

2003

West Valley City v. douglas W. Martin dba Fantastic Sam's and Does 1-10 : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

J. Richard Catten; West Valley City; Attorney for Appellant.

James L. Christensen; Christopher G. Jessop; Corbridge Baird & Christensen; Attorneys for Appellee.

Recommended Citation

Reply Brief, *West Valley City v. Martin*, No. 20030299 (Utah Court of Appeals, 2003).
https://digitalcommons.law.byu.edu/byu_ca2/4283

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

WEST VALLEY CITY,
a Utah municipal corporation,

Plaintiff and Appellant,

vs.

DOUGLAS W. MARTIN, d.b.a.
FANTASTIC SAM'S;
and DOES 1 THROUGH 10,

Defendant and Appellee;

DOUGLAS W. MARTIN, d.b.a.
FANTASTIC SAM'S;

Counterclaim Plaintiff,

vs.

WEST VALLEY CITY,
a Utah municipal corporation,

Counterclaim Defendant.

Case No. 20030299-CA

REPLY BRIEF OF THE APPELLANT

Appeal from the Third Judicial District Court,
in and for Salt Lake County, State of Utah;
the Honorable Joseph C. Fratto, Jr.

James L. Christensen (#0639)
Christopher G. Jessop (#8542)
Corbridge Baird & Christensen
39 Exchange Place, #100
Salt Lake City, Utah 84111
(801) 534-0909
Attorney for Defendant/Appellee

J. Richard Catten (#4291)
WEST VALLEY CITY
3600 Constitution Boulevard
West Valley City, Utah 84119
(801) 963-3271
Attorney for Plaintiff/Appellant

FILED
Utah Court of Appeals

JAN 14 2004

Paulette Stagg
Clerk of the Court

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES	ii
ARGUMENT	1-9
CONCLUSION	9-10
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

CASES	Page
<i>Bradley Facilities, Inc., v. Burns</i> , 551 A.2d 746 (Conn. 1988)	5
<i>Central Florida Investments, Inc. v. Parkwest Associates</i> , 2002 UT 3, 40 P.3d 599 (Utah 2002)	2
<i>Redevelopment Agency of Salt Lake City v. Daskalas</i> , 785 P.2d 1112 (Utah App. 1989) ..	7
<i>Utah State Road Com'n v. Friberg</i> , 687 P.2d 821 (Utah 1984)	6
<i>State By and Through Road Commission v. Brown</i> , 531 P.2d 1294 (Utah 1975).	3
<i>United States v. Petty Motor Company</i> , 327 U.S. 372, 90 L.Ed. 729, 66 S.Ct. 596 (1946) ..	3, 4, 5

ARGUMENT

I. THE FACT THAT WEST VALLEY CITY PURCHASED THE UNDERLYING FEE INTEREST IN THE PROPERTY HAS NO EFFECT ON THE OUTCOME OF THIS CASE.

Despite Martin's protests to the contrary, this case is not about West Valley City attempting to deprive Martin of compensation that he was otherwise entitled to or expecting. The City has nothing to gain since it already has paid the previous owner for the property. Rather, this case is about Martin attempting to exploit the simple fact that West Valley City purchased, rather than condemned, the fee interest in the property, in order to received a financial windfall that he would not have otherwise received.

Almost all of Martin's arguments in this case boil down to one central theme. Martin believes that because West Valley City purchased the office building property rather than condemning it, the rules somehow changed with respect to how he is treated under his lease. For example, Martin argues on page 16 of his brief that the Martin Lease presumes that both the landlord and the tenant's interest will be condemned. (Appellee's Brief, page 16). On page 17 of his brief, he states: "Through the magic combination of condemnation and contract law the City has devised a way to condemn property without having to pay a penny of just compensation." (Appellee's Brief, page 17). This argument is entirely without foundation in either law or logic and it is not surprising that Martin does not cite a single case in its support.

In reality, West Valley City is attempting to treat Martin exactly the same way it would have if the City had condemned the entire building. In that case, there is no doubt

that Sections 19.01 and 19.05 of the Martin Lease would apply and Martin would be prohibited from sharing in any condemnation award. Even Martin understands this concept because on page 14 of his brief he states: “The City’s argument that Mr. Martin is cut off from sharing in the condemnation award might have merit if the City had condemned the entire building.” (Appellee’s Brief, page 14). *See also* Footnote 1 of Appellee’s Brief. (Appellee’s Brief, page 12).

Martin’s argument that the law, and the Martin Lease, somehow changed because the City purchased the underlying fee interest is entirely made up out of thin air. His assertion that the condemnation clause of the Martin Lease “presumes” that the entire property would be condemned has no basis whatsoever in the terms of the Lease itself, nor has Martin offered any evidence that the parties made such a presumption. In any case, such parol evidence would not be admissible since the terms of the Lease are not ambiguous. The four corners doctrine would limit Martin to showing such a presumption within the terms of the Lease itself. No such language exists. *Central Florida Investments, Inc. v. Parkwest Associates*, 2002 UT 3, ¶ 12, 40 P.3d 599, 605 (“If the language within the four corners of the contract is unambiguous, the parties’ intentions are determined from the plain meaning of the contractual language, and the contract may be interpreted as a matter of law.”)

The situation in this case is not that West Valley City has cleverly devised a way to deprive Martin of his compensation, as suggested in his argument. It is simply that Martin bargained that compensation away through the terms of his Lease, and is now

having trouble living with the terms of his bargain. Martin seems to think that West Valley City should have paid full price for the property purchased from Heartland and then also paid him for the value of his leasehold. That result is clearly contrary to Utah law, since the value of the sum of various parts of a parcel of property cannot exceed the value of the whole. *State By and Through Road Commission v. Brown*, 531 P.2d 1294 (Utah 1975).

There is ample case law to support West Valley City's contention that, despite the City's purchase of the fee interest, the terms of the Lease are valid and should be enforced, and that West Valley City should be able to rely on them as would any other party. For example, in *United States v. Petty Motor Company*, 327 U.S. 372, 90 L.Ed. 729, 66 S.Ct. 596 (1946), the United States Supreme Court handled a very similar situation.

In the *Petty* case, the United States government originally brought a condemnation suit against the property owner/landlord and all of the tenants, including tenant Independent Pneumatic Tool Company (the "Tool Company"). During the course of the litigation, the landlord and the government reached a settlement and the landlord was dismissed from the lawsuit. *Petty*, at page 598. That left a situation very similar to the situation at hand, a condemnation suit against a tenant where the condemnor and the landlord have reached a settlement.

The *Petty* court then determined that the Tool Company was not entitled to compensation for its leasehold interest because the Tool Company had contracted that

right away through a condemnation clause in its lease.¹ The Court stated: “The lease of the Independent Pneumatic Tool Company included a clause for its termination on the Federal Government’s entry into possession of the leased property for public use. The events connected with the Government’s entry just set out appear to meet the requirements for termination.” (Footnote omitted). *Petty*, at page 599.

The Supreme Court then went on to hold that: “If the Tool Company, with its termination on condemnation clause, was the only tenant and condemnation of all interests in the property was decreed, the landlord would take the entire compensation because the lessee would have no rights against the fund. There would appear to be no greater right where the landlord has been otherwise satisfied. Condemnation proceedings are in rem, [Citations omitted] and compensation is made for the value of the rights which are taken. [Citations omitted]. The Tool Company contracted away any rights that it might otherwise have had. We are dealing here with a clause for automatic termination of the lease on a taking of property for public use by governmental authority. With this type of clause, at least in the absence of a contrary state rule, the tenant has no

¹ The condemnation clause in *Petty* read as follows: “If the whole or any part of the demised premises shall be taken by Federal, State, county, city or other authority for public use, or under any statute, or by right of eminent domain, then when possession shall be taken thereunder of said premises, or any part thereof, the term hereby granted and all rights of the Lessee hereunder shall immediately cease and terminate, and the Lessee shall not be entitled to any part of any award that may be made for such taking, nor to any damages therefor except that the rent shall be adjusted as of the date of such termination of the Lease.” Footnote 4, *United States v. Petty Motor Co.*, 327 U.S. 372, 375, 66 S.Ct. 596, 598 (1946).

right which persists beyond the taking and can be entitled to nothing.” [Footnote omitted]. *Petty*, at pages 598-599.

Another analogous case is *Bradley Facilities, Inc., v. Burns*, 551 A.2d 746 (Conn. 1988). In the *Bradley* case, a state government landlord condemned its lessee. The lessee attempted to argue that the lease condemnation clause should not apply to condemnation by its landlord, but rather only should apply when both the landlord and tenant are condemned. *Bradley*, at page 749. This is virtually the same argument as Martin is making. The Supreme Court of Connecticut understood the illogical nature of this argument and found as follows:

“The position of the plaintiff is that, if a condemning authority, whether state or federal, should choose to take only its leasehold interest, the parties intended the condemnation clause formula not to apply. It is highly improbable, however, that such an intention would have been entertained because it would result in the plaintiff receiving significantly disparate amounts as compensation for the taking of the same leasehold interest depending upon whether the fee was also taken.” *Bradley*, at pages 749-750.

As the *Bradley* court correctly recognized, to throw out the condemnation clause merely because the condemnor is also the landlord makes no logical sense. By what logical rationale should the lessee compensation be wildly different because of who is condemning? And by what logical rationale should the government be discriminated against by not allowing it to rely on the plain terms of a contract?

These cases expose Martin's theory for what it is, a baseless attempt to create an income where none was due or expected. Clearly the City can rely on the plain language of the Lease by which Martin has agreed to take no compensation in the case of condemnation. The trial court erred when it failed to enforce the terms of the Lease and grant summary judgment to West Valley City.

II. THE LEASEHOLD INTEREST OF MARTIN WAS TERMINATED BY THE OPERATION OF THE SELF-EXECUTING TERMS OF SECTION 19.01 OF THE LEASE.

Martin makes the argument that the Lease has been terminated by operation of law, rather than through the eminent domain termination provision of Section 19.01 of the Lease. He then argues that the lease simply vanishes and, therefore, the condemnation provision is unenforceable. Section 19.01 of the Lease provides for termination of the Lease on the date that possession is taken by the condemning authority, so one would assume that the asserted termination by law would have to occur prior to that event. He refers to the "condemnation of the lease" as the time at which the lease is terminated by law, but never tells us what that means. It is unclear whether he means it terminated at the filing of the complaint or the issuance of the Order of Immediate Occupancy. Martin cannot literally mean the "condemnation" of the Lease. No final order of condemnation has yet been issued, and the Order of Immediate Occupancy is an interim order, issued *pendente lite*. *Utah State Road Com'n v. Friberg*, 687 P.2d 821, 833 (Utah 1984).

As support for his position, Martin quotes from the case of *Redevelopment Agency of Salt Lake City v. Daskalas*, 785 P.2d 1112 (Utah App. 1989). (Appellee's Brief, page 12). However, Martin's argument fails based on the clear language of the *Daskalas* case itself. The terms of the Lease in this case and the language of *Daskalas* are in complete harmony.

The entire quote from the *Daskalas* case is as follows:

"The generally accepted rule is that if the condemning authority takes an estate in fee simple absolute in all of the real property covered by the lease, the lease thereupon terminates." [Citations omitted]. Thus in a total taking, any right which the lessee may have to share in the condemnation award becomes vested at the time of the taking, absent an agreement to the contrary. [Citations omitted]. The time of the taking is generally considered to be the time at which the condemning authority *actually takes possession of the property*, not the time at which the initial complaint is served." (Emphasis added). *Daskalas*, at page 1121.

The triggering event for the suggested common law termination of the Lease is exactly the same as the triggering event for the contractual termination of the Lease. Clearly, the Lease was not terminated by law prior to the condemnation clause of the Lease becoming effective. The actions happened simultaneously. The condemnation clause provisions of the Lease are effective, valid, and should be enforced by this Court. This attempt by Martin to avoid application of the plain language of the Lease that he agreed to should be denied.

III. THE VALUE OF MARTIN'S LEASEHOLD INTEREST IS NOT \$60,000.

On November 12, 2001, the landlord, Heartland, and West Valley City amended the Real Estate Purchase Agreement whereby Heartland paid West Valley City \$60,000 to be released from its obligation to cause Martin to vacate his Lease prior to March 1, 2002. Martin now argues that this payment constitutes a representation of the value of his leasehold interest. That representation is not accurate and there is absolutely no support for that contention in the record of this case.

First, it should be remembered that Martin has bargained away his right to share in any compensation award. Therefore, the value of his leasehold really doesn't have any bearing on the outcome of this case. However, it should be noted that the \$60,000 payment from Heartland to West Valley City does not represent the value of Martin's leasehold interest.

At the time the property was purchased, West Valley City paid additional funds to Heartland with the idea that Heartland would use those funds to work with first-floor tenants to ensure that they vacated the building no later than March 1, 2002 and to assist them in finding space in which to relocate. As part of that agreement, the fourth paragraph of the Assignment of Leases specifically recognizes that the City may use eminent domain, if necessary, to evict first-floor tenants. In such case, Heartland agreed to be liable for all litigation costs and expenses including appraisal and attorney's fees. (Assignment of Leases, Exhibit B to Appellee's Brief). Heartland's payment to the City, as set forth in the Amendment to Real Estate Purchase Agreement, relieved Heartland of

this unknown potential liability. (Amendment to Real Estate Purchase Agreement, Exhibit D to Appellee's Brief). This payment simply has nothing to do with the value of Martin's leasehold.

CONCLUSION

West Valley City is attempting to treat Martin exactly as he would have been treated had the City condemned the entire building, rather than negotiate a purchase of the underlying fee interest. The fact that the City negotiated a purchase of the underlying property in no way changes the application of the condemnation clause of the Lease and Martin's arguments that he is being mistreated are wholly without merit. Martin is being treated precisely the way he agreed to be in his Lease.

Also, there is no legal basis for determining that the Lease was terminated by common law principles prior to West Valley City taking possession of the property. Upon the City taking possession of the property, Section 19.01 of the Lease became effective, the Lease terminated, and the condemnation compensation provisions that Martin has agreed to are valid and enforceable.

Finally, there is no language relating to the payment from the City to Heartland under the Amendment to Real Estate Agreement to indicate that it is reflective of the value of Martin's Lease. It has nothing to do with the value of Martin's Lease.

The trial court should be directed to enter summary judgment in favor of the City and the funds deposited by West Valley City should be ordered to be returned.

DATED this 14TH day of JANUARY, 2004.

WEST VALLEY CITY

A handwritten signature in black ink, appearing to read "J. Richard Catten", is written over a horizontal line.

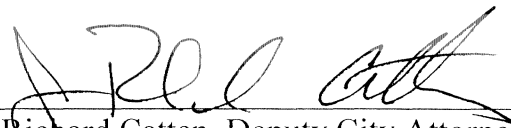
J. Richard Catten, Deputy City Attorney
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I, J. Richard Catten, certify that on the 14th day of January, 2004, I served upon James L. Christensen and Christopher G. Jessop, Attorneys for Defendant/Appellee, two (2) copies each of the Reply Brief of the Appellant, by causing said Briefs to be mailed to them, by first class mail, with sufficient postage prepaid, to the following address:

James L. Christensen
Christopher G. Jessop
Corbridge Baird & Christensen
39 Exchange Place, #100
Salt Lake City, Utah 84111

WEST VALLEY CITY



J. Richard Catten, Deputy City Attorney
Attorney for Plaintiff/Appellant