Supreme Court

No. 2000-148-Appeal.
(PC 98-2525)

William D. Ankner et al. :

v. :

Stephen Napolitano et al. :

Present: Weisberger, C.J., Lederberg, Bourcier, Flanders, and Goldberg, JJ.

O P I N I O N

Flanders, Justice. This is the latest skirmish in the long-raging condemnation battle between Capital Properties, Inc. (CPI), the State of Rhode Island (state), and the City of Providence (city). Because our prior published opinions have chronicled the history of this protracted conflict,[1] we will not recap it here, except as needed to address the issues presented by this appeal.

On December 20, 1999, we issued an order, a copy of which is appended hereto, that remanded this case to the Superior Court. The purpose of the remand was to enable CPI and the state to present their respective contentions to the Superior Court concerning the state's alleged breach of its 1987 agreement with CPI and the state's post-judgment efforts to correct the interest rate that was used to calculate the total condemnation award in favor of CPI. On March 24, 2000, the Superior Court issued a decision on the parties' cross-motions for summary judgment. It concluded, among other things, that CPI's 1987 agreement to credit the state with a sum equal to a 50 percent share of the

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[1] Capital Properties, Inc. v. State, 749 A.2d 1069 (R.I. 1999); Capital Properties, Inc. v. State, 726 A.2d 12 (R.I. 1998); Capital Properties, Inc. v. State, 714 A.2d 617 (R.I. 1998); Capital Properties, Inc. v. State, 636 A.2d 319 (R.I. 1994).

"total condemnation proceeds awarded" to CPI did not include an interest component, but was limited to the principal portion of CPI's 1997 condemnation award. The court also ruled that the state's attempt to modify the judgment to include a variable United States Treasury bill rate of interest on the condemnation award — instead of the 12 percent per annum rate used in the judgment — was untimely and, therefore, it was not properly before the court. The state has challenged these rulings on appeal. After considering the parties' arguments, we reverse and direct the Superior Court to enter an amended judgment in favor of the state on each of the two points discussed below.

I

"Total Condemnation Proceeds Awarded" Included Interest

On December 20, 1999, we ordered the state to pay $5,977,019.84 to CPI. This amount represented the city's 50 percent share of the total condemnation proceeds awarded to CPI in 1997, and it included interest calculated at the variable treasury-bill rate specified in G.L. 1956 §§ 37-6-23 and 37-6-29. With respect to the other half of the award, CPI had agreed to reimburse the state in an amount equal to one-half the "total condemnation proceeds awarded" to CPI, in consideration of the state having conveyed to CPI in 1989 a certain parcel of real estate in Providence (referred to by the parties as "parcel nine"). Thus, in effect, CPI had agreed to credit the state with having already paid to CPI its one-half share of the future condemnation award.

The Superior Court, we conclude, erred as a matter of law in excluding interest from its calculation of the "total condemnation proceeds awarded" to CPI. As a matter of fact and law, the total condemnation proceeds awarded to CPI in 1997 included pre-judgment interest from the date of the condemnation to the date of the judgment embodying the award. Indeed, after the judgment became final on April 17, 1998 (the date this Court affirmed the 1997 judgment, see Capitol Properties, Inc. v.

State, 714 A.2d 617 (R.I. 1998)), the total judgment (principal plus pre-judgment interest) continued to accrue interest until the date of payment. This is so because the law requires condemnation awards to include pre- and post-judgment interest. See M.S. Alper & Son, Inc. v. Director of Public Works, 98 R.I. 154, 159, 200 A.2d 583, 587 (1964); see also Cardi Corp. v. State, 561 A.2d 384, 386-88 (R.I. 1989). Thus, "a condemnee is entitled to interest on the fair market value of [the] property from the day of the taking to the day of payment." M.S. Alper & Son, Inc., 98 R.I. at 160, 200 A.2d at 587 (per curiam) (on motion for reargument); see also 6A Nichols on Eminent Domain § 26E.02[4] at 26E-34-35 (3d. rev. ed. 2000) ("[i]nterest * * * is both part of the [condemnation] award itself, and represents part of [the] just compensation to which a condemnee is constitutionally entitled, arising out of the delay which takes place between the taking of the property and ascertainment of the award"). Thus, the total condemnation proceeds awarded to CPI in this case, as in any other condemnation proceeding, included both a principal component for the value of the land on the date of the taking and prejudgment interest thereon to the date the judgment became final. Thereafter, interest continued to accrue on the total of principal plus prejudgment interest to the date of any payment, and then on any remaining unpaid balance.

We recognized this on December 20, 1999, when we ordered the state to pay to CPI the city's share (namely, one half) of the total condemnation proceeds awarded to CPI, an amount that included both the value of the land taken and interest thereon to the date of payment. Moreover, CPI has already enjoyed the benefits associated with its receipt of the state's 1989 transfer to it of parcel nine in lieu of the state's paying to CPI its one-half share of the total condemnation proceeds that were awarded to CPI in 1997. When the state transferred parcel nine to CPI in 1989, CPI had suggested it was worth some $8,000,000. Thus, a full eight years before CPI obtained a condemnation judgment

that included $6,100,949 ($8,700,000 less $2,599,051 previously paid) (representing the value of the land taken from CPI by the state), plus $4,552,379.60 (representing interest and costs on that taking to the date judgment entered), for a total award of $10,653,328.03, the state effectively had prepaid its one-half share of these total condemnation proceeds. For this reason, as a matter of equity, CPI has been more than fully compensated for the state's share of the total condemnation proceeds it was awarded, having enjoyed the benefits of owning parcel nine since 1989. It is entitled to nothing more, we hold, under its 1987 agreement with the state.

II

Interest on the Condemnation Award

Amending §§ 37-6-23 and 37-6-29 in 1994, the General Assembly enacted P.L. 1994, ch. 258, §§ 1, 2 (the 1994 amendment) to provide for a pre- and post-judgment rate of interest on condemnation awards that would equal the applicable fifty-two week treasury-bill rate. The act became effective upon its passage in 1994 and applied to "all pending cases where a petition for assessment of damages has been filed but final judgment has not been entered." P.L. 1994, ch. 258, § 3.

As a result of the 1994 amendment, the pre- and post-judgment interest rate on any future condemnation award to CPI in this case became the variable treasury-bill rate instead of the previous 12 percent per annum rate. See Lischio v. Gill, 704 A.2d 216, 217 (R.I. 1997). Because a judgment ultimately entered in this case in 1997, the 1994 amendment required that judgment to use the applicable treasury-bill rate, and not the prior 12 percent rate. Id. In Lischio we rejected the argument, reprised here by CPI, that once a judgment using an erroneous interest rate becomes final, the Superior Court cannot correct the amount of interest. Id. at 216. On the contrary, we held in Lischio that "[b]ecause an incorrect rate [of interest] was calculated [for a condemnation award in a final judgment],

the court was permitted to amend this 'clerical' error at any time pursuant to Rule 60(a)." Id. at 217. Although the state in this case failed to file a Super. R. Civ. P. 60(a) motion to correct the erroneous interest rate used to compute the award set forth in the court's 1997 condemnation judgment, it did raise this issue with the Superior Court pursuant to our December 20, 1999, order of remand. Moreover, Rule 60(a) permitted that court to correct this type of mistake in the judgment "at any time of its own initiative" after it became aware of this error. Indeed, even when an appeal is pending "such mistakes * * * may be so corrected with leave of the appellate court." Id. Here, by virtue of our remand order allowing the parties to raise this issue with the Superior Court, we effectively gave the court leave to do so if it determined that such a correction was in order.

Unfortunately, the motion justice erred in concluding that the state had waited too long to call this interest-rate error to the court's attention. Such nondiscretionary mistakes in judgments "arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party." Id. (Emphasis added.) Moreover, it was not the state's responsibility to calculate the correct amount of interest on the judgment in the first place, nor was it obliged to call this error to the court's attention within a certain period. Rather, the calculation of interest on a judgment is supposed to be a ministerial act for the clerk of the court to perform. See Cardi Corp., 561 A.2d at 387. Thus, it is usually not even an issue to be decided by the court. See id. Although interest in this case should have been calculated by the clerk pursuant to the rate specified in the 1994 amendment to §§ 37-6-23 and 37-6-29 and automatically added to the judgment, see id., it was not. But once this mistake became known to the court, it should have corrected this clerical or computational error in the judgment on its own initiative or pursuant to the state's requests for it to do so on remand. See DiLuglio v. Providence Auto Body, Inc., 755 A.2d 757, 778 (R.I. 2000).

Accordingly, we vacate those portions of the Superior Court summary judgment that are inconsistent with this requirement and order the court on further remand to enter an amended judgment that includes interest calculated pursuant to §§ 37-6-23 and 37-6-29: namely, (1) from the date of the condemnation to April 17, 1998, the date the judgment became final, and thereafter, (2) on the combined total of the principal portion of the award and of the prejudgment interest calculated to the date the judgment became final to the date of payment "at a rate equal to the average of the coupon issued yield equivalent as determined by the secretary of the treasury of the average accepted auction price for the auctions of fifty-two (52) week United States [T]reasury bills." As specified in § 37-6-23, post-judgment interest on this award "shall be computed at the [treasury-bill] rate as set out herein," and "shall be computed daily to the date of payment and shall be compounded annually."

Conclusion

This affray, we hope, will now abate. In any event, we sustain the state's appeal, vacate the summary judgment entered by the Superior Court pursuant to that court's decision dated March 24, 2000 (insofar as it is inconsistent with this opinion), and remand this case to the Superior Court with directions to enter an amended final judgment as provided for herein.

COVER SHEET

TITLE OF CASE:	William D. Anker et al v. Stephen Napolitano et al
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DATE OPINION FILED:	January 8, 2001
Appeal from SOURCE OF APPEAL:	Superior Court
JUDGE FROM OTHER COURT:	Needham, J.
JUSTICES:	Weisberger, C.J., Lederberg, Bourcier, Flanders, Goldberg, JJ. **Concurring**
WRITTEN BY:	FLANDERS, J.
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