IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

NORTON OUTDOOR ADVERTISING, INC.,	:	APPEAL NO. C-160243 TRIAL NO. A-1405254
Plaintiff-Appellant,	:	*JUDGMENT ENTRY.*
vs.	:	
RGT FOODS, INC.,	:	
and	:	
BOARD OF TOWNSHIP TRUSTEES OF SYCAMORE TOWNSHIP,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

On February 17, 2006, plaintiff-appellant Norton Outdoor Advertising, Inc. ("Norton") entered into a lease agreement with defendant-appellee RGT Foods allowing Norton to place a billboard on property owned by RGT Foods. The lease was for ten years, and would renew thereafter unless terminated by either party. To terminate the lease, RGT Foods had to give notice 90 days before the lease expired. The lease contained the limitation that "Lessor is prohibited from exercising this right of termination in the event the Property is being acquired by any local, state or federal governmental body or authority with eminent domain power."

On August 22, 2011, RGT Foods notified Norton that it was in the process of selling the property to defendant-appellee Board of Township Trustees of Sycamore Township ("the township"), and that it would not be renewing the lease when it expired on May 31, 2015. Norton responded on August 25, 2011. Steve Knapp, Vice President of Real Estate for Norton, wrote that "I understand that Sycamore

Township has requested that you give notification that they do not intend to renew the lease in 2015," and claimed that the sale was "clearly an attempt to avoid just compensation for the sign." On November 15, 2011, the township sent a letter informing Norton that it had acquired the property from RGT Foods. The township instructed Norton to send future rent payments to the township, and stated, "Please consider this letter as additional notice that the lease shall terminate at the end of its initial term of ten (10) years on May 31, 2015."

Norton continued to make the rental payments to the township from that point forward. On September 8, 2014, Norton filed suit for breach of contract, declaratory judgment, and punitive damages. After the parties exchanged discovery and before trial commenced, the trial court granted the motions for summary judgment filed by the township and RGT Foods. In one assignment of error, Norton claims that this decision was error.

The issue is the application of the clause in the lease that sought to limit the ability of the lessor to terminate. Norton argues that the phrase "with eminent domain power" is meant to describe the type of government entities (i.e. the "local, state or federal governmental body or authority"). Norton claims that the transaction itself did not have to be through eminent domain. In other words, if any government entity that has eminent domain power purchases the property, the lease cannot be terminated, even if that government entity did not use eminent domain to acquire it. Thus, Norton argues, the township was unable to terminate the lease at the end of its term because the township had eminent domain power.

The township and RGT Foods claim that the phrase "with eminent domain power" is meant to describe the word "acquired." Therefore, the clause would not apply in this case because the property was purchased by the township in a fair-market transaction, and was not taken by eminent domain.

We agree with the township and RGT Foods that their reading of the clause is the correct one. The only reason that Norton, as lessee, would need to be protected

from a termination by the lessor would be if the property had been taken by eminent domain, which would threaten its leasehold rights. And, as Norton indicated in its letter, the concern was receiving "just compensation for the sign," which would only be an issue in a governmental taking. Therefore, the purchase of the property by the township did not trigger the provision.

When interpreting a written contract, we give common words their plain and ordinary meaning, unless an absurdity results or some other meaning is apparent from the face or overall contents of the instrument. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph two of the syllabus. The problem with Norton's reading is that it would result in a lease that cannot be terminated by the township unless it sells the property to a buyer who does not have eminent domain power. While Norton suggests that the township would be able to terminate the lease at the expiration of a *second* ten-year term, it is not clear how the township would be prohibited from terminating the lease after the first term, but would be able to do so after the second term. According to Norton, since the property was purchased by a governmental entity that has eminent domain power, the lease can NEVER be terminated. We will not read a contract provision to create such a result.

But even if we had not concluded that the clause did not apply, this court would conclude that remedy was barred by waiver. Generally speaking, waiver is the voluntary relinquishment of a known right. *State ex rel. Wallace v. State Med. Bd. of Ohio*, 89 Ohio St.3d 431, 435, 732 N.E.2d 960 (2000). In this case, the township sent its termination notice on November 15, 2011. But Norton continued to make monthly payments to the township and did not file suit until September 8, 2014—nearly three years later.

Because the clause did not apply in this case, the township, as owner of the property, was allowed to terminate the lease. The trial court properly granted the

motions for summary judgment filed by the township and RGT Foods. We overrule Norton's sole assignment of error, and affirm the judgment on the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and **MOCK, JJ.**

To the clerk:

Enter upon the journal of the court on August 26, 2016

per order of the court _____.

Presiding Judge