NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 120306-U

NOS. 4-12-0306, 4-12-0457 cons.

FILED
December 18, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE CITY OF CHARLESTON, an Illinois Municipal Corporation,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
MARY ELIZABETH MacLAREN, ALFRED W. POTEETE, GALE E. POTEETE, STEPHEN L. HARRISON, LINDA M. HARRISON, CHRIS YOUNG, ROBERT F. PATTERSON, L. DAVID DURHAM, and MARY C. DURHAM,	)	Nos. 10LM67 10LM68 10LM69 10LM70 10LM71 10LM72
Defendants-Appellants.	)	
	)	Honorable
	)	Matthew L. Sullivan,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Where the term of the lease had expired and possession of the property reverted back to the lessor, a governmental entity, the principles of eminent domain or the takings clause were not triggered, so as to entitle the lessee to compensation for the value of the improvements on the property.

(2) Where the lease allowed the prevailing party to recover attorney fees in litigation to enforce the terms of the lease, the trial court did not err in awarding the lessor its reasonable attorney fees in its action to enforce the lease terms.

¶ 2 Defendants, Mary Elizabeth MacLaren, Alfred W. Poteete, Gale E. Poteete, Stephen L. Harrison, Linda M. Harrison, Chris Young, Robert F. Patterson, L. David Durham, and Mary C. Durham, filed two separate appeals; one appealing the trial court's order dismissing their

counterclaim, and the other appealing the court's order awarding plaintiff, the City of Charleston (City), its reasonable attorney fees. The City had filed forcible entry and detainer actions against each defendant for possession of the City's leased premises at the end of the lease term and for rent due. Each defendant filed a counterclaim, claiming the City could not take the property without compensating them for the value of the improvements. Upon the City's motion, the court entered a summary judgment in favor of the City, awarding it possession pursuant to the lease terms and dismissed each defendant's counterclaim. The court also awarded the City its reasonable attorney fees incurred in bringing and prosecuting the actions pursuant to a provision in the lease allowing the same. Defendants appealed each order, with their appeal of the court's order dismissing their counterclaims docketed as case No. 4-12-0306, and their appeal of the court's order awarding the City its attorney fees docketed as case No. 4-12-0457. We have consolidated the appeals and now affirm both orders.

¶ 3 I. BACKGROUND

¶ 4 Many years ago, the City constructed Lake Charleston and entered into leases with individuals who built and resided in homes on the lake. Initially, each lease had a 99-year term. Later, each lease was amended or renewed, as the case may be, to a lesser term of years and each contained a non-renewal clause. The leases currently before this court expired in 2009. Each defendant acquired an interest in the leasehold, either by signing a lease with the City, or receiving an assignment from a lessee who had signed a lessee with the City, after a residence was built on each lot.

¶ 5 In March 2010, after the expiration of the lease term, the City brought a forcible entry and detainer action (735 ILCS 5/9-102(a)(4) (West 2008)) for possession of the premises against

each defendant lessee as follows: (1) defendant Mary Elizabeth MacLaren, case No. 10-LM-67; (2) defendants Alfred W. and Gale E. Poteete, case No. 10-LM-68; (3) defendants Stephen L. and Linda M. Harrison, case No. 10-LM-69; (4) defendant Chris Young, case No. 10-LM-70; (5) defendant Robert F. Patterson, case No. 10-LM-71; and (6) defendants L. David and Mary C. Durham. The City also claimed rent due and sought the recovery of attorney fees pursuant to the lease terms.

¶ 6 In October 2010, each defendant filed a four-count counterclaim, which included a claim for unjust enrichment (count I), the taking of personal property without compensation in violation of 42 U.S.C. § 1983 (count II), the return of tax payments paid to the City (count III), and intentional infliction of emotional distress (count IV). Defendants also filed two affirmative defenses: one based on estoppel, wherein each defendant relied upon purported representations made by city officials that the leases would be renewed, and another based on the theory of a permissible holdover tenant related only to defendant Harrisons' lease. In July 2011, the trial court granted the City's motion to dismiss defendants' counterclaim and allowed them to replead, which they did in November 2011.

¶ 7 In their amended three-count counterclaim, each defendant alleged claims for inverse condemnation (count I), intentional infliction of emotional distress (count II), and compensation from the City based on common-law landlord/tenant principles. The sole affirmative defense related to the theory of estoppel, as alleged in the original pleading.

¶ 8 Also in November 2011, the City filed a motion for summary judgment. Attached to the motion were copies of the leases and the relevant assignment documents for each defendant.

¶ 9 In December 2011, the City filed a motion to dismiss defendants' amended counterclaim and affirmative defenses, based primarily on the grounds supporting its motion for

summary judgment. The City claimed defendants' counterclaims failed as a matter of law based on the express language of the leases which precluded renewal of the lease terms. The City did not specifically respond to defendants' allegations that the City had taken their property without just compensation.

¶ 10 On February 16, 2012, the trial court conducted a hearing on the City's pending motions. Defendants' counsel admitted that each lease at issue expired in 2009 but argued the City could not "acquire a citizen's property without paying just compensation." He argued the City should compensate defendants for taking their homes, either through a condemnation proceeding or a settlement. The City countered defendants' argument, claiming it was not obligated to pay defendants because each leasehold interest's term had expired. The case law addressing compensation as part of a condemnation proceeding was distinguishable because in condemnation situations, the leasehold interest's term had not yet expired and the lessees were still entitled to possession and maintained an interest in the premises. The City claimed that, because the lease term expired, defendants' only remedy was to move the houses from the City's property if they so desired, rather than receive compensation for the fair market value thereof.

¶ 11 On March 1, 2012, the trial court entered a written order in each case, granting the City's motion for summary judgment and motion to dismiss defendants' counterclaims. The court based its decision on the plain and unambiguous language in the leases, which provided that the respective lease was for "the above period only," with no option to renew. As a result, the court awarded possession of the real estate to the City and awarded money damages to the City for the amount of past due rent in each case. Specifically, with regard to the City's motion to dismiss defendants' counterclaim, the court granted the motion with prejudice "for the reasons stated during

the [February] 16, 2012[,] hearing and the reasons stated when this [c]ourt dismissed [the City's] original counterclaim." Additionally, the court ordered the City to provide poof of its attorney fees and costs by the hearing date of May 11, 2012.

¶ 12 On March 22, 2012, the City filed a motion for attorney fees. On April 3, 2012, defendants filed a notice of appeal of the March 1, 2012, order.

¶ 13 On May 11, 2012, the trial court conducted a hearing on the City's motion for attorney fees. Relying on the affidavit from the City's attorney, the court awarded the City $6,125.18 in attorney fees from each defendant. Defendants appealed from this order as well. These consolidated appeals followed.

¶ 14 II. ANALYSIS

¶ 15 A. Is the City Obligated to Compensate Defendants for the Value of Improvements on the Leased Premises?

¶ 16 In appeal No. 4-12-0306, defendants claim the trial court erred in dismissing their counterclaims and affirmative defenses. They do not contest the court's order granting summary judgment, as they do not dispute the leasehold terms expired and the City is entitled to possession of the real property. They claim only that the City cannot take their property, even at the expiration of the lease term, without just compensation. They argue that both the federal and state constitutions preclude the government from taking citizens' property without paying the individual the fair market value. Defendants further argue that, despite the constitutional provisions, even at common law, a landlord is required to pay a tenant for the value of any improvements made to the leased premises at the end of the lease term. Given either of these legal principles, defendants argue, the City must compensate them for the value of the improvements on the property.

¶ 17 The fifth amendment of the United States Constitution (the Takings Clause) and article I, section 15 of the Illinois Constitution both prohibit the taking or damaging of private property for a public purpose without payment of just compensation. U.S. Const., amend. V; Ill. Const. 1970, art. I, § 15. A taking occurs when the government encroaches upon or occupies private land for its own proposed use. See *Gaylord v. Sanitary District of Chicago*, 204 Ill. 576, 588 (1903).

¶ 18 The land at issue in this appeal is not private land, but public land. The City has not encroached upon private property, but has, since the expiration of the lease terms, merely regained its interest in its own property. Defendants each leased public land for a specified term. The lease terms expired and the City was entitled to use its public land for its own purpose. Therefore, the Takings Clause or eminent-domain law does not apply and does not come to the aid of defendants to support its claim for compensation.

¶ 19 We must then look to basic landlord-tenant law to determine the rights between the parties. The issue before us is whether the City is obligated to pay defendants for the value of the improvements made to the leased premises.

¶ 20 Generally, in the absence of statute or an agreement so requiring, a landlord is under no obligation to pay his tenant for improvements made during the term of the lease. *Johnston v. Suckow*, 55 Ill. App. 3d 277, 279 (1977). See also *Lewis v. Real Estate Corp.*, 6 Ill. App. 2d 240, 247 (1955) ("A lessee's right to reimbursement for improvements exists only where there is a specific agreement therefor.") In *Hansen v. Stein*, 201 Ill. App. 501, 504 (1916), the court said:

> "It is a well-settled rule of law that:
>
> > 'A landlord is not liable to his tenant for the value of improvements voluntarily made by the latter, in the absence of an

agreement creating such liability; the tenant's right extending no further than that of removal of them before the expiration of his term.' [Citation.]

The tenant is presumed to repair and improve for his own benefit. [Citation.]

It has been held that a special promise may be implied from conduct, and that if the landlord leads the tenant to believe that the value of the improvements he may thereafter put upon the premises will be deducted from the rent, a contract to do so may be implied. [Citation.] It has also been held that if improvements are made with the assent of the landlord, *and for his benefit*, the law will imply an obligation to pay for them.

'Merely standing by without objecting will not suffice; there must be some act and encouragement from the landlord, to entitle the tenant to charge the landlord.' [Citation.]" (Emphasis in original.)

¶ 21 Another early First District case suggests that the tenant must remove the improvement during the lease term if he desires to do so or he forfeits his right to do so. Quoting from a Supreme Court of Massachusetts case *(Watriss v. First National Bank of Cambridge*, 124 Mass. 571, 575 (1878)), the court stated: " 'The general rule is well settled that [improvements] become annexed to the real estate; but the tenant may remove them during his term, and if he fails to do so, he can not afterward claim them against the owner of the land.' " *Dreiske v. People's Lumber Co.*, 107 Ill. App. 285, 292 (1903).

¶ 22 These authorities suggest that the language in the lease agreement will define the duties, obligations, and privileges of the parties with respect to improvements on the leased premises. Looking to the language set forth in the lease instrument itself, it is apparent that the City expected the respective lessees to, in fact, use the leased premises "exclusively for residential purposes." However, it is just as apparent that the parties agreed that any structure built on the premises would be treated as personal property subject to removal, rather than real property that would later benefit the City. See *In re Payment of Taxes Under Protest by Schniederjon*, 181 Ill. App. 3d 646, 652 (1989) (the provision in the lease which allowed the tenant to remove any structure built on the property was evidence that the parties intended the structures or improvements to be considered personal property). Paragraph 20 of each lease provides as follows:

> "The lessee shall have the right and privilege to remove from said premises any buildings constructed by him, or he may dispose of the same to a successor Lessee, provided the written permission of the Lessor is first had and obtained. If any buildings are removed from said premises, the grounds shall be restored as nearly as possible to the condition in which they were before said buildings were erected thereon."

This lease does not contain a provision regarding compensation for the value of the improvements. Further, it seems the City expected to receive no benefit from the construction of a home or other structure as evidence by this clause allowing removal.

¶ 23 The relevant provisions set forth in the respective leases at issue in this case do not support defendants' claim that the City must compensate them for the improvements made on the

leased premises. Each lease term expired in 2009. Each lease and/or assignment executed by defendants specifically set forth the expiration date, as well as the provision that "there shall be no option for renewal." Defendants' rights were clearly defined in the lease agreements, and as such, they cannot expect compensation at the expiration of the lease term. Therefore, we affirm the trial court's order dismissing defendants' amended counterclaims because defendants failed to state a cause of action which would entitle them to a judgment against the City.

¶ 24 B. Did the Trial Court Err in Awarding the City its Reasonable Attorney fees?

¶ 25 In appeal No. 4-12-0457, defendants contend the trial court erred in awarding the City its attorney fees because (1) it was unconstitutional for the City take defendants' homes without compensation, and (2) the City did not seek possession "based upon the lease between the parties." We have addressed the first basis in our analysis above and determined the City was not obligated to compensate defendants under either the constitution or the landlord-tenant law. As to defendants' second basis, we disagree with their contention and find the City, indeed, proceeded under the terms of the lease agreement, which specifically allows for the recovery of reasonable attorney fees in litigation to enforce the lease.

¶ 26 Paragraph 21 of each lease provides:

> "The Lessee agrees to abide by and observe all the rules and regulations which may be established by the City Council of the City of Charleston and adjacent marginal lands, and further agrees to pay all costs of litigation and reasonable attorney's fees and expenses that might arise from enforcing any of the within covenants against

himself."

The City brought its forcible entry and detainer action against each defendant to recover possession of the premises upon the expiration of the lease term, alleging each defendant withheld possession of the premises from the City contrary to the terms set forth in the lease. Paragraph 19 of each lease provides: "The Lessee shall yield immediate possession of the said premises to the Lessor at the termination of this lease by lapse of time or otherwise." To gain possession of the premises, the City was forced to file the underlying actions in the circuit court to enforce the lease terms. Therefore, the lease term allowing the City to recover fees and costs is enforceable against each defendant.

¶ 27 Generally, a party is responsible for his own attorney fees. However, an exception to this rule applies when a contract term specifically provides for an award of attorney fees. *Abdul-Karim v. First Federal Savings & Loan Ass'n of Champaign*, 101 Ill. 2d 400, 411-12 (1984). Contractual provisions for an award of attorney fees must be strictly construed, and the court must determine the intention of the parties regarding the payment of fees. *Mirar Development, Inc. v. Kroner*, 308 Ill. App. 3d 483, 488 (1999).

¶ 28 In this case, the provision for attorney fees was triggered when the City was required to bring an action against defendants to enforce the provision of the lease requiring the tenant to cede possession at the termination of the leasehold. Defendants each signed the lease and/or the assignment referring to the lease which contained this attorney fees clause. Therefore, we find the trial court did not err in awarding the City's its reasonable attorney fees based on the evidence presented.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the trial court's judgment.

¶ 31 Affirmed.