South Carolina Law Review

Volume 11 | Issue 1 Article 13

Fall 1958

Landlord and Tenant

David H. Means
University of South Carolina School of Law

LANDLORD AND TENANT

DAVID H. MEANS*

The appeal in *Wallace v. Wannamaker*[1] arises out of an action brought to eject defendant lessee from leased premises (a retail gas and oil service station) for alleged nonpayment of rent. The lease provided for a monthly rental of a sum equal to one cent per gallon of gasoline delivered to and sold at the premises each month, but no rent was to be paid the lessor until the lessee had first reimbursed himself for expenditures for improvements he was to construct on the property. Prior to the time that defendant had been so reimbursed plaintiff sued on the theory that certain gasoline sold by the defendant had not been accounted for at the agreed rate of one cent a gallon. However, even after charging the disputed gasoline sales to the improvement account there still remained a balance owed defendant.

On appeal the Court reversed a judgment for plaintiff lessor on the ground that until defendant had been reimbursed in full on the improvement account, there was no rent due plaintiff, and defendant therefore could not be ejected for failure to pay rent.

Condemnation of Leased Premises

In the absence of a governing provision in the lease, the rule most generally adopted when the whole of leased premises is taken by eminent domain proceedings is that the lease is thereby terminated and the tenant is under no liability to pay rent thereafter accruing. On the other hand, where a part only is taken, some jurisdictions hold that the tenant's liability for rent continues unabated, while others reduce the rent thereafter accruing in proportion to the amount which has been taken.[2] However, where only a part is taken, but the remaining part is thereby rendered untenantable for the purposes of the lease, there is at least limited authority[3] that the

*Professor of Law, University of South Carolina.

1. 231 S. C. 158, 97 S. E. 2d 502 (1957).

2. See generally Annot., 43 A. L. R. 1176 (1926), s. 163 A. L. R. 679 (1946); 36 C. J. 319 (1924); 52 C. J. S. 245 (1947); 3 TIFFANY, REAL PROPERTY § 904 (3d ed. 1939); 1 THOMPSON, REAL PROPERTY § 293 (2d ed. 1939); 1 AMERICAN LAW OF PROPERTY § 3.54 (Casner ed. 1952).

3. Yellow Cab Co. v. Howard, 243 Ill. App. 263 (1927); Farr v. Williams, 232 S. C. 208, 101 S. E. 2d 483 (1957), reviewed below. 1

tenant's liability for rent is terminated just as in the case of a taking of the whole of the premises.

In *Farr v. Williams*,[4] a case of novel impression in South Carolina, plaintiff had leased to defendant a lot with a store building thereon, the lease specifying that the leased property was for use as a retail store for the sale of general merchandise, gas and oil. The Highway Department then condemned "the major portion of the leased lot, including the part on which the store building was located," and plaintiff was awarded $6,000 and defendant $2,000 for any and all damage sustained. In plaintiff's subsequent suit against defendant the trial judge ruled that the condemnation award terminated the tenancy and defendant's liability for rent for the remainder of the term. On appeal, affirmed. The Court quotes Orgel[5] as follows: "At common law the prevailing rule, when the entire premises have been condemned or where they are rendered untenantable by the taking of a part, is that the lessee's obligation to pay rents ceases." Concerning the facts in the instant case, the Court found, "It is clear that the taking was of the greater part of the leased premises, including the store building itself, and rendered them untenantable for the purposes of the lease." Plaintiff asserted an alleged oral agreement to extend the term of the written lease for an additional two years. The Court found that such an agreement would be within the Statute of Frauds,[6] nor was defendant estopped to deny the agreement's existence. Furthermore, the length of the term which had existed was immaterial since all rights and obligations under the lease were terminated by the condemnation.

Legislation

No landlord and tenant legislation was enacted during the survey period.

ORGEL, VALUATION UNDER EMINENT DOMAIN § 121 (2d ed. 1953), quoted hereinafter. Bd. of Chosen Freeholders v. Emmerich, 57 N. J. Eq. 535, 42 A. 107 (1898), cited in ORGEL, *op. cit.* § 121 n. 84, would seem inapposite since the decision is predicated upon the presence in the lease of a clause giving the tenant the right to surrender should the building on the premises become untenantable.

4. 232 S. C. 208, 101 S. E. 2d 483 (1957).
5. 1 ORGEL, VALUATION UNDER EMINENT DOMAIN § 121 (2d ed. 1953).
6. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 57-306.