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SUMMARY
June 29, 2023

2023COA60

No. 22CA0956, *Denver v. Monaghan Farms* — Eminent Domain — Condemnation; Real Property — Present Estates and Future Interests — Fee Simple Absolute — Possibility of Reverter

A division of the court of appeals holds that when a city acquired private land through eminent domain, it acquired those parcels in fee simple absolute despite the fact that (1) the condemnation petition didn't explicitly request condemnation in fee simple absolute, (2) the city didn't pay full market value for the parcels, and (3) the parcels were later leased for private commercial use.

COLORADO COURT OF APPEALS **2023COA60**

Court of Appeals No. 22CA0956
City and County of Denver District Court No. 21CV33498
Honorable Shelley I. Gilman, Judge

City and County of Denver, a Colorado municipal corporation,

Plaintiff-Appellee,

v.

Monaghan Farms, Inc., a Colorado corporation,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division III
Opinion by JUDGE GRAHAM*
Lum and Bernard*, JJ., concur

Announced June 29, 2023

Kerry C. Tipper, City Attorney, David P. Steinberger, Assistant City Attorney, Andrew Gomez, Assistant City Attorney, Denver, Colorado, for Plaintiff-Appellee

Montgomery Little Soran P.C., Christopher A. Taravella, Michael R. McCormick, James C. Taravella, Greenwood Village, Colorado; Law Office of Robert R. Duncan, Robert R. Duncan, Denver, Colorado, for Defendant-Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2022.

¶ 1 Defendant-appellant, Monaghan Farms, Inc. (MF), appeals the district court's orders (1) denying MF's motion to dismiss for failure to join an indispensable party under C.R.C.P. 12(b)(6); (2) granting summary judgment for plaintiff-appellee, the City and County of Denver (Denver), on its first (quiet title) and second (release of claims) claims; (3) denying MF's C.R.C.P. 56(f) motion for a denial or continuance on Denver's summary judgment motion; and (4) entering a final judgment and decree quieting title in favor of Denver. We affirm the judgment of the district court.

I. Background

¶ 2 This appeal concerns MF's attempt to recover land ceded to Denver via eminent domain over thirty years ago. In 1988, Denver filed a petition to condemn 8,360 acres of land — the Monaghan Parcels — for the purpose of constructing and operating what would become Denver International Airport (DIA). After Denver was granted immediate possession of the Monaghan Parcels, the condemnation court appointed three commissioners and held a hearing to determine the compensation to which MF was entitled.

¶ 3 The condemnation court entered a "Rule and Decree in Condemnation," stating that upon payment to MF of

$27,155,218.31, plus interest, Denver would be "the absolute holder and owner in unconditional fee simple absolute, free of all rights of reversion and reversionary interests," of the Monaghan Parcels. A little over a month later, the court updated the total compensation due to $27,455,218.31 in its "Amended Rule and Decree in Condemnation," correcting a clerical mistake in the prior order. The court determined the fair value of the Monaghan Parcels to be $38,455,218.31.

¶ 4 Both parties eventually appealed the matter to the Colorado Supreme Court, but they settled their respective claims before the case was decided.

¶ 5 The settlement agreement, signed on November 12, 1992, memorialized the parties' agreement as follows:

- Denver would pay MF $30,096,000, less the $11,340,000 that MF had already withdrawn from the court registry, resulting in a net payment of $18,756,000. The parties agreed that this value was not necessarily reflective of the actual market value of the Monaghan Parcels.
- The parties would jointly file a motion for dismissal of the pending appeal with prejudice and remand to the district

court for (1) vacatur of the earlier Rule and Decrees; (2) entry of a "Second Amended Rule and Order"; and (3) disbursement of funds consistent with the agreement.

- The parties would release each other (and their predecessors, successors, etc.) "from each and every cause of action . . . which the releasing parties had, may now have, or which may hereafter arise against any of the released parties by reason of any act, omission, matter, event, cause or other thing whatsoever occurring prior to the date hereof."

¶ 6 The settlement was conditioned on the condemnation court, upon remand, adopting the settlement as an order of the court and issuing an order for the agreed-upon disbursement of funds, among other things. If those conditions weren't met, then each party's obligations under the agreement would terminate.

¶ 7 On remand, the condemnation court entered its Second Amended Rule and Order, *nunc pro tunc* to January 30, 1990;[1] vacated its prior two orders; and specified "that all interests of [MF]

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[1] The Second Amended Rule and Order was originally entered on November 19, 1992.

in said property have been acquired by [Denver,] and that title to the property described in Exhibit A appurtenances thereto belonging, free and clear of all liens and encumbrances, is hereby vested in [Denver.]" Exhibit A described the property as "[a]ll property interests in, above, on and below the surface of the [Monaghan] Parcels."

¶ 8 In May 2017, after learning that Denver planned to lease part of the condemned property for private commercial use instead of for DIA, MF sent a letter to Denver requesting good faith negotiations under the settlement agreement, contending that it retained a "right to reversion" if the parcels were no longer used for DIA. The letter set forth MF's request as follows:

> [MF] respectfully demands that Denver immediately cease and desist any private commercial use of the Private Use Parcels and instead use the Monaghan Property solely for public airport uses.
>
> Alternatively, if Denver refuses to cease using the Monaghan Property for private commercial uses, then [MF] respectfully requests that Denver convey title to the Private Use Parcels back to [MF].

¶ 9 On April 20, 2020, MF sent Denver another letter, reasserting its intent to pursue claims for reversion.

¶ 10 On November 3, 2021, Denver filed its complaint against MF for quiet title and declaratory judgment. It requested (1) an order quieting its title to the Monaghan Parcels and rejecting any claims to a right of reverter by MF; (2) a declaration that the 1992 settlement agreement barred MF from pursuing any claims that it had any reversionary interest in or to the Monaghan Parcels; and (3) a declaration that the development of commercial, non-aeronautical land uses at DIA, including within any Monaghan Parcels, was in the service and support of DIA, and therefore a "public airport use."

¶ 11 MF then filed a motion to dismiss for failure to join an indispensable party pursuant to C.R.C.P. 12(b)(6), asserting that Adams County should be joined. Before a hearing could be held on the motion to dismiss, Denver filed its motion for summary judgment on its claims to quiet title and to release claims, arguing that those claims were determinative and should be considered first because the public use issue was relevant only to the motion to dismiss. The court heard argument on those two claims.

¶ 12 After the hearing, MF filed a motion to deny the two claims outright or to delay the court's ruling on the summary judgment

motion so that MF could conduct discovery pursuant to C.R.C.P. 56(f).

¶ 13 The district court ruled on the motions, concluding that discovery was not necessary to determine whether Denver's specified land use was a "public airport use" because that issue was irrelevant to Denver's first and second claims. It therefore denied MF's motion to dismiss (finding that Adams County wasn't a party necessary to its adjudication), rejected MF's request to conduct discovery, and granted Denver's motion in part.

¶ 14 As to the quiet title claim, the court found that the use of the phrase "all property interests" in Exhibit A, discussed above, meant that Denver sought and received title to the Monaghan Parcels in fee simple absolute.[2] It further determined that MF did not retain a reversionary interest in the property and that the release provisions in the settlement agreement included any purported right of reversion following condemnation.

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[2] Denver's title is subject to specified exceptions for each parcel identified in Exhibit A related to mineral rights and prior right-of-way easements, none of which are relevant here.

¶ 15 The court also found that the settlement agreement was unambiguous, making extrinsic evidence inadmissible in its interpretation of the agreement, and that MF had failed to engage in good faith negotiations with Denver.

¶ 16 On May 17, 2022, the court entered its "Final Judgment and Decree," declaring that Denver owns the Monaghan Parcels in fee simple absolute and that [MF] retains no residual interest in the property.

¶ 17 MF now appeals the following conclusions from the court's order for summary judgment: (1) the 1992 settlement agreement released MF's claims arising from prior-occurring events; and (2) Denver acquired title to the Monaghan Parcels in fee simple absolute. It also appeals (3) the court's denial of its motion to dismiss finding that Adams County was not a necessary party; and (4) its entry of the Final Judgment and Decree, quieting title in the Monaghan Parcels. Because we agree with Denver that it acquired the Monaghan Parcels in fee simple absolute, we need not reach MF's remaining contentions.

II. Nature of the Condemned Parcels

¶ 18 MF contends that the district court committed reversible error by concluding that Denver condemned the Monaghan Parcels in fee simple absolute because Denver's 1988 petition didn't request condemnation in fee simple absolute, nor did Denver pay for the parcels to be taken in fee simple absolute. MF asserts that Denver merely obtained a defeasible fee subject to the possibility of reverter should the land not be used for "public airport use." Denver counters that the 1992 settlement agreement combined with the Second Amended Rule and Order conveyed the Monaghan Parcels in fee simple absolute and that MF retains no reversionary interest in the property. We agree with Denver.

A. Additional Facts

¶ 19 In the 1988 condemnation petition, Denver sought to acquire "[a]ll property interests in, above, on and below the surface of the Parcels," subject to several exclusions of mineral rights and utility easements not relevant here. Notably, the petition contains no mention of a possibility of reverter, nor do the 1992 settlement agreement or the Second Amended Rule and Order. Instead, the

Second Amended Rule and Order describes the acquired interests as follows:

> The entry of this Second Amended Rule and Order resolving and settling this action between the parties, including the full compensation to be paid for the taking of *said property described in the Petition in Condemnation filed herein, including all appurtenances thereto, and any and all interests therein*, including damages, if any, and for any and all other costs of said parties, including, but not limited to, appraisal and other expert witness fees, including all reports, discovery costs and expenses, trial preparation time, reimbursable costs, and any and all interest, before or after the entry of judgment, to which [MF] may be entitled, if any . . . .
>
> . . . .
>
> ORDERED, ADJUDGED, AND DECREED that the property and interests therein described in Exhibit A attached hereto and incorporated herein by reference have been duly and lawfully taken by [Denver] pursuant to the statutes and the Constitution of the State of Colorado; *that all interests of [MF] in said property have been acquired by [Denver]*; and that title to the property described in Exhibit A, together with all appurtenances thereto belonging, *free and clear of all liens and encumbrances*, is hereby vested in [Denver].

(Emphases added.)

B. Standard of Review

¶ 20 We review de novo the court's order granting summary judgment, applying the same standard as the district court. *Keith v. Kinney*, 140 P.3d 141, 151 (Colo. App. 2005). Thus, we must determine whether a genuine issue of material fact exists and whether the district court correctly applied the law. C.R.C.P. 56(c); *Poudre Sch. Dist. R-1 v. Stanczyk*, 2021 CO 57, ¶ 12.

¶ 21 In resolving a motion for summary judgment, "[a] court must give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed evidence and resolve all doubts in favor of the nonmoving party." *Wagner v. Planned Parenthood Fed'n of Am., Inc.*, 2019 COA 26, ¶ 6, *aff'd*, 2020 CO 51. The nonmoving party may not rely on "mere allegations or denials" of the moving party's pleadings but must identify specific facts, through affidavits or otherwise, that show there is a genuine triable issue sufficient to allow a reasonable jury to return a verdict in its favor. *A-1 Auto Repair & Detail, Inc. v. Bilunas-Hardy*, 93 P.3d 598, 603 (Colo. App. 2004); *Andersen v. Lindenbaum*, 160 P.3d 237, 239 (Colo. 2007).

C. Applicable Law

¶ 22 "The interpretation of a settlement agreement, like any contract, is a question of law that we review de novo." *Ringquist v. Wall Custom Homes, LLC*, 176 P.3d 846, 849 (Colo. App. 2007); *see also CapitalValue Advisors, LLC v. K2D, Inc.*, 2013 COA 125, ¶ 17 (we review the interpretation of a contract de novo (citing *Ad Two, Inc. v. City & Cnty. of Denver*, 9 P.3d 373, 376 (Colo. 2000))). In construing a contract, our goal is to give effect to the intent and reasonable expectations of the parties. *Thompson v. Md. Cas. Co.*, 84 P.3d 496, 501 (Colo. 2004) (citing *Allen v. Pacheco*, 71 P.3d 375, 378 (Colo. 2003)); *CapitalValue*, ¶ 18. We determine the parties' intent primarily from the language of the contract itself. *In re Marriage of Thomason*, 802 P.2d 1189, 1190 (Colo. App. 1990).

¶ 23 Extrinsic evidence of intent is relevant only where there is an ambiguity in the terms of the contract. *Ad Two*, 9 P.3d at 376. Ambiguity exists if the language of the contract is susceptible of more than one reasonable interpretation. *In re Marriage of Crowder*, 77 P.3d 858, 861 (Colo. App. 2003). To determine whether there is ambiguity, courts must examine the instrument's language and construe it in harmony with the plain and generally

accepted meaning of the words employed. *Town of Minturn v. Tucker*, 2013 CO 3, ¶ 40.

¶ 24 Additionally, the question whether a right of reverter exists is a question of law that we review de novo. *See Bill Barrett Corp. v. Lembke*, 2020 CO 73, ¶ 13; *Perfect Place v. Semler*, 2016 COA 152M, ¶ 47, *rev'd on other grounds*, 2018 CO 74. But because actions to quiet title under C.R.C.P. 105 are equitable proceedings, we review the trial court's findings of fact for an abuse of discretion and review de novo whether the trial court correctly understood the appropriate test for quieting title. *Semler*, ¶ 47.

¶ 25 A plaintiff in an action to quiet title to lands must rely on the strength of its own title, and when it appears that its rights have terminated, it is in no position to question the legality of the title claimed by others. *Sch. Dist. No. Six v. Russell*, 156 Colo. 75, 82, 396 P.2d 929, 932 (1964).

D. Language of the Condemnation

¶ 26 The language of the Second Amended Rule and Order is clear; Denver sought and acquired the Monaghan Parcels, "and any and all interests therein," free and clear of any possibility of reverter to MF. As the district court explained, "Conveyances of real estate are

deemed to be fee simple unless expressly limited." *Campbell v. Summit Plaza Assocs.*, 192 P.3d 465, 473 (Colo. App. 2008); *see also* § 38-1-105(4), C.R.S. 2022 (In a condemnation action, "[u]pon the entry of such [a rule describing the land and compensation for it], the petitioner shall become seized in fee unless a lesser interest has been sought . . . of all such lands, . . . described in said rule as required to be taken."). The only limitations provided related to mineral rights and prior right-of-way easements, none of which grant MF a right of reverter. The lack of certain "magic words" doesn't change the nature of the estate that Denver obtained. *See Steamboat Lake Water & Sanitation Dist. v. Halvorson*, 252 P.3d 497, 504 (Colo. App. 2011).

¶ 27 MF relies on *Gypsum Ranch Co. v. Board of County Commissioners*, 219 P.3d 365, 370 (Colo. App. 2009) (*Gypsum I*), *rev'd sub nom. Dep't of Transp. v. Gypsum Ranch Co.*, 244 P.3d 127 (Colo. 2010) (*Gypsum II*), for the premise that an "all interests" provision does not convey fee simple absolute to a condemnor. We do not read *Gypsum I* so broadly. There, a division of this court held that, contrary to the condemnor's claim, the condemnation granted only "an interest in the property sufficient to meet the

purpose of the condemnation," but not the underlying mineral interests, as those were precluded from condemnation via section 38-1-105(4). *Gypsum I*, 219 P.3d at 370. Our supreme court reversed the decision, holding that, while "governmental entities are prohibited from acquiring a right to any mineral resource beneath real property that was itself acquired through condemnation for highway purposes, . . . statutory enactments are presumed to be intended to change the law and to do so only prospectively." *Gypsum II*, 244 P.3d at 131. Neither of these cases holds that an "all interests" provision isn't sufficient to obtain all property interests that are able to be condemned. Moreover, the issue at hand doesn't concern mineral interests, as those were properly excluded from Denver's condemnation of the Monaghan Parcels. Thus, MF's reliance on *Gypsum I* and *Gypsum II* is misplaced.

¶ 28 And we dispose of MF's contention that the phrase "free and clear of all liens and encumbrances" doesn't extinguish the possibility of reverter. "A good title in fee simple means the legal estate is in fee, free and clear of all claims, liens, and encumbrances whatsoever, except as listed in the deed." *Campbell*, 192 P.3d at 473. As explained above, no right of reverter is shown anywhere in

the transferring documents; thus, MF's severance of the right of reverter from liens and encumbrances does it no good.

E. Payment for the Condemnation

¶ 29 Similarly inaccurate is MF's contention that because Denver didn't pay the full market value for the parcels, it thus could not have acquired them in fee simple absolute, for which MF relies on *Halvorson*, 252 P.3d at 504. But, contrary to MF's assertion, *Halvorson* does not posit a factor test requiring that a condemnor sought and paid for an absolute fee interest in order to obtain fee simple absolute. True, the *Halvorson* court stated "that here, because the District *explicitly sought, and paid for*, an absolute fee interest in Lot 78, the trial court did not err in so describing the District's title." *Id.* (emphasis added). But this dictum doesn't create a new test for courts to consider when evaluating condemnations, so we decline to apply it here.

¶ 30 Moreover, not only did the settlement agreement make it clear that the parties had agreed that the price paid did not necessarily reflect the market value of the property, but paying the full market value for a condemned property doesn't equate to transfer in fee simple absolute. *See Gypsum I*, 219 P.3d at 370 ("Because the

power to take by eminent domain is qualified, the title may be qualified, even if the condemnor has paid full value for the property."); *Lithgow v. Pearson*, 25 Colo. App. 70, 80, 135 P. 759, 762 (1913) (where owner forced to accept condemnation, payment of full and actual value of property proper even though fee simple absolute may not have been transferred). Thus, MF's argument fails.

F. Use of the Condemned Parcels

¶ 31 Nor do we agree with MF's contention that the use of the parcels for anything other than DIA triggers a reversionary interest. Divisions of this court have recognized that private interests taken via condemnation are not subject to defeasement simply because the property is later put to private use. *See Halvorson*, 252 P.3d at 504; *Wall v. City of Aurora*, 172 P.3d 934, 937 (Colo. App. 2007) ("[A] condemnor may use condemned property for a different purpose, so long as the original purpose was valid at the time of the taking."). We see no reason here to depart from that acknowledgment.

¶ 32 Accordingly, we agree with the district court's determination that Denver acquired the Monaghan Parcels in fee simple absolute

and that MF did not retain any reversionary interest, regardless of the use to which the property is put.

III. Remaining Contentions

¶ 33 Because we have determined that MF has no interest in the Monaghan Parcels, we do not reach MF's remaining contentions. We note that these include MF's assertions that the district court erred by failing to afford discovery under C.R.C.P. 56(f). In light of our disposition concluding that there was no remaining right of reverter, further discovery would have been unavailing.

IV. Disposition

¶ 34 We affirm the judgment of the district court.

JUDGE LUM and JUDGE BERNARD concur.