Beware of Verbal Promises

Knowing when to suspect questionable terms

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An unusual problem arose during the planning phase for a City's road widening project in the County of San Bernardino, California. When the City sought to identify privately owned properties that would be impacted by the project, they found a 2,700 square foot commercial building that was straddling the City's right of way. Although the City initiated discussions with the property owner requesting the immediate removal of the building encroachment, there were two problems that stood in the way.

First, the encroaching portion of the commercial building could not be removed without leaving an unusable half-building improvement. The commercial building was of the "lath and plaster" type that could not be successfully cut-and-refaced while maintaining the structural integrity of the remaining building. The parties determined and agreed that it was not physically possible or economically feasible to relocate the entire building, and it would need to be demolished. Naturally, the property owner would not agree to this.

Secondly, the building was being leased to a tenant with an expiring contract. While this may not seem like a particularly complicated or controversial matter, the tenant was one of a limited number of "adult-themed" bookstore businesses in the City. Adult-themed businesses are only permitted in areas that are specifically zoned for this use, so if relocation efforts were deemed necessary, the City would face a difficult task.

Taking Legal Action

With project deadlines looming and voluntary negotiations stalled, the City filed a Complaint for Quiet Title and Ejectment with the courts. This type of legal action serves a two-fold purpose: (a) it quickly places the dispute concerning the encroachment and property rights before a judge; and (b) this is an effective method for seeking a court order to enter the property.

In an abundance of caution, the City ordered an appraisal with the intent of making a written offer. It was at this time that the tenant contacted the City inquiring about his entitlement to relocation benefits and the future of his business given the City's lawsuit with the landlord-property owners. However, since the tenant was being displaced by the encroachment and not because of the public project, it was premature for the City to begin discussions regarding benefits because eligibility was not yet established.

The appraiser proceeded with the notice of intent to appraise and sent a request for property inspection to both the owner and tenant. But only the tenant—over the objections of the property owner—agreed to meet and be interviewed. It was during this interview that the City gathered the final puzzle pieces needed to proceed.

The Story Unfolds

According to the tenant, the property owner had recently asked him to execute a new lease agreement for a monthly rent amount that was significantly higher than the existing rent. Along with the new lease was a verbal promise from the landlord that the tenant would *not* actually be responsible for the new contract rent amount, and could continue to pay the existing (lower) rate. The tenant told the appraiser that he had a strained and sometimes contentious

relationship with the property owner, and that he believed the undisclosed side agreement was improper and illegal, and felt that the property owner would likely renege on the aforementioned verbal promise. After all, the tenant would have no written proof of the verbal agreement. The tenant expressed his willingness and desire to let the current lease term expire and move his business to a replacement site, but only if the City was willing to assist him with the relocation process.

Recognizing the difficulty and sensitivity required to find potential replacement locations for an adult-themed bookstore business, the City retained a relocation consultant to work directly with the tenant. The consultant located several potential replacement sites for the tenant's business, which all happened to be located *just outside* of the City limits. As a result, the tenant was able to quickly and successfully negotiate a lease for the replacement site and secure a new permit and business license for operation of the adult-themed business. The tenant moved the business and personalty items after accepting an "in-lieu" relocation payment.

A Change of Heart

With the tenant issue finally resolved, the City reinitiated negotiations with the property owner to try to once again sort out the encroachment lawsuit. The property owner was aware that the City had spoken to the tenant about the highly questionable terms in the attempted lease renewal, and responded with an unexpected counter-proposal indicating that he was *now* interested and willing to sell the whole property to the City.

After determining that the City could actually use the remainder property in their current and future public projects for construction staging, both parties agreed on monetary compensation and the matter was (finally) amicably resolved. ✪

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