SUPREME COURT OF ALABAMA

New Gourmet Concepts, Inc. v. Siedo Investments Co., LLC; Eric, Inc. v. Siedo Investments Co., LLC

988 So. 2d 961 (Ala. 2007) · No. 1060442 and 1060473 · Decided October 19, 2007

SUMMARY

The Alabama Supreme Court held that a condemnation clause in a commercial lease was ambiguous as to the effect of a total taking of the leased property. Construing the ambiguity in favor of the lessee, the court concluded that the lease did not automatically terminate upon condemnation and that the lessee and sublessees retained the right to share in the condemnation proceeds. The court reversed and remanded for a determination of the sublessees' interests.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Stuart, Justice; Lyons, Justice; Woodall, Justice; Smith, Justice; Bolin, Justice; Parker, Justice; See, Justice; Murdock, Justice; Cobb, Chief Justice
JURISDICTION	Alabama
DECIDED	October 19, 2007
DOCKET	1060442 and 1060473
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	NGC and Eric appealed from a final judgment of the trial court holding that they were not entitled to share in condemnation proceeds arising from the taking of leased property.
STANDARD OF REVIEW	De novo review applies to the trial court's determination whether a contract is ambiguous and to its determination of the legal effect of an unambiguous contract term.
PRECEDENTIAL VALUE	Published opinion; binding Alabama Supreme Court precedent.
PARTIES	New Gourmet Concepts, Inc., Eric, Inc. v. Siedo Investments Company, L.L.C.

TOPICS

eminent domain · contract interpretation · contracts · real estate · appellate procedure

PRACTICE AREAS

eminent domain · real estate · contracts · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether the condemnation clause in the lease was ambiguous as to the effect of a total taking of the subject property.
2. Whether the lease automatically terminated upon UAB's total taking of the property.
3. Whether NGC and Eric retained the right to share in the condemnation proceeds through their leasehold interests.

HOLDINGS

1. The condemnation clause was ambiguous because its four subparts plausibly could govern a total taking, and they provided differing consequences for the lease.
2. Because the condemnation clause was ambiguous, the lease had to be construed more strongly against the lessor and more liberally in favor of the lessee.
3. The lease did not automatically terminate upon the total taking, so BSD's and, by extension, NGC's and Eric's rights to share in the condemnation proceeds were not extinguished.

KEY QUOTATIONS

> *"We therefore conclude that the condemnation clause is ambiguous insofar as it relates to the effect a total taking of the subject property would have on the original lease."* (967)

> *"Construing the lease in favor of BSD, the lessee, we hold that the lease did not automatically terminate when UAB took possession of the subject property."* (967)

> *"The trial court's judgment to the contrary is therefore due to be reversed."* (968)

FACTUAL BACKGROUND

Siedo leased the subject property to Wendy's, which assigned its lease rights to BSD. BSD later subleased portions of the property to NGC and Eric, who operated restaurants there. UAB condemned the entire property, including the improvements and parking area, and the trial court concluded that the condemnation clause automatically terminated the lease and extinguished the subtenants' rights to share in the condemnation award.

PROCEDURAL HISTORY

UAB initiated an eminent-domain proceeding in the Jefferson County Probate Court and obtained condemnation of the subject property. After UAB and Siedo agreed on the amount of compensation, the trial court held an evidentiary hearing concerning the leasehold interests of BSD, NGC, and Eric and entered judgment denying NGC and Eric any share of the condemnation proceeds. NGC and Eric separately appealed to the Supreme Court of Alabama, which consolidated the appeals, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct a further proceeding to determine the extent of NGC's and Eric's rights to share in the condemnation award.

CASES CITED

- Harco Drug, Inc. v. Notsla, Inc., 382 So. 2d 1, 3 (Ala. 1980)
- Fibreglas Fabricators, Inc. v. Kylberg, 799 P.2d 371, 375-76 (Colo. 1990)
- City of Dothan v. Wilkes, 269 Ala. 444, 114 So. 2d 237 (1959)
- McDonald v. U.S. Die Casting & Dev. Co., 585 So. 2d 853, 855 (Ala. 1991)
- Hardin v. Kirkland Enterprises, Inc., 939 So. 2d 40, 44 (Ala. Civ. App. 2006)
- Bowdoin Square, L.L.C. v. Winn-Dixie Montgomery, Inc., 873 So. 2d 1091, 1098 (Ala. 2003)
- Interstate Inv. Corp. v. Rose Care, Inc., 631 So. 2d 836, 839 (Ala. 1993)
- Winkleblack v. Murphy, 811 So. 2d 521, 525-26 (Ala. 2001)
- Voyager Life Ins. Co. v. Whitson, 703 So. 2d 944, 948 (Ala. 1997)
- Greenwood v. Bennett, 208 Ala. 680, 684, 95 So. 159, 163 (1923)
- FabArc Steel Supply, Inc. v. Composite Constr. Sys., Inc., 914 So. 2d 344, 357-58 (Ala. 2005)
- Lackey v. Central Bank of the South, 710 So. 2d 419, 422 (Ala. 1998)
- McCollough v. Regions Bank, 955 So. 2d 405, 411 (Ala. 2006)