal. However, neither party advanced this argument before the trial court or in this appeal.

Oakbrook Terrace, 364 Ill. App. 3d 506. In that case, the ordinance provided amortization, or a time frame within which the owner must remove a sign, as the only remedy available to the owner of a condemned sign, deemed by the ordinance to be a nuisance, without just compensation for the sign owner. *Id.* at 518. On review, the appellate court held such an ordinance “impermissibly infringes on a statewide issue, namely, the provision of just compensation to advertising sign owners.” *Id.* at 518-19. The court held that the Oakbrook Terrace sign ordinance was invalid because it constituted an unlawful taking of property and precluded just compensation as a remedy for the sign owner under the Act. *Id.* The appellate court held “[a]mortization’ has nothing to do with fair market value of the property at its highest and best use on the date the property is deemed condemned.” *Id.* at 518 (citing *Department of Transportation v. Drury Displays, Inc.*, 327 Ill. App. 3d 881, 887-888 (2002)).

¶ 29 In this case, North Pekin asserts that Adams does not have an ownership interest in the signs, subject to just compensation, because Adams’ leases pertaining to the signs expired either before the date of notice on August 24, 2003, or the deadline for removal of April 30, 2004. Relying on *Lamar Advantage G.P. Co., LLC v. Addison Park District*, 354 Ill. App. 3d 130 (2004), North Pekin claims Adams’ leases terminated on their own terms before North Pekin sent Adams the notice of noncompliance in 2003. *Id.* at 136. Consequently, North Pekin argues there was no taking of property occasioned by North Pekin’s demand for Adams to remove the signs.

¶ 30 First, we note that the *Lamar* case is distinguishable because, in *Lamar*, the municipality owned the real estate under the sign and, as a landowner, opted to terminate or refuse to renew a lease with the sign owner. The *Lamar* court held that, as a contractual party to a lease, the municipality did not take property without just compensation but merely opted to terminate a

contract or lease, as was the right of any landlord, and, therefore, the lease expired on its own terms.

¶ 31 Second, the undisputed terms of the leases, contained in this record, do not support North Pekin's assertion that Adams' leases expired by their own terms before the April 30, 2004, deadline for removal. Moreover, throughout this appeal and for purposes of the motion for summary judgment, North Pekin agreed the facts were not in dispute. Although the parties dispute whether the leases terminated on their own terms, this is a question of law that the court could resolve, and not a question of fact, because copies of the leases are contained in this record and they speak for themselves.

¶ 32 Based on our *de novo* review of the record, we conclude the North Billboard's four-year lease was not due to expire until December 31, 2004; the South Billboard's two-year lease would not have expired until October 1, 2005; and the Middle Billboard lease automatically renewed on a year-to-year basis unless or until either party to the contract terminated the lease with 90 days notice. Therefore, consistent with the trial court's findings, we also conclude Adams' leases had not expired on their own terms as of April 30, 2004, the deadline date for removal as assigned by North Pekin based on Ordinance 221.

¶ 33 Here, we conclude, as did the trial court, the *Oakbrook Terrace* case is factually similar to the case at bar. North Pekin's sign ordinance provides amortization as the only remedy available to the owner of a condemned sign, and impermissibly infringes on provisions of the Eminent Domain Act requiring just compensation be paid to advertising sign owners of condemned signs. See 735 ILCS 7-101 (West 2002). Therefore, we conclude Ordinance 221 is invalid because it permits an unlawful taking of property by mandating removal of the signs without just

compensation.

¶ 34

CONCLUSION

¶ 35 For the foregoing reasons, we affirm the circuit court's grant of summary judgment in favor of Adams finding that Ordinance 221 is invalid and that Adams' sign should remain undisturbed.

¶ 36 Affirmed.