

RENDERED: FEBRUARY 4, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2009-CA-000999-MR  
AND  
NO. 2009-CA-001000-MR

LAWRENCE R. WEBSTER

APPELLANT

APPEAL FROM PIKE CIRCUIT COURT  
v. HONORABLE JOHN DAVID CAUDILL, SPECIAL JUDGE  
ACTION NOS. 08-CI-01242 AND 08-CI-01243

PIKE COUNTY FISCAL COURT

APPELLEE

### OPINION AND ORDER DISMISSING

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BEFORE: TAYLOR, CHIEF JUDGE; MOORE AND THOMPSON, JUDGES.

TAYLOR, CHIEF JUDGE: Pike County Fiscal Court filed a Motion to Dismiss the above-styled appeals and argued that Lawrence R. Webster lacked standing to pursue these appeals challenging condemnation of his leasehold interests in real property located in Pike County. For the reasons hereinafter stated, we agree.

The genesis of these appeals began with the Fiscal Court filing actions in 2008 in the Pike Circuit Court seeking condemnation of real property located in downtown Pikeville in order to construct a new courthouse. Webster asserted that he held leasehold interests in two parcels of real property subject to condemnation and objected to the condemnation of these leasehold interests. The record reveals that on May 8, 2009, counsel for the lessors sent two letters notifying Webster that his leases were terminated. As grounds therefore, the lessors cited to an identical provision in each lease agreement that provided for termination at the lessors' option in the event of legal proceedings to transfer the leasehold interests. The provisions read:

In the event of bankruptcy, receivership, or any other legal proceeding to attach or transfer this Lease, then this Lease shall, at the option of Lessors, be cancelled and forfeited.

Although never specifically articulated in this Commonwealth, we are persuaded that “where a lease provides for its termination at the lessor’s option on condemnation of the property, the lessee has no right to compensation for the taking if the option is exercised.” *Cardi American Corp. v. All American House & Apartment Movers, L.L.C.*, 221 Ariz. 85, 210 P.3d 1256, 1258 (2009)(quoting 29A C.J.S. *Eminent Domain* § 233 (2007))(citing *Sparrow Chisholm Co. v. City of Boston*, 327 Mass. 64, 97 N.E.2d 172, 173-174 (1951); *Carroll Weir Funeral Home, Inc. v. Miller*, 2 Ohio St.2d 189, 207 N.E.2d 747, 749, 750 (1965); *State v. Sheets*, 48 Wash.2d 65, 290 P.2d 974, 974, 975-76 (1955)). Stated differently,

where a lessor properly exercises an option to terminate a lease upon condemnation, the lease is thusly terminated, and the lessee has no standing either to seek compensation for the taking or to object to the taking of the property.

We believe that the termination language set forth in the respective leases clearly contemplates condemnation as a legal proceeding to “attach or transfer” the leases. In this case, the lessors exercised their option to terminate the leases as legal proceedings (condemnation actions) were instituted to acquire same. Webster was given notice by written correspondence of the lessors’ intent to exercise the option of terminating the leases. Upon receipt, Webster ceased making lease payments and moved his law office from the premises.<sup>1</sup> As such, the leases were terminated, and Webster lacks standing to pursue the instant appeals objecting to the taking of the leasehold interests.

Now therefore be it ORDERED that the Pike Fiscal Court’s Motion to Dismiss is GRANTED and that Appeal No. 2009-CA-000999-MR and Appeal No. 2009-CA-001000-MR be and are hereby DISMISSED.

MOORE, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS AND FILES SEPARATE

OPINION.

ENTERED: February 4, 2011

/s/ Jeff S. Taylor  
CHIEF JUDGE, COURT OF APPEALS

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<sup>1</sup> Lawrence R. Webster asserts that he continues to use one floor of the building for storage of furniture and other personalty.

THOMPSON, JUDGE, DISSENTING: I cannot agree that this case should be dismissed for lack of standing by the holdover tenant and, therefore, dissent. There is no dispute that Webster is a holdover tenant afforded the right and protection of our laws. KRS 383.160. It is well established that a leasehold is a property interest and that the tenant is entitled to compensation in a condemnation proceeding. Yet, the majority orders that the case be dismissed for lack of standing.

The reasoning is premised on the lease which states that the lease could be cancelled at the lessor's option "[i]n the event of bankruptcy, receivership, or any other legal proceeding to attach or transfer this lease..." Absent from the lease is any reference to a condemnation proceeding. I do not believe the omission was unintentional and rely on the unambiguous language that expressed the intent that the legal proceedings mentioned refer to those that seek to attach or transfer the lease. A condemnation proceeding seeks to obtain the real property to which the leasehold interest is attached.

Moreover, the Fiscal Court's affidavit makes a broad unsupported allegation that Webster abandoned the property and failed to make rental payments. Left unanswered is when Webster abandoned the property or when he ceased payments. Thus, the issue is not properly reconciled as a matter of law.

For the foregoing reasons, I would deny the motion to dismiss.

BRIEF FOR APPELLANT:

Lawrence R. Webster  
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Russell H. Davis, Jr.  
Pikeville, Kentucky