2015 IL App (1st) 130623-U

FIRST DIVISION
JULY 20, 2015

No. 1-13-0623

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE VILLAGE OF ORLAND PARK, an Illinois Home Rule Municipal Corporation, Plaintiff, v. ORLAND PARK BUILDING CORPORATION an Illinois Corporation, Defendant-Appellant (Syman Jewelers; Knitting Etc., Inc., an Illinois Corporation; Creative Cabinetry and Remodeling, Inc., an Illinois Corporation; Bloomfield's Florist, Inc., an Illinois Corporation; and Orland Park Bakery, Ltd., an Illinois Corporation, Defendants-Appellees; Cheryl Kruspe, as Trustee under Trust Deed Dated May 15, 1974 and Recorded May 29, 1974 as Document No. 22731926, Trust Deed Dated December 20, 1989 and Recorded February 5, 1990 as Document No. 90059367, and Trust Deed Dated August 3, 1992 and Recorded August 11, 1992 as Document No. 92592952; Maria L. Hardt, as Agent of Holders and Owners of the Notes and as Successor Trustee Under Mortgage (Trust Deed) Modification Agreement Dated December 19, 1994 and Recorded January 4, 1995 as Document No. 95003796 and Mortgage (Trust Deed) Modification Agreement Dated July 28, 1997 and recorded July 31, 1997 as Document No. 97556854; Bank of the West; Richard J. Vuillaume, Individually and d/b/a Norman's Cleaners; Norman A. Vuillaume, Individually and d/b/a Norman's Cleaners; Road Fabrics, Inc., an Illinois Corporation; Northwest General	)	Appeal from the Circuit Court of Cook County. No. 08 L 50965

Contractors, Inc., an Illinois Corporation, R.J.H. Stores, Inc., an Illinois corporation, d/b/a Randy's Market; Orland Video, Inc., an Illinois Corporation, Marquette Bank; Adventure Travel Center; Miroballi Shoes, Inc., an Illinois Corporation; Paper Creations, LLC, an Illinois Limited Liability Company; Kosnar Drugs, Inc., an Illinois Corporation a/k/a Kosnar Liquor; Frontier Construction, Inc., an Illinois Corporation; Tri-City Electric Service, Inc., an Illinois Corporation; Demo Enterprises, Inc., an Illinois Corporation, d/b/a Plaza Café; Orland Plaza Barber Shop; Lang Lee II, Inc., an Illinois Corporation; Erich G. Englemann, a/k/a Englemann Storage; Recording for the Blind and Dyslexic, Inc., an Illinois Corporation; Gee-Schussler Insurance; and Unknown Owners, Defendants).	)	Honorable Alexander P. White, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: After bench trial concerning value of tenants' leasehold interests in shopping center acquired by village by eminent domain, trial court's findings that tenants were entitled to a portion of the just compensation paid for the shopping center were not against the manifest weight of the evidence. Although trial court's ruling consisted largely of verbatim excerpts of the parties' appraisal reports, did not cite trial testimony, and contained various typographical errors and omissions, the ruling expressly credited the conclusions of the appraisal reports submitted into evidence by tenants while rejecting conflicting expert appraisals. In addition, the methodology of tenant's appraiser in evaluating certain leaseholds based upon square footage values larger than those stated in lease terms was not improper as a matter of law, where the appraiser explained that the larger square footage represented the amount of space actually occupied by the tenants.

¶ 2 This appeal arises from the trial court's determination that the five defendants-appellees (tenants), each of whom leased retail space in a shopping center owned by defendant-appellant Orland Park Building Corporation (the owner), were entitled to share in an award of just compensation arising from the taking of the underlying real estate in an eminent domain action by the Village of Orland Park (the village). The owner appeals from the trial court's order,

following a bench trial, that accepted the tenants' appraisals of the five leaseholds at issue and accordingly held that the tenants were entitled to receive approximately $657,000 from the $2.75 million in just compensation previously paid by the village.

¶ 3 BACKGROUND

¶ 4 In September 2008, the village filed a complaint for condemnation to acquire, by eminent domain, certain property of the owner, including a shopping center known as Orland Plaza Shopping Center (Orland Plaza). Each of the tenants leased retail spaces in Orland Plaza pursuant to separate lease agreements with the owner. The tenants included: (1) Syman Jewelers (Jewelers); (2) Knitting Etc., Inc. (Knitting); (3) Creative Cabinetry & Remodeling, Inc. (Cabinetry), (4) Bloomingfield's Florist, Inc. (Florist), and (5) Orland Park Bakery, Ltd. (Bakery).

¶ 5 In July 2011, the village and the owner entered into a settlement agreement in which they agreed that the sum of $2.75 million represented the "fair cash market value and just compensation due and owing" for the village's acquisition of the subject property at issue, including the leasehold interests of the tenants. The settlement agreement acknowledged that certain tenants might claim a portion of that amount, but provided that the owner would "exclusively be liable and responsible for satisfying any and all of the Tenant Defendant Apportionment Claims to the just compensation funds deposited by the Village." The trial court approved the settlement agreement pursuant to a final judgment entered on September 15, 2011. The village subsequently deposited the $2.75 million of just compensation with the Cook County Treasurer.

¶ 6 The five tenants brought claims against the owner seeking a share of the $2.75 million just compensation, based upon the value of their leasehold interests. Each of the tenants maintained that the market value of its leasehold within the shopping center exceeded the contract rent that it was obligated to pay under its lease and had thus suffered the loss of this "bonus value" due to the condemnation. Thus, each tenant asserted that it was entitled to recover this lost "bonus value" amount from the $2.75 million in just compensation paid by the village. The owner, on the other hand, contended that the market value of the leaseholds was much lower and that each tenant had suffered only a minimal loss, or no loss at all, that would entitle any tenant to a portion of the $2.75 million.

¶ 7 In January 2012, the trial court ordered that the question of the tenants' right to share in the just compensation would be governed by the value of each tenant's leasehold as of September 15, 2011, the date of the order approving the $2.75 million just compensation amount. The tenants and the owner each hired appraisers to assess the market value of the five leasehold interests as of that valuation date. Unsurprisingly, the tenants' appraisers concluded that the leaseholds had significant value, whereas the owner's appraiser determined that the leaseholds were of little or no value.

¶ 8 Counsel representing three of the tenants – Jewelers, Knitting, and Cabinetry – hired Dale Kleszynski to conduct appraisals of those leasehold interests as of September 15, 2011. Kleszynski prepared appraisal reports in which he concluded that the market rental rate for each of the three leaseholds was $20 per square foot. Kleszynski's appraisals also assumed that rent would increase at the rate of 3% per year, and he applied a "discount rate" of 9% to calculate the present value of each leasehold.

¶ 9 For each of these three tenants, Kleszysnki calculated that the market value of the leasehold interest exceeded the contract rent due under the terms of each lease, and thus each leasehold had a "bonus rent" value. For Jewelers, Kleszynski reported that the leasehold consisted of 1800 square feet and a leasehold that ran through April 2019; Kleszynski calculated a "bonus rent" of $78,102. For Knitting, Klesyznksi reported a leased area of 2740 square feet and a leasehold running through October 2014, and calculated a "bonus rent" amount of $93,306. For Cabinetry, Kleszynksi reported an area of 1,615 square feet and a lease running through September 2019, calculating a "bonus rent" of $85,736. Based on Kleszynski's calculations, each of these three tenants claimed that it was entitled to recover its "bonus rent" amount from the $2.75 million in just compensation paid by the village.

¶ 10 Counsel for the Florist and the Bakery engaged a different appraiser, Michael S. MaRous, who submitted separate reports calculating the leasehold interests of these two tenants. MaRous' reports stated that he had appraised each leasehold "by estimating a market rental rate and analyzing the difference between that rate and the contract rental rate in order to determine whether any benefit accrues to the tenant," and then "discounted the difference between the contract rent and the market rent to present value utilizing an appropriate discount rate in order to arrive at an estimate of the market value of the leasehold interest in the subject property." MaRous' reports concluded that, as of the September 2011 valuation date, the market value of the Florist's leasehold was $215,000 and the market value of Bakery's leasehold was $185,000.

¶ 11 The owner's counsel hired Patricia McGarr of Reznick Group, P.C. (Reznick) to conduct appraisals of each of the five leaseholds at issue as of September 15, 2011. McGarr prepared five corresponding appraisal reports. Under McGarr's methodology, she first calculated a

"present value of the leasehold advantage" by comparing the contract rent to her estimate of the market rental rate. Then, to determine the "fair market value of leasehold interest," McGarr additionally deducted costs that she estimated each tenant would incur if the tenant were to sublet the leasehold to a third party. Thus, for each leasehold, McGarr additionally deducted an estimated broker's fee or leasing commission, as well as her estimate of costs that would be incurred to clean and prepare each retail space for occupancy by a new tenant.

¶ 12 Under this methodology, McGarr concluded that only one of the five leaseholds had any market value. With respect to Cabinetry, McGarr's appraisal (as amended by an addendum)[1] concluded that, after deductions to represent leasing commissions and other costs to sublease the space, the market value of the leasehold interest was *negative* $8,720. With respect to Jewelers, McGarr's appraisal concluded that the fair market value of leasehold interest was *negative* $9,620. With respect to the Florist, McGarr's appraisal (as amended by an addendum taking into account an option to extend the lease for an additional five-year term) concluded that the fair market value of that leasehold was *negative* $8,960. With respect to the Bakery, McGarr opined that the fair market value for the leasehold interest was actually *negative* $1,833. With respect to Knitting, McGarr's appraisal concluded that the fair market value of the leasehold interest was $8,300. Thus, for four of the five leaseholds, McGarr concluded a *negative* fair market value, and for a fifth (Knitting) opined that the leasehold was worth $8,300.

[1] The addendum noted that McGarr's initial appraisal for Cabinetry had not taken into account that Cabinetry held an option to extend the lease for an additional five years. However, McGarr's addendum concluded that the "secondary option terms were considered above market, and the costs associated with cleaning and leasing the space to a sublet exceeded any rental advantage over the first three years of the remaining first option term." Thus, McGarr's revised appraisal was even lower than the initial appraisal.

¶ 13 In addition to these initial reports, McGarr created "technical appraisal reviews" in which she criticized the methodology and conclusions of Kleszynski's appraisals of Cabinetry, Jewelers, and Knitting, as well as MaRous' appraisals of the Florist and Bakery. Likewise, both Kleszynski and MaRous also created rebuttal reports that criticized McGarr's methodology and conclusions with respect to each of the five leaseholds.

¶ 14 A bench trial was held in May 2012 to determine the value of the tenants' leaseholds. Each of the reports by Kleszynski, MaRous, and McGarr, including their initial appraisals and their rebuttal reports, was admitted into evidence. Over five days, the court heard testimony from witnesses including McGarr, Kleszynski, and MaRous, each of whom was qualified to testify as an expert in real estate valuation pursuant to stipulation of the parties.

¶ 15 Kleszynski testified on May 24, 2012 regarding his appraisals of Jewelers, Knitting, and Creative Cabinetry. Kleszynski stated he personally inspected each of the tenant areas several times and reviewed the terms of each lease. He testified that he researched rental rates in the Orland Park market by speaking to tenants, owners, managers, and leasing agents, and had analyzed six other shopping centers as comparables. Based on his research, he opined that the market rental rate for each of the Jewelers, Knitting, and Cabinetry leaseholds was $20 per square foot, subject to an annual increase of three percent per year. Kleszynski testified that, applying this market rate, for each leasehold he calculated the net worth of the leasehold by subtracting the amount of contractual rent due under the lease terms from the market value of each remaining lease term. Kleszynski reiterated his conclusions that Jewelers' leasehold had a market value of $78,102, Knitting's leasehold had a value of $93,306, and Cabinetry's leasehold had a value of $85,736.

¶ 16 Kleszynski also testified regarding his criticisms of McGarr's appraisals for these three leaseholds. Among these, he claimed McGarr had understated the amount of parking available at the shopping center, and that she had underestimated the value of the "tenant profile" and "synergy" among the center's tenants, such as the presence of a grocery store. In contrast to McGarr's opinion that the shopping center was outdated and in relatively poor condition, Kleszynski testified he believed it was "the best retail location in Orland Park." He criticized McGarr's description of "functional obsolescence" at Orland Plaza, opining that the subject spaces had been occupied "on a consistently high basis and had very few vacancies" over many years.

¶ 17 Kleszynski also criticized McGarr's reliance on rents paid by other Orland Plaza tenants as comparables, without taking into account that those tenants were also subject to condemnation. Because an appraisal should be a "purely market derived conclusion," Kleszynski opined that it was improper in an eminent domain case to appraise leaseholds by comparing rental rates of other tenants in the same shopping center, which were also subject to condemnation. Kleszynski also noted that the leaseholds relied upon by McGarr as comparables had a rent range of 13 to 17 dollars per square foot, yet McGarr had determined that an even lower market rate applied to the Orland Plaza tenants. Thus he opined that her calculation was below market rate. Kleszynski also expressed his view that it was improper for McGarr to reduce her appraised value of the leaseholds by deducting the cost of brokerage commissions and costs to prepare each space for occupancy by a new tenant.

¶ 18 With specific regard to Knitting's leasehold, whose lease stated a square footage of 1950 square feet, Kleszynski testified that McGarr should have evaluated the leasehold on the basis of

a larger, 2,740 square feet area, because the Knitting tenant had actually occupied an additional 790 square-foot area. Similarly, with respect to Cabinetry, Kleszynski acknowledged that the lease specified an area of 1465 square feet, which McGarr had used as the basis for her evaluation. However, Kleszynski testified that Cabinetry's owner had informed him the actual size of the leasehold was actually 1615 square feet, and thus he had based his appraisal on this larger area.

¶ 19 McGarr testified on May 25, 2012. She described her methodology of determining whether each leasehold had a positive value, or "bonus rent," based upon whether the market rent was higher than the contract rent, and that in determining the net value she had further deducted the expected costs of subletting a leasehold, including brokers' fees and costs to prepare the space for a new tenant. McGarr reiterated her conclusions that under her methodology, four of the leaseholds had no actual fair market value, except that Knitting had a value of $8,300.

¶ 20 McGarr's testimony elaborated on her relatively low appraisals of the leaseholds, focusing on the negative aspects of Orland Plaza. She emphasized Orland Plaza's age, noting that it was outdated in terms of design and faced competition from recently constructed shopping centers. She also testified that the tenant profile of Orland Plaza, which had been limited to local tenants, was less attractive in contrast to other centers that attracted national tenants.

¶ 21 McGarr described how she had selected five leaseholds as comparables. McGarr explained that, due to Orland Plaza's age, it had been difficult to identify comparable leaseholds in other shopping centers. Thus, her comparables were much younger than Orland Plaza. McGarr had identified five leaseholds in shopping centers near the subject property, and

explained that those comparables were more attractive than Orland Plaza with respect to several factors, including design, visibility, vehicle traffic, and the presence of national tenants.

¶ 22 McGarr also testified concerning the criticisms contained in her technical reviews of the appraisals submitted by Kleszynski and MaRous. With respect to Kleszynksi, she stated that his appraisal had overly relied on data derived from publicly available listings and offerings, rather than actual lease terms of completed transactions. McGarr criticized his selection of comparables as being too far from Orland Plaza, and opined that Klesyznksi had not given sufficient weight to the difference in age and the identity of the tenants, noting that Kleszynski's comparables had more national tenants and more attractive "anchor" tenants than Orland Plaza.

¶ 23 McGarr also testified regarding her criticisms of MaRous' appraisal of the Florist and Bakery. She noted that MaRous, in a previous appraisal of Orland Plaza in 2008, had found "functional obsolescence" at the site and had identified older shopping centers as comparables. In contrast, MaRous' new report on behalf of Florist and Bakery did not emphasize the old age of Orland Plaza and instead had identified leaseholds in newer shopping centers as comparables. She also noted that MaRous' comparables were located in shopping centers with widely known, national tenants, in contrast to the local nature of the Orland Park Plaza tenants. McGarr further opined that MaRous had included inadequate details on the lease terms for his comparables.

¶ 24 On cross-examination, McGarr admitted that three of the five comparables she had identified were not even occupied by leaseholders as of the September 2011 valuation date. She also admitted she had not been able to view any actual leases for her five comparables. Rather, she had based her information on those comparables on conversations she had with brokers.

McGarr also admitted that her comparable locations were exposed to less vehicle traffic than the Orland Plaza tenants.

¶ 25 MaRous testified on May 29, 2012. MaRous acknowledged that he had appraised the Orland Plaza shopping center for the village in 2006 and 2008, but stated that he had not appraised any leasehold values in those prior appraisals. MaRous described his methodology in appraising the Florist and Bakery leaseholds, including his review of the leases, his inspection of the spaces, and his selection of 39 leaseholds that he cited as comparables in his appraisals. MaRous acknowledged that Orland Plaza "was one of the older centers in Orland," but emphasized the value of its location on "two major arterials," LaGrange Road and 143rd Street, noting that 63,000 cars passed the location per day. Thus, MaRous testified that in selecting comparables, it "was most important to look at location and to investigate to see if I could find rents of properties on LaGrange Road." MaRous testified that through "exhaustive research" he located 39 leases, including many on LaGrange Road and several signed within two years of the September 2011 valuation date.

¶ 26 MaRous also emphasized that Orland Plaza had a grocery store as an "anchor tenant," stating that "grocery stores generally are one of the most desirable draws to a center." MaRous explained that he estimated the market value of the Bakery as $19.50 per square foot, and the Florist as $19 per square foot. Based on the terms of the leases, he testified that he calculated a value for Florist's leasehold as $215,000 and a value of Bakery's leasehold as $185,000.

¶ 27 MaRous also testified regarding his criticisms of McGarr's methods and conclusions. Among these, MaRous opined that it was not proper to deduct the amounts of a brokerage commission or costs to clean or prepare the space for a subtenant, as McGarr had in her

appraisal. MaRous also testified that he disagreed with McGarr's conclusion that the amount of parking spaces for the Bakery was "below the industry standard." MaRous also testified that McGarr's emphasis on Orland Plaza's deteriorated condition and lack of proper maintenance was related to the fact that the property "was pending condemnation for many years," and that it was improper for McGarr to conclude that the leaseholds had lower value "due to the fact of ongoing condemnation" rather than external factors.

¶ 28 MaRous also criticized the fact that none of McGarr's comparables was located on the LaGrange Road retail corridor and emphasized that her five comparables were exposed to significantly less daily vehicle traffic than Orland Plaza. He also testified that McGarr's comparables had lower occupancy rates than Orland Plaza, and that none of her comparables had the benefit of a being in "a grocery store anchored center" as was Orland Plaza. As Kleszynski had testified, MaRous also criticized McGarr's opinion that the market rental rate per square foot for the Orland Plaza tenants was lower than the comparables she had selected, which MaRous believed were "inferior locations" to Orland Plaza.

¶ 29 Following the testimony of the parties' expert appraisers, Larry Zona, the owner of Florist, testified that his business had been successful in Orland Plaza in the years leading up to its condemnation and described the benefits of the Orland Plaza location, such as a large amount of customer traffic and the "synergy" with other businesses located in the shopping center.

¶ 30 The final witness was Joseph Mikan, an officer of the owner, who gave rebuttal testimony on the issue of the square footage of the Knitting leasehold. Mikan testified that the Knitting leasehold space was: "divided into multiple parts. In the front [is] 1950 square feet is what we leased to Knitting, Etc, and there were two more areas behind that. One, which people

from Knitting, Etc. could gain access to. And the second area behind that, which they could not." Mikan acknowledged that the owner had allowed Knitting "to store things from time to time in the one area," but that the additional area "was clearly not part of their lease" or "[w]hat they were paying rent for."

¶ 31 Mikan additionally testified that he had recently spoken about the issue with the son of Knitting's owner. Mikan stated that, the previous day, he had received a letter from Knitting's owner admitting that the leasehold only included 1,950 feet. Mikan testified that the letter stated: "I leased 1950 square feet at this address and paid rent for that square footage. The 790 square feet that was attached was a gratis from the landlord."

¶ 32 Closing arguments were heard on June 8, 2012. On February 6, 2013, the court issued its findings of fact in a "memorandum decision and judgment" (the ruling). Notably, much of the trial court's ruling consists of verbatim excerpts of the reports prepared by the parties' appraisers.

¶ 33 The trial court's ruling opens with a "Statement of Facts," the first several pages of which consist of verbatim passages from McGarr's appraisal reports describing the characteristics of Orland Plaza and the five leaseholds at issue. The next several pages of the ruling consist of exhibit lists submitted by the owner and the tenants. Following those exhibits lists, under the heading "Leasehold valuation summary by the Reznick Group," the ruling sets forth additional excerpts from McGarr's appraisals, including McGarr's calculations as to the market value of each of the five leaseholds.

¶ 34 Next, under the heading "Leasehold Analysis for Syman Jewelers, Knitting, Etc., and Creative Cabinetry by Dale Kleszynski," the ruling sets forth several criticisms of McGarr's analysis, all of which are taken verbatim from Kleszynski's review of McGarr's appraisals. The

next several pages of the ruling consist of verbatim excerpts of MaRous' appraisal reports describing his methodology in calculating leasehold values for the Florist and Orland Park Bakery.[2]

¶ 35 Following the excerpts from the written reports that make up the "Statement of Facts," the ruling states that the "Issues Presented" are:

> "1. Whether the opinions contained in the Reznick report should be followed.
>
> 2. Whether the opinions of Dale Kleszynski should be followed.
>
> 3. Whether the opinions of Michael MaRous should be followed."

The ruling then sets forth a section entitled "Arguments of the Parties and Comments and Decision by the Court." That section does not contain substantive arguments. The section in its entirety states:

> "In respect to issue one, the Village[3] contends the opinions contained in the Reznick report should be followed. The village argues as follows: [sic]

[2] The ruling does not use quotation marks or citations to clearly indicate the source of the content. However, review of the appraisal reports makes clear that the ruling simply copied lengthy excerpts of those reports. For example, the ruling copies first-person statements from the appraisers, such as "I have discounted the difference between the contract rent and the market rent to present value utilizing an appropriate discount rate." Indeed, the ruling copies boilerplate language from the appraisals, such as "If additional information about the Subject is received or becomes known, MaRous and Company reserves the right to determine whether this information has a substantive impact on the valuation of the subject property."

[3] The ruling mistakenly uses the term "Village" in this section when referring to the positions taken by the owner.

> All five lessees respond as follows: The opinion[s] contained in the Reznick report should not be followed. The court agrees with the five lessees.
>
> In response to issue two, Defendants, Syman Jewelers, Knitting Inc, and Creative Cabinetry Inc. contend the opinions of Dale Kleszynski should be followed. They argue as follows: [sic]
>
> The Court agrees with the three lessees.
>
> In respect to issue three, Defendants, Bloomfield Florist and Orland Park Bakery contend the opinions of Michael MaRous should be followed. They argue as follows: [sic]
>
> The Court agrees with the two lessees."

¶ 36 The next section of the ruling is entitled "Findings of the Court." There, the court states "[t]he Reznick report is less credible because of the following" and proceeds to list, verbatim, twelve criticisms from Kleszynski's review of McGarr's appraisal of Cabinetry's leasehold. After reciting those criticisms, the court states that it "adopts the findings contained in" the Kleszynski and MaRous reports. The court's ruling then lists the "Conclusions by the Court" as follows:

> "In respect to Subject One, the Court concludes the value is $215,000.
>
> In respect to Subject Two, the Court concludes the value is $185,000.

> In respect to Subject Three, the Court concludes the value is $78,102.
>
> In respect [to] Subject Four, the Court concludes the value is $93,306.
>
> In respect [to] Subject Five, the Court concludes the value is $85,736.
>
> The court determines the amounts controlled in its conclusions are the amounts of competition [sic] due to the issues."

Notably, although this section of the trial court's ruling does not specify which leasehold is "Subject One," "Subject Two," etc., the five values stated by the court match the five leasehold valuations stated by Kleszynski and MaRous in their appraisal reports and trial testimony. Thus, in total, the court found that the value of the five leaseholds was $657,144. The trial court's ruling concludes with the statements that the court "does not adopt the conclusions contained in the Reznick reports" for the five subjects, but "adopts the conclusions contained in the Kleszynksi reports for subjects One, Two and Three," and "adopts the conclusions contained in the MaRous report for subjects four and five."

¶ 37 The owner filed a notice of appeal from the trial court's ruling on February 15, 2013. On the same date, the owner filed a motion requesting that the court set an appeal bond of $657,144 and that the court direct the Cook County Treasurer to transfer to the owner the remainder of the $2.75 million originally paid by the village as just compensation. On March 8, 2013, Cabinetry, Knitting, and Jewelers filed a motion to withdraw their portions of the just compensation pursuant to the court's February 6, 2013 ruling.

¶ 38 On March 13, 2013, the court entered an order that directed the Cook County Treasurer to transfer $657,144 to the five tenants as set forth in the February 6, 2013 ruling; that order specifically directed the transfer of $215,000 to the Florist, $185,000 to the Bakery, $78,102 to Jewelers, $93,306 to Knitting, and $85,736 to Cabinetry. The same order stated that the owner's "motions to set appeal bond [and] motion for extension of time to set [and] approve appeal bond [and] stay of enforcement of money judgment are denied." However, the March 13, 2013 order further provided that the "tenants paid herein agree that if the appellate or circuit court orders any return of funds paid herein," the tenants "shall return such funds within 30 days of being ordered to do so." In a subsequent order, on April 3, 2013, the court granted the owner's "motion to withdraw remainder of final just compensation" and directed the Cook County Treasurer to transfer the remainder of the $2.75 million just compensation funds to the owner.

¶ 39 ANALYSIS

¶ 40 We have jurisdiction because the owner filed a timely notice of appeal from the trial court's February 6, 2013 ruling. See Ill. S. Ct. R. 303(a) (eff. May 30, 2008).

¶ 41 Before reaching the merits, we address the waiver argument raised in the brief submitted by Jewelers, Knitting, and Cabinetry. Those tenants argue that because the owner (after filing a notice of appeal) additionally moved to withdraw its portion of the $2.75 million compensation, the owner waived its right to challenge the court's ruling apportioning $657,144 of that sum to the tenants. The tenants argue that the owner accepted the benefits of the trial court’s February 2013 ruling and thus waived its right to maintain its claim that the ruling was erroneous.

¶ 42 Our supreme court has held that in eminent domain cases, "a property owner may not accept the fruits of an award and later appeal from the judgment setting such award;" that is, one

who "voluntarily accepts the fruits thereof has waived any error in the proceedings." *Cook County v. Malysa*, 39 Ill. 2d 376, 380-81 (1968) (holding that Cook County, as condemnor, waived error in the condemnation proceedings by voluntarily paying the condemnation judgment and taking possession of the property). Thus, an owner of condemned property in an eminent domain action "may not exercise the statutory and constitutional right to appeal without forfeiting the right to use the amount of the award pending the appeal." *Morton Grove Park District v. American National Bank and Trust Co.*, 78 Ill. 2d 353, 359-60 (1980) (explaining that "the condemnee's award is deposited with the county treasurer during the course of an appeal from an award and the money may not be withdrawn by the owner without abandoning all objections to the award, that is, abandoning the appeal."). Thus, our court has dismissed a property owner's appeal challenging the sufficiency of a just compensation award where the owner has already accepted the amount of the judgment. See *Department of Public Works and Buildings v. Forbeck*, 118 Ill. App. 2d 231 (1969).

¶ 43 The owner argues that the present situation is distinguishable from these authorities. First, the owner emphasizes that it is not appealing from the amount of the initial condemnation award. That is, the owner does not challenge the sufficiency of the $2.75 million just compensation paid by the village for the subject property, which was determined by a settlement agreement and court order in September 2011. Instead, the owner appeals from the subsequent order allocating $657,144 of that sum to the five tenants. In addition, the owner urges that the language of the March 13, 2013 order precludes a finding of waiver, as it provided that the tenants "agree[d] that if the appellate *** court orders any return of funds" awarded to them by the trial court, they would do so.

¶ 44 We agree that the language of the March 13, 2013 order expressly preserved the owner's right to maintain this appeal, notwithstanding the owner's motion to withdraw its portion of the $2.75 million in just compensation. The statement of the tenants' agreement to return any funds if so ordered by the appellate court explicitly contemplated appellate review of the trial court's February 2013 ruling regarding the tenants' share of the just compensation. As that language was included in conjunction with the denial of the owner's motion to set an appeal bond, it was clearly inserted to protect the owner in the event that a reviewing court concluded that the tenants were not entitled to the sums awarded by the trial court. The inclusion of such language would be inconsistent with a finding that the owner intentionally waived the right to pursue this appeal. Thus, we decline to find that the owner forfeited its right to appeal the trial court's February 2013 findings.

¶ 45 Turning to the merits, the owner asserts that the trial court's findings in the February 2013 ruling were against the manifest weight of the evidence. "When a party challenges a trial court's bench-trial ruling, we defer to the trial court's factual findings unless they are contrary to the manifest weight of the evidence. [Citation.] Under this standard of review, we give great deference to the circuit court's credibility determination and we will not substitute our judgment for that of the circuit court because the fact finder is in the best position to evaluate the conduct and demeanor of the witnesses." *Staes and Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35. As in reviewing other findings of fact, "[a]n appellate court will defer to the judgment of the trial court regarding property valuation unless the trial court's decision was against the manifest weight of the evidence." (Internal quotation marks omitted). *In re Estate of Lambrecht*, 375 Ill. App. 3d 865, 871 (2007). A factual finding "is against the manifest weight of the

evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence. [Citation.] We will not disturb the findings and judgment of the trier of fact if there is any evidence in the record to support such findings." [Internal quotation marks omitted]. *Staes and Scallan, P.C.*, 2012 IL App (1st) 112974, ¶ 35. In other words, "[a] trial court's judgment following a bench trial will be upheld if there is any evidence supporting it." *Southwest Bank of St. Louis v. Poulokefalos*, 401 Ill. App. 3d 884, 890 (2010).

¶ 46 The owner argues on appeal that the trial court's February 2013 ruling "is riddled [with] numerous errors, making the same nearly unintelligible." We acknowledge many apparent typographical errors and omissions, and that the content of the ruling consisted largely of verbatim excerpts of the appraisal reports completed for the tenants. Nonetheless, given the deferential standard of review, we cannot say that the trial court's factual findings were against the manifest weight of the evidence.

¶ 47 In particular, we cannot say that there was no basis in the record for the court's conclusions. The trial court's ruling is unambiguous in adopting the leasehold values stated by the tenants' appraisers, Kleszynski and MaRous, with respect to each of the five leaseholds at issue. The specific leasehold values adopted by the court's ruling were contained in the appraisal reports, which were admitted into evidence, and those figures were reiterated in the individual appraisers' trial testimony.

¶ 48 The owner emphasizes that the ruling consists largely of verbatim portions of the appraisal reports. In particular, with respect to the "findings" portion of the ruling, the owner emphasizes that the trial court "failed to provide any analysis of its findings, mention any piece

of testimony introduced at trial, and instead, quote[d] the entire section, verbatim from Kleszynski's rebuttal report" of McGarr's appraisal. We acknowledge that the court's ruling failed to use its own words to explain why it determined that the tenants' experts were more credible than the conclusions of McGarr on behalf of the owner. Instead, the trial court restated, verbatim, Kleszynski's criticisms of McGarr's appraisal, and then simply stated that it rejected McGarr's conclusions and accepted those of the tenants' appraisers.

¶ 49 While it may have been preferable for the trial court to have articulated its reasoning in more detail, rather than simply repeating the language used by the tenants' appraisers, the court's ruling finds support in the record. The applicable standard of review, which focuses on whether the trial court's ruling was based on the evidence, does not require the trial court to use its words. In this case, although the trial court borrowed much of the language which it included in its ruling, from the appraisal reports, it nonetheless made clear that its findings were based on the properly admitted evidence submitted by the tenants' appraisers. Thus, we cannot say that the trial court's ruling was arbitrary or not based on the evidence.

¶ 50 Likewise, while the owner's argument on appeal emphasizes the typographical errors or omissions in the trial court's ruling, those errors do not demonstrate that the court's conclusions lacked basis in the evidence. For example, the owner emphasizes that the section of the ruling entitled "argument of the parties" contains several instances stating that a party "argues as follows" but fails to articulate any arguments. While we agree that in the interest of clarity, it certainly would have been preferable for the trial court to articulate the arguments that the parties made, it still is clear from the entirety of the record that the court's ruling found support in the record.

¶ 51 Therefore, the omissions in this portion of the ruling are not fatal to the validity of the trial court's ruling as a whole. Elsewhere in its ruling, the trial court sets forth the conflicting opinions of the parties' appraisers, and then expressly fashions its conclusions on the basis of the evidence provided by the tenants' appraisers, while rejecting opinions offered by McGarr, the owner's appraiser. Thus, although the trial court's opinion could have been more articulately worded in its own language, these omissions do not render the trial court's ruling against the manifest weight of the evidence.

¶ 52 Similarly, the owner's appellate brief argues that there is inconsistency within the trial court's ruling as to which of the five leaseholds is referred to as "Subject One," "Subject Two," and so on. Because the portion of the ruling entitled "Conclusions by the Court" sets forth a value for each numbered "subject" without restating which particular leasehold corresponds to each "subject" and leasehold value, the owner contends that the conclusions are against the manifest weight of the evidence.

¶ 53 For example, the ruling initially refers to Jewelers as "Subject One," which Kleszynski appraised at $78,102. However, the "conclusions" portion of the ruling states the value of “Subject One” is $215,000, which figure actually corresponds to MaRous' appraisal for the Florist. Instead, the $78,102 figure is listed as the value for "Subject Three," although the trial court earlier in its ruling, referred to a different leasehold, Cabinetry, as "Subject Three." The owner points out that, although the "conclusions" portion of the ruling recites each of the five values stated by Kleszynski and MaRous for the five leaseholds, the trial court's ruling is internally inconsistent as to which leasehold corresponds to which "subject." The owner argues

that as a result, the trial court's ruling "erroneously misstates evidence" and is thus against the manifest weight of the evidence.

¶ 54 We do not find this argument persuasive. Any apparent confusion over which leasehold corresponds to which "subject," is resolved by review of the trial court's ruling as a whole and the tenants' appraisal reports, which make clear that the trial court adopted each of the five specific leasehold values set forth in Kleszynski's and MaRous' reports and rejected McGarr's appraisal evidence.

¶ 55 The owner additionally argues that, because the trial court's ruling "fails to mention one single piece of [trial] testimony, and relies solely on the appraisal reports submitted into evidence," that the court must have failed to consider *any* trial testimony and thus the trial court's ruling was "arbitrary, unreasonable, and not based on the evidence." The owner additionally points out that the trial court's ruling does not cite McGarr's addenda to her initial appraisals, and that the portion of the ruling listing the exhibits of the parties does not include certain of the exhibits that were offered by the owner and admitted at trial. Indeed, the owner suggests that such exhibits were "lost" by the trial court. However, we will not presume that the trial court arbitrarily or unreasonably ignored such evidence merely because it was not explicitly mentioned in the court's findings. The trial court is not required to list each piece of evidence that it admitted but did not find persuasive. Rather, our deferential standard of review directs us to affirm the trial court if its findings are supported by *any* evidence in the record. Here, the trial court explicitly credited the appraisals of the tenants' experts and rejected the appraisal of the owner's expert, and thus we cannot say the ruling was against the manifest weight of the evidence.

¶ 56 The owner additionally complains that "the court chose to adopt MaRous' 2011 appraisal report" on behalf of the Florist and Bakery, but "failed to give any weight whatsoever to his testimony regarding his 2006 and 2008 appraisal reports, which directly contradicts his 2011 findings." Specifically, the owner's brief emphasizes inconsistencies between MaRous' 2011 appraisal and his prior reports with respect to the age and location of the properties he selected as "comparable" leaseholds. The owner also notes that MaRous' 2006 and 2008 reports had indicated that Orland Plaza appealed strictly to local retailers, whereas the subsequent reports submitted by the tenants in this case indicate Orland Plaza was comparable to locations with national tenants.

¶ 57 These arguments are unavailing, as they amount to contentions that the trial court gave too much weight to the tenants' appraisals, but did not give sufficient weight to the contrary evidence offered by the owner. We will not second-guess the credibility determinations of the judge at a bench trial. "The trial judge, as the trier of fact, is in a position superior to a court of review to observe the demeanor of witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive." [Citation.] *Lambrecht*, 375 Ill. App. 3d at 871. This is so even if we "might have reached a different conclusion." See *id*. Moreover, we again note that merely because the trial court's ruling does not specifically mention conflicting trial testimony, we do not presume that the trial court did not recognize and consider it in determining which appraisal to accept and which to reject.

¶ 58 Separate from its argument that the trial court's findings were against the manifest weight of the evidence, the owner asserts an additional basis for error in that Kleszynski used an "improper valuation method" with respect to the leaseholds for Knitting and Cabinetry.

Specifically, the owner contends that Kleszynski "used the wrong square footage" in appraising those two leaseholds, as his appraisals applied "number[s] different than the contractual square footage in the leases."

¶ 59 With respect to Knitting, the lease specifies a square footage of 1,950. However, an exhibit to that lease includes a diagram that shows not just the 1,950 square foot area, but an additional adjacent 790 square foot area. Kleszynski testified that, upon learning the Knitting tenant was permitted to use the additional 790 square foot area, he appraised the leasehold as a 2,740 square foot area to reflect "what they were actually occupying." Likewise, although Cabinetry's lease states an area of only 1,465 square feet, Kleszynski appraised the leasehold as having an area of 1,615 square feet based on information from the owner of Cabinetry, who had independently measured "what he actually occupied" at the premises. Thus, Kleszynski acknowledged the discrepancy from the lease but stated he appraised the leasehold based on "actual occupancy."

¶ 60 The owner asserts that instead of the deferential "manifest weight" standard, the question of whether Kleszynski used an improper valuation method is a question of law which is reviewed *de novo*. The owner cites cases applying *de novo* review to appraisal methodology used in property tax assessments. See *United Airlines, Inc. v. Pappas*, 348 Ill. App. 3d 563, 568 (2004) (*de novo* review applied to finding of Property Tax Appeal Board where the "appeal requires us to examine the appropriateness of the valuation methodology used by taxpayer's expert in valuing the leasehold interest" which was a "question of law"); *Kankakee County Board of Review v. Property Tax Appeal Board*, 131 Ill. 2d 1, 14 (1989) (applying *de novo* review as to whether Property Tax Appeal Board "erred as a matter of law when it determined that the

subsidy income [property owner] receives pursuant to its contract with the government may not be considered" in determining fair market value).

¶ 61 Before addressing the merits of the owner's attack on Kleszynski's methodology, we note that Knitting and Cabinetry claim that the owner forfeited appellate review of this issue, as the owner did not move at trial to limit or bar Kleszynski's testimony, did not object during his testimony, and did not move to strike any of his opinions. The owner responds that it did not need to object at trial because it is not arguing on appeal that Kleszynski's testimony was improperly admitted as evidence. Rather, the owner asserts that the issue "is whether the trial Court erred in completely adopting Kleszynski's report," where the "square footage used in his appraisal was different than the square footage contracted for in [Knitting and Cabinetry's] leases."

¶ 62 We agree that the owner did not forfeit this argument. The owner does not claim, as an evidentiary matter, that Kleszynski's opinions should not have been admitted, which would have required the issue to be raised in the trial court. Rather, the owner's contention on appeal is that the trial court erred in crediting Kleszynski's opinions to the extent they were based on allegedly improper valuation methods. That is, the owner's argument goes to whether the trial court should have given weight to Kleszynski's opinion, not whether the opinion should have been admitted. Thus, we do not find that the owner forfeited its challenge to Kleszynski's valuation method.

¶ 63 Knitting and Cabinetry additionally argue that the proper standard for our review on this issue is the whether the trial court's adoption of Kleszynski's opinions was against the manifest weight of the evidence, not *de novo* as urged by the owner. However, the authorities cited by the owner indicate that when the challenge is to the propriety of the appraiser's *methodology*, rather

than the appraiser's factual conclusions, the *de novo* standard applies. See *United Airlines v. Pappas*, 348 Ill. App. 3d at 568; *Kankakee County Board of Review*, 131 Ill. 2d at 14. We agree with the owner that the issue of whether a leasehold's appraiser may rely upon a square footage beyond that specified in the terms of the lease is a question of methodology, and thus is a question of law subject to *de novo* review.

¶ 64 Nonetheless, even if *de novo* review applies, we do not find that Kleszynski's methodology was erroneous. In property valuation cases, we have held that "[a]s long as the appraisers act honestly and in good faith, they have wide discretion with respect to their methods of procedure and the sources of information they use to arrive at the value they assign. [Citation.]" *In re Estate of Lambrecht*, 375 Ill. App. 3d at 872-73; see also *Chicago City Bank & Trust Co. v. Ceres Terminals, Inc.*, 93 Ill. App. 3d 623, 631 (1981) ("Appraisal of real estate involves consideration of numerous variables ***. It is unrealistic to expect that similarly qualified appraisers will equally weigh each valuation element ***. It is therefore logical that the trial court's acceptance of a particular appraisal will not be set aside unless it is the result of disqualification of the appraiser, fraud, bad faith, or fundamental mistake.").

¶ 65 The owner does not identify any case which holds that it is error for an appraiser to evaluate a leasehold based on the area actually occupied by the tenant, even if that area is larger than the dimensions set forth in the lease. The case cited by the owner on this point, *Commercial Delivery Service v. Medema*, 7 Ill. App. 2d 419 (1955), also involved the valuation of a leasehold interest following a condemnation, but its holding is inapplicable. In *Medema*, the trial court had made a finding that the value of plaintiff's leasehold was $6,800; the court had additionally awarded a separate sum of $1,057 to the plaintiff for the value of a loading dock installed at the

leased premises. *Id.* at 422. On appeal, our court held that the separate award for the loading dock was improper. The owner's argument suggests that *Medema* disallowed the separate award because the loading dock "was not included on the lease." However, review of the *Medema* decision indicates that the separate award for the loading dock was held improper because the plaintiff's appraisal witness had testified "that his valuation of the leasehold interest *** was based on the real estate with the dock included" and thus the trial court's finding of the leasehold value of $6,800 "necessarily included the value of the loading dock." *Id.* at 426. Thus, the award of a separate sum for the loading dock was disallowed because its value had already been incorporated in the initial leasehold award. *Id.* at 427. Thus, *Medema* does not support the proposition for which it is cited by the owner.

¶ 66 We are not aware of any legal authority barring an appraiser from taking into account the actual amount of space occupied by the lessee, even if that area is larger than that stated in the lease terms. Rather, if a lessor has permitted a tenant to occupy a larger area, or if the lease is simply incorrect in stating the actual dimensions of the property, a reasonable appraiser might take such facts into account. In this case, Kleszynski's trial testimony explained his findings that the Knitting and Cabinetry tenants were permitted to occupy a larger area than that stated in their leases. In fact, the owner concedes that it permitted Knitting to use the full 2,740 square foot area relied upon by Kleszynski. Thus, we decline to find that Kleszynski's methodology was improper or that the trial court erred in crediting his appraisals.

¶ 67 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 68 Affirmed.