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LANDLORD AND TENANT

DAVID H. MEANS*  

The appeal in Wallace v. Wannamaker1 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 untenable for the purposes of the lease, there is at least limited authority3 that the

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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. 203 (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*, 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 merchan-
dise, 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 remain-
der of the term. On appeal, affirmed. The Court quotes
Orgel5 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 addi-
tional 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.

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*Orgel, Valuation Under Eminent Domain* § 121 (2d ed. 1953), quoted
hereinafter. Ed. of Chosen Freeholders v. Emmerich, 57 N. J. Eq. 535,
42 A. 107 (1898), cited in *Orgel, op. cit.* § 121 n. 84, would seem inap-
propriate 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.

5. 1 Orgel, Valuation Under Eminent Domain § 121 (2d ed. 1953).