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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE ex rel. DEPARTMENT OF TRANSPORTATION et al., Plaintiffs, v. NABEEL HAWARA et al., Defendants and Appellants; HAGOP BARTOUMIAN, Defendant and Respondent.	B289147 (Los Angeles County Super. Ct. No. BC617966)

APPEAL from an order of the Superior Court of Los Angeles County. Robert Hess, Judge. Affirmed.

Mazur & Mazur and Janice R. Mazur for Defendants and Appellants Nabeel Hawara and Amal Alset Hawara.

Briggs & Alexander and Peter Sunukjian for Defendant and Respondent Hagop Bartoumian.

* * * * * *

This is a contract case wrapped in a condemnation case. After the State of California (the State) filed a lawsuit to condemn a parcel of property, the commercial tenant of that property sought a share of the "just compensation" for that property. The landowner moved for summary adjudication and/or summary judgment against the tenant on the ground that the tenant, in its lease, had ceded all right to such compensation to the owner. The trial court granted summary adjudication and/or summary judgment on that issue. As a threshold matter, we determine that the trial court's order is an appealable order. We go on to conclude that the order was correct on its merits. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *The property*

The property at issue is a parcel of land immediately adjacent to State Highway 138 in the city of Pearblossom (the property). On it sits a gas station and mini-mart.

B. *The 2001 lease*

In June 2001, the property's owners—Hagop Bartoumian and his wife, Anahid—leased the premises to Michael and Afif Sati (the Satis) for a period of nine years, which included an option to extend the lease for two, subsequent five-year periods.

The owners and the Satis signed a written lease agreement (the lease).

The lease spells out what is to happen should the property be subject to eminent domain proceedings. In full, this provision reads:

> "[1] If the whole or any part of the premises shall be taken by any public authority under the power of eminent domain, decree, state police power, or regulation, then the terms of this lease shall cease as to the part so taken from the day possession of that party, shall be required for any public purpose, and rent shall be paid up to that day, and on or before that day lessee shall elect in writing either to cancel this lease or to continue in possession of the remainder of the premises under the terms herein provided, except that the rent shall be reduced in proportion to the amount of the premises taken. [2] Lessee acknowledges that the state highway 18 may at some time in the future be expanded into a four-lane highway, or other alternative project that the state may contract for. [3] Lessee holds Lessor harmless of such condemnation, and or taking, partial, sub partial, or total taking of said leased premises. [4] Lessee understands that any drilling, or activities by government entities in relations to the project for widening is not the responsibility of Lessor, and hold Lessor harmless of such activities. [5] Any time lost or closure of said leased premises for such activities are not the responsibility of Lessor, and Lessor is held harmless for any loss or damages

> by the Lessee. [6] All damages awarded for such taking shall belong to and be the property of the LESSOR, whether such damages are awarded as compensation for diminution in value to the leasehold or for the fee of the premises. [7] If any government entity should through diminish [sic] the property through a taking, said lease will be null and void, and terminated. [8] LESSEE hereby irrevocably assigns to LESSOR any right to compensation or damages to which LESSEE may become entitled by reason of the condemnation of all or a part of the demised premises."

C. *Assignment of the lease*

In June 2005, the Satis assigned the lease to Nabeel and Amal Alset Hawara (the Hawaras) with the owner's permission.

On June 20, 2005, the owner and the Hawaras signed a written addendum to the lease that (1) increased the monthly rent from $2,100 to $2,800, (2) granted the Hawaras "the opportunity for two (2) consecutive, five year . . . terms," and set forth how the monthly rent for each extended period would be calculated, and (3) specified that the Hawaras could "sell their interest in [the] lease," but that the price for doing so would be a one-time payment of $5,000 to the owner and a $200 "increase" in the monthly rent, and (4) affirmed that "[n]o other terms and conditions of [the lease] will change with this addendum."

II. Procedural Background

In April 2016, the State filed an eminent domain lawsuit to condemn the property in order to widen Highway 138. Among others, the State named the owner and the Hawaras as

defendants. The Hawaras filed an answer, in which they sought "just[] compensat[ion]" for "their interest" in the property.

In November 2017, the owner filed a motion for summary judgment and/or summary adjudication to dismiss the Hawaras from the lawsuit because, under the terms of the lease, they had "irrevocably assign[ed] to" the owner, as "LESSOR", "any right to compensation or damages to which [they] may become entitled by reason of the condemnation of all or part of the demised premises." After considering the Hawaras' opposition and the owner's reply, the trial court granted summary adjudication and/or summary judgment against the Hawaras. Specifically, the court "adjudicated that [the Hawaras] have, through their written lease agreement, assigned to [the owner] any and all rights to compensation or damages to which they may be entitled by reason of this [condemnation] action." Thus, the court ruled, it would "apportion any damages awarded in th[e condemnation] [a]ction solely to [the owner]."

The Hawaras filed this timely appeal.

DISCUSSION

The Hawaras argue that the trial court erred in summarily adjudicating that they had, by contract, assigned their right to obtain any of the "just compensation" the State owed in this condemnation action. We independently review a grant of summary adjudication or summary judgment. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347.) Before reaching the merits of the appeal, we are confronted with a precursor issue—namely, do we have jurisdiction to entertain this appeal at all?

As a general rule, we may only entertain appeals from final judgments (Code Civ. Proc., § 904.1, subd. (a)),[1] and an order granting summary adjudication or summary judgment is *not* a final judgment (*Fisherman's Wharf Bay Cruise Corp. v. Superior Court* (2003) 114 Cal.App.4th 309, 319 [order granting summary adjudication]; *Saben, Earlix & Associates v. Fillet* (2005) 134 Cal.App.4th 1024, 1030 (*Saben*) [order granting summary judgment]). But where a case has several parties, a judgment that "leave[s] nothing to be decided between one or more parties and their adversaries . . . ha[s] the finality required" to be subject to appeal. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741.) What is more, we have the power to "cho[ose] to treat an appeal from an order granting summary judgment as an appeal from a subsequently entered judgment, or even to deem the order itself to be a judgment . . ." (*Saben,* at p. 1030.) Here, it is undisputed that the order adjudicating that the Hawaras can take nothing from the condemnation award leaves nothing to be decided as to their rights to that award. We accordingly choose to treat the trial court's order granting summary adjudication and/or summary judgment against the Hawaras as an appealable judgment. This is precisely what the appellate court did in *County of Los Angeles v. Stone* (1961) 198 Cal.App.2d 640 when confronted with facts nearly identical to the ones presented here—namely, a motion that summarily adjudicated a lessee not to have any right to share in a condemnation award (*id.* at pp. 644-646). At oral argument, both parties urged us to treat the

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1 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

order in this case like the order in *Stone*. We see no reason to chart a different path than *Stone*.

A trial court may grant summary adjudication or judgment to a defendant on a "cause[] of action" or a "claim[] for damages" if, with respect to either, "there is no triable issue of material fact." (*Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 480; § 437c, subds. (f)(1) & (o)(1).) In applying this standard, we must view the evidence in the light most favorable to the non-moving party and "resolv[e] any doubts" against summary adjudication or judgment. (*Miller v. Bechtel Corp.* (1983) 33 Cal.3d 868, 874; *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, 499-500.) If "we can draw two reasonable inferences from the[] undisputed facts," there is a triable issue and summary adjudication or judgment must be denied. (*Sumrall v. Modern Alloys, Inc.* (2017) 10 Cal.App.5th 961, 967.)

The trial court properly granted summary adjudication or summary judgment because the undisputed facts established that the Hawaras had contractually assigned away their right to any compensation from the State's condemnation action. Although the tenant on a parcel of a property, as a person with an interest in the property, has a constitutional right to "just compensation" (*City of Vista v. Fielder* (1996) 13 Cal.4th 612, 616-617 (*City of Vista*); § 1265.150 ["lessee may have" right "to compensation for the taking of his lease"]; see generally, U.S. Const., 5th Amend.; Cal. Const., art. I, § 9; § 1263.010, subd. (a) ["The owner of a property acquired by eminent domain is entitled to compensation . . ."]), the tenant may nonetheless assign that right away "by a provision of a lease to the contrary" (*City of Vista*, at p. 618; *Galardi Group Franchise & Leasing, LLC v. City of El Cajon* (2011) 196 Cal.App.4th 280, 287-288). That is what

the Hawaras did. The last sentence of the paragraph in the lease dealing with condemnation expressly provides that "LESSEE hereby irrevocably assigns to LESSOR any right to compensation or damages to which LESSEE may become entitled by reason for the condemnation of all or a part of the demised premises." This language unequivocally assigns to the owner the Hawaras' right to any compensation from a condemnation award.

The Hawaras offer what boil down to three categories of arguments against this outcome.

First, the Hawaras proffer two reasons why the assignment clause, by its plain text, does not apply here or is, at a minimum, sufficiently ambiguous that it precludes summary adjudication or summary judgment. To be sure, the clause is part of a contract, our job in construing a contract is to ascertain the "'mutual intent[] of the parties,'" and mutual intent is usually manifested by the words the parties use in the contract. (Civ. Code, §§ 1636, 1639; *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18 (*Waller*).) A contract is "ambiguous [only] when it is capable of two or more constructions, both of which are reasonable." (*Waller*, at p. 18.) However, "obvious typographical error[s] d[o] not render" a contractual provision "ambiguous." (E.g., *Gillotti v. Stewart* (2017) 11 Cal.App.5th 875, 903; *Gillies v. JPMorgan Chase Bank, N.A.* (2017) 7 Cal.App.5th 907, 913.) Both of the Hawaras' proffered reasons for not applying the assignment clause arise from typographical errors. The Hawaras initially assert that the assignment clause is limited by the condemnation paragraph's earlier reference to the widening of "[H]ighway 18" and that the State's condemnation suit in this case was to widen Highway 138, such that the clause does not apply here. This is not a reasonable construction of the condemnation paragraph:

Highway 18 is, at its closest, 9 or 10 miles away from the property,[2] so the widening of Highway 18 could have no effect whatsoever on ownership, occupation or use of the property. Instead, the lease's reference to "highway 18" is obviously missing the middle number—"3"—which is the only reasonable construction because the property abuts "Highway 138." The Hawaras next assert that the penultimate sentence in the condemnation paragraph is nonsensical because it reads: "If any government entity should *through diminish* the property through a taking, said lease will be null and void, and terminated." (Italics added.) Not only does this particular clause have nothing to do with the assignment of rights to compensation, but it is obvious that the drafter erroneously omitted the word "condemnation" between the words "through" and "diminish." What is more, because neither clause is ambiguous, we have no occasion to construe any ambiguity against the drafter of the lease.

Second, the Hawaras contend that the owner *subsequently* made the assignment clause ambiguous—in the 2005 addendum to the lease and in a 2016 settlement of an unlawful detainer action between the parties. As to the 2005 addendum, the Hawaras assert that the portion in the addendum empowering them to "sell their interest in [the] lease" to a third party (while paying the owner $5,000 for doing so) negated the clause assigning their right to any compensation from condemnation. We disagree. The Hawaras' power to *sell* their lease to someone

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[2] We can and do take judicial notice of the geographical distance between two points on the earth. (Evid. Code, § 451, subd. (f).)

else if they pay the owner $5,000 does not grant the Hawaras a right to collect compensation when the State *takes* the property as a whole. This construction is reinforced by the addendum's reaffirmation that "[n]o other terms and conditions of [the lease] will change . . ." As to the 2016 settlement, the settlement acknowledged the pending condemnation action, agreed that "[a]ny assignment of the Lease by" the Hawaras "to the State . . . is deemed reasonable and acceptable to Landlord," and acknowledged that all "remaining terms and conditions of the existing Lease . . ., which are not contradicted by th[is new] term[] . . . shall remain in full force and effect." Contrary to what the Hawaras argue, however, the term making the Hawaras' right to assign *the lease* to the State more absolute (by eliminating the requirement that the landlord consent to the assignment) is different from—and does not contradict—the clause in which the Hawaras assign their *right to compensation for the condemnation* to the owner. The first deals with the power to assign the lease, the latter deals with the right to collect money when the property is condemned.

Lastly, the Hawaras suggest—without pointing to any evidence in the record—that they should be excused from the lease's assignment clause because they never read the lease before signing it. However, a "claim that [a person] had not read or understood [an] agreement before signing it" "raise[s] no triable issue on the question of mutual assent." (*Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1587.)

DISPOSITION

The order is affirmed. The owner is entitled to his costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ