

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE, upon the :
Relationship of the Secretary of the : C.A. No. 06C-10-014 WLW
Department of Transportation, :
 :
Plaintiff, :
 :
v. :
 :
MEHUL N. AMIN and TRUPTI N. DESAL, :
ARTISANS' BANK, 8,311.34 square feet :
(0.19 acres of land), more or less as :
Permanent Taking, and Denial of Vehicular :
Access to U.S. Route 13 Southbound and :
Lockmeath Way, Situate in North :
Murderkill Hundred, Kent County, State :
of Delaware and Unknown Owners, :
 :
Defendants. :

Submitted: May 10, 2007

Decided: August 8, 2007

ORDER

Upon Defendants' Motion for Partial Reargument. Denied.

Upon Plaintiff's Motion for Partial Reargument. Denied.

Mark F. Dunkle, Esquire of Parkowski Guerke & Swayze, Dover, Delaware; attorneys for the Plaintiff.

Richard L. Abbott, Esquire of Abbott Law Firm, Hockessin, Delaware; attorneys for the Defendants.

WITHAM, R.J.

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The Delaware Department of Transportation (“DelDOT” or “the State”) brought an action to acquire land under the power of eminent domain. Generally, the interests to be acquired by the Plaintiff are fee simple title as to 8,311.34 square feet (0.19 acres of land), more or less, and the imposition of a denial of vehicular access along the property line fronting U.S. Route 13 Southbound and Lockmeath Way. The Land Owner Defendants opposed the taking and attempted to show good cause why the Order of Possession should not be entered.¹

By Court Order² dated April 26, 2007, the Court found that the taking proposed by the State was necessary for a public purpose. The Court also found that the State failed to comply with the Real Properties Acquisition Act (“RPAA”). Therefore, the Court dismissed the State’s Complaint without prejudice to ensure compliance with the RPAA’s guidelines.³

Both the State and the Defendant Land Owners filed Motions for Partial Reargument concerning the Court’s April 26, 2007 Order.⁴ The Court will address

¹Defendants in this action are Mehul N. Amin, Trupti N. Desai, Artisans’ Bank, 8,311.34 Square Feet (0.19 acres of land), more or less as permanent taking, and Denial of Vehicular Access to U.S. Route 13 Southbound and Lockmeath Way, Situate in North Murderkill Hundred, Kent County, State of Delaware and Unknown Owners.

²*State v. Amin, et. al*, 2007 WL 1784187 (Del. Super).

³The Court further explained that if good faith efforts to comply with the RPAA failed to result in an agreement between the parties, the State was entitled to commence another condemnation action.

⁴Both Parties also filed Motions in response to the opposing Party’s Motion for Partial Reargument.

both Motions for Partial Reargument concurrently.

Standard of Review

The standard for a Rule 59(e) motion for reargument is well defined under Delaware law.⁵ A motion for reargument will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.⁶ A motion for reargument is not intended to rehash arguments already decided by the court.⁷

Discussion

I. Defendants Motion for Partial Reargument

Defendants filed a Motion for Partial Reargument of the Court's April 26, 2007 Order regarding Defendants' objections to the taking of the subject property based upon lack of a valid public purpose. Specifically, Defendants argue that it was necessary for the Court to conduct an evidentiary hearing in order to make factual findings regarding the issue of whether DelDOT had a valid public purpose for the proposed taking. The State contends that Defendants' Motion for Partial Reargument should be denied because the Defendant is merely rehashing the same arguments ruled on by the Court in its April 26th Order.

⁵*Kennedy v. Invacare Corp.*, 2006 WL 488590 (Del. Super.) at *1.

⁶*Id.*

⁷*State v. Trump*, 2004 Del.Super. LEXIS 285, at *2.

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The Court held a hearing on the issue of good cause concerning the Order of Possession, under Superior Court Civil Rule 71.1⁸, on January 19, 2007. Upon consideration of the Parties' arguments and the Parties' written submissions, the Court ruled that the taking proposed by the State was necessary for a public purpose. Defendants previously argued for the Court to hold a full blown evidentiary hearing concerning certain objections and/or defenses to the taking that the Defendants raised. The Court considered Defendants' request and determined that "a full blown evidentiary hearing [was] not needed."⁹

Superior Court Civil Rule 71.1 governs condemnation proceedings.¹⁰ The Rule

⁸Rule 71.1 provides in pertinent part:

"In a condemnation proceeding instituted by a public agency...an order of possession of the property to be taken shall be entered forthwith, pursuant to 10 *Del. C.* § 6110(a), upon 10 days' written notice of intent to present such order, to be given to the property owner or his attorney of record, supported by an affidavit of necessity executed by the chief administrative officer of the condemning agency, unless the property owner by affidavits, depositions, and/or verified answer shall show good cause why such order of possession should not be entered forthwith. Any hearing on the issue of good cause shall be held without delay and on such affidavits, depositions, and/or verified answer. Disposition of the issue of good cause shall be made by the Court without delay...

In all such condemnation proceedings the burden shall be upon the property owner to overcome the presumption of regularity and the prima facie case of necessity for a public use presented by the institution of such proceeding..."

⁹*State v. Amin, et. al*, 2007 WL 1784187, FN 3 (Del. Super). FN 3 of the Court's April 26, 2007 Order provides: "Defendants argued for and wish to have a full blown evidentiary hearing concerning certain objections or defenses raised. The Court held a hearing on good cause pursuant to Rule 71.1 and will determine whether to enter the Order of Possession forthwith based on the previously held hearing and submissions of Parties. A full blown evidentiary hearing is not needed."

¹⁰Title 10 *Del. C.* § 6103 makes Rule 71.1 applicable. Title 10 *Del. C.* § 6103 states "The rules of the Superior Court shall govern, insofar as applicable, all condemnation proceedings of real

provides that “any hearing on the issue of good cause *shall be held without delay and on such affidavits, depositions, and/or verified answer*. Disposition of the issue of good cause shall be made by the Court without delay.”¹¹ The Rule does not require that the Court hold a full blown evidentiary hearing, which would necessitate the examination of numerous witnesses. The Rule requires that the Court hold the good cause hearing *on such affidavits, depositions, and/or verified answer* (that the property owner can proffer to show good cause). In the case *sub judice*, the Court held a Rule 71.1 hearing on the issue of good cause and disposed of the issue without delay. The Court properly denied Defendants’ request for a full blown evidentiary hearing, because a full blown evidentiary hearing was (and is) not needed in this case and would only tend to delay disposition of the issue.

Defendants alternatively argue that, absent an evidentiary hearing, dispositive motions like the one in question must be treated similar to motions for summary judgment.¹² Condemnation Proceedings are governed by Rule 71.1, which does not provide for a full blown evidentiary hearing nor does the rule make mention of the

and personal property under the power of eminent domain, except as otherwise provided in this chapter.”

¹¹Superior Court Civil Rule 71.1.

¹²When considering Motions for Summary Judgment, the Court views the facts in a light most favorable to the nonmoving party. In this condemnation proceeding, the State filed a Complaint seeking an Order of Possession under the power of eminent domain and Defendants objected to the taking by way of answer (pursuant to statute). Therefore, there is technically no “nonmoving party,” so Defendants are apparently arguing that the Court should view the facts in a light most favorable to the answering Defendants in a condemnation proceeding.

standard that Defendants now argue is applicable. Assuming, without deciding, that the proposed standard is applicable in the present condemnation action, the Court reiterates its previous ruling that the proposed taking is necessary for a public purpose when viewing the facts (laid out in the Court's April 26th Order) in a light most favorable to the Land Owner Defendants.

Defendants raise a third argument regarding the subject of discovery. The Court's April 26, 2007 Order, which is subject to the present Motion for Reargument, did not address any discovery issues. Any oral ruling concerning discovery that the Court would have made, necessarily, occurred at or before the Court's January 19, 2007 hearing on good cause.¹³ A Motion for Reargument on the issue was required to be filed within 5 days of the ruling.

Superior Court Civil Rule 59(e) states that a "motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision."¹⁴ "The Rule is crystal clear."¹⁵ "Under Superior Court Civil Rule 6(b)¹⁶, the Superior Court has divested itself of the power to enlarge the time for a motion for

¹³The Court notes that Defendants did not point to any specific Court ruling in their present Motion.

¹⁴*Hendricks v. Tull*, 2005 WL 1654005 (Del. Super.) at *1.

¹⁵*White v. Riego*, 2005 WL 516850 (Del. Super.) at *1.

¹⁶*Superior Court Civil Rule 6(b)* states in relevant part: the Court may not extend time for taking any action under Rules...59(e), except to the extent and under the conditions stated in them.

reargument.”¹⁷ Defendants’ present Motion for Partial Reargument was not filed until May 3, 2007, over three months after the hearing on good cause was held. Defendants’ attempt to reargue the discovery issue is therefore time barred pursuant to Rule 59(e).

Based on the foregoing, Defendants Motion for Partial Reargument is *denied*.

II. DeIDOT’s Motion for Partial Reargument

The State filed a Motion for Partial Reargument of the Court’s April 26, 2007 Order regarding the Court’s determination that the State failed to comply with the Real Properties Acquisition Act. The State argues that certain facts, not specifically mentioned in the Court’s Order, evidences that the State complied with the RPAA, 29 *Del. C.* § 9505, and/or the State had a reasonable basis for not complying with the act. Defendants contend that the State is attempting to rehash arguments previously made and rejected by the Court in the Court’s April 26th Order, which clearly established the Court’s full consideration of all of the facts regarding the negotiation posture in the months preceding DeIDOT’s filing for condemnation.

In making its April 26, 2007 ruling, the Court fully considered the events, facts and correspondences between the Parties that occurred prior to the State placing the subject property into condemnation. The Court concluded that the State did not make every reasonable effort to acquire the Defendants’ property by negotiation, as required by the RPAA, because the State placed the property into condemnation without requesting a counteroffer from Defendants and without explaining that

¹⁷*Hessler, Inc., v. Farrell*, 260 A.2d 701, 702 FN* (Del. Supr. 1969).

negotiations concerning alternative options were off the table. The specific communications (emails) in the record that the State now emphasizes merely show that the State asked Defendants for updates concerning the June 29, 2006 offer. The communications were not express requests for a counteroffer. Defendants timely responded to the State's request for updates. The responses were adequate, even though Defendants did not respond to the offer in monetary terms. Defendants did not respond in monetary terms because they were in the process of negotiating alternative access to the liquor store. However, Defendants did "update" the State regarding the June 29, 2006 offer, pursuant to the State's request.¹⁸

The property was placed into condemnation without the State informing Defendants that the alternative options were off the table (which would have triggered the Defendants to get an appraisal) and the State never expressly demanded a counteroffer. When the Condemnation action was commenced, the Defendants were under the impression that negotiations concerning alternative options were still ongoing. After reviewing the negotiations that occurred prior to placing the property into condemnation, the Court properly determined that the State did not make every

¹⁸Defendants also articulated that they did not want to address a monetary figure at that time because they thought the proposed taking was not necessary for a public purpose. The State argues that Defendants' position provided the State with a valid excuse for not complying with the RPAA, since further negotiations would have been futile. However, the State neither expressly asked for a counteroffer, nor explained to Defendants that the ongoing negotiations regarding alternative options had ceased, prior to placing the property into condemnation. Defendants were negotiating with the State at the time the property was put into condemnation concerning alternative options, which tends to show that Defendants were willing to negotiate. Defendants' position did not make further negotiations futile. Therefore, the State did not have a valid excuse for noncompliance.

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reasonable effort to acquire the Defendants' property by negotiation (in this case), as required by the RPAA. The communications that the State emphasizes in its present Motion for Partial Reargument were previously before the Court and do not change the outcome of the Court's underlying opinion.

Based on the foregoing, DelDOT's Motion for Partial Reargument is *denied*.
IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution