

Affirmed and Memorandum Opinion filed November 16, 2021.



In The

Fourteenth Court of Appeals

NO. 14-19-00774-CV

GILCHRIST COMMUNITY ASSOCIATION, Appellant

V.

COUNTY OF GALVESTON, TEXAS, Appellee

**On Appeal from County Court at Law No. 2
Galveston County, Texas
Trial Court Cause No. CV-0076026**

MEMORANDUM OPINION

Appellant Gilchrist Community Association challenges the trial court’s judgment in favor of appellee County of Galveston, Texas in this condemnation proceeding. In four issues, Gilchrist argues the trial court reversibly erred by (1) granting the County’s summary-judgment motion on the grounds that Gilchrist had no compensable interest in the property at issue, (2) granting the County’s summary-judgment motion despite Gilchrist’s “associational standing,” (3) determining that the issue of whether the County had a right to take the

property was moot, and (4) determining the County had the right to take the property. We affirm.

I. BACKGROUND

We have addressed portions of the background and substance of this case before. *See Gilchrist Cmty. Ass'n v. County of Galveston*, No. 14-17-00681-CV, 2018 WL 6722343 (Tex. App.—Houston [14th Dist.] Dec. 21, 2018, no pet.) (mem. op.) (*Gilchrist I*).¹ This litigation involves condemnation proceedings concerning a piece of property commonly known as Rollover Pass, which is located on Bolivar Peninsula in Galveston County. In March 2016, the County filed a petition in condemnation naming the Gulf Coast Rod, Reel and Gun Club (the Club) as owner of the property. We noted in *Gilchrist I* that, “[a]t the time Galveston County filed suit and for many years prior, the Club owned the property while [Gilchrist] managed and maintained it,” though there was no written agreement to that effect before the County filed its condemnation lawsuit. *Id.* at *1.

The same month it filed suit, the County filed a lis pendens giving notice of the condemnation litigation concerning the property. Tex. Prop. Code Ann. § 12.007(a).² “A filed lis pendens is constructive notice of the underlying lawsuit,”

¹ In addition to the above direct appeal, this court has also disposed of numerous other proceedings in or relating to this litigation, though without substantive analysis of the issues raised in this appeal. *See In re Gulf Coast Rod, Reel, & Gun Club*, No. 14-17-00403-CV, 2017 WL 3441544 (Tex. App.—Houston [14th Dist.] Aug. 10, 2017, orig. proceeding) (per curiam) (mandamus petition by Gulf Coast Rod, Reel and Gun Club); *In re Gilchrist Cmty. Ass'n*, No. 14-17-00728-CV, 2017 WL 4440514 (Tex. App.—Houston [14th Dist.] Oct. 5, 2017, orig. proceeding) (per curiam) (petition for writ of injunction by Gilchrist); *Gilchrist Cmty. Ass'n v. County of Galveston*, No. 14-17-00348-CV, 2017 WL 6102774 (Tex. App.—Houston [14th Dist.] Dec. 7, 2017, no pet.) (per curiam) (dismissing interlocutory appeal by Gilchrist for want of jurisdiction); *In re Gilchrist Cmty. Ass'n*, No. 14-19-00811-CV, 2019 WL 6606461 (Tex. App.—Houston [14th Dist.] Dec. 5, 2019, orig. proceeding) (per curiam) (petition for writ of injunction by Gilchrist).

² Property Code section 12.007(a) (Lis Pendens) provides:

After the plaintiff’s statement in an eminent domain proceeding is filed or during

such that an interest in the property acquired after the filing of the lis pendens is acquired “subject to the outcome of the pending litigation.” *World Sav. Bank, F.S.B. v. Gantt*, 246 S.W.3d 299, 303 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

Gilchrist, which was not initially named as a defendant to the lawsuit, filed a notice of appearance, claiming to be a “tenant of the property sought to be condemned.” The County amended its condemnation petition to add Gilchrist as a defendant. In May 2016, after the litigation had commenced and the County had filed its lis pendens, Gilchrist and the Club executed an agreement titled “COMMERCIAL LEASE.” The lease purports to rent the property to Gilchrist for purposes of “management of parking and collection of parking fees.” The lease states a term of 99 years beginning January 1, 2009, more than seven years prior to the execution of the lease, with a monthly rent of \$10.00.

In 2017, the trial court rendered judgment determining that the County was entitled to condemn the property and the Club was to be awarded \$1,750,000 as compensation for the taking.³ The judgment also noted that the court had granted the County’s motion to require Gilchrist to present proof of standing, in which the County argued that Gilchrist lacked standing because it had no compensable interest in the property. Based on this ruling, the trial court rendered judgment that Gilchrist was not entitled to any compensation for the taking of the property due to

the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending.

Tex. Prop. Code Ann. § 12.007(a).

³ Before the 2017 judgment, the trial court rendered partial summary judgment in favor of the County on its right to take the property from the Club. As noted in the 2017 judgment, the County and the Club then settled the remainder of their dispute.

its lack of standing.

Gilchrist appealed, and we reversed the portion of the judgment determining that Gilchrist take nothing because it lacked standing. We reasoned that, “because [Gilchrist] is the defendant in this condemnation cause of action, [Gilchrist] is not required to establish standing.” *Gilchrist I*, 2018 WL 6722343, at *4. We remanded for further proceedings, noting that, “[o]n remand, Galveston County will have a full and fair opportunity to assert its claims regarding [Gilchrist]’s ownership interests, or lack thereof, on summary judgment and, if necessary, its right to take with respect to [Gilchrist].” *Id.* at *6.

After we remanded the case, the County filed two motions for summary judgment, one asserting that Gilchrist had no compensable interest in the property, and the other asserting that the County had the right to take the property from Gilchrist.⁴ In its final judgment,⁵ the trial court rendered summary judgment in favor of the County on the grounds that Gilchrist had no ownership interest in the property. The trial court further noted that the County’s summary-judgment motion on its right to take the property from Gilchrist was moot, given the trial court’s determination that Gilchrist had no ownership interest in the property.

II. ANALYSIS

A. Compensable interest

In issue 1, Gilchrist argues the trial court reversibly erred by granting the County’s summary-judgment motion on the grounds that Gilchrist has no

⁴ While the trial court granted the County’s summary-judgment motion on its right to take before the appeal in *Gilchrist I*, we concluded that “it is not clear that the trial court ruled on Galveston County’s right to take the property from [Gilchrist],” as opposed to from the Club. *Gilchrist I*, 2018 WL 6722343, at *5.

⁵ The trial court’s final judgment states, “This Judgment finally disposes of all Parties and claims and is appealable.” See *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192–93 (Tex. 2001).

compensable interest in the property.⁶ Gilchrist argues that its 2016 lease with the Club gives it a compensable leasehold interest in the property. *Cf. Motiva Enterprises, LLC v. McCrabb*, 248 S.W.3d 211, 214 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (“A lessee is entitled, as a matter of law, to share in a condemnation award when part of its leasehold interest is lost by condemnation.”).

The lease was executed on May 4, 2016. At that time, however, the County had already filed its condemnation petition as well as a lis pendens giving notice of the pending litigation. *See* Tex. Prop. Code Ann. § 12.007(a). As noted above, “[a] filed lis pendens is constructive notice of the underlying lawsuit, and a prospective buyer is on notice that he acquires any interest subject to the outcome of the pending litigation.” *Gantt*, 246 S.W.3d at 303. A grantee acquiring an interest in a property subject to a lis pendens is bound by the outcome of the litigation just as the grantor is. *See id.* In other words, “[i]f the grantor recovers the interest, the grantee succeeds to it; if not, the grantee acquires nothing.” *Cherokee Water Co. v. Advance Oil & Gas Co.*, 843 S.W.2d 132, 135 (Tex. App.—Texarkana 1992, writ denied) (citing *Rosborough v. Cook*, 194 S.W. 131 (Tex. 1917)).

In this case, the lis pendens prevented Gilchrist from acquiring a compensable interest via the lease. Because the lease was executed after the filing of the lis pendens, any interest Gilchrist acquired by the lease was subject to the outcome of the litigation between the County and the Club. *See id.* And after the trial court’s 2017 judgment, in which the trial court determined that the County had

⁶ While Gilchrist characterizes the County’s motion as again challenging Gilchrist’s standing, the substance of the motion challenges Gilchrist’s compensable interest in the property, not its standing. Gilchrist further argues that, in *Gilchrist I*, we instructed that summary judgment was not a proper vehicle to resolve this question. To the contrary, we stated, “[o]n remand, Galveston County will have a full and fair opportunity to assert its claims regarding [Gilchrist]’s ownership interests, or lack thereof, on summary judgment and, if necessary, its right to take with respect to [Gilchrist].” *Gilchrist I*, 2018 WL 6722343, at *6.

the right to condemn the property and otherwise resolved the litigation between the County and the Club, the Club was left with no interest in the property. Accordingly, the Club had no compensable interest to grant to Gilchrist via the lease.⁷ *See id.*

We conclude the trial court properly rendered summary judgment on the basis that Gilchrist had no compensable interest in the property.⁸ We overrule issue 1.

B. Associational standing

In issue 2, Gilchrist argues the trial court reversibly erred by “not recognizing” its “associational standing.” As we explained in *Gilchrist I*, however, there is no need for Gilchrist to show standing in this case. As we previously noted, Gilchrist did not intervene in this lawsuit or file a counterclaim; rather, Gilchrist was named as a defendant to the County’s condemnation claim. *See Gilchrist I*, 2018 WL 6722343, at *4. Under these circumstances, we concluded that, “because [Gilchrist] is the defendant in this condemnation cause of action, [Gilchrist] is not required to establish standing.” *Id.* Applying the same reasoning here, we conclude that, because Gilchrist was not required to show standing, the trial court did not reversibly err by “not recognizing” Gilchrist’s associational standing.

⁷ While Gilchrist contends that the lease memorialized “a verbal understanding which preceded the execution of the lease by several years,” any such verbal agreement is unenforceable under the statute of frauds, which requires a lease of real estate for a term longer than one year to be in writing. Tex. Bus. & Com. Code Ann. § 26.01(a)(1), (b)(5). Moreover, the backdating of the lease does not change the fact that there was no enforceable agreement between Gilchrist and the Club before the County filed its *lis pendens*. *Cf. Crowell v. Bexar County*, 351 S.W.3d 114, 118–19 (Tex. App.—San Antonio 2011, no pet.) (recognizing “general rule” that “parties to a contract cannot make the contract retroactively binding to the detriment of third persons”).

⁸ *Cf. Gilchrist I*, 2018 WL 6722343, at *4 (“If [Gilchrist] failed to carry its burden to prove it had a compensable leasehold interest, the consequence would be a binding judgment that [Gilchrist] is not entitled to compensation from Galveston County[.]”).

We overrule issue 2.

C. Right to take

In issue 3, Gilchrist argues the trial court reversibly erred by treating the question of the County’s right to take the property as moot. As above, the trial court’s final judgment notes that, in addition to its summary-judgment motion on Gilchrist’s lack of a compensable interest, the County also filed a motion for summary judgment on its right to take the property from Gilchrist. The trial court determined that “the granting of [the County’s] summary judgment motion regarding [Gilchrist’s] alleged ownership interest in the property . . . moots any need to rule on the [County’s] Right to Take motion.”

“In order for there to be a taking, the plaintiff must have a compensable interest in the property at issue.” *Brownlow v. State*, 251 S.W.3d 756, 760 (Tex. App.—Houston [14th Dist.] 2008), *aff’d*, 319 S.W.3d 649 (Tex. 2010). Because Gilchrist had no compensable interest in the property, as determined by the trial court and affirmed herein, there is no “taking” regarding Gilchrist. *See id.* Accordingly, the trial court had no need to determine whether the County had the “right to take” from Gilchrist. *See id.*

We overrule issue 3. Based on this determination, we also overrule issue 4, in which Gilchrist argues the merits of the County’s right to take the property. Tex. R. App. P. 47.1.

III. CONCLUSION

We affirm the trial court's judgment as challenged on appeal.

/s/ Charles A. Spain
Justice

Panel consists of Justices Bourliot, Zimmerer, and Spain.