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DISTRICT IV

February 28, 2020

To:

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You are hereby notified that the Court has entered the following opinion and order:

2019AP374

Lynn Properties, Inc. v. Columbia County (L.C. # 2018CV161)

Before Blanchard, Kloppenburg and Graham, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in Wis. Stat. Rule 809.23(3).

Lynn Properties, LLC, appeals a summary judgment order that dismissed its action against Columbia County for relocation expenses following the County's purchase of property owned by Lynn Properties. It contends that the undisputed facts establish that its claim for relocation expenses was timely. It also contends that the County should be estopped from asserting any deficiencies in the claim. Based upon our review of the briefs and record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We summarily affirm.

In April 2015, Columbia County purchased real estate from Lynn Properties.² The real estate contract provided that Lynn Properties had the right to occupy the property after closing, until October 31, 2015. On October 6, 2015, Lynn Properties delivered a key to the locked fence surrounding the property to the County to allow the County to conduct environmental testing. Lynn Properties also retained keys to the property and maintained occupancy of the property until October 31, 2015. On October 11, 2017, Lynn Properties served the County with its claim for actual and reasonable relocation expenses. The County denied the claim as untimely. Lynn Properties then initiated this action in the circuit court to recover its relocation expenses. The circuit court granted summary judgment to the County and dismissed the claim.

A claim for relocation expenses under the eminent domain laws must be filed within two years “after the condemnor takes physical possession of the entire property acquired.” WIS. STAT. § 32.20. We review a grant of summary judgment independently, using the same methodology as the circuit court. *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).

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² It is undisputed between the parties that the real estate transaction between Lynn Properties and the County is governed by the eminent domain laws. The parties dispute only whether Lynn Properties is entitled to relocation expenses under those laws. We limit our discussion to the issues as briefed by the parties.

Lynn Properties argues that the County did not take physical possession of the entire property until October 31, 2015, despite having a key to the locked fence surrounding the property as of October 6, 2015.³ In support, Lynn Properties asserts that it continued to occupy the property until October 31, 2015; that it gave the County a key only to the locked fence surrounding the property on October 6, 2015, not to the locked buildings on the property; that the County requested access to the property only to conduct environmental testing; and that there are no facts in the summary judgment materials that establish when the County actually entered the property. It also asserts that courts liberally construe statutory provisions in favor of condemnees. *See Shepherd Legan Aldrian Ltd. v. Village of Shorewood*, 182 Wis. 2d 472, 478, 513 N.W.2d 686 (Ct. App. 1994) (“[C]ourts strictly construe the condemnor’s power, while liberally construing provisions that favor the owner, including statutes that regulate the compensation to be paid to the owner.”).

The County responds that it took physical possession of the entire property on October 6, 2015, when Lynn Properties provided it with a key to the locked fence surrounding the property. The County cites the ordinary dictionary definition of “possession” as “the act of having or taking into control”; “control or occupancy of property without regard to ownership.” *See Merriam Webster*, <http://www.merriam-webster.com/dictionary/possession> (last visited

³ Lynn Properties also contends that the County should be equitably estopped from asserting that Lynn Properties’ claim was untimely because, it asserts, the County failed to fulfill its statutory obligations to notify Lynn Properties of its right to relocation expenses under the eminent domain law. Essentially, Lynn Properties contends that the County’s failure to provide the required notice resulted in Lynn Properties not learning of its right to relocation expenses until August 2017, leaving it little time to prepare a sufficient claim. However, Lynn Properties does not develop an argument that the County’s inaction induced reasonable reliance that prevented Lynn Properties from filing its claim by October 6, 2017. *See Wosinski v. Advanced Cast Stone Co.*, 2017 WI App 51, ¶40, 377 Wis. 2d 596, 901 N.W.2d 797 (elements of equitable estoppel). We are not persuaded that the circuit court was required to apply equitable estoppel to bar the County’s arguments that the claim was not timely.

February 25, 2020). The County contends that WIS. STAT. § 32.20 does not require that the condemnor have possession for all purposes or that it have sole physical possession of the property. Rather, the County asserts, once the County had a key to the locked fence surrounding the property on October 6, 2015, the County and Lynn Properties shared physical possession of the entire property.⁴ Lynn Properties replies that the County has asserted only that it had *legal* possession, not *physical* possession, of the property on October 6, 2015. It argues that the summary judgment materials did not establish that the County took *physical* possession of the entire property as of October 6, 2015. It contends that, at most, there is a disputed issue of material fact as to when the County took physical possession of the entire property.

We conclude that the County was entitled to summary judgment on Lynn Properties' claim for relocation expenses because the undisputed facts establish that the County had physical possession of the entire property as of October 6, 2015. According to the summary judgment materials, Lynn Properties gave the County a key to the fence surrounding the property on October 6, 2015. Lynn Properties did not indicate to the County that there were any limits to the County's access to the property. Lynn Properties asked the County if it needed access to the fenced-in area or to the building, and the County stated that it did not think it would need to go into the building, which still contained Lynn Properties' belongings. Thus, as of October 6, 2015, both the County and Lynn Properties had their own keys to the locked fence that surrounded the property. We agree with the County that, according to the ordinary dictionary

⁴ The County's position as to its access to the buildings on the property and the relevance of its access to the buildings is unclear; it inconsistently acknowledges that it did not have keys to access the buildings, asserts that there are no facts in the record establishing that it did not have access to the buildings, and argues that it had the right to access the buildings under the real estate contract but chose not to do so.

definition of “possession,” the County had physical possession of the entire property once it had its own key to the locked fence surrounding the property. See Merriam Webster, <http://www.merriam-webster.com/dictionary/possession> (last visited February 25, 2020) (possession defined as “the act of having or taking into control”; “control or occupancy of property without regard to ownership”); see also *C. Coakley Relocation Systems, Inc. v. City of Milwaukee*, 2008 WI 68, ¶¶23-24, 310 Wis. 2d 456, 750 N.W.2d 900 (explaining that “[t]he legislature utilized the phrase ‘physical possession’ to set forth the expectations under these scenarios,” that “[a]pplying ‘physical possession’ is a straightforward approach that is easily applied by litigants and the courts,” and declining to read additional words “into this plainly worded and easily understood statute”).

We reject Lynn Properties’ argument that the County did not have physical possession of the entire property as of October 6, 2015, based on Lynn Properties’ continued occupancy. As the County points out, Lynn Properties has not established that possession must be *sole* possession under WIS. STAT. § 32.20. We also reject Lynn Properties’ argument that the fact that the County did not have keys to specific buildings on the property means that the County did not have physical possession of the entire property. We are not persuaded that this fact negates the conclusion that the County had physical possession by having a key to the locked fence surrounding the entire property. We also reject Lynn Properties’ arguments that the County did not have physical possession of the entire property based on the County’s stated reason for requesting a key or the lack of evidence that the County physically entered the property on October 6, 2015. We are not persuaded that those facts are relevant to the question of whether the County had physical possession of the entire property. We are also not persuaded that a liberal construction of the statute requires a different result. We conclude that, applying the

ordinary meaning of “possession” as used in the “straightforward” and “plainly worded and easily understood statute,” *see Coakley*, 310 Wis. 2d, ¶¶23-24, the County had physical possession of the entire property when Lynn Properties gave it its own key to the fence surrounding the property on October 6, 2015.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals