COURT OF APPEALS
DECISION
DATED AND FILED

July 26, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1021 **Cir. Ct. No. 2010CV234**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

PARAS REDDY AND LORI REDDY,

PLAINTIFFS-APPELLANTS,

V.

CITY OF PLATTEVILLE,

DEFENDANT-THIRD-PARTY PLAINTIFF-RESPONDENT,

V.

FAHERTY, INC. F/K/A FAHERTY DRILLING COMPANY, INC., FAHERTY SANITARY SERVICE, INC., AND RALPH FAHERTY,

THIRD-PARTY DEFENDANTS.

APPEAL from an order of the circuit court for Grant County: ROBERT P. VANDEHEY, Judge. *Affirmed*.

Before Lundsten, P.J., Vergeront and Sherman, JJ.

¶1 PER CURIAM. Paras and Lori Reddy appeal an order granting summary judgment in favor of the City of Platteville. The issues involve the validity and reformation of a lease concerning Platteville's police department firing range and an inverse condemnation claim. We affirm.

¶2 This matter arises from the Reddys' purchase of seventy-two acres from Faherty Drilling Company[1] and Ralph Faherty. The real estate consisted of a forty-acre parcel, a twenty-acre parcel, and a twelve-acre parcel. Much of the property was previously utilized as a landfill and a demolition site. The landfill was capped in 1990 and the demolition site was abandoned around 1998.

¶3 In 1999 Platteville entered into a twenty-five year lease to use a portion of the property as a police department firing range.[2] Platteville began operating the firing range soon thereafter, and it has been in use ever since. However, the legal description in the lease described the forty-acre parcel rather than a portion of the adjacent twelve-acre parcel where the firing range was located. Both the forty-acre parcel and the twelve-acre parcel were owned by Faherty Drilling, although the lease was signed by Ralph Faherty as lessor. Ralph Faherty was the majority stockholder of Faherty Drilling.

¶4 On August 1, 2005, Paras Reddy signed an offer to purchase the property. The offer specifically stated:

> Purchaser is aware there is a 25 year lease with the City of Platteville with regard to twelve (12) acres of the seventy-

[1] Faherty Drilling is now known as Faherty, Inc. We refer to them collectively as Faherty Drilling unless otherwise noted.

[2] In their brief in support of summary judgment, the Reddys represented that Platteville began using a 550-foot by 100-foot area for the shooting range.

> two (72) acres being purchased. Purchaser shall honor said lease and acknowledges there will be no payments to him for said lease. Said lease shall survive the closing of the transaction.

The offer to purchase did not identify the exact location of the shooting range. A land contract was executed in November 2005. The Reddys subsequently defaulted under the land contract by failing to make payments due.[3]

¶5 On April 15, 2010, the Reddys commenced an inverse condemnation action against Platteville under WIS. STAT. § 32.10 (2009-10).[4] In essence, the Reddys contended the lease was invalid and did not give Platteville the right to occupy the shooting range because the legal description in the lease was not for the twelve-acre parcel on which the shooting range was located. Therefore, the Reddys sought compensation from Platteville for the use of the firing range.

¶6 The parties filed cross-motions for summary judgment. The circuit court granted Platteville's motion for summary judgment and found the offer to purchase specifically confirmed that the Reddys considered the lease to be valid. It also found that any defects in the legal description were the result of mutual mistake and subject to reformation. The court stated:

> Everyone knew where the shooting range was. Everyone knew what it was being used for. And the fact that the correct legal description wasn't in the document seems to be a clear case of a mutual mistake. The parties intended to have a valid lease. It just is a situation where the lease agreement, the deeds in furtherance of that did not

[3] It appears from the record that no legal action was taken against the Reddys because of the default, but that is not an issue on appeal.

[4] The Reddys also claimed a basis for a taking in the Fifth Amendment to the United States Constitution. References to Wisconsin Statutes are to the 2009-10 version unless otherwise indicated.

> contain the correct legal description. And I think that's [a] classic case for reformation. Mr. Reddy had actual knowledge that somebody was possessing this part of the real estate. He had actual knowledge that there was a lease for 25 years with the option to extend for [another] 25 years.

The court further concluded the Reddys lacked standing to bring an inverse condemnation action because "the action for inverse condemnation belongs to the property owner at the time of the taking." The court reasoned that any alleged taking must have occurred in 1999, "when the City set up this shooting range, and [the claim] would belong to Faherty Drilling, Inc." The Reddys now appeal.

¶7 When we review the grant or denial of summary judgment, our review is de novo, and we employ the same methodology as the circuit court. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶8 We turn first to the issue of the validity of the lease.[5] The lease was signed by Ralph Faherty in his personal capacity, although both the twelve-acre parcel and the forty-acre parcel were owned by Faherty Drilling. However, it is undisputed that Ralph Faherty had a controlling interest in the corporation and intended to bind the corporation to the terms of the lease. Moreover, his actions were ratified and therefore rendered binding. *See* ***Lyons v. Menominee Enters., Inc.***, 67 Wis. 2d 504, 510, 227 N.W.2d 108 (1975). It is undisputed that Gregory

[5] The Reddys concede at one point in their brief to this court that "it was reasonable for the trial court to conclude that the Lease Agreement is a valid contract between Faherty, Inc. and the City of Platteville." Yet, later in the same brief, the Reddys argue the lease is invalid "because it contains too many deficiencies."

and Edward Faherty, who are Ralph's sons and corporate officers of Faherty Drilling, approved the lease. Edward arranged the deal and encouraged his father to allow Platteville to use a portion of the land as a shooting range. Gregory approved the lease before his father signed it.

¶9 The Reddys contend "there is nothing in the record to indicate that the [Platteville] City Manager was authorized to sign the Lease Agreement on behalf of the City." This contention is incorrect. As Platteville points out in its response brief, its submissions show that the city council voted unanimously to approve the lease, and the city manager had the authority to sign the lease and thereby bind Platteville. *See* WIS. STAT. § 64.11(1). The Reddys fail to address this issue in their reply brief, and it is therefore deemed conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (citation omitted). We conclude that a valid lease authorized the operation of the shooting range.

¶10 The Reddys also argue the undisputed facts were insufficient to permit the circuit court to use its equitable power to reform the legal description in the lease based on mutual mistake. The party seeking reformation must establish mutual mistake by clear and convincing evidence. *See* ***Hajec v. Novitzke***, 46 Wis. 2d 402, 414, 175 N.W.2d 193 (1970). We conclude the court properly reformed the lease.

¶11 Here, the legal description in the lease was incomplete. It neither defined the exact location nor the boundaries of the shooting range. The circuit court was therefore warranted in examining extrinsic evidence to determine the true intent of the parties. *See* ***Chandelle Enters., LLC v. XLNT Dairy Farm, Inc.***, 2005 WI App 110, ¶12, 282 Wis. 2d 806, 699 N.W.2d 241.

¶12 The Reddys contend there is an issue of material fact regarding whether "the parties intended to rent part of the 12-acre parcel for a police shooting range." In this regard, they emphasize that the legal description in the lease described the forty-acre parcel. The Reddys also argue that Platteville's intent is reflected in a notation by a deputy clerk in city council meeting minutes confirming the approval "to rent the old landfill site from Faherty's for a police weapons/firing range." As we understand the Reddys' argument, they contend that the notation makes the location of the closed landfill a material fact, and that their submissions create a dispute regarding whether the landfill was on the forty-acre parcel only or on both the forty-acre parcel and the twelve-acre parcel.

¶13 We conclude the Reddys fail to show a genuine issue of material fact as to the intent of the parties to the lease. First, it is clear there was a meeting of the minds between the parties to the lease. During the spring of 1999, the parties agreed Platteville could use a portion of the property as a shooting range. It is undisputed that prior to entering into the lease, Platteville's police department worked directly with Edward, Gregory, and Ralph Faherty to select an appropriate spot for the firing range. Once they agreed upon a site, Platteville's city attorney prepared a lease agreement. At the time of its execution, the parties to the lease believed the legal description accurately described the location of the shooting range, and no disagreements ever arose between the parties to the lease about its location, size, or use. We reject the Reddys' contention that a hearsay notation describing the property in meeting minutes by a deputy clerk not involved in the transaction is material and raises a genuine issue of fact as to the intended location of the shooting range.

¶14 In addition, the offer to purchase irrefutably shows the Reddys themselves purchased the seventy-two acres with a clear understanding that the

lease involved Platteville using "twelve (12) acres" for the firing range.[6] Paras Reddy admitted in a sworn affidavit that he inspected the property and had actual knowledge prior to purchase that the twelve-acre parcel was being used as a shooting range. It is undisputed that the location of the shooting range has never changed at any point in time.

¶15 Edward Faherty also testified in his deposition that he personally discussed with Paras Reddy prior to purchase the portion of the property Platteville was using as a firing range. Edward stated as follows:

> Q: Do you recall any discussions with Paras Reddy about the fact that a portion of the land was being used as a shooting range?
>
> A: Yes.
>
> Q: And these discussions predated his 2005 purchase of this land?
>
> A: Yes.
>
> Q: Did you personally have those discussions with him?
>
> A: Yes.
>
> Q: So he was aware that it was being used as a shooting range?
>
> A: Yes.
>
> Q: Because you made him aware?
>
> A: Yes.
>
> Q: Did he have a problem with it?
>
> A: No.

[6] Another condition required the Reddys to "honor said lease" and to "acknowledge[] there will be no payments to [them] for said lease."

> Q: Did he have a problem with the size of land that was being used as a shooting range?
>
> A: No.
>
> Q: When you discussed this with him, did he appear to have a problem with the location of the shooting range?
>
> A: No.

¶16 As the circuit court correctly observed, "Everyone knew where the shooting range was. Everyone knew what it was being used for." However, by mutual mistake, the lease contained an erroneous legal description. We agree with the circuit court that this case presented a "classic case for reformation." The circuit court appropriately exercised its equitable power to reform the lease to correct the legal description.

¶17 Because we conclude Platteville had the right to use the property as a shooting range, we need not reach the issue of inverse condemnation. *See* WIS. STAT. § 32.10.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.