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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Plaintiff and Respondent,

v.

RECOVERY RESOURCE LLC,

Defendant and Appellant.

B231850

(Los Angeles County
Super. Ct. No. BC392013)

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Ralph W. Dau, Judge. Affirmed.

Century Law Group, Karen A. Larson and Rizza D. Gonzales for Defendant and Appellant.

California Eminent Domain Law Group, Arthur J. Hazarabedian and Artin N. Shaverdian for Plaintiff and Respondent.

Recovery Resource LLC appeals from an order dismissing its claim for loss of goodwill allegedly caused by the acquisition by eminent domain of the real property upon which Recovery Resource's business was conducted. We conclude substantial evidence supports the trial court's conclusion that Recovery Resource's loss of goodwill was not caused by the acquisition of the property, and affirm the order.

BACKGROUND

On June 5, 2008, the Los Angeles Unified School District (LAUSD) filed an action in eminent domain to acquire commercial property for construction of a school. Several small businesses occupied the property, including Recovery Resource, a recycling business that occupied the property under a month-to-month tenancy. Recovery Resource filed an answer to the action, claiming loss of approximately \$2 million in business goodwill.¹ On November 18, 2008, LAUSD moved for prejudgment possession, which was granted.

Before trial on the issue of just compensation for the taking, LAUSD filed a motion pursuant to Code of Civil Procedure section 1260.040 for a pretrial determination that Recovery Resource was not entitled to compensation for loss of business goodwill because LAUSD's taking of the property did not cause Recovery Resource to lose any business. Instead, Recovery Resource lost its business when the property owner terminated Recovery Resource's leasehold and filed an action for unlawful detainer. Recovery Resource did not oppose the motion. The trial court held a four day bench trial on the issue of Recovery Resource's entitlement to goodwill damages.

Evidence at trial showed that Recovery Resource's business was the processing of bakery and food waste obtained primarily from Sara Lee and Puritan Bakery into animal feed. Its contracts with Sara Lee and Puritan Bakery accounted for up to 90 percent of its business. In 2005, Henry Johnson, Recovery Resource's managing member, entered into a business relationship with Disposable Solutions, Inc. and its owner, Tom Wittwer. Johnson located the subject property, which was owned by a trust we will call the

¹ The answer is not part of the record on appeal.

Hanelin Trust, Jonas Hanelin trustee. Johnson negotiated a six-month leasehold with Hanelin, which was established on July 11, 2005, between the Hanelin Trust as landlord and Disposable Solutions as tenant. The leasehold property comprised a metal building, a brick building, and a yard area. An addendum to the lease provided that the landlord and tenant would share the cost of installing upgraded electrical facilities to service the tenant's business.

In August or September 2005, Johnson and Wittwer advised Hanelin they would not need the electrical upgrade because the contracts they expected to enter into with Sara Lee and Puritan Bakery were not materializing.

When the leasehold expired in February 2006, Disposable Solutions ended its relationship with Recovery Resource and vacated the premises. Recovery Resource continued to occupy the property under a month-to-month tenancy. It was late with rent payments from mid-2006 through at least 2008, and bounced at least one rent check.

In 2007, Disposable Solutions sued Recovery Resource and obtained a judgment of \$407,377.03. Disposable Solutions partially satisfied the judgment sometime around May 2007 by taking vehicles and equipment from Recovery Resource which Recovery Resource had used to conduct its business at the subject property.

Near the end of 2007, Johnson told Hanelin that because the bulk of its business no longer existed, Recovery Resource no longer needed full use of the property—including the two buildings and most of the yard area, and would require only a small office and a portion of the yard. Recovery Resource relinquished possession of the buildings and Hanelin reduced the rent from \$4,500 per month to \$750. Hanelin rented the buildings to other tenants.

Recovery Resource never relinquished the yard area, but instead stored large mounds of hazardous material there which at times would spontaneously catch fire. It continued to have problems making rent payments.

Because of the delinquent rent payments and unsafe conditions, in May 2008, Hanelin served a three-day notice to pay rent or quit, filed an eviction action against Johnson and Recovery Resource, and demanded that they vacate the lot. On May 6 and

November 18, 2008, Johnson filed petitions for bankruptcy. Hanelin thereafter declined to pursue the unlawful detainer action because he considered it to be stayed by Johnson's bankruptcy proceedings, but he never changed his mind about permitting Recovery Resource to remain on the lot. He testified he would not allow Johnson back on the property once the stay was lifted and would not continue to lease the property to Recovery Resource irrespective of the eminent domain action.

LAUSD filed its eminent domain action on June 5, 2008 and took possession of the property on January 15, 2009.

Recovery Resource contended at trial that LAUSD, by announcing its intention to take the property by eminent domain, caused Hanelin not to install electrical upgrades that were essential to Recovery Resource's business. Lack of proper electrical facilities caused Recovery Resource to be unable to operate its business competitively, which in turn caused it to lose its contracts with Sara Lee and Puritan Bakery.

At the conclusion of the bench trial, the trial court issued a tentative ruling in which it found that although Recovery Resource had lost the bulk of its business, it still had one bakery waste supplier at the time of the taking and continued also to process non-bakery waste. It was therefore entitled to pursue its claim for loss of goodwill.

Recovery Resource objected to the tentative ruling and LAUSD filed a request for clarification and for a statement of decision, requesting among other things that the trial court make a finding whether the taking caused Recovery Resource's claimed losses.

The trial court issued a modified tentative ruling on July 29, 2010, concluding that Recovery Resource's losses were not caused by the taking. Recovery Resource again objected to the tentative decision.

On August 18, 2010, the trial court issued a proposed statement of decision which, receiving no objection, became final. In it, the court expressly rejected Recovery Resource's contention that LAUSD's eminent domain proceedings caused Hanelin not to install electrical upgrades on the property. It did not "not find credible" Johnson's testimony that he never told Hanelin the upgrades were unneeded, his claim that Hanelin refused to install the upgrades because of the looming eminent domain proceedings, or

his claim that the eminent domain action prevented Recovery Resource from obtaining sufficient bakery waste to be competitive. The court found credible Hanelin's testimony that his decision to evict Recovery Resource was unrelated to the eminent domain proceedings and he would have completed the eviction but for Recovery Resource's bankruptcy filings. Accordingly, the court concluded Recovery Resource failed to meet its burden of showing loss of goodwill caused by the taking of the property.

The court entered judgment and its final order of condemnation on January 27, 2011. Recovery Resource timely appealed on March 24, 2011.

DISCUSSION

We “exercise de novo review when confronted with questions of law and the application of law to undisputed facts. . . . [W]here the facts are in dispute, we apply the deferential substantial evidence standard.” (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 527-528 (*Handlery*).)

A private property owner is entitled to just compensation when the property is taken or damaged for public use. (Cal. Const., art. I, § 19; Code Civ. Proc., § 1263.010, subd. (a).)² When “property subject to a lease is acquired for public use, the lease terminates” and the lessee is ordinarily entitled to share in the condemnation award to compensate for the value of its leasehold interest. (§§ 1265.010, 1265.150; *City of Vista v. Fielder* (1996) 13 Cal.4th 612, 616.) “The owner of a business conducted on the property taken . . . shall be compensated for loss of goodwill if the owner proves . . . [¶]. . . [t]he loss [was] caused by the taking” (§ 1263.510, subd. (a)(1).)³

Before the taking occurred here, Hanelin had already decided not to permit Recovery Resource, a month-to-month tenant, to remain on the property and had filed an

² Undesignated statutory references are to the Code of Civil Procedure.

³ Subdivision (b) of section 1263.510 defines “goodwill” as “the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.”

unlawful detainer action. Although by the time of the taking Hanelin had not pursued the action to completion, his reason was not that he had changed his mind about Recovery Resource's tenancy, but that he believed the bankruptcy proceedings effected a stay on the action. Thus, it was not the condemnation that terminated Recovery Resource's right to possession of the property but the owner's decision not to continue the month-to-month tenancy. For this reason, Recovery Resource could not establish that its loss of goodwill was caused by the taking of the property, as required under section 1263.510, subdivision (a)(1).

Recovery Resource argues that it possessed the property and continued to operate some part of its business on it up to the time LAUSD took possession, and thus retained a leasehold interest up to that time. It could have expected to continue in the leasehold but for the taking, at least until Hanelin's unlawful detainer action wended its way through the court system, which showed the taking caused termination of the leasehold and cessation of its business. Any dispute between it and Hanelin regarding how long the tenancy would have lasted beyond the taking, Recovery Resource argues, goes to valuation of its damages, not entitlement to them. We disagree.

It is undisputed Recovery Resource did not own the property and had no lease, but merely occupied the property and paid rent. This situation created, at most, a presumed month-to-month tenancy. (Civ. Code, § 1945 ["If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year."].) The right of continued occupancy under such an arrangement lasts only so long as the landlord accepts the arrangement. If the landlord rejects the arrangement, the right is extinguished.

Here, Hanelin rejected Recovery Resource's tenancy when he filed the unlawful detainer action. Because a month-to-month tenancy continues only so long as both parties agree to it, Hanelin's renunciation of the agreement terminated the tenancy and Recovery Resource's right to conduct business on the property. Although it is true that

Recovery Resource continued to occupy the property until it was dispossessed by LAUSD, a tenant must show more than mere dispossession to prevail on a claim for loss of goodwill.

Handlery, supra, 73 Cal.App.4th 517, is directly on point. There, a transit board expressed an interest in acquiring property that included a golf course operated by Handlery Hotel pursuant to a 50-year lease. After the lease expired, Handlery and the owner negotiated several short-term extensions, each set to terminate when the transit board took possession of the property. In its answer in the condemnation action, Handlery claimed loss of business goodwill. Affirming the trial court's order granting nonsuit, the appellate court held that in the absence of a long-term lease or a right to renew an existing lease, Handlery had no compensable property right. (*Id.* at p. 531.)

Similarly here, Hanelin decided not to continue Recovery Resource's tenancy before the taking occurred. Thus, it was not the condemnation that terminated Recovery Resource's right to possession of the property, but Hanelin's decision not to lease it to Recovery Resource. Recovery Resource therefore could not establish that LAUSD's actions caused its loss of goodwill.

Recovery Resource argues that *Los Angeles Unified School Dist. v. Pulgarin* (2009) 175 Cal.App.4th 101 (*Pulgarin*) compels the opposite conclusion. There, the trial court dismissed a business owner's claim for loss of goodwill in an eminent domain action, finding it had no continuing expectation of occupancy on the condemned property because it was merely a month-to-month tenant. The appellate court reversed. "Neither the recommendation [of the Law Revision Commission] nor the statute requires that a business owner's entitlement to goodwill must be based on a written lease on the property that is taken. What is required is that the business owner prove that the loss is caused by the taking of the property. [Citation.] A business that is required to move because of the taking of the property on which it operates has suffered a loss from the taking. This is true whether the tenancy is for a fixed term or is a periodic tenancy, as in this case. The value of the lost goodwill is affected by the probable remaining term of the tenancy. Evidence of the remaining length of a lease and the existence of an option to renew a

lease are, of course, relevant for determining the amount of compensation, if any, to be paid for loss of goodwill. [Citation.] Similarly, evidence of the precondemnation duration of a periodic tenancy and the quality and mutual satisfaction in the landlord and tenant relationship are probative for determination of compensation for loss of goodwill.” (*Id.* at p. 107.)

Pulgarin is distinguishable. There, evidence that the landlord was satisfied with the month-to-month arrangement and would have continued in it but for the condemnation proceedings sufficed to show the business owner was required to move *because* of the taking of the property on which it operated, and thus suffered a loss from the taking. Here, Hanelin was not satisfied with the month-to-month arrangement and had in fact terminated it. Recovery Resource was thereafter required to move not because of LAUSD’s taking of the property, but because it indisputably possessed no continuing right to stay.

Recovery Resource argues LAUSD’s prelitigation activities effected a taking long before the district actually took possession of the property. As early as August 2005, it argues, the district made public its intention to obtain the property. This induced Hanelin not to install electrical upgrades necessary to Recovery Resource’s business, which adversely affected the business, which led to Recovery Resource’s economic problems and default. The argument is without merit.

Recovery Resource’s theory at trial was that LAUSD’s prelitigation activities effected a taking long before the district took possession of the property. It contended below, as it does here, that those activities induced Hanelin not to install electrical upgrades, which effectively gutted Recovery Resource’s operations. The trial court expressly rejected the contention. Hanelin testified he did not install the upgrades because Johnson asked him not to—Recovery Resource was not receiving enough bakery waste from Sara Lee or Puritan Bakery to make the upgrades necessary. Although Johnson testified he never made such a request, the court did not believe him, stating in its statement of decision: “The court does not find credible (1) Mr. Johnson’s denial that he told Mr. Hanelin the lessee did not need the electrical upgrade, (2) Mr. Johnson’s

claim that the landlord did not install the electrical upgrade because LAUSD intended to exercise the power of eminent domain with respect to the . . . property, or (3) Mr. Johnson's claim that LAUSD's proposed eminent domain action prevented [Recovery Resource] from getting sufficient bakery waste to be competitive."

Recovery Resource essentially contends that its version of events is the correct one. But because our review is only for substantial evidence, and because the trial court's rejection of Recovery Resource's theory was founded on substantial evidence—Hanelin's testimony—the contention must be rejected.

Recovery Resource argues several incorrect evidentiary rulings resulted in exclusion of substantial evidence that LAUSD's prelitigation activities adversely impacted Recovery Resource's business. It argues the trial court did not permit Johnson to testify regarding LAUSD's prelitigation activities or hearsay statements made by Hanelin regarding his motive for not installing the electrical upgrades. It argues Hanelin's hearsay statements are admissible either to demonstrate his state of mind or as a party admission. The argument is meritless. First, Hanelin was not a party. Second, it is undisputed that the trial court did in fact consider Recovery Resource's theory regarding the effect of LAUSD's prelitigation activities and was aware that Johnson contended those activities caused Hanelin not to install the upgrades. It simply did not believe him.

Recovery Resource argues Hanelin testified he would have continued to rent the property to Recovery Resource had Recovery Resource not been compelled by the taking to relinquish it. The record is to the contrary. Hanelin was asked if he would have continued renting to Recovery Resource if it were a good tenant. He said he would. Given that Hanelin considered Recovery Resource not to be a good tenant, his affirmative answer to the hypothetical is not evidence that the taking caused Recovery Resource's loss of business.

Recovery Resource invites us to consider *Los Angeles Unified School District v. San Miguel Meat Distributors* (Mar. 15, 2007, B185769) [2007 WL 2411901], arguing creatively and at length that exceptions to the rule against citing to an unpublished case

should apply here. None of the exceptions applies, and we therefore decline the invitation. (Cal. Rules of Ct., rule 8.1115, subd. (a).)

Finally, Recovery Resource argues the trial court erred in admitting evidence of Johnson's prior felony conviction on two counts of fraud and of his bankruptcy filings. The argument is meritless. Johnson's fraud conviction was relevant to his credibility as a witness. (Evid. Code, § 788.) His bankruptcy filings were relevant because they caused Hanelin not to pursue unlawful detainer proceedings. None of the evidence was unduly prejudicial. (Evid. Code, § 352.)

DISPOSITION

The judgment is affirmed. Respondent is to receive its costs on appeal.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.